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[EDITORIAL NOTE: Several documents were published with document numbers instead of page numbers in the Table Of Contents in the **Federal Register** of Friday, April 23, 2004. These TOC entries are reprinted below with the correct page numbers.

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

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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 701

RIN 0560–AG26

Emergency Conservation Program

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule; correction.

SUMMARY: This document corrects the final rule document published March 4, 2004 (69 FR 10299), which set out regulations for the Emergency Conservation Program (ECP) and also provided for resolving matters related to other programs that have been administered under the same part. This document removes erroneous language that could be misleading.

EFFECTIVE DATE: March 4, 2004.

FOR FURTHER INFORMATION CONTACT: Clayton Furukawa, Conservation and Environmental Protection Division, Farm Service Agency (FSA), United States Department of Agriculture (USDA 690–057), Stop 0517, 1400 Independence Avenue SW., Washington, DC 20250–0517. Telephone: (202) 690–0571; e-mail: *clayton.furukawa@usda.gov*.

SUPPLEMENTARY INFORMATION: The Farm Service Agency published a final rule in the **Federal Register** of March 4, 2004, (69 FR 10299) revising the regulations for the Emergency Conservation Program. In section 701.10(c) of that final rule, the last sentence incorrectly states "Denial of a request for a waiver is not subject to appeal." This correction removes that sentence.

In rule FR Doc. 04–4861 published March 4, 2004, (69 FR 10299) make the following correction:

§ 701.10 [Corrected]

■ On page 10304, in § 701.10, paragraph (c), remove the last sentence.

Signed in Washington, DC, on April 19, 2004.

Michael W. Yost,

Acting Administrator, Farm Service Agency.

[FR Doc. 04–9419 Filed 4–23–04; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 956

[Docket No. FV04–956–1 IFR]

Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Establishment of Special Purpose Shipping Regulations and Modification of Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule establishes procedures to allow the grading, packing, or storing of Walla Walla sweet onions outside the production area established under the Walla Walla sweet onion marketing order and also modifies handler reporting requirements. The marketing order regulates the handling of sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon and is administered locally by the Walla Walla Sweet Onion Marketing Committee (Committee). Allowing sweet onion market preparation to occur outside the production area will increase marketing options for Walla Walla sweet onions and may reduce marketing costs. Modification of the reporting requirements will contribute to the efficient operation of the program and enhance compliance with the special purpose shipment procedures as established in this rule.

DATES: Effective April 27, 2004; comments received by June 25, 2004 will be considered prior to issuance of a final rule. Pursuant to the Paperwork Reduction Act, comments on the information collection burden must be received by June 25, 2004.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; fax: (202) 720–8938; or e-mail: *moab.docketclerk@usda.gov* or *www.regulations.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW. Third Avenue, Suite 385, Portland, Oregon 97204–2807; telephone: (503) 326–2724; fax: (503) 326–7440; or e-mail: *Barry.Broadbent@usda.gov*; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491; fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone (202) 720–2491; fax: (202) 720–8938; or e-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 956, both as amended (7 CFR part 956), regulating the handling of Walla Walla sweet onions grown in Southeast Washington and Northeast Oregon, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws,

regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Minimum grade, size, maturity, container, and pack requirements are authorized under the order, but currently only container markings are regulated. This rule establishes procedures and safeguard requirements that allow grading, packing, or storing of Walla Walla sweet onions outside the production area, but within the States of Oregon and Washington. Persons desiring to ship, as well as those desiring to receive Walla Walla sweet onions for grading, packing, or storing outside the production area will apply and report to the Committee on forms provided by the Committee. This rule also increases the existing reporting requirements for handlers regulated under the order with the addition of a preseason handler registration form and the expansion of the current handler shipment statement.

Section 956.63 of the order provides authority for the USDA to issue special regulations to facilitate the shipping of Walla Walla sweet onions for grading, packing, or storing outside the production area. Further, § 956.66 provides authority for the establishment of such safeguards as may be necessary to ensure that Walla Walla sweet onions are shipped for the purpose so authorized. Reporting requirements are authorized in § 956.80.

The Committee met on December 8, 2003, and unanimously recommended the establishment of procedures and safeguard requirements to allow grading, packing, or storing of Walla Walla sweet onions outside the production area. At that meeting, the Committee also unanimously recommended expanding current handler reporting requirements to include a preseason registration form. The Committee met again on February 10, 2004, and made a unanimous recommendation to broaden the scope of the handler shipment statement to include the listing of producers whose product was handled and the quantity thereof. Committee members believe that this rule will: (1) Allow shippers to use grading, packing, or storing facilities that will be most beneficial to their individual circumstances; (2) contribute to the efficient operation of the program by improving Committee information; and (3) enhance compliance with the provisions of the order.

The grading, packing, and storing costs associated with preparing Walla Walla sweet onions for market may vary between onion packing facilities inside and outside the production area. There may also be differences in the type and variety of packaging options, the transportation alternatives available, or the level of services offered by individual onion packing facilities inside and outside the production area. This rule allows shippers of Walla Walla sweet onions the flexibility to pack and ship product from the most advantageous facility available, regardless of where in Oregon or Washington that facility is located.

Some examples of situations in which this rule will benefit the industry are: (1) A packer outside the area of production is experimenting with modified atmosphere packaging that increases the shelf life of sweet onions; (2) a Walla Walla sweet onion producer is part owner of a packing facility located outside the area of production and wishes to pack and store sweet onions in that facility; (3) a packing facility outside the area of production can offer rail service for shipping and a rail siding is not available within the production area; and (4) a fresh produce marketing company that has a packing facility outside the area of production desires to begin packing and shipping Walla Walla sweet onions.

The Committee believes that the regulations established under the order create orderly marketing, are good for consumers, encourage repeat purchases, and ultimately improve returns to producers. Therefore, the Committee also recommended the establishment of safeguards to ensure that all Walla Walla sweet onions graded, packed or stored outside the production area are ultimately subject to the requirements established under the order.

Persons desiring to ship or receive Walla Walla sweet onions for grading, packing, or storing outside the production area will apply to the Committee on a *Shippers/Receivers Application for Certificate of Privilege*, (SRACP) Form No. 3. Applicants will complete and submit a SRACP form each year prior to shipping or receiving Walla Walla sweet onions for grading, packing, or storing outside the production area. Information collected on the application includes the company name, contact name, address, contact telephone numbers, signature of the shipper or receiver, date, and such other information as the Committee may require. Applicants will agree to furnish reports on shipments of sweet onions made under the Certificate of Privilege and will certify that all shipments of production area onions for grading, packing, or storing outside the production area will be made in accordance with order provisions. Those parties acting as receivers under the Certificate of Privilege must further agree to forward all assessments due on sweet onions handled to the Committee office. If approved, the Committee manager will sign the application, assign a Certificate of Privilege number for tracking purposes, and return a copy of the application to the applicant. If denied, the applicant will be notified in writing of the reasons for denial and have an opportunity to appeal the Committee's decision.

After the Committee approves the applications of both the shipper and the receiver, Walla Walla sweet onions may be shipped out of the production area for grading, packing, or storing. When the parties conclude shipping or receiving, both the shipper and receiver will be required to submit a *Special Purpose Shipment Report*, (SPSR) Form No. 4. Information collected on the SPSR will include the Certificate of Privilege number as assigned by the Committee, company name, contact name, address, contact telephone numbers, names of the individuals or companies shipped to or received from, the total quantities of onions shipped or received in 50-pound equivalents, signature of the shipper or receiver, date, and such other information as the Committee may require.

The SPSR, as well as any assessments due, will be submitted to the Committee no later than 30 days after the date of the last shipment or receipt of Walla Walla sweet onions under the Certificate of Privilege. The SPSR will also reiterate that it is the receiver of sweet onions shipped under the Certificate of Privilege that is responsible for payment of the administrative assessment. Shippers and receivers will only be required to submit one (1) of these reports annually.

This rule also increases handler-reporting requirements by requiring the submission of a *Walla Walla Sweet Onion Handler Registration Form*, (Registration) Form No. 2, and by expanding the scope of the information required on the existing *Handler's Statement of Walla Walla Sweet Onion Shipments*, (Form No. 1; Form FV–141) (Statement). Each year prior to the shipping season, but in no case later than May 31, all persons desiring to handle Walla Walla sweet onions during the forthcoming season will be required to complete a Registration form and submit it to the Committee. Information collected on this form includes: Company name, contact name, signature, date, addresses, and contact telephone numbers; brands or labels to be marketed; estimated acres of production to be packed; and such other information as the Committee may require.

The current Statement, which is submitted to the Committee at the end of each shipping season, requires handlers to report the quantity of Walla Walla sweet onions handled during the season. This action expands the information collected on the Statement to include reporting the quantity of Walla Walla sweet onions handled on behalf of each producer. Information collected on the Registration and modified Statement will greatly enhance order compliance by allowing the Committee to compare the two required reports, the pre-season handler registration form and the post-season shipment report. This will ultimately assist the Committee in monitoring onion shipments and the collection of assessments. For example, acreage and production information provided by producers will be reconciled with similar information collected from handlers to help ensure that all assessable sweet onion shipments have been properly reported and that assessments have been correctly collected.

This information collection is important to the Committee in light of the regulation relaxation that allows grading, packing, or storing outside the production area. The Committee believes that enhancing the scope of the reporting requirements is the best way to maintain oversight of the special purpose shipment procedures as modified herein. In addition to enhancing the Committee's compliance efforts, the collection of handler profile information such as addresses and contact numbers will also be useful to the Committee for maintaining contact throughout the season.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 28 handlers of Walla Walla sweet onions subject to regulation under the order and approximately 37 Walla Walla sweet onion producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (SBA)(13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

The Committee estimates that in 2003, 674,038 50-pound containers of Walla Walla sweet onions were marketed at an average FOB price of about $11.50 per container. The total industry value at shipping point was approximately $7,751,437, leaving an average annual gross receipt per handler of $276,837. Thus, a majority of handlers and producers of Walla Walla sweet onions may be classified as small entities.

Committee meetings are widely publicized in advance of the meetings and are held in a location central to the production area. The meetings are open to all industry members and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Committee recommendations can be considered representative of small business interests in the industry.

This rule will allow persons to ship or receive Walla Walla sweet onions outside the area of production for grading, packing, or storing purposes. Persons desiring to do so will first be required to apply to the Committee. The applicants will be required to certify that all Walla Walla sweet onions graded, packed or stored outside the production area would meet any minimum grade, size, maturity, container, pack, or inspection requirements established under the order. Currently, only container, assessment, and reporting requirements are implemented under the order.

After the Committee completes its review of the application and determines that everything is in order, applicants will be granted a Certificate of Privilege authorizing them to ship or receive Walla Walla sweet onions outside the production area for market preparation. At the end of the shipping season, both the shipper and receiver will submit reports to the Committee regarding the quantity of Walla Walla sweet onions handled under Certificate of Privilege. The authority for this action is provided in §§ 956.63 and 956.66.

In addition, this rule expands handler-reporting requirements by adding a preseason registration form and by expanding the scope of information currently required on the handler's shipment report. These changes will provide the Committee with more comprehensive handler information that the Committee believes will improve handler compliance and enhance safeguards that are currently in place. The additional information gathered from the new mandatory report will complement the modification to the current reporting requirements and will contribute to greater efficiency in the operation of the program. The improved safeguards and oversight afforded the Committee with these reporting requirement changes is essential to maintaining compliance with procedures for market preparation outside the production area. The authority for this action is provided in § 956.80.

Regarding the impact of this action on affected entities, this rule will impose minimal additional costs. The Committee estimates that about 10 persons may desire to ship or receive Walla Walla sweet onions for grading, packing, or storing outside the production area during each marketing year. Such shippers and receivers will complete a *Shippers'/Receivers Application for Certificate of Privilege, (Form No. 3)* and submit it to the Committee for approval each year prior to shipping or receiving any Walla Walla sweet onions for grading, packing, or storing outside the production area. Once the Committee has approved the application, the parties will be free to handle sweet onions for market preparation out of the production area. After Walla Walla sweet onions have been handled pursuant to the Certificate of Privilege, both the shipper and receiver will be required to submit a *Special Purpose Shipment Report, (Form No. 4)* to the Committee no later

than 30 days after the date of the last shipment or receipt of onions. The Committee estimates that 10 shippers and receivers will each be obligated to submit one (1) of these reports annually. The annual industry burden associated with the information collection on both forms is estimated to total approximately 3.60 hours.

The addition of a preseason registration form and the expansion of the existing reporting requirements for all Walla Walla sweet onion handlers will also impose minimal additional costs on the industry. Persons desiring to handle Walla Walla sweet onions will be required to complete and submit a *Walla Walla Sweet Onion Handler Registration Form, (Form No. 2)* prior to May 31 of each year. Handlers of sweet onions will be required to submit a *Handler's Statement of Walla Walla Sweet Onion Shipments (Form No. 1; Form FV–141)* that is more detailed than the one currently in use. The Committee estimates that 28 handlers will be affected with a total annual industry burden of approximately 25.76 hours for both forms.

The Committee considered one alternative to the part of this proposal that allows Walla Walla sweet onions to be graded, packed, or stored out of the area. The alternative was to prohibit any grading, packing, or storing of Walla Walla sweet onions outside the production area. The Committee felt that this alternative would have limited the flexibility of shippers in making marketing decisions related to the grading, packing, or storing of Walla Walla sweet onions and was rejected. Allowing the shipment of Walla Walla sweet onions outside the production area for grading, packing, or storing is a relaxation of order requirements and any costs related to additional reporting is outweighed by the benefits of allowing such shipments.

The alternatives that the Committee discussed with regard to increasing handler reporting requirements were: (1) Maintain the status quo and make no changes in the reporting requirements; and (2) make the submission of the registration form and producer information on the shipment statement voluntary instead of mandatory. Both of these options were rejected as not sufficiently addressing the need for better handler information to help improve the Committee's ability to ensure industry compliance with the order, especially in light of the relaxation changes to the order regulations allowing grading, packing, or storing outside the production area.

In addition, the Committee's meetings were widely publicized throughout the sweet onion industry and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the December 8, 2003, and the February 10, 2004, meetings were public meetings and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule imposes additional reporting and recordkeeping burdens on handlers, as well as on producers and marketers who ship or receive Walla Walla sweet onions for grading, packing, or storing outside the production area. This action requires three new Committee forms and the modification of an existing Committee form. The information collection requirements are discussed later in this document. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. The USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice announces that AMS has requested and obtained emergency approval from the Office of Management and Budget (OMB) for a new information collection request and to revise a currently approved information collection for Marketing Order No. 956, regulating the handling of sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon. This emergency approval was assigned OMB No. 0581–0221. The emergency request was necessary because insufficient time was available to follow normal clearance procedures. Upon publication of the final rule, this collection will be merged with the forms currently approved for use under OMB No. 0581–0178 "Generic OMB Vegetable Crops."

Title: Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Marketing Order No. 956.

OMB Number: 0581–0221.

Type of Request: New collection; revision of a currently approved information collection.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the Walla Walla sweet onion marketing order program, which has been operating since 1995.

On December 8, 2003, the Committee unanimously recommended the establishment of procedures and safeguard requirements to allow the grading, packing, or storing of Walla Walla sweet onions outside the production area. At that meeting, the Committee also recommended the addition of a preseason handler registration form to the reporting requirements. The information requirements created by this action will be reported on three new Committee forms. Safeguard requirements require any person who wishes to ship or receive Walla Walla sweet onions for grading, packing, or storing outside the production area to first apply to the Committee on a *Shippers/Receivers Application for Certificate of Privilege, Form No. 3* prior to shipping or receiving product. After the Committee approves the application, the applicant will be required to submit a *Special Purpose Shipment Report, Form No. 4* to the Committee after Walla Walla sweet onions are shipped or received out of the production area pursuant to a Certificate of Privilege. The Committee also recommended expanding current handler reporting requirements to include a *Walla Walla Sweet Onion Handler Registration Form, Form No.* 2. The new reporting requirement will help ensure compliance with the marketing order regulations and assist the Committee and the USDA with oversight and planning.

The Committee met again on February 10, 2004, and unanimously recommended the revision of the current *Handler's Statement of Walla Walla Sweet Onion Shipments, Form FV–141, Form No. 1* to require that sweet onion shipment information be segregated by producer as well as by week and region. This additional information will increase the time it takes each handler to complete the form from 25 minutes to 40 minutes, or an additional 6.16 burden hours for this form. The Committee believes that this information, used in conjunction with other information obtained, will improve their ability to administer the

order. This form has already been approved for 12.60 burden hours by OMB under OMB No. 0581–0178.

The information collected will be used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Programs' regional and headquarters' staff, and authorized Committee employees. Authorized Committee employees are the primary users of the information and AMS is the secondary user.

The request for approval of the new information collection under the order is as follows:

Shippers/Receivers Application for Certificate of Privilege, Form No. 3

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2 minutes per response.

Respondents: Persons who wish to ship or receive Walla Walla sweet onions for grading, packing, or storing outside the production area.

Estimated Number of Respondents: 10.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 0.30 hours.

Special Purpose Shipment Report, Form No. 4

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 20 minutes per response.

Respondents: Persons who ship or receive Walla Walla sweet onions for grading, packing, or storing outside the production area.

Estimated Number of Respondents: 10.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 3.30 hours.

Walla Walla Sweet Onion Handler Registration Form, Form No. 2

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 minutes per response.

Respondents: All persons who wish to handle Walla Walla sweet onions.

Estimated Number of Respondents: 28.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 7.00 hours.

Handler's Statement of Walla Walla Sweet Onion Shipments, Form FV–141; Form No. 1

As previously mentioned, *Form FV–141, Handler's Statement of Walla Walla Sweet Onion Shipments*, is already approved under OMB No. 0581–0178, for 12.60 hours (30 respondents x .42 hours, equals 12.60 burden hours). Because of the additional information being requested, and the decrease in the number of respondents (from 30 to 28), the burden for this form is being increased to 18.76 burden hours (28 respondents x .67 hours), or an additional burden of 6.16 hours.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 40 minutes. This is an increase from the previous estimate of 25 minutes.

Respondents: Walla Walla sweet onion handlers.

Estimated Number of Respondents: 28.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 18.76 hours.

Comments: Comments are invited on: (1) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–0221 and the Marketing Order for Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon and be sent to the USDA in care of the Docket Clerk at the previously mentioned address. All comments timely received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. As mentioned before, because there was insufficient time for a normal clearance procedure and prompt implementation is needed, AMS has obtained emergency approval from OMB for the use of this collection of forms for the 2004 regulation period, which begins June 2004. Upon publication of the final rule, this collection will be merged with the forms currently approved for use under OMB No. 0581–0178 "Generic OMB Vegetable Crops."

In summary, this rule establishes procedures to allow the grading, packing, or storing of Walla Walla sweet onions outside the production area established under the Walla Walla sweet onion marketing order and also modifies handler reporting requirements. Allowing the preparation of sweet onions for market to occur outside the production area will increase marketing options for producers and may reduce marketing costs. The additional reporting requirements will contribute to the efficient operation of the program and assist in ensuring handler compliance with marketing order provisions. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The Walla Walla sweet onion marketing season normally starts in mid-June and these changes should be in effect by that time to achieve their intended purpose; (2) the Committee unanimously recommended these changes at public meetings and all interested parties had an opportunity to provide input; (3) Walla Walla sweet onion producers and handlers are aware of this rule and need no additional time to comply with the relaxed requirements; (4) this rule provides a 30-day comment period on the regulation changes which is deemed appropriate, and a 60-day comment period on the reporting requirement changes, and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 956

Marketing agreements, Onions, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 956 is amended as follows:

PART 956—SWEET ONIONS GROWN IN THE WALLA WALLA VALLEY OF SOUTHEAST WASHINGTON AND NORTHEAST OREGON

■ 1. The authority citation for 7 CFR part 956 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 956.163 is amended by adding a new paragraph (b) to read as follows:

§ 956.163 Handling for specified purposes.

* * * * *

(b) *Market preparation outside the production area.* (1) Persons desiring to ship or receive Walla Walla sweet onions for grading, packing, or storing outside the production area, but within Oregon and Washington, shall apply to the Committee on a *"Shippers/Receivers Application for Certificate of Privilege"* form. Such application shall contain the following:

(i) Company name, contact name, address, contact telephone numbers, date, and signature of the applicant;

(ii) Whether the applicant is the shipper or receiver;

(iii) Agreement to provide a *Special Purpose Shipment Report* to the Committee as required after shipping or receiving Walla Walla sweet onions for grading, packing, or storing out of the production area under a Certificate of Privilege.

(iv) Certification by the applicant that all provisions of the rules and regulations of this part will be adhered to including, but not limited to, any grade, size, quality, maturity, pack, or container requirements that may be currently in effect;

(v) Certification by the applicant, if a receiver under the Certificate of Privilege, that they will forward to the Committee office all assessments due on Walla Walla sweet onions handled.

(vi) Such other information as the Committee may require.

(2) Each approved applicant shall furnish to the Committee a *Special Purpose Shipment Report* form no later than thirty (30) days after the final shipment of sweet onions are shipped or received pursuant to the Certificate of Privilege. That report shall contain the following information:

(i) Company name, contact name, address, contact telephone numbers, signature, and date;

(ii) Names of shippers or receivers who have either shipped Walla Walla sweet onions out of the production area or received the same;

(iii) The total quantity of Walla Walla sweet onions shipped or received under this section during the period covered;

(iv) Certification by the receiver that all assessments due on Walla Walla sweet onions handled under the respective Certificate of Privilege are being forwarded to the Committee; and

(v) Such other information as the Committee may require.

(3) The Committee may cancel any Certificate of Privilege if proof satisfactory to the Committee is obtained that any Walla Walla sweet onions shipped or received were done so contrary to the provisions of this section. Upon cancellation of such Certificate of Privilege the shipper or receiver may appeal to the Committee for reconsideration.

■ 3. Section 956.180 is revised to read as follows:

§ 956.180 Reports.

(a) Each handler shall furnish to the Committee, no later than May 31 each year, a preseason *Walla Walla Sweet Onion Handler Registration Form.* Such form shall include:

(1) Company name, contact name, mailing and physical addresses, contact telephone numbers, and signature of handler;

(2) Season covered by registration;

(3) Brand names or labels to be used; and

(4) Estimated number of acres of fall planted and spring planted Walla Walla Sweet Onions to be packed during the season.

(b) Each handler shall furnish to the Committee a *Handler's Statement of Walla Walla Sweet Onion Shipments* containing the information paragraphs (a)(1), (a)(2), and (a)(3) of this section, except that gift box and roadside stand sales shall be exempt from paragraph (a)(2) of this section: *Provided*, That for Walla Walla Sweet Onions handled prior to September 1, such report shall be furnished to the Committee by September 1, and that for Walla Walla Sweet Onions handled during the period September 1 through May 31 of each fiscal period, such report shall be furnished to the Committee no later than thirty (30) days after the end of the month in which such onions were handled:

(1) The number of 50 lb. equivalents of Walla Walla Sweet Onions shipped by each handler during each week of the shipping season and the total for the season;

(2) The geographical regions as defined by the Committee to which each shipment is made;

(3) The name, address, and signature of each handler; and

(4) The name of each producer and the number of 50 lb. equivalents of Walla Walla Sweet Onions that were handled on behalf of or acquired from that producer.

Dated: April 21, 2004.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 04–9426 Filed 4–23–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 04–10]

RIN 1557–AC76

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R–1156]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AC74

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 567

[No. 2004–15]

RIN 1550–AB79

Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Interim Capital Treatment of Consolidated Asset-Backed Commercial Paper Program Assets; Extension

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Treasury.

ACTION: Interim final rule; extension of applicability date.

SUMMARY: The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), and Office of Thrift Supervision (OTS) (collectively, the agencies) are extending the applicability date in the interim final rule on the capital treatment of consolidated asset-backed commercial paper (ABCP) programs that was issued on October 1, 2003 (68 FR 56530)

(October 2003 interim final rule). The October 2003 interim final rule amended the agencies' risk-based capital standards by providing an interim capital treatment for assets in ABCP programs that are consolidated onto the balance sheets of sponsoring banks, bank holding companies, and thrifts (collectively, sponsoring banking organizations) as a result of Financial Accounting Standards Board Interpretation No. 46, Consolidation of Variable Interest Entities (FIN 46). The interim capital treatment that is being extended allows a sponsoring banking organization to remove the consolidated ABCP program assets from risk-weighted assets for the purpose of calculating its risk-based capital ratios. The October 2003 interim final rule indicated that the capital treatment is applicable only for the regulatory reporting periods ending September 30 and December 31, 2003, and March 31, 2004. This extension permits affected institutions to apply the designated capital treatment through July 1, 2004.

DATES: *Effective Date:* This interim final rule is effective April 26, 2004.

FOR FURTHER INFORMATION CONTACT:

OCC: Amrit Sekhon, Risk Expert, Capital Policy Division, (202) 874–5211; Laura Goldman, Senior Attorney, or Ron Shimabukuro, Special Counsel, Legislative and Regulatory Activities Division, (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Thomas R. Boemio, Senior Project Manager, Policy, (202) 452–2982, David Kerns, Supervisory Financial Analyst, (202) 452–2428, Barbara Bouchard, Deputy Associate Director, (202) 452–3072, Division of Banking Supervision and Regulation; or Mark E. Van Der Weide, Senior Counsel, (202) 452–2263, Legal Division. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263–4869.

FDIC: Jason C. Cave, Chief, Policy Section, Capital Markets Branch, (202) 898–3548, Robert F. Storch, Chief Accountant, Division of Supervision and Consumer Protection, (202) 898–8906; Michael B. Phillips, Counsel, Supervision and Legislation Branch, Legal Division, (202) 898–3581, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Christine A. Smith, Project Manager, Supervision Policy, (202) 906–5740; or Karen Osterloh, Special Counsel (202) 906–6639, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: In January 2003, the Financial Accounting Standards Board (FASB) issued interpretation No. 46, "Consolidation of Variable Interest Entities" (FIN 46), which requires the consolidation of variable interest entities (VIEs) onto the balance sheets of companies deemed to be the primary beneficiaries of those entities.[1] On December 23, 2003, the FASB published interpretation 46–R (FIN 46–R), which revised FIN 46 to clarify some of the provisions of FIN 46 and to exempt certain entities from its requirements. FIN 46–R (and its predecessor FIN 46) resulted in the consolidation of many ABCP programs onto the balance sheets of sponsoring banking organizations beginning in the third quarter of 2003. In contrast, under pre-FIN 46 accounting standards, banking organizations normally were not required to consolidate the assets of these programs. Where a banking organization is required to consolidate ABCP program assets under FIN 46 it must include all of the program assets (mostly receivables and securities) and liabilities (mainly commercial paper) on its balance sheets for purposes of the bank Reports of Condition and Income (Call Report), the Thrift Financial Report (TFR), and the bank holding company financial statements (FR Y–9C Report).

The agencies believe that the consolidation of ABCP program assets onto the balance sheets of a sponsoring banking organization could result in risk-based capital requirements that are excessive in light of the risks faced by that organization. Accordingly, the agencies published the October 2003 interim final rule providing temporary capital relief for sponsoring banking organizations with assets in ABCP programs that are consolidated onto the balance sheets of those organizations as a result of FIN 46. *See* 68 FR 56530 (October 1, 2003). The agencies requested public comment on the October 2003 interim final rule. The comment period closed November 17, 2003. The agencies' October 2003 interim final rule became effective on October 1, 2003, and the applicability of the capital treatment guidelines expired on April 1, 2004 (April 1st sunset date).

In addition, the agencies received comments on a notice of proposed rulemaking (68 FR 56568) (proposed rule) issued concurrently with the October 2003 interim final rule. That rulemaking proposed capital charges on certain ABCP conduit exposures and indicated that the October 2003 interim final rule would not be finalized until the issues addressed in the proposed rule were resolved. The agencies are continuing to work on developing a more risk-sensitive approach to dealing with exposures to ABCP conduits, taking into account comments received on the proposed rule.

Because the agencies have not yet fully resolved issues addressed in the proposed rule, especially those related to banking organization exposures to ABCP conduits, they are amending the October 2003 interim final rule to extend the April 1st sunset date to July 1, 2004. The agencies believe that an explicit extension of the April 1st sunset date is necessary in order to eliminate potential industry confusion and uncertainty with respect to the calculation of regulatory capital ratios pending the issuance of a final rule.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the agencies have determined that this interim final rule would not have a significant impact on a substantial number of small entities in accordance with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). For purposes of the Regulatory Flexibility Act, "small entities" are banking organizations having assets of $150 million or less. There are approximately 18 sponsoring banking organization for purposes of this interim final rule, and all of them are well over that asset size threshold. Accordingly, a regulatory flexibility analysis is not required. In addition, the interim final rule would reduce regulatory burden with respect to the agencies' risk-based capital standards.

Administrative Procedure Act

The Agencies find that there is good cause to dispense with prior notice and public comment on this interim final rule and with the 30-day delay of effective date generally prescribed by the Administrative Procedure Act (APA). 5 U.S.C 553.

Under section 553(b) of the APA, the agencies are not required to provide notice and an opportunity for public

[1] Under FIN 46, the FASB broadened the criteria for determining when one entity is deemed to have a controlling financial interest in another entity and, therefore, when an entity must consolidate another entity in its financial statements. An entity generally does not need to be analyzed under FIN 46 if it is designed to have "adequate capital" as described in FIN 46 and its shareholders control the entity with their share votes and are allocated its profits and losses. If the entity fails these criteria, it typically is deemed a VIE and each stakeholder in the entity (a group that can include, but is not limited to, legal-form equity holders, creditors, sponsors, guarantors, and servicers) must assess whether it is the entity's "primary beneficiary" using the FIN 46 criteria. This analysis considers whether effective control exists by evaluating the entity's risks and rewards. The stakeholder who holds the majority of the entity's risks or rewards is the primary beneficiary and must consolidate the VIE.

comment on a rule if they find, for good cause, that notice and comment are "impracticable, unnecessary or contrary to the public interest." The agencies find that notice and public comment are unnecessary because the agencies have given the public a prior opportunity to comment on the substance of the October 2003 interim final rule, which is to preserve the pre-existing non-consolidated risk-based capital treatment for sponsoring banking organizations pending the agencies' determination of the capital charge appropriate to certain ABCP conduit exposures. Most commenters favored this result. This extension of the effective date merely provides additional time for the agencies to complete that process. Further, the agencies find that further notice and public comment are not in the public interest because a failure to extend the April 1st sunset date could create confusion regarding the calculation of regulatory capital ratios pending the issuance of a final rule. The agencies also find that it is impracticable to provide an additional opportunity for comment before the April 1, 2004 expiration date established by the October 2003 interim rule.

Under section 553(d) of the APA, the agencies must generally provide a 30-day delayed effective date for final rules. The agencies may waive the 30-day delayed effective date requirement "for good cause found and published with the rule." Similarly, section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), requires a banking agency to make a rule effective on the first day of the calendar quarter that begins on or after the date on which the regulations are published in final form, unless the agency finds good cause for an earlier effective date. 12 U.S.C. 4802(b)(1). The agencies find that there is good cause to waive the two effective date requirements because a failure to extend the April 1st sunset date could create confusion and uncertainty regarding the calculation of regulatory capital ratios pending the issuance of a final rule. Further, the purpose of the APA and CDRI delayed effective date provisions is to afford affected persons a reasonable time to comply with rule changes. Because institutions have complied with the requirements since October 2003, it is not necessary to delay the effective date to achieve this purpose.

Paperwork Reduction Act

The agencies have determined that this interim final rule does not involve a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Unfunded Mandates Reform Act of 1995

OCC and OTS: Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. This interim final rule is designed to temporarily offset the effect on risk-based capital ratios of FIN 46 with respect to ABCP programs. The OCC and OTS have determined that this interim final rule will not result in expenditures by State, local, or tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, section 202 of the Unfunded Mandates Act does not require the OCC or OTS to prepare a budgetary impact statement for this interim final rule.

Executive Order 12866

The Director of the OTS and the Comptroller of the OCC have determined that this interim final rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 325

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Capital adequacy, Reporting and recordkeeping requirements, Savings associations, State non-member banks.

12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Savings associations.

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

■ For the reasons set out in the joint preamble, part 3 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

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

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, and 3909.

Appendix A to Part 3—[Amended]

■ 2. In Appendix A to part 3:
■ a. In section 2, paragraph (a)(3)(ii), remove "April 1" and add "July 1" in its place; and
■ b. In section 4, paragraphs (j)(4) and (k)(2), remove "April 1" and add "July 1" in its place.

Dated: April 9, 2004.

John D. Hawke, Jr.,

Comptroller of the Currency.

Federal Reserve System

12 CFR Chapter II

Authority and Issuance

■ For the reasons set forth in the joint preamble, the Board of Governors of the Federal Reserve System amends parts 208 and 225 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

■ 1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1831x, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

Appendix A to Part 208—[Amended]

■ 2. In Appendix A to part 208, the following amendments are made:
■ a. In section II.A.1.c., remove "April 1" and add "July 1" in its place; and
■ b. In section III.B.6.c., remove "April 1" and add "July 1" in its place.

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

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

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

Appendix A to Part 225—[Amended]

■ 2. In Appendix A to part 225, the following amendments are made:
■ a. In section II.A.1.c., remove "April 1" and add "July 1" in its place; and
■ b. In section III.B.6.c., remove "April 1" and add "July 1" in its place.

By order of the Board of Governors of the Federal Reserve System, April 16, 2004.

Jennifer J. Johnson,

Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

■ For the reasons set forth in the joint preamble, the Board of Directors of the Federal Deposit Insurance Corporation amends part 325 of chapter III of title 12 of the Code of Federal Regulations as follows:

PART 325—CAPITAL MAINTENANCE

■ 1. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note).

Appendix A to Part 325—[Amended]

■ 2. In Appendix A to part 325, the following amendments are made:
■ a. In section I.A.1.iii.e., remove "April 1" and add "July 1" in its place; and
■ b. In section II.B.6.c., remove "April 1" and add "July 1" in its place.

By order of the Board of Directors.

Dated at Washington, DC, this 6th day of April, 2004.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Department of the Treasury

Office of Thrift Supervision

12 CFR Chapter V

Authority and Issuance

■ For the reasons set out in the preamble, part 567 of chapter V of title 12 of the Code of Federal Regulations is amended as follows:

PART 567—CAPITAL

■ 1. The authority citation for part 567 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828 (note).

567.5 [Amended]

■ 2. In § 567.5(a)(1)(iii), remove "April 1" and add "July 1" in its place.

567.6 [Amended]

■ 3. In § 567.6, paragraphs (a)(3)(iv) and (a)(4)(ii), remove "April 1" and add "July 1" in its place.

Dated: March 30, 2004.

By the Office of Thrift Supervision.

Richard M. Riccobono,

Acting Director.

[FR Doc. 04–9361 Filed 4–23–04; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P

DEPARTMENT OF TRANSPORTATION

14 CFR Part 11

[Docket No. FAA 1999–6622; Amendment No. 11–50]

General Rulemaking Procedures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Technical amendment.

SUMMARY: The FAA published a final rule on August 21, 2000 (65 FR 50850) that revised and clarified its rulemaking procedures by putting them into plain language and by removing redundant and outdated material. This technical amendment revises regulations on "How and to whom do I submit my petition for rulemaking or petition for exemption," and directs petitioners for certain rulemaking or exemptions to submit the petition to the appropriate FAA airport field office in whose area the petitioner proposes to establish or has established its airport in addition to sending the petition to the U.S. Department of Transportation, Docket Management System.

DATES: Effective April 26, 2004.

FOR FURTHER INFORMATION CONTACT: Komal K. Jain, Attorney-Advisor, Regulations Division, AGC–200, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591; telephone: (202) 267–3073.

SUPPLEMENTARY INFORMATION:

Background

The FAA is amending 14 CFR 11.63, "How and to whom do I submit my petition for rulemaking or petition for exemption," and directs petitioners for rulemaking or exemptions pertaining to 14 CFR part 139 to submit the petition to the appropriate FAA airport field office in whose area the petitioner proposes to establish or has established its airport in addition to sending a copy to the U.S. Department of Transportation, Docket Management System. Under the December 14, 1999, Notice of Proposed Rulemaking (64 FR 69856), the FAA proposed to retain the part 11 rule that any petition filed under part 139 of this chapter be submitted to the appropriate FAA airport field office in whose area the petitioner proposes to establish or has established its airport. In its effort to revise and clarify its rulemaking procedures by putting them into plain language and by removing redundant and outdated material, the FAA published the final rule on August 21, 2000 (65 FR 50850) and required that all petitions for rulemaking and exemptions be sent to one central address. The FAA's experience since the last revision to part 11 indicates that streamlining is not appropriate for part 139 petition processes. The FAA realizes the nature of these petitions, with unique concerns and characteristics, are not appropriate for the streamlined general rulemaking and exemption process. Therefore, the FAA now revises part 11 to re-establish a specific process for petitions for rulemaking and exemptions pertaining to part 139.

List of Subjects in 14 CFR Part 11

Administrative practice and procedure, Reporting and recordkeeping requirements.

The Amendment

■ In consideration of the above, the Federal Aviation Administration amends chapter 1 of title 14, Code of Federal Regulations as follows:

PART 11—GENERAL RULEMAKING PROCEDURES

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

Authority: 49 U.S.C. 106(g), 40101, 40103, 40105, 40109, 40113, 44110, 44502, 44701–44702, 44711, and 46102.

■ 2. Revise § 11.63 to read as follows:

§ 11.63 How and to whom do I submit my petition for rulemaking or petition for exemption?

(a) For a petition of rulemaking or exemption filed under part 139 of this chapter:

(1) To the appropriate FAA airport field office in whose area the petitioner proposes to establish or has established its airport; and

(2) To the U.S. Department of Transportation, Docket Management System, 400 7th Street, SW., Room PL 401, Washington, DC 20591–0001 or to this Internet address: *http://dms.dot.gov/.*

(b) For all other cases,

(1) By paper submissions, send the original signed copy of your petition for rulemaking or exemption to this address: U.S. Department of Transportation, Docket Management System, 400 7th Street, SW., Room PL 401, Washington, DC 20591–0001.

(2) By electronic submission, submit your petition for rulemaking or exemption to FAA through the Internet using the Docket Management System Web site at this Internet address: *http://dms.dot.gov/.*

(c) In the future, FAA may designate other means by which you can submit petitions.

(d) Submit your petition for exemption 120 days before you need the exemption to take effect.

Issued in Washington, DC, on April 20, 2004.

Donald P. Byrne,

Assistant Chief Counsel.

[FR Doc. 04–9394 Filed 4–23–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–32–AD; Amendment 39–13586; AD 2004–08–16]

RIN 2120–AA64

Airworthiness Directives; NARCO Avionics Inc. AT150 Transponders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain serial numbers (SNs) of NARCO Avionics Inc. AT150 transponders. This AD requires modification to the transponder by adding a resistor and transistor to the circuit board. This AD results from reports of AT150 transponders not recognizing and responding properly to Mode S interrogations from Mode S ground stations and Traffic Alert and Collision Avoidance System (TCAS–II) airborne equipment. We are issuing this AD to prevent loss of aircraft airspace separation and the possibility of mid-air collision.

DATES: This AD becomes effective June 1, 2004. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of June 1, 2004.

ADDRESSES: You can get the service information identified in this AD from NARCO Avionics Inc., 270 Commerce Drive, Fort Washington, PA 19034; telephone (215) 643–2905; fax (215) 643–0197.

You may examine the AD docket, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA. You may examine the service information, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Balram Rambrich, Aerospace Engineer, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 10 Fifth Street, 3rd floor, Valley Stream, NY 11581–1200; telephone (516) 256–7507; fax (516) 256–2716.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR Part 39 with a proposed airworthiness directive (AD). The proposed AD applies to certain SNs of NARCO Avionics Inc. AT150 transponders. We published the proposed AD in the **Federal Register** on February 20, 2003 (68 FR 816). That action proposed to require:

- For transponders not modified in accordance with NARCO Avionics Inc. Service Bulletin (SB) AT150 No. 1, dated July 29, 1977, modification of "Chassis Level A" transponders, serial numbers 10000 through 12598 inclusive, by adding a resistor and transistor to the circuit board, changing transponder to "Chassis Level B", and transponder testing after the modification; and
- For transponders modified in accordance with NARCO Avionics Inc. SB No. AT150 No. 1, dated July 29, 1977, changing transponder to "Chassis Level B", and transponder testing.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Request To Correct the Discussion Wording

One commenter, the manufacturer, requests that we correct the discussion section in the proposal. As written, the discussion states that the manufacturer determined that "Chassis Level A" AT150 transponders have a design error, which causes the P4 pulse not to be presented, causing the transponders to shut down. The commenter states that the AT150 transponder met all the requirements of technical standard order (TSO)–C–74C at the time of design. The commenter also states that NARCO Avionics Inc. SB AT150 No. 1, dated July 29, 1977, was issued because original design AT150 transponders did not work properly with particular Tele Instruments Corporation (TIC) and bench test equipment. Also, the commenter states that the incorporation of NARCO Avionics Inc. SB No. AT150 No. 1, dated July 29, 1977, resolves the P4 problem, which came about years after the original design. The implementation of the P4 pulse was an FAA requirement.

We partially agree. We agree that this problem in its entirety is not a design error because we implemented the P4 pulse requirement after approval of TSO–C–74C and because the problem with NARCO AT150 transponders was discovered during the P4 pulse testing. However, the AT150 transponder did not work properly with the TIC ramp and bench test equipment. The final rule does not repeat the discussion information found in the proposal. No changes to the final rule are made based on this comment.

Request To Correct Service Information Fax Number

One commenter, the manufacturer, requests that we correct the service information fax number to read (215) 643–0197.

We agree. We corrected the fax number in the final rule.

Request To Correct Part Numbers

Two commenters request that we correct the part numbers for the transistor and resistor, which are transposed in the proposal.

We agree. We corrected the part numbers in the final rule.

Aircraft Models List

Three commenters state that the applicability section should not include a list of any particular aircraft models because the unsafe condition identified in the proposal involves the design of the transponder, not the aircraft. The commenters suggest using a generic statement, such as "all general aviation aircraft" rather than listing any specific aircraft models.

We do not agree. The commenters all start from the incorrect premise that the listing of aircraft in the proposed AD affects the applicability of the AD. The listing is provided only as a guide to operators as to some of the types of aircraft on which these transponders may be found. The AD applies to the transponder regardless of the installation, even if installed in an aircraft not found in the list. The list is provided for informational purposes only. However, because the presence of the list is causing more confusion than benefits we deleted the list from the applicability paragraph.

AD Should Not Be Issued Through Engine & Propeller Directorate

One commenter states that the FAA should not issue this AD through the Engine & Propeller Directorate.

We do not agree. While each engineering Directorate within the Aircraft Certification Service has an area of concentration, all of the Directorates have the expertise to deal with avionics issues, such as transponders. For example, the Rotorcraft Directorate issued an AD against Terra Corporation transponders in 1994, and recently the Small Aircraft Directorate issued an AD in December 2003 against Garmin transponders. Because we handle unsafe conditions that result from appliances, such as transponders, geographic basis, the Engine & Propeller Directorate appropriately issued the proposal and the AD in this case.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD 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.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866;

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 2002–NE–32–AD" in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2004–08–16 NARCO Avionics Inc. AT150 Transponders: Amendment 39–13586. Docket No. 2002–NE–32–AD.

Effective Date

(a) This AD becomes effective June 1, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to NARCO Avionics Inc. AT150 transponders with "Chassis Level A", serial numbers (SNs) 10000 through 12598 inclusive.

Unsafe Condition

(d) This AD results from reports of AT150 transponders not recognizing and responding properly to Mode S interrogations from Mode S ground stations and Traffic Alert and Collision Avoidance System (TCAS–II) airborne equipment. The actions specified in this AD are intended to prevent loss of aircraft airspace separation and the possibility of mid-air collision.

Compliance

(e) Compliance with this AD is required as indicated, unless already done.

Transponders Not Modified in Accordance With Service Bulletin AT150 No. 1

(f) For AT150 transponders with a SN listed in this AD that are not modified in accordance with NARCO service bulletin (SB) No. AT150 No. 1, dated July 29, 1977, within six months after the effective date of this AD, do the following:

(1) Install resistor part number (P/N) 312180102 and transistor P/N 755610028; and

(2) Change transponder to "Chassis Level B"; and

(3) Test transponders in accordance with the Corrective Action, Testing the Modification, and Return to Service paragraphs of NARCO SB No. AT150 No. 6, dated January 31, 2003.

Transponders Modified in Accordance With Service Bulletin AT150 No. 1

(g) For AT150 transponders with a SN listed in this AD, that are modified in accordance with NARCO SB No. AT150 No. 1, dated July 29, 1977, do the following:

(1) Within six months after the effective date of this AD, change transponder to "Chassis Level B"; and

(2) Test transponders in accordance with the Testing the Modification paragraph of NARCO SB No. AT150 No. 6, dated January 31, 2003; and

(3) Perform a bench test to the transponder before returning it to service. Information on bench testing can be found in AT150 Manual P/N 03606–0600.

Alternative Methods of Compliance

(h) The Manager, New York Aircraft Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(i) You must use NARCO SB No. AT150 No. 6, dated January 31, 2003, to perform the testing required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You can get a copy from NARCO Avionics Inc., 270 Commerce Drive, Fort Washington, PA 19034; telephone (215) 643–2905; fax (215) 643–0197. You can review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Related Information

(j) None.

Issued in Burlington, Massachusetts, on April 16, 2004.

Robert Guyotte,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 04–9104 Filed 4–23–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–156–AD; Amendment 39–13588; AD 2004–08–18]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Dornier Model 328–300 series airplanes, that currently requires repetitive inspections of motive flow check valves and adjacent parts for fuel leaks, and replacement of the valves if leaks are detected. This amendment requires new repetitive engine operational tests. This amendment also requires replacement of the motive flow check valves with new parts, which would constitute terminating action for the repetitive inspections and engine operational tests. The actions specified by this AD are intended to prevent leakage of fuel from the motive flow check valves, which could result in fuel vapors coming into contact with fuel ignition sources and consequent fuel tank explosion and fire. This action is intended to address the identified unsafe condition.

DATES: Effective June 1, 2004.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of June 1, 2004.

The incorporation by reference of a certain other publication listed in the regulations was approved previously by the Director of the Federal Register as of May 15, 2001 (66 FR 21276, April 30, 2001).

ADDRESSES: The service information referenced in this AD may be obtained from AvCraft Aerospace GmbH, PO Box 1103, D–82230 Wessling, Germany. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2001–09–04, amendment 39–12209 (66 FR 21276, April 30, 2001), which is applicable to certain Dornier Model 328–300 series airplanes, was published in the **Federal Register** on February 26, 2004 (69 FR 8881). The action proposed to continue to require repetitive inspections of motive flow check valves and adjacent parts for fuel leaks, and replacement of the valves if leaks are detected. The action also proposed new repetitive engine operational tests, and replacement of the motive flow check valves with new parts, which would constitute terminating action for the repetitive inspections and engine operational tests.

Comments

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

Conclusion

We have determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 28 airplanes of U.S. registry that will be affected by this AD.

The repetitive inspections that are currently required by AD 2001–09–04 take approximately 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $1,820, or $65 per airplane, per inspection cycle.

The new actions that are required in this AD would take approximately 4 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts would be provided by the manufacturer at no charge. Based on these figures, the cost impact of the requirements of this AD on U.S. operators is estimated to be $7,280, or $260 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–12209 (66 FR 21276, April 30, 2001), and by adding a new airworthiness directive (AD), amendment 39–13588, to read as follows:

2004–08–18 Fairchild Dornier GmbH (Formerly Dornier Luftfahrt GmbH): Amendment 39–13588. Docket 2002–NM–156–AD. Supersedes AD 2001–09–04, Amendment 39–12209.

Applicability: 328–300 series airplanes, certificated in any category, equipped with a motive flow check valve having part number (P/N) 106–0007–01.

Compliance: Required as indicated, unless accomplished previously.

To prevent leakage of fuel from the motive flow check valves, which could result in fuel vapors coming into contact with fuel ignition sources and consequent fuel tank explosion and fire, accomplish the following:

Restatement of Requirements of AD 2001–09–04

Initial Inspection

(a) Prior to the accumulation of 800 total flight cycles on the motive flow check valve P/N 106–0007–01, or within 3 days after May 15, 2001 (the effective date of AD 2001–09–04, amendment 39–12209), whichever occurs later: Perform a general visual inspection of the lower inboard leading edge/pylon area and the pylon drain tube to detect fuel droplets or fuel staining, in accordance with paragraph 2.B of the Accomplishment Instructions of Dornier Alert Service Bulletin ASB 328J–28–007, dated September 20, 2000. If any fuel droplet or fuel staining is detected, prior to further flight, perform an additional inspection and operational test, in accordance with paragraphs 2.C and 2.D of the Accomplishment Instructions of Dornier Alert Service Bulletin ASB 328J–28–007, dated September 20, 2000.

Note 1: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Repetitive Inspections

(b) Within 15 days or 60 flight hours after May 15, 2001, whichever occurs first: Perform a general visual inspection of the motive flow check valve to detect fuel leaks, in accordance with paragraph 2.C of the Accomplishment Instructions of Dornier Alert Service Bulletin ASB 328J–28–007, dated September 20, 2000.

(1) If no fuel leak is detected, repeat the general visual inspection of the motive flow check valve at least every 15 days or 60 flight hours, whichever occurs first, until paragraph (b)(2) or paragraph (e) of this AD is accomplished.

(2) If any fuel leak is detected, prior to further flight, replace the motive flow fuel valve with a new valve, in accordance with the alert service bulletin. After the new valve has accumulated 800 flight cycles, do the general visual inspection of the valve required by paragraph (b) of this AD, including the repetitive inspection, at least every 15 days or 60 flight hours, whichever occurs first, until paragraph (e) of this AD is accomplished.

(c) Within 400 flight hours after May 15, 2001: Perform an engine operational test and a general visual inspection of the motive flow check valve to detect a fuel leak, in accordance with paragraphs 2.C and 2.D of the Accomplishment Instructions of Dornier Alert Service Bulletin ASB 328J–28–007, dated September 20, 2000.

(1) If no fuel leak is detected, repeat the engine operational test and the general visual inspection of the motive flow check valve at least every 400 flight hours, until paragraph (c)(2) or paragraph (e) of this AD is accomplished.

(2) If any fuel leak is detected, prior to further flight, replace the motive flow fuel valve with a new valve, in accordance with the alert service bulletin. After the new valve has accumulated 800 flight cycles, do the general visual inspection of the valve required by paragraph (c) of this AD, including the repetitive inspections, at least every 400 flight hours.

New Requirements of This AD

Repetitive Tests

(d) If any motive flow fuel valve is replaced per the requirements of paragraph (c)(2) of this AD: At the later of the times specified in paragraphs (d)(1) and (d)(2) of this AD, do the engine operational test required by paragraph (c) of this AD. Thereafter, repeat the engine operational test at intervals not to exceed 400 flight hours, until paragraph (e) of this AD is accomplished.

(1) Within 800 flight cycles after the replacement of any motive flow fuel valve.

(2) Within 30 days or 90 flight hours after the effective date of this AD, whichever is first.

Terminating Action for Repetitive Inspections and Tests

(e) Within 12 months after the effective date of this AD: Remove any motive flow check valve having P/N 106–0007–01 and replace it with a motive flow check valve having P/N 106–0007–02 in accordance with the Accomplishment Instructions of Dornier Service Bulletin SB–328J–28–047, dated May 18, 2001. Accomplishment of the replacement is terminating action for the repetitive inspections and engine operational tests required by paragraphs (b), (c) and (d) of this AD.

Parts Installation

(f) As of the effective date of this AD, no person may install a motive flow check valve, P/N 106–0007–01, on any airplane.

Alternative Methods of Compliance

(g) 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.

Incorporation by Reference

(h) The actions shall be done in accordance with Dornier Alert Service Bulletin ASB 328J–28–007, dated September 20, 2000; and Dornier Service Bulletin SB–328J–28–047, dated May 18, 2001; as applicable.

(1) The incorporation by reference of Dornier Service Bulletin SB–328J–28–047, dated May 18, 2001, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Dornier Alert Service Bulletin ASB 328J–28–007, dated September 20, 2000, was approved previously by the Director of the Federal Register as of May 15, 2001 (66 FR 21276, April 30, 2001).

(3) Copies may be obtained from AvCraft Aerospace GmbH, PO Box 1103, D–82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in German airworthiness directive 2001–058/2, dated June 27, 2002.

Effective Date

(i) This amendment becomes effective on June 1, 2004.

Issued in Renton, Washington, on April 15, 2004.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–9108 Filed 4–23–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–128–AD; Amendment 39–13589; AD 2004–08–19]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A330–200 series airplanes. This action requires certain modifications of the rudder servo controls. This action is necessary to prevent failure of the driving finger of the rudder servo control and consequent loss of the rudder servo control function in driving the rudder to its commanded position, which, if combined with an engine failure during takeoff or go around, could result in loss of control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective May 11, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 11, 2004.

Comments for inclusion in the Rules Docket must be received on or before May 26, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–128–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 fax or the Internet must contain "Docket No. 2003–NM–128–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in this AD may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, ANM–116, International Branch, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; 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 certain Model A330–200 series airplanes. The DGAC advises that, during a pre-flight check, an Electronic Aircraft Centralized Monitoring (ECAM) warning message for rudder servo control jamming was displayed, "F/CTL RUD Y SERVO JAM." Following this incident, two similar incidents occurred on other airplanes. In each case, investigation revealed that the driving finger of the affected rudder servo control was found broken due to fatigue failure. Such fatigue failure was caused by additional loads resulting from jamming of a hard particle between the servo control valve spool and the sleeve. In addition, a sealing defect of the jamming detection switches of the rudder servo control was found on other airplanes on which the message was displayed. Such conditions, if not corrected, could result in inability of the rudder servo control to drive the rudder to its commanded position, which, if combined with an engine failure during takeoff or go around, could result in loss of control of the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletins A330–27–3101, Revision 01, dated March 13, 2003; and Revision 02, dated February 4, 2004, which describe procedures for modification of the rudder servo controls. The modification includes replacing the existing driving finger and control valve assembly of the rudder servo controls with new, improved parts, and re-identifying the rudder servo controls. The service bulletins cite Goodrich Actuation Systems Retrofit Information Letter, 31110–27–05, dated October 30, 2002, as an additional source of service information for accomplishment of the modification.

Service Bulletins A330–27–3101, Revision 01 and Revision 02, recommend prior or concurrent accomplishment of Airbus Service Bulletin A330–27–3078, dated May 18, 2000. This service bulletin describes procedures for modification of the jamming detection switches of the rudder servo controls. The modification includes adding packing, replacing filling product in the switches, and re-identifying the rudder servo controls. Service Bulletin A330–27–3078 cites Lucas Aerospace Service Bulletin No. 31110–27–02, dated April 20, 2000, as an additional source of service information for accomplishment of the modification.

Accomplishment of the actions specified in the Airbus service information is intended to adequately address the identified unsafe condition. The DGAC classified this service information as mandatory and issued French airworthiness directive 2003–102(B), dated March 5, 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 section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept 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 the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design that may be registered in the United States at some time in the future, this AD is being issued to prevent failure of the driving finger of the rudder servo control and consequent loss of the rudder servo control function in driving the rudder to its commanded position, which could result in loss of control of the airplane, if combined with an engine failure during takeoff or go around. This AD requires certain modifications of the rudder servo control. The actions are required to be accomplished in accordance with the Airbus service information described previously, except as discussed below.

Difference Between Proposed AD and Service Bulletin

The applicability of French airworthiness directive 2003–102(B) excludes airplanes that accomplished Airbus Service Bulletins A330–27–3101, Revision 01, dated March 13, 2003; and Revision 02, dated February 4, 2004, in service. However, we have not excluded those airplanes in the applicability of this proposed AD; rather, this proposed AD includes a requirement to accomplish the actions specified in those service bulletins. Such a requirement would ensure that the actions specified in those service bulletins and required by this proposed AD are accomplished on all affected airplanes. Operators must continue to operate the airplane in the configuration required by this proposed AD unless an alternative method of compliance is approved.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, we consider that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future:

For Service Bulletin A330–27–3101, Revision 01 or Revision 02: It would require about 12 work hours to do the

modification of the rudder servo controls, at an average labor rate of $65 per work hour. Parts cost would be negligible. Based on these figures, the cost impact of this modification would be $780 per airplane.

For Service Bulletin A330–27–3078: Modification of the jamming detection switches, if required, would take about 12 work hours to do, at an average labor rate of $65 per work hour. Parts cost would be negligible. Based on these figures, the cost impact of this modification would be $780 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and 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–128–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.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–08–19 Airbus: Amendment 39–13589. Docket 2003–NM–128–AD.

Applicability: Model A330–200 series airplanes; certificated in any category; on which Airbus Modifications 48510 and 47628 have not been done during production.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the driving finger of the rudder servo control and consequent loss of the rudder servo control function in driving the rudder to its commanded position, which, if combined with an engine failure during takeoff or go around, could result in loss of control of the airplane, accomplish the following:

Modification

(a) Within 24 months after the effective date of this AD: Modify the rudder servo controls by doing all the actions per the Accomplishment Instructions of Airbus Service Bulletin A330–27–3101, Revision 01, dated March 13, 2003; or Revision 02, dated February 4, 2004.

Note 1: Goodrich Actuation Systems Retrofit Information Letter, 31110–27–05, dated October 30, 2002, is cited in Airbus Service Bulletins A330–27–3101, Revision 01, dated March 13, 2003; and Revision 02, dated February 4, 2004; as an additional source of service information for accomplishment of the modification.

Credit for Previous Issue of Service Bulletin

(b) Accomplishment of the modification of the rudder servo controls before the effective date of this AD per Airbus Service Bulletin A330–27–3101, dated October 24, 2002, is considered acceptable for compliance with the modification specified in paragraph (a) of this AD.

Prior or Concurrent Requirements

(c) Prior to or concurrent with accomplishment of paragraph (a) of this AD: Modify the jamming detection switches of the rudder servo controls by doing all the actions per the Accomplishment Instructions of Airbus Service Bulletin A330–27–3078, dated May 18, 2000.

Note 2: Lucas Aerospace Service Bulletin No. 31110–27–02, dated April 20, 2000, is cited in Airbus Service Bulletin A330–27–3078, dated May 18, 2000, as an additional source of service information for accomplishment of the modification of the jamming detection switches.

Alternative Methods of Compliance

(d) 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.

Incorporation by Reference

(e) Unless otherwise specified in this AD, the actions shall be done in accordance with Airbus Service Bulletin A330–27–3101, Revision 01, dated March 13, 2003; Airbus Service Bulletin A330–27–3101, Revision 02, dated February 4, 2004; and Airbus Service Bulletin A330–27–3078, dated May 18, 2000; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be

obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 2003–102(B), dated March 5, 2003.

Effective Date

(f) This amendment becomes effective on May 11, 2004.

Issued in Renton, Washington, on April 15, 2004.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–9109 Filed 4–23–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2004–CE–09–AD; Amendment 39–13587; AD 2004–08–17]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Models 208 and 208B Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Cessna Aircraft Company (Cessna) Models 208 and 208B airplanes. This AD requires you to inspect any upper and lower wing strut attach fitting nut for existence of the corresponding cotter pin and do any necessary corrective action. This AD is the result of a report of one airplane having loose and improperly tied nuts on the wing struts upper attachment bolts. We are issuing this AD to detect and correct loose and improperly tied nuts on the wing struts, which could result in an attachment nut coming off the bolt. This could lead to the failure of the wing structure with consequent loss of control of the airplane.

DATES: This AD becomes effective on May 17, 2004.

As of May 17, 2004, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

We must receive any comments on this AD by June 22, 2004.

ADDRESSES: Use one of the following to submit comments on this AD:

- *By mail:* FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2004–CE–09–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.
- *By fax:* (816) 329–3771.
- *By e-mail:* 9–ACE–7–Docket@faa.gov. Comments sent electronically must contain "Docket No. 2004–CE–09–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII.

You may get the service information identified in this AD from Cessna Aircraft Company, Product Support, PO Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2004–CE–09–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Paul Nguyen, Aerospace Engineer, FAA, Wichita Aircraft Certification Office ACO, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: 316–946–4125; facsimile: 816–946–4107.

SUPPLEMENTARY INFORMATION:

What events have caused this AD? The FAA has received a report of a Cessna Model 208 airplane having loose and improperly tied nuts on the wing struts upper attachment bolts.

A review of Cessna's manufacturing records shows that 15 Models 208 and 208B airplanes could have this condition.

What is the potential impact if FAA took no action? Loose and improperly tied nuts on the wing struts upper attachment bolts could lead to the failure of the wing structure with consequent loss of control of the airplane.

Is there service information that applies to this subject? Cessna has issued Special Service Project No. SSP04–2, dated April 5, 2004.

What are the provisions of this service information? This service information includes procedures for:

—Inspecting any upper wing strut attach fitting part number (P/N) MS17826–14 nut for the P/N MS24665–360 cotter pin and any lower wing strut attach fitting P/N MS17826–12 nut for the P/N MS24665–357 cotter pin;

—Tightening the nut and aligning the castellations of the corresponding P/N MS17826–14 or P/N MS17826–12 nut and the cotter pin hole in the bolt if any P/N MS24665–360 or P/N MS24665–357 cotter pin is not installed; and

—Installing the corresponding P/N MS24665–360 or P/N MS24665–357 cotter pin.

FAA's Determination and Requirements of the AD

What has FAA decided? We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design.

Since the unsafe condition described previously is likely to exist or develop on other Cessna Models 208 and 208B airplanes of the same type design, we are issuing this AD to detect and correct loose and improperly tied nuts on the wing struts, which could result in an attachment nut coming off the bolt. This could lead to the failure of the wing structure with consequent loss of control of the airplane.

What does this AD require? This AD requires you to incorporate the actions in the previously-referenced service information.

In preparing this rule, we contacted type clubs and aircraft operators to get technical information and information on operational and economic impacts. We did not receive any information through these contacts. If received, we would have included a discussion of any information that may have influenced this action in the rulemaking docket.

How does the revision to 14 CFR part 39 affect this AD? On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Comments Invited

Will I have the opportunity to comment before you issue the rule? This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. 2004–CE–09–AD" in the subject line of your comments. If you want us to

acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us through a nonwritten communication, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

Regulatory Findings

Will this AD impact various entities? We have determined that this AD will not have federalism implications under Executive Order 13132. This AD 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.

Will this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 2004–CE–09–AD" in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2004–08–17 Cessna Aircraft Company: Amendment 39–13587; Docket No. 2004–CE–09–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on May 17, 2004.

Are Any Other ADs Affected By This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial Numbers
208	20800370 and 20800371.
208B	208B1034 through 208B1043, 208B1045, 208B1046, and 208B1048.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of a report of one airplane having loose and improperly tied nuts on the wing struts upper attachment bolts. We are issuing this AD to detect and correct loose and improperly tied nuts on the wing struts, which could result in an attachment nut coming off the bolt. This could lead to the failure of the wing structure with consequent loss of control of the airplane.

What Must I do To Address This Problem?

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) Inspect any upper wing strut attach fitting part number (P/N) MS17826–14 nut for the P/N MS24665–360 cotter pin and any lower wing strut attach fitting P/N MS17826–12 nut for the P/N MS24665–357 cotter pin.	Within the next 10 hours time-in-service (TIS) after May 14, 2004, the effective date of this AD, unless already done.	Follow Cessna Special Service Project No. SSP04–2, dated April 5, 2004. The applicable airplane maintenance manual also addresses this issue.
(2) If any P/N MS24665–360 or P/N MS24665–357 cotter pin is not installed:.	Before further flight after the inspection in paragraph (e)(1) of this AD.	Follow Cessna Special Service Project No. SSP04–2, dated April 5, 2004. The applicable airplane maintenance manual also addresses this issue.
(i) tighten the corresponding nut (P/N MS17826–14 or P/N MS17826–12) and align the castellations of the nut and the cotter pin hole in the bolt; and		
(ii) install the corresponding P/N MS24665–360 or P/N MS24665–357 cotter pin		

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Wichita Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact Paul Nguyen, Aerospace Engineer, FAA, Wichita ACO, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: 316–946–4125; facsimile: 816–946–4107.

Does This AD Incorporate Any Material by Reference?

(g) You must do the actions required by this AD following the instructions in Cessna Special Service Project No. SSP04–2, dated April 5, 2004. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy from Cessna Aircraft Company, Product Support, PO Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. You may review copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Issued in Kansas City, Missouri, on April 16, 2004.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–9115 Filed 4–23–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–16987; Airspace Docket No. 04–ACE–5]

Establishment of Class E Airspace; Paola, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes a Class E airspace area at Paola, KS. The FAA has developed Standard Instrument Approach Procedures (SIAPs) to serve the Miami County Airport, Paola, KS. Controlled airspace is needed to accommodate the SIAPs.

The effect of this proposal is to provide Class E controlled airspace for aircraft executing the SIAPs and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

EFFECTIVE DATE: 0901 UTC, June 10, 2004.

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

SUPPLEMENTARY INFORMATION:

History

On Wednesday, February 25, 2004, the FAA proposed to amend Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by establishing a Class E airspace area at Paola, KS (69 FR 8583). The FAA has developed an Area Navigation (RNAV) Global Positioning System (GPS) Runway (RWY) 03, ORIGINAL SIAP and an RNAV (GPS) RWY 21, ORIGINAL SIAP to serve Miami County Airport, Paola, KS. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAPs. The proposal was to establish a Class E airspace area extending upward from 700 feet above the surface at Paola, KS. 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.

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, 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 designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR Part 71 establishes a Class E airspace area extending upward from 700 feet above the surface at Paola, KS. This action provides controlled airspace to accommodate aircraft executing newly developed SIAPs serving Miami County Airport, Paola, KS. The area will be depicted on appropriate aeronautical charts.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ACE KS E5 Paola, KS

Paola, Miami County airport, KS
(Lat. 38°32′25″ N., long. 94°55′13″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Miami County airport.

* * * * *

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

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–9395 Filed 4–23–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–16988; Airspace Docket No. 04–ACE–6]

Modification of Class E Airspace; Neodesha, 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 Neodesha, KS.

EFFECTIVE DATE: 0901 UTC, June 10, 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 February 25, 2004 (69 FR 8555). 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 June 10, 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 April 13, 2004.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–9396 Filed 4–23–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17143; Airspace Docket No. 04–ACE–91]

Modification of Class E Airspace; Iowa City, IA

AGENCY: Federal Aviation Administration, 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 Iowa City, IA.

EFFECTIVE DATE: 0901 UTC, June 10, 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 March 8, 2004 (69 FR 10610). 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 June 10, 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 April 15, 2004.

Elizabeth S. Wallis,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–9397 Filed 4–23–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17146; Airspace Docket No. 04–ACE–12]

Modification of Class E Airspace; Charleston, MO

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 Charleston, MO.

EFFECTIVE DATE: 0901 UTC, June 10, 2004.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on March 5, 2004 (69 FR 10327). 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 June 10, 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 April 15, 2004.

Elizabeth S. Wallis,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–9398 Filed 4–23–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17145; Airspace Docket No. 04–ACE–11]

Modification of Class E Airspace; Des Moines, 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 Des Moines, IA.

EFFECTIVE DATE: 0901 UTC, June 10, 2004.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 9801 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 March 12, 2004 (69 FR 11791). 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 June 10, 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 April 15, 2004.

Elizabeth S. Wallis,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–9399 Filed 4–23–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17144; Airspace Docket No. 04–ACE–10]

Modification of Class E Airspace; Cedar Rapids, 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 Cedar Rapids, IA.

EFFECTIVE DATE: 0901 UTC, June 10, 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 March 12, 2004 (69 FR 11793). 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 June 10, 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 April 15, 2004.

Elizabeth S. Wallis,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–9400 Filed 4–23–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17421; Airspace Docket No. 04–ACE–22]

Modification of Class E Airspace; Chappell, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR 71) by revising Class E airspace at Chappell, NE. A review of controlled airspace for Billy G Ray Field revealed it does not comply with the criteria for 700 feet above ground level (AGL) airspace required for diverse departures. The review also identified discrepancies in the legal description for the Chappell, NE Class E airspace area. The area is modified and enlarged to conform to the criteria in FAA Orders.

DATES: This direct final rule is effective on 0901 UTC, August 5, 2004. Comments for inclusion in the Rules Docket must be received on or before June 2, 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–2004–17421/ Airspace Docket No. 04–ACE–22, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modified the Class E airspace area extending upward from 700 feet above the surface at Chappell, NE. An examination of controlled airspace for Billy G Ray Field revealed it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The criteria in FAA Order 7400.2E for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the airport reference point to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The review also identified that the Chappell, NE Class E airspace area legal description was not in compliance with FAA Order 8260.19C, Flight Procedures and Airspace. The limit of the Class E airspace area extension should be defined as a distance from the Chappell nondirectional radio beacon (NDB). Inclusion of 1,200 AGL airspace in the legal description is unnecessary since this area is also defined in ANM CO E5 Denver, CO. This amendment expands the airspace area from a 6–mile radius to a 6.4–mile radius of Billy G Ray Field, defines the extension in relation to the Chappell NDB, corrects an error in the bearing from the NDB describing the Class E airspace area extension, deletes a description of 1,200 AGL airspace and brings the legal description of the Chappell, NE Class E airspace area into compliance with FAA Orders 7400.2E and 8260.19C. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L, 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 designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

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

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

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronatucial, 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–2004–17421/Airspace Docket No. 04–ACE–22." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

ACE NE E5 Chappell, NE

Chappell, Billy G Ray Field, NE
(Lat. 41°04′39″ N., long. 102°27′51″ W.)
Chappell NDB
(Lat. 41°04′36″ N., long. 102° 27′ 32″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Billy G Ray Field and within 2.2 miles each side of the 142° bearing from the Chappell NDB extending from the 6.4 mile radius of the airport to 7 miles southeast of the NDB.

* * * * *

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

Elizabeth S. Wallis,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–9401 Filed 4–23–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–16989; Airspace Docket No. 04–ACE–7]

Modification of Class E Airspace; Hays KS

AGENCY: Federal Aviation Administration, 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 Hays, KS.

EFFECTIVE DATE: 0901 UTC, June 10, 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 March 5, 2004 (69 FR 10330) and subsequently published corrections to the direct final rule on March 11, 2004 (69 FR 11712) and March 26, 2004 (69 FR 15667). 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 June 10, 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 April 14, 2004.

Elizabeth S. Wallis,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–9402 Filed 4–23–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–16990; Airspace Docket No. 04–ACE–8]

Modification of Class E Airspace; Larned, 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 Larned, KS.

EFFECTIVE DATE: 0901 UTC, June 10, 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 February 25, 2004 (69 FR 8559). 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 June 10, 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 April 14, 2004.

Elizabeth S. Wallis,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–9403 Filed 4–23–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17422; Airspace Docket No. 04–ACE–23]

Modification of Class E Airspace; Cozad, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by revising Class E airspace at Cozad, NE. A review of controlled airspace for Cozad Municipal Airport revealed it does not comply with the criteria for 700 feet above ground level (AGL) airspace required for diverse departures. The review also identified discrepancies in the legal description for the Cozad, NE Class E airspace area. The area is modified and enlarged to conform to the criteria in FAA Orders.

DATES: This direct final rule is effective on 0901 UTC, August 5, 2004. Comments for inclusion in the Rules Docket must be received on or before June 3, 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–2004–17422/ Airspace Docket No. 04–ACE–23, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendments to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Cozad, NE. An examination of controlled airspace for Cozad Municipal Airport revealed it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The criteria in FAA Order 7400.2E for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the airport reference point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The review identified a discrepancy in the Cozad Municipal Airport ARP used in the Class E airspace legal description and also that the legal description was not in compliance with FAA Order 8260.19C, Flight Procedures and Airspace. The limit of the Class E airspace area extension should be defined as a distance from the Cozad very high frequency omni-directional radio range (VOR). This amendment expands the airspace area from a 6-mile radius to a 6.4-mile radius of Cozad Municipal Airport, corrects the ARP in the legal description, defines the extension in relation to the Cozad VOR and brings the legal description of the Cozad, NE Class E depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet ormore above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2002, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

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

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2004–17422/Airspace Docket No. 04–ACE–23." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

ACE NE E5 Cozad, NE

Cozad Municipal Airport, NE
(lat. 40°52′09″ N., long. 100°00′15″ W.)
Cozad VOR
(lat. 40°52′14″ N., long. 100°00′13″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Cozad Municipal Airport and within 2.6 miles each side of the 312° bearing from the Cozad VOR extending from the 6.4 mile radius of the airport to 7 miles northwest of the VOR.

* * * * *

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

Elizabeth S. Wallis,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–9404 Filed 4–23–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9122]

RIN 1545–BC28

Guidance Under Section 1502; Stock Basis After a Group Structure Change

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation.

SUMMARY: This document contains final regulations under section 1502 providing guidance regarding the determination of basis in the stock of the former common parent following a group structure change. These final regulations affect corporations filing consolidated returns.

DATES: These regulations are effective April 26, 2004.

FOR FURTHER INFORMATION CONTACT: Ross Poulsen, (202) 622–7770 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 1502 of the Internal Revenue Code of 1986 (Code), specifically § 1.1502–31, relating to the determination of the basis of stock in the former common parent after a group structure change. Section 1.1502–31 applies if one corporation (P) succeeds another corporation (T) under the principles of § 1.1502–75(d)(2) or (3) as the common parent of a consolidated group in a group structure change. Section 1.1502–31 provides that if a corporation acquires stock of the former common parent in a group structure change, the basis of the members in the former common parent's stock immediately after the group structure change is generally redetermined to reflect the former common parent's net asset basis.

Because of a concern that the application of the net asset basis rule may produce inappropriate results on the disposition of stock acquired in a transaction in which, under generally applicable rules, the basis of the acquired stock would otherwise be determined by reference to the acquirer's cost, the IRS and Treasury Department issued regulations proposing to except from the application of the net asset basis rule stock acquired in a transaction in which gain or loss was recognized in whole. Those regulations were included in a notice of proposed rulemaking (REG–130262–03) published in the **Federal Register** (68 FR 40579 [technical correction published in 68 FR 52545]) on July 8, 2003.

No public hearing was requested or held regarding the proposed regulations. One written comment, however, was received. That comment urged the expeditious promulgation of the proposed regulations as final regulations.

This Treasury decision adopts the proposed regulations without substantive changes as final regulations. The final regulations apply to group structure changes that occur after April 26, 2004. With respect to group structure changes that occur on or before April 26, 2004, and in a consolidated return year beginning on or after January 1, 1995, these regulations apply at the election of the group.

Special Analyses

It has been determined that these regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations do not have a significant impact on a substantial number of small entities. This certification is based on the fact that these regulations primarily will affect affiliated groups of corporations, which tend to be larger businesses. Moreover, the number of taxpayers affected is minimal and the regulations will simplify basis determinations. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact.

Drafting Information

The principal author of this regulation is Ross Poulsen, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.1502–31 is amended by revising paragraphs (b)(2), (d)(2)(ii), (g), and (h) to read as follows:

§ 1.1502–31 Stock basis after a group structure change.

* * * * *

(b) * * *

(2) *Stock acquisitions.* If a corporation acquires stock of the former common parent in a group structure change, the basis of the members in the former common parent's stock immediately after the group structure change (including any stock of the former common parent owned before the group structure change) that is, or would otherwise be, transferred basis property is redetermined in accordance with the results for an asset acquisition described in paragraph (b)(1) of this section. For example, if all of T's stock is contributed to P in a group structure change to which section 351 applies, P's basis in T's stock is T's net asset basis, rather than the amount determined under section 362. Similarly, if S merges into T in a group structure change described in section 368(a)(2)(E) and P acquires all of the T stock, P's basis in T's stock is the basis that P would have in S's stock under paragraph (b)(1) of this section if T had merged into S in a group structure change described in section 368(a)(2)(D).

* * * * *

(d) * * *

(2) * * *

(ii) *Stock acquisitions.* If less than all of the former common parent's stock is subject to the redetermination described in paragraph (b)(2) of this section, the percentage of the former common parent's net asset basis taken into account in the redetermination equals the percentage (by fair market value) of the former common parent's stock subject to the redetermination. For example, if P owns less than all of the former common parent's stock immediately after the group structure change and such stock would otherwise be transferred basis property, only an allocable part of the basis determined under this section is reflected in the shares owned by P (and the amount allocable to shares owned by nonmembers has no effect on the basis of their shares). Alternatively, if P acquired 10 percent of the former common parent's stock in a transaction in which the stock basis was determined by P's cost, and P later acquires the remaining 90 percent of the former common parent's stock in a separate transaction that is described in paragraph (b)(2) of this section, P retains its cost basis in its original stock and the basis of P's newly acquired shares reflects only an allocable part of the former common parent's net asset basis.

* * * * *

(g) *Examples.* For purposes of the examples in this section, unless otherwise stated, all corporations have only one class of stock outstanding, the tax year of all persons is the calendar year, all persons use the accrual method of accounting, the facts set forth the only corporate activity, all transactions are between unrelated persons, and tax liabilities are disregarded. The principles of this section are illustrated by the following examples:

Example 1. Forward triangular merger. (i) *Facts.* P is the common parent of one group and T is the common parent of another. T has assets with an aggregate basis of $60 and fair market value of $100 and no liabilities. T's shareholders have an aggregate basis of $50 in T's stock. In Year 1, pursuant to a plan, P forms S and T merges into S with the T shareholders receiving $100 of P stock in exchange for their T stock. The transaction is a reorganization described in section 368(a)(2)(D). The transaction is also a reverse acquisition under § 1.1502–75(d)(3) because the T shareholders, as a result of owning T's stock, own more than 50% of the value of P's stock immediately after the transaction. Thus, the transaction is a group structure change under § 1.1502–33(f)(1), and P's earnings and profits are adjusted to reflect T's earnings and profits immediately before T ceases to be the common parent of the T group.

(ii) *Analysis.* Under paragraph (b)(1) of this section, P's basis in S's stock is adjusted to reflect T's net asset basis. Under paragraph (c) of this section, T's net asset basis is $60, the basis T would have in the stock of a subsidiary under section 358 if T had transferred all of its assets and liabilities to the subsidiary in a transaction to which section 351 applies. Thus, P has a $60 basis in S's stock.

(iii) *Pre-existing S.* The facts are the same as in paragraph (i) of this *Example 1*, except that P has owned the stock of S for several years and P has a $50 basis in the S stock before the merger with T. Under paragraph (b)(1) of this section, P's $50 basis in S's stock is adjusted to reflect T's net asset basis. Thus, P's basis in S's stock is $110 ($50 plus $60).

(iv) *Excess loss account included in former common parent's net asset basis.* The facts are the same as in paragraph (i) of this *Example 1*, except that T has two assets, an operating asset with an $80 basis and $90 fair market value, and stock of a subsidiary with a $20 excess loss account and $10 fair market value. Under paragraph (c) of this section, T's net asset basis is $60 ($80 minus $20). *See* sections 351 and 358, and § 1.1502–19. Consequently, P has a $60 basis in S's stock. Under section 362 and § 1.1502–19, S has an $80 basis in the operating asset and a $20 excess loss account in the stock of the subsidiary.

(v) *Liabilities in excess of basis.* The facts are the same as in paragraph (i) of this *Example 1*, except that T's assets have a fair market value of $170 (and $60 basis) and are subject to $70 of liabilities. Under paragraph (c) of this section, T's net asset basis is negative $10 ($60 minus $70). *See* sections 351 and 358, and §§ 1.1502–19 and 1.1502–80(d). Thus, P has a $10 excess loss account in S's stock. Under section 362, S has a $60 basis in its assets (which are subject to $70 of liabilities). (Under paragraph (a)(2) of this section, because the liabilities are taken into account in determining net asset basis under paragraph (c) of this section, the liabilities are not also taken into account as consideration not provided by P under paragraph (d)(1) of this section.)

(vi) *Consideration provided by S.* The facts are the same as in paragraph (i) of this *Example 1*, except that P forms S with a $100 contribution at the beginning of Year 1, and during Year 6, pursuant to a plan, S purchases $100 of P stock and T merges into S with the T shareholders receiving P stock in exchange for their T stock. Under paragraph (b)(1) of this section, P's $100 basis in S's stock is increased by $60 to reflect T's net asset basis. Under paragraph (d)(1) of this section, P's basis in S's stock is decreased by $100 (the fair market value of the P stock) because the P stock purchased by S and used in the transaction is consideration not provided by P.

(vii) *Appreciated asset provided by S.* The facts are the same as in paragraph (i) of this *Example 1*, except that P has owned the stock of S for several years, and the shareholders of T receive $60 of P stock and an asset of S with a $30 adjusted basis and $40 fair market value. S recognizes a $10 gain from the asset under section 1001. Under paragraph (b)(1) of this section, P's basis in S's stock is increased by $60 to reflect T's net asset basis. Under paragraph (d)(1) of this section, P's basis in S's stock is decreased by $40 (the fair market value of the asset provided by S). In addition, P's basis in S's stock is increased under § 1.1502–32(b) by S's $10 gain.

(viii) *Depreciated asset provided by S.* The facts are the same as in paragraph (i) of this

Example 1, except that P has owned the stock of S for several years, and the shareholders of T receive $60 of P stock and an asset of S with a $50 adjusted basis and $40 fair market value. S recognizes a $10 loss from the asset under section 1001. Under paragraph (b)(1) of this section, P's basis in S's stock is increased by $60 to reflect T's net asset basis. Under paragraph (d)(1) of this section, P's basis in S's stock is decreased by $40 (the fair market value of the asset provided by S). In addition, S's $10 loss is taken into account under § 1.1502–32(b) in determining P's basis adjustments under that section.

Example 2. Stock acquisition. (i) *Facts.* P is the common parent of one group and T is the common parent of another. T has assets with an aggregate basis of $60 and fair market value of $100 and no liabilities. T's shareholders have an aggregate basis of $50 in T's stock. Pursuant to a plan, P forms S and S acquires all of T's stock in exchange for P stock in a transaction described in section 368(a)(1)(B). The transaction is also a reverse acquisition under § 1.1502–75(d)(3). Thus, the transaction is a group structure change under § 1.1502–33(f)(1), and the earnings and profits of P and S are adjusted to reflect T's earnings and profits immediately before T ceases to be the common parent of the T group.

(ii) *Analysis.* Under paragraph (d)(4) of this section, although S is not the new common parent of the T group, adjustments must be made to S's basis in T's stock in accordance with the principles of this section. Although S's basis in T's stock would ordinarily be determined under section 362 by reference to the basis of T's shareholders in T's stock immediately before the group structure change, under the principles of paragraph (b)(2) of this section, S's basis in T's stock is determined by reference to T's net asset basis. Thus, S's basis in T's stock is $60.

(iii) *Higher-tier adjustments.* Under paragraph (d)(4) of this section, P's basis in S's stock is increased by $60 (to be consistent with the adjustment to S's basis in T's stock).

(iv) *Cross ownership.* 1 The facts are the same as in paragraph (i) of this Example 2, except S purchased 10% of T's stock from an unrelated person for cash. In an unrelated transaction, S acquires the remaining 90% of T's stock in exchange for P stock. S's basis in the initial 10% of T's stock is not redetermined under this section. However, S's basis in the additional 90% of T's stock is redetermined under this section. S's basis in that stock is adjusted to $54 (90% of T's net asset basis).

(v) *Allocable share.* The facts are the same as in paragraph (i) of this *Example 2*, except that P owns only 90% of S's stock immediately after the group structure change. S's basis in T's stock is the same as in paragraph (ii) of this *Example 2*. Under paragraph (d)(2) of this section, P's basis in its S stock is increased by $54 (90% of S's $60 adjustment).

Example 3. Taxable stock acquisition. (i) *Facts.* P is the common parent of one group and T is the common parent of another. T has assets with an aggregate basis of $60 and fair market value of $100 and no liabilities. T's shareholders have an aggregate basis of $50 in T's stock. Pursuant to a plan, P acquires all of T's stock in exchange for $70 of P's stock and $30 in a transaction that is a group structure change under § 1.1502–33(f)(1). P's acquired T stock is not transferred basis property. (Because of P's use of cash, the acquisition is not a transaction described in section 368(a)(1)(B).)

(ii) *Analysis.* The rules of this section do not apply to determine P's basis in T's stock. Therefore, P's basis in T's stock is $100.

(h) *Effective dates*—(1) *General rule.* This section applies to group structure changes that occur after April 26, 2004. However, a group may apply this section to group structure changes that occurred on or before April 26, 2004, and in consolidated return years beginning on or after January 1, 1995.

(2) *Prior law.* For group structure changes that occur on or before April 26, 2004, and in consolidated return years beginning on or after January 1, 1995, with respect to which the group does not elect to apply the provisions of this section, see § 1.1502–31 as contained in the 26 CFR part 1 edition revised as of April 1, 2003. For group structure changes that occur in consolidated return years beginning before January 1, 1995, see §1.1502–31T as contained in the 26 CFR part 1 edition revised as of April 1, 1994.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: April 14, 2004.

Gregory F. Jenner,

Acting Assistant Secretary of the Treasury.

[FR Doc. 04–9448 Filed 4–23–04; 8:45 am]

BILLING CODE 4830–01–P

POSTAL SERVICE

39 CFR Part 111

Machinable Parcel Testing Changes

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: On February 20, 2004 (69 FR 7887), the Postal Service™ published a proposed rule amending the *Domestic Mail Manual* (DMM™) to centralize the processing of requests for parcel testing. Such testing is requested to determine if parcels can be successfully processed on bulk mail center (BMC) parcel sorters when they do not conform to the general machinability criteria in the DMM. The Postal Service proposed DMM changes specific to this issue. This notice announces the adoption of these changes, which support the Postal Service's goal of consistency in determining the machinability of parcels.

EFFECTIVE DATE: April 17, 2004.

FOR FURTHER INFORMATION CONTACT: Obataiye B. Akinwole, 703–292–3643.

SUPPLEMENTARY INFORMATION: On April 15, 2004, *Domestic Mail Manual* (DMM) changes will be adopted to implement the new requirements for testing parcel machinability. The Postal Service believes that systemwide consistency will be achieved if exception requests are processed at one central location rather than at each BMC. This change is in line with the Postal Service's obligation to ensure prompt, efficient, reliable responses to customer needs, and will ensure that customer expectations of consistency across postal operations are met.

Comments Received

The Postal Service received one comment in response to the February 20, 2004, proposed rule. The comment came from a professional mailer. The mailer supports the proposed rule as a means of creating more consistent rulings on machinable parcels. The mailer also encouraged the Postal Service to expedite the publication of a final rule implementing the new process.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the *Domestic Mail Manual* (DMM), which is incorporated by reference in the *Code of Federal Regulations* (*see* 39 CFR part 111).

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S. C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

■ 2. Revise the following sections of the *Domestic Mail Manual* (DMM) as set forth below:

Domestic Mail Manual (DMM)

* * * * *

C Characteristics and Content

C000 General Information

C010 General Mailability Standards

* * * * *

[*Delete 7.0, Mailing Test Packages.*]

* * * * *

C050 Mail Processing Categories

* * * * *

4.0 MACHINABLE PARCEL

* * * * *

4.3 Exception

[*Revise 4.3 to read as follows:*]

Some parcels may be successfully processed on BMC parcel sorters even though they do not conform to the general machinability criteria in 4.1. The manager, BMC Operations, USPS Headquarters (see G043 for address) may authorize a mailer to enter such parcels as machinable parcels rather than irregular parcels if the parcels are tested on BMC parcel sorters and prove to be machinable. Mailers who wish to have parcels tested for machinability on USPS parcel sorting machines must:

a. Submit a written request to BMC Operations. The request must list mailpiece characteristics for every shape, weight, and size to be considered. If the letter requesting testing describes a mailpiece that falls within the specifications of pieces that were tested previously, the mailpiece will not be tested.

b. Describe mailpiece construction, parcel weight(s), estimated number of parcels to be mailed in the coming year, and preparation level (*e.g.*, destination BMC pallets).

c. Send 100 samples to the test facility designated by the manger, BMC Operations, at least 6 weeks prior to the first mailing date. The manager, BMC Operations, will recommend changes, to ensure machinability, of parcels that do not qualify.

* * * * *

6.0 OUTSIDE PARCEL (NONMACHINABLE)

[*Revise the first sentence to read as follows:*]

An outside parcel is a parcel that exceeds any of the maximum dimensions for a machinable parcel.

* * *

* * * * *

G General Information

G000 The USPS and Mailing Standards

* * * * *

G040 Information Resources

* * * * *

G043 Address List for Correspondence

[*Add the following address:*] BMC Operations, US Postal Service, 475 L'Enfant PLZ, SW., RM 7631, Washington, DC 20260–2806.

* * * * *

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 04–9414 Filed 4–23–04; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 799

[OPPT–2003–0006; FRL–7312–2]

RIN 2070–AD42

In Vitro Dermal Absorption Rate Testing of Certain Chemicals of Interest to the Occupational Safety and Health Administration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating a final rule under the Toxic Substances Control Act (TSCA) that requires manufacturers (including importers) and processors of 34 chemicals to conduct *in vitro* dermal absorption rate testing. These chemicals are of interest to the Occupational Safety and Health Administration (OSHA) of the Department of Labor, and the data obtained under this testing program will be used by OSHA to evaluate the need for "skin designations" for these chemicals. Skin designations are used by OSHA to alert industrial hygienists, employers, and workers to the potentially significant contribution to the overall exposure to certain chemicals which can occur by the cutaneous route. Thus, skin designations encourage employers to consider whether changes should be made to processes involving such chemical substances in order to reduce the potential for systemic toxicity from dermal absorption of these chemicals. Persons who export or intend to export any chemical substance included in this final rule are subject to the export notification requirements in TSCA section 12(b).

DATES: This final rule is effective on May 26, 2004. For purposes of judicial review, this final rule shall be promulgated at 1 p.m. eastern daylight/standard time on May 10, 2004.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number OPPT–2003–0006. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket/*. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will not be placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Office of Pollution Prevention and Toxics (OPPT) Docket, EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744, and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Keith Cronin or Catherine Roman, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8157 or (202) 564–8172; e-mail address: *cronin.keith@epa.gov* or *roman.catherine@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you manufacture (defined by statute to include import) or process any of the chemical substances that are listed in § 799.5115(j) of the regulatory text. Any use of the term "manufacture" in this document will encompass "import," unless otherwise stated. In addition, as described in Unit VI., any person who exports or intends to export any of the chemical substances in this final rule is subject to the export notification requirements in 40 CFR part 707, subpart D. Entities that could be subject to the requirements in this final rule may include, but are not limited to:

- Manufacturers (defined by statute to include importers) of one or more of the 34 subject chemical substances

(NAICS 325 and 324110), e.g., chemical manufacturing and petroleum refineries.

- Processors of one or more of the 34 subject chemical substances (NAICS 325 and 324110), e.g., chemical manufacturing and petroleum refineries.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industry Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit V.E. and consult the regulatory text at 40 CFR 799.5115(b). If you have any questions regarding the applicability of this action to a particular entity, consult one of the technical persons listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to EDOCKET (*http://www.epa.gov/edocket/*), you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 9 and part 799 is available on E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. Background

A. What Action is the Agency Taking?

In this action, EPA is promulgating a test rule under TSCA section 4 (15 U.S.C. 2603) which responds to recommendations of the Interagency Testing Committee (ITC). Under TSCA section 4(e)(1), the ITC is responsible for recommending chemical substances and mixtures to the EPA Administrator for priority testing consideration. In September 1991, the ITC received a nomination from OSHA of 658 chemical substances and mixtures for ITC review. OSHA requested that the ITC assess the availability of data relevant to dermal absorption for these chemical substances and mixtures and determine the need for further testing (Ref. 1). OSHA indicated to the ITC that it needed quantitative measures of dermal absorption to evaluate the potential hazard of these chemicals to workers (Ref. 2). These quantitative measures are expressed as the dermal absorption rate for a particular chemical (Ref. 3, p. 35725). The results of the ITC's review were published in the **Federal Register** (Ref. 1, p. 26900 and Ref. 2, pp. 38492–38493).

In the 31st, 32nd, and 35th ITC Reports to the EPA Administrator (Refs. 1, 2, and 4), the ITC designated for *in vitro* dermal absorption rate testing a total of 83 of the 658 chemical substances nominated by OSHA. A summary of the process by which the ITC selected the 83 chemical substances was presented in the proposal to this action (Ref. 5, p. 31077). The data reviewed by the ITC included data obtained from TSCA section 8(a) and 8(d) rules (Refs. 6, 7, and 8) which were promulgated by EPA for the 83 chemical substances included in the 31st, 32nd, and 35th ITC Reports (Refs. 1, 2, and 4). These rules required the reporting to EPA of certain production, use and exposure-related information, and unpublished health and safety data concerning the 83 chemical substances.

In reviewing the available data, the ITC determined that the data for methyl methacrylate, diethyl phthalate, and cyclohexanone would meet OSHA's data needs for these three chemicals. Accordingly, the ITC withdrew its designation for these three chemicals: Methyl methacrylate and diethyl phthalate in the 34th ITC Report (Ref. 3), and cyclohexanone in the 36th ITC Report (Ref. 9).

Eighty of the chemical substances originally nominated by OSHA are thus currently designated by the ITC for *in vitro* dermal absorption rate testing under TSCA. In the **Federal Register** notices containing the 31st, 32nd, and 35th ITC Reports (Refs. 1, 2, and 4), EPA solicited proposals for TSCA section 4 enforceable consent agreements (ECAs) for dermal absorption rate testing of the 80 chemical substances. EPA received no proposals for ECAs for dermal absorption rate testing in response to these solicitations.

On April 3, 1996, EPA again solicited interested parties to submit proposals for ECAs (Ref. 10). On June 26, 1996, EPA received a proposal from the ARCO Chemical Company (ARCO) (Ref. 11) for *tert*-butyl alcohol. On March 26, 1998, EPA received a study from ARCO entitled *[^{14}C]-t-Butyl Alcohol: Topical Application: Dermal Absorption Study in the Male Rat* (Refs. 12 and 12a.). This study was reviewed and found acceptable as a means of determining the dermal absorption rate for *tert*-butyl alcohol. Accordingly, EPA did not propose testing of *tert*-butyl alcohol.

On June 9, 1999, EPA responded to the ITC's designation of the remaining 79 chemicals by issuing a proposed test rule under TSCA section 4 (Ref. 5) which would require that 47 of these chemical substances be tested with respect to *in vitro* dermal absorption rate. The Agency selected the 47 chemicals for testing because, at the time of the proposal, EPA believed that their production volumes were the highest among the 80 chemicals designated by the ITC. At the time of the proposed rule, the most current information available to EPA indicated that each of the 47 chemicals was produced in "substantial quantities," meaning that their annual production volumes ranged from one million to more than one billion pounds. These chemical substances were being used in a wide variety of applications, which resulted in potential exposures of 1,000 or more workers to each chemical substance. Based upon EPA's review of more recent production volume data, exposure data, and dermal absorption rate data, which became available after the proposal to this rule was published, EPA is now requiring testing for 34 of the 47 chemicals that had been included in the proposed rule. The rationale for EPA's decision not to finalize testing requirements for the other 13 chemicals, which were originally proposed for testing, is described in Unit VII.A. through I.

EPA is requiring that the 34 chemicals be tested according to the *in vitro* dermal absorption rate test standard set forth in § 799.5115(h) of the regulatory text. EPA has also specified reporting requirements in § 799.5115(i) of the regulatory text. EPA may pursue testing of the remaining 32 chemicals based on further analysis.

In the solicitations discussed in this unit (Refs. 1, 2, 4, and 10), EPA referenced an *in vitro* dermal absorption rate test method for review by potential submitters in developing their proposed protocols (Ref. 10, p. 14776). This method was based on the peer reviewed method of Bronaugh and Collier (Ref. 13). Some refinements of the method were made by a panel of Federal scientists from ITC member and liaison agencies (including, for example, Consumer Product Safety Commission (CPSC), Department of Defense (DoD), EPA, Food and Drug Administration (FDA), National Institute for Occupational Safety and Health (NIOSH), and OSHA). EPA received public comments on the method and entered them, along with the method itself, into the dockets for the 31st, 32nd, and 35th ITC Reports (docket control numbers OPPTS–41038, OPPTS–41039, and OPPTS–41042, respectively). In addition, the American Chemistry Council (ACC, formerly the Chemical Manufacturers Association (CMA)) submitted a proposed protocol outlining

an alternative method (Refs. 14 and 14a.). Scientists from the Federal Agencies represented on the ITC (including EPA and OSHA) reviewed the public comments and the ACC proposal. As a result of this review, the ITC and EPA scientists further refined the *in vitro* dermal absorption rate test method of Bronaugh and Collier which EPA then proposed to be the test standard required by this final rule (Ref. 5).

The test standard that will be required under this final rule describes the procedures for measuring a permeability constant (Kp) and two short-term absorption rates (10 minutes and 60 minutes) for chemical substances in liquid form. A Kp is useful in estimating skin permeation when contact with the chemical is prolonged (hours) and steady state is achieved, while a short-term absorption rate measurement is more relevant when the contact is short-term (minutes). Both measurements are required by the test standard.

This test standard makes use of established *in vitro* diffusion cell techniques that allow absorption rate studies to be conducted using human cadaver skin and either flow-through or static diffusion cells (see § 799.5115(h) in the regulatory text). This test standard also requires the use of radiolabeled chemical substances unless the test sponsor can demonstrate that procedures utilizing a non-radiolabeled test substance are able to measure the substance with equivalent sensitivity. The first six parameters that are discussed under test procedures in § 799.5115(h)(5) of the regulatory text (i.e., choice of membrane, preparation of membrane, diffusion cell design, temperature, testing of hydrophobic chemicals, and vehicle) are similar for the determination of either of the two percutaneous absorption rate values (Kp and short-term absorption rate). In contrast, the remaining two parameters (i.e., dose and study duration) are different for the two percutaneous absorption rate values.

The *in vitro* approach was chosen not only for the practical considerations that it makes efficient use of labor and materials and can easily be performed by a variety of laboratories, but also because *in vitro* diffusion cell studies are necessary for measuring a Kp. Although the *in vitro* method in § 799.5115(h) of the regulatory text will satisfy OSHA's data needs to support its skin designations, EPA does not believe the method is an adequate substitute for all dermal absorption rate testing methods.

B. What is the Agency's Authority for Taking this Action?

This final rule is being promulgated under TSCA section 4 (15 U.S.C. 2603), which authorizes EPA to require the development of data relevant to assessing the risk to health and the environment posed by exposure to chemical substances and mixtures (chemicals).

Section 2(b)(1) of TSCA (15 U.S.C. 2603(b)(1)) states that it is the policy of the United States that:

> adequate data should be developed with respect to the effect of chemical substances and mixtures on health and the environment and that the development of such data should be the responsibility of those who manufacture and those who process such chemical substances and mixtures[.]

To implement this policy, TSCA section 4(a) mandates that EPA require by rule that manufacturers and/or processors of chemical substances and mixtures conduct testing if the Administrator finds that:

> (1)(A)(i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,
>
> (ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or any combination of such activities on health or the environment can reasonably be determined or predicted, and
>
> (iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or
>
> (B)(i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,
>
> (ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or any combination of such activities on health or the environment can reasonably be determined or predicted, and
>
> (iii) testing of such substance or mixture with respect to such effects is necessary to develop such data [.]

The purpose of this testing is to develop data about the substance's or mixture's health or environmental effects for which there is an insufficiency of data and experience, and which are relevant to a determination that the manufacture, distribution in commerce, processing, use, or disposal of the substance or mixture, or any combination of such activities, does or does not present an unreasonable risk of injury to health or the environment.

Once the Administrator has made a finding under TSCA section 4(a)(1)(A)(i) (i.e., a finding that a chemical substance may present an unreasonable risk of injury to health or the environment) or a finding under TSCA section 4(a)(1)(B)(i) (i.e., a finding that a chemical substance is or will be produced in substantial quantities and either it enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to the chemical substance), EPA may require any type of health or environmental effect testing necessary to address unanswered questions about the effects of the chemical substance. EPA need not limit the scope of testing required to the factual basis for the TSCA section 4(a)(1)(A)(i) or (B)(i) findings, as long as EPA also finds that there are insufficient data and experience upon which to reasonably predict the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or any combination of such activities on health or the environment, and that testing is necessary to develop such data. This approach is explained in more detail in EPA's statement of policy for making findings under TSCA section 4(a)(1)(B) (frequently described as the "B" policy) (Ref. 55, pp. 28738–28739).

In this final rule, EPA is using its broad TSCA section 4(a) authority to obtain dermal absorption rate data necessary for OSHA to evaluate the need for "skin designations" (see Unit III.B.3.) for the 34 chemical substances specified in Table 2 in § 799.5115(j) of the regulatory text. Following consideration of the public comments received by EPA on the proposed test rule (Ref. 5), EPA is making the following findings for these chemicals under TSCA section 4(a)(1)(B): They are produced in substantial quantities; there is or may be substantial human exposure to them; existing data are insufficient to determine or predict their health effects; and testing is necessary to develop such data.

EPA has used its TSCA section 4(a) authority in the past to support regulatory programs of other EPA offices as well as other Federal Agencies needing health and/or environmental effects test data. See, e.g., the final test rule for the Office of Water Chemicals (Ref. 68, p. 59673).

III. Response to Public Comments

A. Summary

EPA received comments on the proposed rule (Ref. 5) from ACC, Monsanto Company, First Chemical Corporation, American Forest and Paper Association (AFPA), American Petroleum Institute (API), Biphenyl Work Group, Diethyl Ether Producers Association (DEPA), Synthetic Organic Chemical Manufacturers Association (SOCMA), Acetonitrile Task Force, Dupont Dow Elastomers, Fragranced Products Information Network, Association of Veterinarians for Animal Rights, People for the Ethical Treatment of Animals, Animal Protection Institute Midwest Regional Office, Humane Society of the United States, Doris Day Animal League, Chlorobenzene Producers Association, Tetrahydrofuran Task Force (THFTF), a private citizen, and Union Carbide Corporation (Refs. 15–33).

ACC's Naphthalene Panel, Propylene Glycol Ethers Panel, Olefins Panel (ACC/O), Hydrocarbon Solvents Panel, Ketones Panel and Oxo Process Panel (ACC/KO), and Carbon Disulfide Panel, generally supported the comments by ACC (Refs. 34–39). The Chlorobenzene Producers Association, Biphenyl Work Group, and the Acetonitrile Task Force, also endorsed the comments submitted by ACC. Comments by ACC and those comments generally supportive of ACC's comments are collectively referred to as "ACC's" hereinafter in this document. Comments submitted by these groups that are specific to a chemical are addressed, as appropriate, in Unit III.F. and in Unit VII.

A summary of the comments received by EPA on the Proposed Test Rule for *In Vitro* Dermal Absorption Rate Testing of Certain Chemicals of Interest to Occupational Safety and Health Administration is included in this unit, along with EPA's responses to those comments. The comments are available in the public docket for this rulemaking (see **ADDRESSES**).

B. TSCA Section 4 Findings

1. *"Substantial" human exposure, TSCA section 4(a)(1)(B)(i)(II)*—a. *"B" policy.* ACC commented that EPA has not provided a sufficient basis for its finding of "substantial" human exposure under TSCA section 4(a)(1)(B)(i)(II), (15 U.S.C. 2603(a)(1)(B)(i)(II)), with its approach in this final rule which is based solely on numbers of people exposed (more specifically, the number of workers exposed) to each chemical. ACC asserts that a substantial human exposure finding must additionally be based on information such as each chemical's physical, chemical, and biological properties; the manner of use and release; exposure concentrations; and duration and frequency of exposure. ACC states that neither OSHA's objective of developing skin designations, nor EPA's objectives under TSCA, are served by requiring dermal testing in circumstances where dermal exposures are at low concentrations, or are so infrequent that harm is not likely to occur.

EPA disagrees with ACC's assertion that EPA has not provided a sufficient rationale for its finding that there is or may be "substantial" human exposure to the chemical substances that are subject to this final rule as required under TSCA section 4(a)(1)(B)(i)(II). EPA also disagrees with ACC's contention that EPA must consider chemical-specific factors to make a "substantial" human exposure finding. In its policy statement that explains how EPA generally makes findings under TSCA section 4(a)(1)(B)(i) (the "B" policy), EPA articulated quantitative thresholds to serve as guidance in making findings of "substantial" production, release, and human exposure. (Ref. 55) These quantitative thresholds are based on the Agency's belief that it is reasonable to interpret the word "substantial" to mean exposure to large numbers of people. Therefore, EPA believes that, in the case of this final rule, where, based on information available to EPA (Refs. 5 and 56), 1,000 or more workers are potentially exposed to each chemical for which the final rule would require testing, it is reasonable to require the testing of each chemical. In other words, EPA's policy (as articulated in its final "B" policy statement (Ref. 55)) is that quantitative data alone can justify EPA's finding that production, potential release, or the number of people potentially exposed to a chemical are "substantial." This is consistent with TSCA's goals of ensuring that, given the exposure of humans and the environment to a large number of chemical substances and mixtures with potentially harmful effects, there is effective regulation of commerce in such substances (15 U.S.C. 2601(a)), that adequate data be developed with respect to the effect of chemical substances and mixtures on health and the environment, and that the development of such data should be the responsibility of those who manufacture and those who process these substances (15 U.S.C. 2601(b)). Affected entities had the opportunity to comment on the proposed rule and submit current employee information, readily available to them, to refute EPA's finding that a substantial number of employees is exposed. In those instances when EPA agreed with information submitted by commenters which demonstrated that fewer than 1,000 employees were exposed to a chemical, that chemical was not included in this final rule (see Unit VII.D., E., and G.)

A "substantial" human exposure finding under TSCA section 4(a)(1)(B)(i)(II) requires no hazard or risk analysis (Ref. 55, p. 28742). Given the statutory framework, the legislative history, and the case law interpreting the TSCA section 4 testing provisions, EPA does not believe that it is required to consider each of the types of information described by ACC in order to make a TSCA section 4(a)(1)(B)(i)(II) "substantial" human exposure finding (Ref. 55, p. 28742).

Although EPA is not required to consider the factors mentioned by ACC in making its "substantial" human exposure findings, information of the sort described by ACC is nevertheless relevant to other decisions leading to a determination as to whether to require testing under TSCA section 4. As stated in the Agency's "B" policy:

> [f]or each substance-specific rulemaking under section 4, EPA must determine whether there are sufficient 'data and experience' upon which to 'reasonably determine or predict' the health and environmental effects of a chemical substance, and whether testing of such substance is 'necessary to develop such data.' In making these determinations, the Agency has always, and will continue to examine all available and relevant information concerning the substance in question, including the physical and biological properties of the substance, the manner of its use and release, the level, frequency, and duration of exposure, and any available relevant exposure and toxicity data. It is the responsibility of interested parties to provide any information they believe may be relevant to the Agency's determination to require testing of a particular chemical substance under TSCA section 4.
> (Ref. 55, p. 28743).

In those instances where interested parties provided such relevant information on chemical substances prior to the publication of this final test rule, EPA and OSHA carefully reviewed the information and, based on that review, EPA in some cases decided not to require testing for those chemical substances. (See Unit VII.A. through G.).

b. *The National Occupational Exposure Survey (NOES).* ACC commented that EPA has continued to rely on the NOES database to support its findings of "substantial" human exposure, a data base which ACC

believes to be unrepresentative, incomplete, and outdated. ACC states that the NOES estimates are greatly overstated and should not be relied upon by EPA in making its findings. ACC provided a critique of the NOES (Ref. 40) as support for its statements and added that EPA should evaluate the level, frequency, and duration of exposure to each chemical to determine if it is "substantial."

EPA disagrees with the commenter's statements regarding the adequacy of the NOES for supporting a finding of "substantial" human exposure under TSCA section 4(a)(1)(B)(i)(II). This database contains, among other things, useful information on the approximate number of workers potentially exposed to a chemical substance specified in the database. That is to say, while the survey does not provide meaningful information on the level, frequency, or duration of exposure, it is useful for providing an estimate of the potential number of workers exposed to a chemical. As noted in Unit III.B.1.a., EPA also does not agree with the comment that EPA should undertake an exhaustive analysis of exposure (i.e., level, frequency, and duration) to a chemical substance to find that there is or may be "substantial" human exposure.

For each of the chemicals for which testing is required in this final rule, estimates of the number of exposed workers were identified in the NOES. The NOES was a nationwide data gathering project conducted by NIOSH, which was designed to develop national estimates for the number of workers potentially exposed to various chemical, physical, and biological agents and describe the distribution of those potential exposures. Initiated in 1980 and completed in 1983, the survey involved a walkthrough investigation by trained surveyors of 4,490 facilities in 523 different types of industries. Surveyors recorded potential exposures when a chemical agent was likely to enter or contact a worker's body for a minimum duration. These potential exposures could be observed or inferred. Information from these representative facilities was extrapolated to generate national estimates of potentially exposed workers for more than 10,000 different chemicals (Ref. 41). The NOES survey is the most recent and comprehensive source of this kind of information.

In the critique of the NOES cited by ACC, a general conclusion of the authors was:

> We conclude from reviewing the survey design that, despite some flaws, it represents one of the soundest approaches possible, within the limited budget, for attaining national estimates of the number of workers in the proximity of potentially hazardous agents.
> (Ref. 40).

EPA agrees with this conclusion and believes that it is reasonable to use information provided in the NOES database to support a finding of "substantial" human exposure for a chemical substance contained within that database.

In addition, EPA agrees with the authors of the critique, Buell et al (Ref. 40), that the survey results, while potentially useful for making broad, national estimates of the number of persons in workplaces where potentially hazardous agents are also present, should not be used to gauge actual worker exposure to these agents, particularly to individual chemicals in individual industry sectors. This information was not collected in the survey. EPA has relied only on the information in the NOES database regarding the approximate number of potentially exposed workers in support of its finding of "substantial" human exposure.

Because some time has passed since the NOES was completed, EPA acknowledges that there may be instances where changes in various industrial sectors (i.e., market demand, advances in technology, and other mitigating factors) have led to a decrease in the number of workers potentially exposed to certain chemical substances. EPA's proposed test rule asked interested parties to provide any information they believed relevant to the Agency's determination to require testing of a particular chemical substance under TSCA section 4. EPA has received additional exposure information on certain chemical substances for which testing was proposed. This information has been fully considered, and for those chemical substances for which EPA believes it cannot make the "substantial" human exposure finding in light of such information, the Agency is not finalizing testing requirements. (See Units VII.D., E., and G.).

c. *The Toxic Release Inventory (TRI).* ACC stated that it is unclear what role the TRI data played in making the TSCA section 4 findings in the proposed rule, and that EPA should clarify how environmental releases factor into a determination of occupational dermal exposures. ACC notes that TSCA section 4(a)(1)(B), makes no mention of "release," but refers to whether a substance "enters" the environment. ACC asserts that in the context of TSCA section 4, the word "enter" connotes presence in the environment. Accordingly, ACC argues that "release" of a chemical in excess of one million pounds per year is not necessarily evidence that the compound "enters" the environment in "substantial" quantities. For example, if a substance is dispersed, degraded, or reacted rapidly upon release from manufacturing and processing facilities and is never present in significant concentrations in air, water, or soil, ACC asserts that it has not "entered" the environment in "substantial" quantities.

Moreover, ACC contends that environmental release, such as that reported under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA), does not correlate well with dermal exposure in the workplace. ACC notes that TRI reports do not indicate the concentrations of listed substances in environmental media or the extent of their distribution in the environment. Accordingly, ACC asserts that the release quantities reported under section 313 of EPCRA are not an adequate basis to support a TSCA section 4(a)(1)(B)(i)(I) finding in the context of this final rule, and they should not be combined with other data on the number of workers potentially exposed to support such a finding.

Although EPA reviewed information contained in the TRI database to identify additional support material for the test rule (Ref. 56), EPA did not find it necessary to use TRI release data in developing its exposure findings for this final rule.

d. *TSCA sections 8(a) and 8(d).* API commented that EPA does not present results of data gathering in the 1993, 1994, and 1995 TSCA section 8(a) and 8(d) rules (Refs. 6–8) for the proposed test rule chemicals. API objects to EPA's issuing data gathering rules and then not using the data gathered for the purposes of the test rule, particularly given that it is 10 years more current than the data that EPA used to make its TSCA section 4(a)(1)(B)(i)(II) finding i.e., NOES data (Ref. 19).

Following the EPA Administrator's receipt of the ITC Reports (Refs. 1, 2, and 4) which designated 83 chemicals for priority testing, the EPA's Office of Pollution Prevention and Toxics (OPPT) promulgated TSCA section 8(a) Preliminary Assessment Information Reporting (PAIR) and TSCA section 8(d) Health and Safety Data rules (Refs. 6–8) for the 83 chemicals designated for testing by the ITC. The TSCA section 8(a) rule required manufacturers and importers of chemicals designated for testing by the ITC to submit production

and exposure reports. The TSCA section 8(d) rule required manufacturers (including importers), and processors of chemicals designated for testing by the ITC to submit unpublished health and safety studies. These rules are automatically promulgated by EPA unless the ITC requests that EPA not do so.

The ITC reviews the TSCA section 8(a) PAIR reports, TSCA section 8(d) studies, and "other information" that become available after the ITC adds chemicals to the *Priority Testing List*. "Other information" includes TSCA section 4(a) studies, TSCA section 8(c) submissions, TSCA 8(e) "substantial risk" notices, "For Your Information" (FYI) submissions, ITC-FYI voluntary submissions, unpublished data submitted to U.S. Government organizations represented on the ITC, published papers, as well as use, exposure, effects, and persistence data that are voluntarily submitted to the ITC by manufacturers, importers, processors, and users of chemicals recommended by the ITC. The submissions are indexed and maintained by EPA. After the ITC reviews this information it determines if data needs should be revised, if chemicals should be removed from the *Priority Testing List*, or if recommendations should be changed to designations.

EPA disagrees with the comment that data gathered under TSCA section 8(a) and 8(d) rules were not considered in preparing the proposal. In fact, the proposed rule described the ITC's use of the data from the TSCA section 8(d) rules to support withdrawing its designation for three chemicals. As described in the proposal (Ref. 5, p. 31077), the ITC received dermal absorption rate data for three chemicals after EPA had promulgated TSCA section 8(d) rules for these chemicals. The ITC determined that the dermal absorption rate data for these three chemicals would meet OSHA's data needs, and accordingly, the ITC withdrew its designation for these three chemicals: Methyl methacrylate and diethyl phthalate in the 34th ITC Report (Ref. 3, p. 35725), and cyclohexanone in the 36th ITC Report (Ref. 9, p. 42987).

Furthermore, the ITC's review of the data gathered under TSCA sections 8(a) and 8(d) for the 80 remaining designated chemicals did not provide a sufficient rationale for the ITC to make a determination that the specified data needs should be revised or that its designation of chemicals for *in vitro* dermal absorption rate testing should be withdrawn and those chemicals removed from its *Priority Testing List*.

The proposed rule also described EPA's use of production data as a basis for its decision to pursue rulemaking on only 47 of the remaining 80 designated chemicals because of their greater production volumes, data which were reported under the TSCA section 8(a) rules (Ref. 5, p. 31077). Although EPA considered the information on employee exposure at manufacturing sites provided in the TSCA section 8(a) submissions, EPA also relied on NOES data as they indicate what additional employee exposure may occur at processing facilities.

Finally, for those remaining 32 chemicals designated for *in vitro* dermal absorption rate testing by the ITC which are not addressed by this final rule, EPA will present any determinations regarding data gathered from TSCA section 8(a) and 8(d), as well as any other available data in any future proposal for those chemicals.

2. *"Data are insufficient," TSCA 4(a)(1)(B)(ii).* DEPA (Ref. 21), the Chlorobenzene Producers Association (Ref. 31), and the Union Carbide Corporation (Ref. 47) challenged the Agency's finding that data are insufficient to determine a dermal absorption rate for ethyl ether, *o*-dichlorobenzene, and *n*-amyl acetate, respectively. These commenters provided studies to support their claims that available data are sufficient to determine dermal absorption rates. ACC (Ref. 15) commented that isobutyl alcohol and sec-butyl alcohol are structurally similar to other alcohols for which data have been generated and that a structure-activity relationship (SAR) approach could be used to predict the dermal absorption rates of these two chemicals. EPA reviewed the submitted studies and agreed that the available data are sufficient at this time to adequately determine or predict dermal absorption rates for these five chemicals. See Unit VII.A. through C. and F. for a description of the submitted studies and the basis for EPA's decision not to pursue rulemaking on these five chemicals.

3. *"Testing is necessary," TSCA section 4(a)(1)(B)(iii).* ACC commented that EPA failed to demonstrate that the proposed testing is necessary to develop data to predict the effects of the chemicals on human health and the environment (Ref. 15). ACC also stated that the Agency has provided no information on the need for dermal absorption data to "support chemical risk assessments at EPA as well as at other Federal agencies." As a general matter, ACC believes that EPA should not require testing when the Agency has not determined how the data will be used, and indeed cannot conclude that testing is necessary in such a case. Similarly, API and THFTF (Refs. 19 and 32) requested that EPA explain how the Agency (or other Federal Agencies) might use the dermal test data.

EPA believes it has adequately demonstrated a need for the testing that will be conducted under this final rule. As discussed in the preamble to the proposed rule (Ref. 5, pp. 31076–31078) and in the 31st, 32nd, and 35th ITC Reports to the Administrator (Refs. 1, 2, and 4, respectively), OSHA has found that for many toxic substances to which workers are exposed via multiple routes, and specifically for the chemical substances for which testing will be required under this final rule, very little knowledge exists of the contribution of dermal exposure to the total body burden of the substance.

Dermal absorption rate data for toxic substances encountered in industrial and occupational settings are quantitative estimates of the rate (amount per specified period of time) at which substances pass through the layers of the skin to enter the systemic circulation. OSHA assigns a "skin designation" to a chemical if it determines that cutaneous exposure (through the skin, eyes, and mucous membranes) to the chemical may result in systemic toxicity. In order to assign a skin designation for a chemical substance, OSHA requires dermal absorption rate data. OSHA requested (Refs. 1, 2, and 4) that the ITC help identify chemicals which lack sufficient data for OSHA to develop skin designations and to use its authority to recommend chemicals for priority testing consideration by EPA to obtain these data.

As described in the proposed rule, the ITC performed searches for data relating to the chemicals on the following databases: RTECS (Registry of Toxic Effects of Chemical Substances), TOXLINE (TOXicology of information onLINE), MEDLINE (MEDlars onLINE), TOXLIT (TOXicology LITerature from special sources), CECATS (OPPT/Risk Assessment Division/Chemical Screening Branch's Existing Chemical Assessment Tracking System), TSCATS (Toxic Substances Control Act Test Submissions), and INDEX MEDICUS. The search strategy was designed to identify any toxicological tests that used the dermal route of exposure. The information from the searches was collected and the chemicals were subcategorized based on the number of postings (Ref. 2, p. 38493).

Also as described in the proposed rule, in addition to these literature searches, the ITC reviewed data from

TSCA section 8(a) and 8(d) rules (Refs. 6 through 8) which were promulgated by EPA for the chemical substances included in the 31st, 32nd, and 35th ITC Reports (Refs. 1, 2, and 4). These rules required the reporting to EPA of certain production, use and exposure-related information, and unpublished health and safety data concerning these chemicals. For the 34 chemicals for which *in vitro* dermal absorption rate testing is required under this final rule, there was either no dermal absorption rate information available or available data were insufficient to derive a dermal absorption rate.

Testing of the 34 subject chemical substances is necessary to develop dermal absorption rate data. Dermal absorption rate data derived from testing these 34 chemical substances are needed by OSHA to estimate the amount of the chemical substance absorbed after contact with the skin. Only when dermal absorption is considered along with inhalation exposure data can a more complete and accurate quantitative assessment of body burden be estimated. Accurate estimates of body burden are necessary to develop assessments of risk to worker health posed by exposures to toxic substances in the workplace. This testing is needed to determine if the manufacturing, processing, or use of these 34 chemical substances presents an unreasonable risk of injury to human health.

In addition to playing an important role in assessing body burden, dermal absorption rate data can generate useful quantitative information for making recommendations or decisions concerning engineering controls or employee use of personal protective clothing to prevent exposure by the dermal route. Such information, when considered in conjunction with toxicologic and health effects data, can be used by industrial hygienists, other occupational health professionals, employers, and workers. Dermal absorption information is useful for hazard communication and right-to-know purposes, including Material Safety Data Sheets, and product labels. Additionally, dermal absorption rate data for chemicals used or produced in particular work sites are useful in developing comprehensive safety and health programs at those facilities.

OSHA standards, including skin designations, are widely applied and referenced. Local, State, and county governments, and other Federal Agencies rely on OSHA's occupational standards, as do other national governments. It is both appropriate and necessary to require dermal absorption rate testing of these industrial chemicals.

Although OSHA is the primary agency requesting the data that will be developed under this final rule, OSHA is not the only Federal Agency that will use the data. NIOSH is also very interested in method-related issues associated with characterizing dermal exposure and advancing improvements in occupational exposure assessments.

EPA is also interested in data that may be gathered on these chemicals. The information obtained by the testing required in this final rule may be used to inform the Agency's decisionmaking process by providing data which can be used in a preliminary estimate of the potential health risk of certain chemical exposures. The 34 chemicals for which testing is required under this final rule are part of other ongoing Agency efforts. For example, all 34 chemicals are included in EPA's High Production Volume (HPV) Initiative (*http://www.epa.gov/chemrtk.htm.*) In addition, EPA's Voluntary Children's Chemical Evaluation Program (VCCEP) (Ref. 43) is designed to provide data to enable the public to better understand the potential health risks to children associated with certain chemical exposures. Four of the 34 chemicals are included in EPA's VCCEP: Vinylidene chloride (Chemical Abstract Service Registry Number (CAS No.) 75–35–4); *p*-dichlorobenzene (CAS No. 106–46–7); ethylene dichloride (CAS No. 107–06–2); and chlorobenzene (CAS No. 108–90–7). (See *http://www.epa.gov/chemrtk/childhlt.htm.*). While *in vitro* dermal absorption rate data are not being developed under either of these Agency efforts, the data may be of benefit in preliminary risk screening, which is the purpose of data gathering in the HPV Initiative. Dermal absorption rate data may also be beneficial in further consideration of chemicals to which children may be exposed. Thus, EPA may use data obtained under this test rule in preliminary risk screenings to support its HPV Initiative and VCCEP, or for other Agency efforts to protect human health and the environment from unreasonable risks resulting from the manufacture, processing, or use of chemicals.

In summary, the data developed under this test rule will assist the Agency and others in evaluating these chemical substances for potential health or safety risk concerns. Although it is not an independent basis for supporting this final rule, as an additional benefit, the data will be publicly available, and thus will serve to further the Agency's goal of identifying and controlling human health and environmental risks by providing greater knowledge to the public.

C. Categories

ACC (Ref. 15) believes that EPA should consider a category approach to dermal absorption rate testing. In reviewing the list of 79 ITC-designated chemicals, ACC concludes that a great majority can be grouped into categories of similar chemical structure and that selected chemicals from each category could be tested for the purpose of obtaining sufficient data that would allow an accurate prediction of dermal absorption rate for other members of the structural group through a combination of modeling and quantitative structure activity relationship (QSAR) analysis. ACC states that for the designated chemicals, these categories would include aliphatic alcohols, ketones, aliphatic hydrocarbons, nitroaliphatics, halogenated hydrocarbons, aliphatic esters, aromatic hydrocarbons, nitroaromatics, halogenated aromatics, amides, aromatic amines, and phenols/phenol ethers. ACC suggests that the data generated from testing chemicals within categories could then be combined with existing data on other category members (including those in the larger group of 658 workplace chemicals that were originally nominated for testing by OSHA) to attempt to correlate chemical structure with dermal absorption rates.

EPA disagrees with the category approach suggested by ACC as an alternative to the approach proposed by EPA for testing these chemicals. ACC has not provided specifics on the number of chemicals in each category that would need to be tested and the reason certain chemicals would be representative so that reliable structure activity predictions could be made. Twelve different structural classes were mentioned as potential categories by ACC, but additional classes would likely be needed to categorize within the group of 79 chemicals that have been designated for testing by the ITC. EPA remains unconvinced that the approach suggested by ACC will either minimize the testing burden or more efficiently develop data on the chemicals of interest. However, the results from the dermal absorption rate testing of the chemicals in this final rule could, in appropriate cases, provide additional data for more thorough QSAR analysis and better validated models for future predictions.

D. Use of Calculated Kps to Screen and Prioritize Chemicals

ACC commented that adequate data already exist to "reasonably determine

or predict adverse effects," according to TSCA 4(a)(1)(B), for most if not all of the chemicals included in the proposed test rule (Ref. 15). It is ACC's understanding that the ITC calculated dermal penetration rates (Kps) for all of the chemicals covered by the test rule. ACC also notes that in 1992, EPA published guidance for estimating Kps for organic chemicals (see Ref. 42). The guidance document included calculated Kps for 11 of the 47 chemicals proposed for testing. In addition, ACC indicates that EPA's 1992 methodology has been largely validated, as the calculated Kps closely approximate available experimentally determined penetration rates. As such, ACC asserts that Kps, estimated using the suggested methodology, would be of sufficient quality to be used in screening-level assessments to determine the likely influence of dermal exposure on total worker exposure (i.e., the need for OSHA skin designations).

ACC states that EPA should consider giving industry the option of using calculated Kp values in lieu of testing, and together with industry and OSHA, assess the feasibility of using such data before the final rule is promulgated. ACC also states that, at a minimum, EPA should consider using calculated Kp data in order to screen and prioritize the chemicals for the proposed dermal absorption rate testing (Ref. 15). To do this, ACC states that prior to requiring testing the available calculated Kp data should be used to screen chemicals for their potential to cause systemic toxicity as a result of dermal exposure by assessing the potential contribution of dermal exposures to total occupational exposures, and that this assessment should be used to prioritize testing needs. ACC believes that the dermal absorption rate testing should be reserved for those chemicals for which screening-level assessments indicate the dermal pathway may be of concern. ACC comments that neither OSHA nor EPA has attempted to prioritize chemicals using published EPA dermal exposure assessment guidance, including published estimated dermal penetration rates.

EPA disagrees that adequate data exist to "reasonably determine or predict adverse effects," according to TSCA 4(a)(1)(B), for the chemicals included in the final test rule. As an initial matter, EPA believes that measured Kps (i.e., those determined through well designed and conducted *in vitro* or *in vivo* testing experiments) are generally more reliable than calculated Kps, and measured Kps are not available for the 34 chemicals subject to this final rule. EPA further believes that calculated Kp data may not be sufficiently reliable to be used in lieu of testing or in screening-level assessments to prioritize testing needs when the most relevant worker exposures involve exposure to neat compounds or compounds dissolved in organic solvents. With respect to the chemicals for which measured Kps are presented in Table 5–8 in EPA's 1992 guidance document (Ref. 42), the Kps were measured exclusively for the chemicals when they were in aqueous solutions; the table presents no measured Kps for neat liquids or chemicals in organic solvents, both of which are generally expected to be more relevant to the workplace (Ref. 62). Thus, these data are not adequate to provide the information needed for OSHA's intended purpose (Ref. 62). However, the *in vitro* testing required by this final rule, in addition to developing data needed to assess the potential risk of the 34 subject chemicals, will expand the existing data base and allow more thorough comparisons of measured Kps with calculated Kps relevant to occupational exposures.

E. Comments on Proposed In Vitro Test Standard

1. *General.* EPA received comments supporting use of the proposed test standard from several groups and individuals (Refs. 25–30). Many of these comments were similar in that they supported the standard as a means of gathering data without utilizing laboratory animals.

EPA agrees that there are instances, such as utilizing the test standard articulated in this final rule, in which sufficient data on the dermal absorption rate of a chemical substance may be gathered without using live laboratory animals. EPA considers many factors in relying upon specific test methods in its proposals under TSCA section 4. In specifying the standard for this rulemaking, the ITC and EPA considered the views of the public commenters, Federal scientists, and laboratories capable of conducting such testing. The standard articulated in this rulemaking makes efficient use of labor and materials and can be performed in a consistent, economical, and timely manner by different laboratories. The specification of the *in vitro* method as the test standard for this final rule also reflects EPA efforts to reduce the use of animals, where appropriate, in its testing programs. However, as noted previously in Unit II.A., although this *in vitro* method will satisfy OSHA's data needs to support its skin designations, EPA does not believe the method is an adequate substitute for all dermal absorption rate testing methods.

2. *Technical.* In addition to the general comments received by EPA on the proposed test standard, EPA also received technical comments from ACC, API, THFTF, DEPA, and a private citizen. In general, commenters argue that the proposed test standard was unnecessarily rigid and that several improvements would provide greater flexibility and reduce the cost of testing. EPA and OSHA agree with a number of the changes recommended by ACC , API, and THFTF, and have revised the test standard accordingly, as described in this unit.

a. ACC, API, and THFTF commented that both static and flow-through *in vitro* cells have been found acceptable in estimating dermal penetration of compounds. EPA agrees. Both static and flow-through *in vitro* cells, as described by the commenters and in the international Organization for Economic Co-operation and Development (OECD) draft guidance document (Ref. 44), are acceptable for estimating dermal penetration of compounds (Ref. 62). EPA has modified the test standard at paragraph (h)(5)(iii) to read: "Either static or flow-through diffusion cells must be used in these studies."

b. EPA received a comment from a private citizen (Ref. 33) who believes that more scientifically valid dermal absorption rates would be obtained by using the technologically more advanced flow-through type cells and viable human skin instead of the older method using static diffusion cells and cadaver skin.

EPA agrees that in some instances it may be preferable to utilize flow-through cell types and viable human skin to generate dermal absorption rate data. Based on this comment and similar comments by ACC, API, and THFTF, EPA has modified the test standard to allow the use of either flow-through cells or static diffusion cells in developing the data required under this final rule (See § 799.5115(h)(5)(iii) of the regulatory text). However, although EPA agrees that utilizing viable human skin could provide more reliable data, EPA is requiring that human cadaver skin be utilized for all testing required in this action. EPA's rationale for this decision is described in Unit III.E.2.o.ix.

c. ACC commented that heat treatment to separate epidermis from dermis is an acceptable alternative to dermatome slicing for preparing epidermal membranes. EPA agrees. The use of a dermatome prepared skin membrane of a thickness of 200 to 500 micrometers (um) is but one scientifically acceptable method of preparation. Peeling the epidermis from the dermis after heat treatment at 60° C

for 45 seconds, as recommended by ACC (Ref. 15), or 1 to 2 minutes, as specified in the draft OECD guidance document (Ref. 44), is also a scientifically accepted means of preparing the test membrane (Ref. 62). In response to this comment, EPA specified a time range of 45 seconds to 2 minutes as the time for heat treatment to include the two recommended treatment times in the ACC and OECD methods (45 seconds and 1 to 2 minutes, respectively). EPA modified the required test standard § 799.5115(h)(5)(ii) to read:

A suitable membrane must be prepared from skin either with a dermatome at a thickness of 200 to 500 micrometers (um), or with heat separation by treating the skin at 60° C for 45 seconds to 2 minutes after which the epidermis can be peeled from the dermis.

d. ACC and THFTF commented that the requirement that barrier properties of human cadaver skin must be pretested with a standard compound such as tritiated water prior to conducting the study should be expanded to include suitable alternatives to the use of tritiated water. (See Howes, et al., Methods for Assessing Absorption, in *ECVAM Workshop Report 13*, J.H. Fentem, ed., European Center for the Validation of Alternative Methods, 94–95 (Ispra, Italy 1996)). EPA agrees. Membrane integrity checks conducted with transepidermal water loss (TEWL) or electrical resistance, as described by the commenters and in the OECD guidance document (Ref. 44), are acceptable alternatives to dermal penetration of tritiated water for the evaluation of human cadaver skin integrity (Ref. 62). EPA has modified the test standard in § 799.5115(h)(5)(i)(D) to read:

Prior to conducting an experiment with the test substance, barrier properties of human cadaver skin must be pretested either by:

(*1*) measuring the movement of a standard compound such as tritiated water as discussed, for example, in the reference in § 799.5115(h)(8)(i),

(*2*) determining an electrical resistance to an alternating current, at up to two volts, or

(*3*) measuring trans-epidermal water loss from the stratum corneum.

e. API, THFTF, and ACC commented that human cadaver skin samples can be stored frozen for periods longer than 2 weeks, as proposed by EPA. Frozen storage, even for longer periods of time, does not adversely affect the integrity of the dermal barrier (see Ref. 45).

EPA agrees that for purposes of this test rule, the human cadaver skin samples can be stored frozen for periods longer than 2 weeks. However, EPA does not agree with ACC that skin samples can be frozen for up to 18 months without changes in penetration rates for standard compounds. EPA does not believe that a single report (Ref. 45) of acceptable skin penetration using a single substance (water) with membranes frozen for 466 days justifies extending the standard storage period to 18 months. Most of the chemicals designated for testing in this final rule are organic chemicals with chemical properties quite different from water. EPA believes it is reasonable to extend the maximum period of time during which human cadaver skin samples can be stored frozen (-20° C) to 3 months (Ref. 62). This period of time is consistent with OECD guidance (Ref. 44). In response to these comments, EPA has modified the test standard in § 799.5115(h)(5)(ii) to read:

These epidermal membranes can be stored frozen (-20° C) for up to 3 months, if necessary, if they are frozen quickly and the barrier properties of the samples are confirmed immediately prior to commencement of the experiment.

f. THFTF commented that EPA should allow a longer, though unspecified, amount of time for study completion. THFTF cited three circumstances which would make more time necessary:

- The practical ability of companies to test multiple materials.
- The availability of contract facilities to conduct the testing.
- The extra time needed to synthesize radiolabeled material.

EPA agrees. Circumstances may arise where the proposed 9 months would be an insufficient amount of time to complete testing. Therefore, EPA is extending the period of time provided to complete the required testing from 9 months to 13 months which EPA believes should accommodate the circumstances cited by THFTF.

g. ACC and THFTF noted that the test standard requires a full balance sheet to demonstrate recovery of radioactivity. (A "full balance" refers to a determination of where the radiolabel is present at the conclusion of the experiment (i.e., in the receptor fluid, skin sample, test vehicle, or diffusion cell) and that the recovery of radioactivity in the test system is nearly 100%). Commenters stated that it is unclear whether this requirement applies to Kp studies, to studies to measure short-term absorption rates, or both. They assert that full balance sheets are not necessary for studies in which Kp is being determined. Additionally, they commented that small losses of the test article do not affect the outcome of the studies because the study is, by definition, conducted with an infinite dose. (Infinite dose is the amount of test preparation applied to the skin where a maximum absorption rate is achieved and maintained because such a volume ensures continuous excess of test preparation in the donor chamber.) (Ref. 44). Commenters requested that EPA clarify how accounting for losses affects Kp values.

EPA believes the test standard should require that a full balance of radioactivity be presented for both Kp and short-term absorption rate studies, as proposed. While EPA agrees that small losses of test compound are tolerable in the infinite dose design, it is, nevertheless, considered good laboratory procedure and does not require excessive effort to assess recovery in experiments using radiolabeled compound (Ref. 62).

h. ACC and API (Refs. 15 and 19) commented that the use of isopropyl myristate (IPM) as a solvent in the proposed test standard is inappropriate. ACC and API stated that IPM, although frequently used as a vehicle in various dermatological formulations, has questionable applicability in an occupational environment to the chemicals subject to this test rule. ACC and API also stated that IPM may not mimic workplace conditions and if used, some corrective factor should be applied to determine the rate of percutaneous absorption.

EPA disagrees. IPM is an appropriate all-purpose solvent for the rare instances in which certain water insoluble substances capable of damaging skin are being tested (Ref. 62). ACC has not provided evidence to suggest that use of IPM will generate distorted Kp values unrepresentative of occupational settings. If such evidence exists, EPA is willing to consider, via the procedures specified at 40 CFR 790.55, *in vitro* percutaneous absorption experiments with other vehicles for specific test chemicals, if the test sponsor demonstrates that their vehicle is more representative of relevant occupational exposure than IPM. EPA will not speculate on what, if any, adjustments might be made to Kp values determined by the test standard in order "to reflect realistic exposure scenarios" or to account for differences in regional absorption for skin.

i. ACC noted that the preamble to the proposed rule indicates that the parent chemical and its major metabolites are to be detected in certain cases, and requested clarification as to which of the major metabolites of the chemicals this requirement applies.

In the proposal to this action, EPA mentioned that the measurement of major metabolites in the receptor fluid

is done when viable skin is used and significant dermal metabolism is anticipated. However, EPA did not propose nor is EPA requiring that live skin be used and skin viability be maintained during performance of the required tests. Therefore, EPA is also not requiring measurement of major metabolites in the receptor fluid. (See Unit III.E.2.o.ix.).

j. ACC was unsure whether EPA's proposed test standard would require the use of 6 or 18 human cadaver skin samples per chemical. EPA is requiring a minimum of 18 human cadaver skin samples per chemical. EPA has modified the test standard at § 799.5115(h)(5)(i)(B) to clarify that data must be obtained from a minimum of six samples for each of the determinations, i.e., Kp, 10-minute short-term absorption rate, and 60-minute short-term absorption rate. Also, the samples used for the testing of a given chemical must come from at least three different human subjects, with two samples from each subject being used for each determination to allow for biological variation among subjects. (See § 799.5115(h)(5)(i)(B) of the regulatory text).

k. ACC commented that in § 799.5115(h)(5)(v) of the proposed regulatory text it is unclear whether it is necessary to demonstrate that the concentration of a test substance in the donor chamber has remained at greater than 90% of its original value, or that the concentration of the test substance in the receptor fluid is less than 10% of the initial test substance concentration in the donor chamber. Similarly, THFTF commented that § 799.5115(h)(5)(v) of the proposed regulatory text should be revised to state that physicochemical data or experimental results should be used to show that about 10 times the concentration in the receptor fluid is achievable under experimental conditions. This will ensure that back diffusion is not significant. See the OECD Guideline 1999 (Ref. 44).

EPA has removed the language in question in § 799.5115(h)(5)(v) of the regulatory text, and has inserted related text in the test standard at § 799.5115(h)(5)(iii) to read:

> To ensure that an increase in concentration of the test substance in the receptor fluid does not alter penetration rate, the testing laboratory must verify that the concentration of the test substance in the receptor fluid is less than 10% of the initial concentration in the donor chamber.

This requirement applies to all chemicals to be tested, including hydrophobic chemicals.

l. ACC commented that there is some confusion created by inconsistencies between statements in the proposed rule preamble and requirements in the proposed test standard. ACC points out that the preamble states that "the measurement of a short-term absorption rate is only required when a Kp cannot be obtained using this standard," whereas § 799.5115(h)(5)(vii)(B) of the proposed regulatory text states that "Short-term absorption rates must be determined for all chemicals." It is not clear to ACC why short-term absorption rates must be determined for all test chemicals. ACC believes that if a chemical affects the skin and a Kp value cannot be determined, determining a Kp rate is moot. Knowledge of the short-term rate is not useful in determining Kp values. API similarly commented that it is not clear why determining the short-term absorption rate for each test rule chemical is necessary.

EPA is requiring the measurement of short-term absorption rates for all chemicals included in this final rule. The panel of Federal scientists that refined the method of Bronaugh and Collier (Ref. 13) recommended that all chemicals be tested for short-term absorption in order to obtain *in vitro* dermal absorption rate measurements for brief dermal exposures that commonly occur in occupational settings, such as spills or splashes. EPA believes that the panel's rationale supporting the testing of all chemicals for short-term absorption is reasonable.

m. ACC and THFTF commented that the correct unit of measurement is micrometers, not millimeters, as stated in § 799.5115(h)(5)(ii) of the proposed regulatory text. EPA agrees that the correct unit of measurement is micrometers, not millimeters. EPA has corrected the test standard in § 799.5115(h)(5)(ii) of the regulatory text to reflect this.

n. DEPA argues that the proposed test standard is unacceptable for measuring very volatile liquids, such as ethyl ether, because efforts to prevent evaporation would lead to unrealistically high pressures, leakage of material from the cell, damage to the skin membrane, and other substantial technical difficulties. EPA disagrees. DEPA did not provide any evidence to suggest, nor is EPA aware, that any such problems have ever been reported. However, in those instances where a test sponsor can document that closed (i.e., occluded) conditions lead to leakage of material or damage to the skin membrane or similar technical difficulties, *in vitro* percutaneous dermal absorption rate experiments with the skin surfaces uncovered (unoccluded) may be substituted, via the provisions in 40 CFR 790.55, if EPA agrees that conducting the study in such a manner is more technically feasible and appropriate.

o. THFTF suggested numerous minor changes to the test standard that EPA believes go against either the recommendations of the ITC expert panel or TSCA Good Laboratory Practice Standards (GLPS) at 40 CFR part 792, and do not enhance the validity or acceptability of the method. The suggested changes include:

i. Removing the requirement that the time elapsed between the death and harvest of human skin specimens be reported. EPA believes that all experimental parameters should be reported in accordance with TSCA GLPS, and has retained this requirement in the final rule.

ii. Removing the requirement that the thickness of the skin membrane be reported. EPA believes that all experimental parameters should be reported in accordance with TSCA GLPS, and has retained this requirement in the final rule.

iii. Requiring solids to be applied directly to the skin and determining percentage absorbed rather than dissolving solids in a vehicle and determining Kp. EPA disagrees. Although there may be instances where some of the test rule chemicals that are solids at room temperature have dermal exposures limited to the chemical in solid form, it is also possible based on common industrial practices, that there will be occupational exposures to these chemicals when they are dissolved or suspended in an aqueous or solvent medium. In addition, test solutions are more suitable for determining Kp values for chemicals that are solids at room temperature. This is because solutions in contact with the skin are uniform and have known concentrations, which is not necessarily the case with solids in contact with skin (Ref. 63). Therefore, EPA is generally requiring, as proposed, that chemicals that are solids at room temperature be dissolved in water. If the chemical is hydrophobic and its concentration in water is not high enough to obtain a steady-state absorption, the chemical must be dissolved in isopropyl myristate. However, in those instances where a test sponsor can document that occupational exposure is limited to a chemical in solid form, development of percutaneous dermal absorption rate experiments with solid material may be substituted, via the provisions contained in 40 CFR 790.55, if EPA agrees that conducting the study in such a manner is more appropriate.

iv. Specifying fixed amounts of test chemical, 10 milligrams per centimeter

squared (mg/cm²) for dry solid or 10 microliters per centimeter squared (ul/cm²) for liquids, be used in short-term absorption rate experiments rather than simply requiring the use of sufficient test chemical to cover the skin and reporting the quantity used. EPA disagrees. It is not necessary to specify that all substances be tested at the same fixed volume per skin area. The size of the diffusion chamber will partially determine the volume of required test material. The important issue is that sufficient test chemical is available to completely cover the skin. This is because the absorption rate of a chemical is reported per square centimeter of skin, thus, it is necessary to precisely ascertain the area of skin contacted (Ref. 63).

v. Requiring three rather than four absorption measurements for determination of Kp. EPA disagrees. The panel of Federal scientists that refined the Bronaugh and Collier method (Ref. 13) for use as the test standard in this final rule believes that three measurements during the steady state absorption period are inadequate to accurately determine the Kp and that an additional measurement is necessary for this purpose (Ref. 62). As a result, EPA is retaining the requirement in this final rule that four absorption measurements be taken for the determination of a Kp.

vi. Specifying that exposure time should be up to 8 hours for estimating dermal absorption of finite doses. EPA disagrees. EPA does not believe that it will be necessary to test each of the chemicals for as long as 8 hours. In fact in many instances, the study can be completed in an hour. However, there may be chemicals for which the study could require up to 24 hours to complete. Therefore, EPA believes that specifying a study duration of up to 8 hours is inappropriate (Ref. 63). However, if a test sponsor provides EPA with documentation that an alternate exposure time for a specific chemical is more relevant than the exposure time specified in this final rule, EPA may provide for the substitution of other exposure durations for the development of *in vitro* percutaneous dermal absorption rate experiments, via the provisions contained in 40 CFR 790.55, if EPA agrees that conducting the study in such a manner is more appropriate.

vii. Allowing 1:1 ethanol:water to be used as receptor fluid for hydrophobic chemicals in addition to 6% polyethylene glycol (PEG) in water. EPA agrees that a 1:1 ratio of ethanol to water is a suitable receptor fluid for hydrophobic chemicals. However, EPA is specifying that the PEG receptor solvent at a concentration of 6% be used for testing of hydrophobic chemicals. EPA believes that specifying the use of the single PEG receptor solvent for these chemicals should ensure more uniform and consistent results. Specifying that a single receptor fluid be used for all hydrophobic chemicals will enhance the interpretability of test results for these chemicals (Ref. 63).

viii. Not expressing short-term finite absorption as a rate, i.e., micrograms per hour per centimeter squared (ug/h/cm²), because the true absorption rate is likely to change over the time interval during which absorption is being measured. This is to be distinguished from Kp determinations at steady state conditions under which there is little change in an absorption rate over time. The commenter suggests that cumulative amount absorbed per area, i.e., micrograms per centimeter squared (ug/cm²) is a more appropriate way to express the data.

EPA disagrees. EPA is aware of the distinctions between a short-term absorption rate measured under non-steady state conditions and a Kp value based on a steady state absorption rate. (See § 799.5115(h)(5)(vii)(A) of the regulatory text which states that an infinite dose must be applied to the skin to achieve a steady-state rate of absorption for calculation of a Kp.) Concerning the units to be used for short-term absorption rates, EPA does not agree that expressing short-term absorption data as cumulative amount per area rather than a rate provides any interpretive advantage. A short-term absorption rate represents the average absorption over the time interval during which it is measured. The true rate will usually be greater than the average rate early in the time interval and less than the average rate later in the time interval. A determination of cumulative amount absorbed per unit of area provides only end of the experiment information rather than information about the average rate during the course of the test. EPA is requiring that the results be expressed as a rate (ug/h/cm²), rather than as an amount per area (ug/cm²) in order to be consistent with rate units used to calculate Kp (Ref. 63).

ix. Allowing the use of human skin obtained from cosmetic surgery (breast and/or abdominal skin) as an alternative to human cadaver skin for testing. In refining the test method, the ITC and EPA considered the collective views of commenters, Federal scientists, and laboratories capable of conducting such testing. The test standard specifies the use of human cadaver skin which EPA believes makes efficient use of labor and materials and can easily be performed by many different laboratories. EPA believes that the use of this human cadaver skin will provide the desired results in an economical and timely manner. Although EPA agrees that a method utilizing viable human skin could provide more reliable Kps for compounds in which skin metabolism influences dermal penetration, EPA does not believe that extensive metabolism is likely, based on the physical chemical properties, for the 34 chemicals subject to this final rule. Based on the public comments received and discussions with Federal scientists and laboratories capable of conducting such testing, EPA believes that performing the study with skin from cosmetic surgery could increase test costs. As a result, the final test standard requires the use of human cadaver skin.

x. Not requiring the use of radiolabeled materials in the required testing because many chemicals subject to the final rule are unlikely to be readily available in radiolabeled form. Thus, it will take additional time to prepare an adequate supply of radiolabeled chemicals, potentially adversely affecting industry's ability to meet the regulatory deadlines established for completing the testing and submitting the test results.

EPA disagrees. This comment was in reference to a single chemical (tetrahydrofuran) and was the only comment which indicated that radiolabeled materials are not available off-the-shelf. EPA believes that radiolabeled materials are likely to be available for at least some of the other chemicals included in this final rule. In those instances where radiolabeled materials are not currently available and must be synthesized, EPA believes that the additional amount of time provided in this final rule (see Unit III.E.2.f.) is sufficient both to prepare such materials and complete the testing. Also, radiolabeling is not an uncommon analytical procedure and there are many different laboratories (Ref. 46) in the United States that are capable of preparing radiolabeled materials. Finally, the test itself is short-term, generally taking no longer than 24 hours to complete. The Agency has provided test sponsors with 13 months to complete the requirements established under this final rule. To the extent that a test sponsor does require additional time to comply with the final rule, an extension from EPA may be requested utilizing the procedures at 40 CFR 790.55.

xi. Deleting the word "live" as used in § 799.5115(h)(5)(i)(A) of the proposed regulatory text which states "the most accurate absorption rate data for regulatory concerns related to human

health would be obtained with live human skin." In the course of developing the final test rule, EPA deleted this statement from the test standard primarily for the reasons presented in Unit III.E.2.o.ix.

F. Chemical Specific Comments

Chemical specific comments on ethyl ether (CAS No. 60–29–7), isobutyl alcohol (CAS No. 78–83–1), *sec*-butyl alcohol (CAS No. 78–92–2), *o*-dichlorobenzene (CAS No. 95–50–1), *p*-nitrotoluene (CAS No. 99–99–0), *beta*-chloroprene (CAS No. 126–99–8), *n*-amyl acetate (CAS No. 628–63–7), *N*-isopropylaniline (CAS No. 768–52–5), and *o*-dinitrobenzene (CAS No. 528–29–0) are addressed in Unit VII.

1. *Acetonitrile.* The Acetronitrile Task Force commented that the total number of workers associated with acetonitrile (CAS No. 75–05–8) production in the United States is on the order of 500 (Ref. 23). The Task Force believes that EPA has included laboratory personnel in its larger estimate as the Agency's figure far exceeds the number of personnel involved in manufacturing the chemical. The Task Force notes that analytical laboratory personnel are well trained in safely handling hazardous materials of this type, and that these workers typically handle small volumes of acetonitrile.

EPA reviewed the Acetonitrile Task Force's estimate of the number of workers exposed to acetonitrile at manufacturing sites, but did not find that the information provided sufficient basis to conclude that there are not substantial numbers of workers potentially exposed to acetonitrile during manufacturing, processing, and use. Although EPA requested the Acetonitrile Task Force to provide documentation for its estimate of the number of workers exposed to acetonitrile, EPA did not receive any further information from the Task Force in support of its estimate. Also, the NOES data used by EPA did include laboratory personnel and EPA believes it is appropriate to include them because they are potentially exposed. EPA believes that employee training does not assure that exposure will not occur and is no basis for the assertion that laboratory employees will have no exposure. EPA also believes that the Task Force's estimate that 500 employees are potentially exposed may be low if it did not include laboratory personnel. Absent specific data indicating otherwise, EPA believes the NOES database should be used to estimate worker exposure because it is the most recent and comprehensive source of this kind of information. Therefore, EPA is requiring the testing of acetonitrile to determine an *in vitro* dermal absorption rate.

2. *Carbon disulfide.* ACC's Carbon Disulfide Panel cited three studies summarized in an Agency for Toxic Substances and Disease Registry (ATSDR) document (*Toxicological Profile for Carbon Disulfide* (August 1996), p. 65–66) as a supporting rationale for its assertion that sufficient data exist for carbon disulfide (CAS No. 75–15–0) and that testing of carbon disulfide is therefore, unnecessary (Ref. 39). One 30-year-old study estimated dermal absorption by measuring very small changes in carbon disulfide solution before and after immersion of the hand (T. Dutkiewicz and B. Baranowska. 1967. The significance of absorption of carbon disulfide through the skin in the evaluation of exposure. *Toxicology of Carbon Disulfide. Proceedings of a Symposium, Prague, 1966*, pp. 50–51). EPA reviewed this study and considered the methodology flawed due to its indirect measurement and potential failure to control for volatilization. In the other two studies cited by the Carbon Disulfide Panel (A.E. Cohen, et al. 1958. Skin absorption of carbon disulfide vapor in rabbits. I. Associated changes in blood protein and zinc. *AMA Archives of Industrial Health*, 17:164–169; and H. Drexler, et al. 1995. Carbon disulfide. 2. Investigations on the uptake of CS_2 and the excretion of its metabolite 2-thiothiazolidine-4-carboxylic acid after occupational exposure. *International Archives of Occupational Environmental Health*, 67:5–10), EPA notes that a dermal absorption rate was not determined and could not be derived using the data gathered (Ref. 62).

The Carbon Disulfide Panel also cited a dermal absorption rate calculated by EPA for carbon disulfide in composted sludge at a level of 0.59 milligrams per kilogram (mg/kg) soil. EPA notes that the dermal absorption rate was not experimentally determined, but was estimated from low environmental levels in composted sludge rather than the potentially higher worker exposure to the undiluted liquid (Ref. 62). EPA and OSHA do not consider the data cited by the Carbon Disulfide Panel to be sufficient to determine a useful and reliable dermal absorption rate (Ref. 62).

The Carbon Disulfide Panel also cited ATSDR's statement that "carbon disulfide partitions immediately to the air when released to the environment, and does not therefore expose humans to carbon disulfide through oral or dermal contact" (*Toxicological Profile for Carbon Disulfide* (August 1996), pp. 134–141). EPA notes that this statement refers to dermal contact with environmental media that had been contaminated with carbon disulfide, not to occupational exposure (Ref. 62). In fact, the same document makes it clear that the main way workers are exposed to carbon disulfide is through the inhalation of vapors and dermal contact (*Toxicological Profile for Carbon Disulfide* (August 1996), pp. 9 and 63). Therefore, EPA is requiring the testing of carbon disulfide to determine an *in vitro* dermal absorption rate in this final rule.

3. *Naphthalene.* ACC's Naphthalene Panel commented that dermal toxicity data generated under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) makes the [proposed] test rule unnecessary [with respect to naphthalene] (Ref. 34). The Naphthalene Panel comments summarize four unpublished studies submitted under FIFRA to support the registration of naphthalene (CAS No. 91–20–3) as an active ingredient in moth repellants. One study reports the simulated amount of naphthalene that would be deposited on the hands of a homeowner handling mothballs. However, the study did not simulate occupational exposure and a dermal absorption rate was not measured. The other three studies were toxicity investigations in which the test compound was topically applied to animals, but none of the studies measured the rate of absorption. The toxicity endpoints examined (mortality, body/organ weights, hematology, gross tissue examination, skin lesions) related to only dermal irritation or advanced systemic effects (Ref. 62). EPA and OSHA do not consider the data cited by the Naphthalene Panel to be sufficient to determine a dermal absorption rate. Therefore, EPA is requiring the testing of naphthalene to determine an *in vitro* dermal absorption rate in this final rule.

The Naphthalene Panel also commented that EPA's proposed test rule for certain Hazardous Air Pollutants (Ref. 48) estimated that 23,092 workers are exposed to naphthalene, yet, the proposal to this final rule estimated that 112,695 workers are exposed to naphthalene. In both proposals, EPA cited the NOES as the basis for the estimates. The Naphthalene Panel argued that neither figure is correct and that an informal survey of Naphthalene Panel members, which comprise the major manufacturers and importers of naphthalene, showed that only approximately 263 workers are potentially exposed during naphthalene manufacturing activities in the United States. The Naphthalene Panel also

argued that the NOES did not obtain information on the frequency, concentration, nor duration of worker exposure to naphthalene, and therefore EPA should not rely on the NOES to find "substantial" or "significant" worker exposure. Furthermore, although the criteria stated in EPA's "B" policy for finding "substantial" human exposure may be met (Ref. 55, p. 28746), the Naphthalene Panel believes NOES does not show worker exposure to naphthalene at levels that may cause health concerns. Moreover, the Naphthalene Panel indicated (without providing further specific information) that NOES does not reflect current workplace conditions or naphthalene exposure levels.

EPA acknowledges that different estimates for the numbers of workers exposed to naphthalene were cited in the two proposed test rules indicated by the commenter and that these estimates were both from the NOES. The estimate of 23,092 workers in the Hazardous Air Pollutants proposal (Ref. 48) was based on an interim report (Ref. 49) compiled in March of 1989. The NOES database was still being updated after that time until June 1990, when the final update was completed and trade name product resolution ceased. The estimate of 112,695 potentially exposed workers cited in the proposal to this final rule was based on the final update of the NOES. The figure is still the most up-to-date NOES information EPA has related to potential worker exposure to naphthalene, which includes employee exposure information on both manufacturing and processing sites. EPA considered the results of the Naphthalene Panel's survey of its members which found that 263 workers were potentially exposed at their manufacturing sites. However, that number does not include an estimate of the number of employees potentially exposed to naphthalene at processing sites.

As stated in Unit III.B.1.a., it is EPA's belief that the "substantial" human exposure finding in TSCA section 4(a)(1)(B)(i)(II) was intended to address situations in which large numbers of people, in this instance, large numbers of workers, may be potentially exposed to a chemical substance. EPA is not required to make a finding that a chemical substance would pose an unreasonable risk of injury at some hypothetical level of toxicity and exposure in order to require testing under TSCA section 4(a)(1)(B). See *Chemical Manufacturers Association* v. *EPA*, 899 F.2d 344, 354–55 (5th Cir. 1990). EPA has made the necessary findings under TSCA section 4(a)(1)(B), and EPA is therefore requiring the testing of naphthalene to determine an *in vitro* dermal absorption rate in this final rule.

4. *Biphenyl.* The Biphenyl Work Group (BWG) commented that biphenyl (CAS No. 92–52–4) currently has two primary uses. Both uses are in closed systems either as a chemical intermediate or as a component of thermal fluids in highly specialized, closed industrial heat transfer systems (Ref. 20). The BWG states that previous industrial uses of biphenyl in fruit wrappings and as a dye carrier have been phased out. Therefore they state that any exposure to biphenyl is unlikely. The BWG asserts that only very low airborne exposures of biphenyl are found in manufacturing facilities and facilities using heat transfer fluids. They state that, with reference to the biphenyl occupational exposure limit of 200 parts per billion (ppb) (29 CFR 1910.1000(a), Table Z-1), occupational airborne exposures are very low. The BWG estimated that at present, no more than 100 workers are involved in U.S. biphenyl production (including maintenance and laboratory personnel) and fewer than 100 workers have potential dermal exposure in heat transfer uses.

EPA reviewed the BWG's estimate of number of workers exposed to biphenyl, but did not agree that the information provided sufficient basis to conclude that there are not substantial numbers of workers potentially exposed to biphenyl (Ref. 67). Although EPA requested the BWG to provide documentation for its estimate of the number of workers exposed to biphenyl, EPA did not receive any further information from the BWG to support its estimate. Absent specific data indicating otherwise, EPA believes the NOES database should be used to estimate worker exposure because it is the most recent and comprehensive source of this kind of information. Therefore, EPA is requiring the testing of biphenyl to determine an *in vitro* dermal absorption rate.

5. *p-Xylene, pentane, nonane, and n-heptane.* The Hydrocarbon Solvents Panel states that EPA should be able to reliably determine dermal absorption rates for untested members of a chemical category by comparing the logarithms of their octanol-water partition coefficients (log K_{OW}) to those of structurally similar category members which have data on dermal absorption rates (Ref. 37).

The Hydrocarbon Solvents Panel did not provide sufficient detail to evaluate its case for a category approach with these four chemicals. The Hydrocarbon Solvents Panel also did not provide any data, nor is EPA aware of any data, which would provide EPA with a reliable estimate of the dermal absorption rate for *p*-xylene, pentane, nonane, and *n*-heptane. Therefore, EPA is requiring testing of *p*-xylene, pentane, nonane, and *n*-heptane.

6. *p-Dichlorobenzene and chlorobenzene.* The Chlorobenzene Producers Association cited a number of acute dermal toxicity studies for *p*-dichlorobenzene (CAS No.106–46–7) and chlorobenzene (CAS No. 108–90–7) to support its position that testing of these chemicals is unnecessary (Ref. 31). In addition, the Association cited EPA's *Dermal Exposure Assessment: Principles and Applications* (Ref. 42), which described calculated Kps for chlorobenzene and *p*-dichlorobenzene.

EPA disagrees with the comment that testing chlorobenzene and *p*-dichlorobenzene is unnecessary because existing data on dermal toxicity or calculated Kp values are sufficient to reasonably predict the human health effects of dermal exposure to these chemicals. None of the studies cited by the Chlorobenzene Producers Association for chlorobenzene or *p*-dichlorobenzene specifically measure the dermal absorption rate of these chemicals or provide data by which dermal absorption rate can be determined. The Kp values cited in the 1992 EPA Dermal Exposure Assessment Report for the two chemicals are estimated from empirical models and not experimental data and, therefore, do not meet OSHA needs. Therefore, EPA is requiring testing of chlorobenzene and *p*-dichlorobenzene to determine an *in vitro* dermal absorption rate.

7. *Tetrahydrofuran.* THFTF commented that quantitative dermal absorption data for tetrahydrofuran (CAS No. 109–99–9) are not needed by OSHA to establish its skin designations because OSHA has established skin designations in the past without such data. THFTF also commented that "current MSDS warnings and product stewardship efforts" are adequately protective against harmful dermal exposure to tetrahydrofuran in the workplace (Ref. 32).

OSHA's current skin designations (29 CFR 1910.1000, Table Z-1) were originally recommendations made by the Threshold Limit Value (TLV) Committee of the American Conference of Governmental Industrial Hygienists (ACGIH) in 1970 or prior to 1970, and adopted without reservation by OSHA in 1971. It is true that OSHA was able to set the original "skin designations" without quantitative dermal absorption data. However, OSHA currently believes that now and in the future when a skin

designation is included in a standard that limits occupational exposure, it should be supported by a scientific determination of the ability or speed of the substance to be absorbed through the skin after dermal contact. Because methods are now available to provide this information for human skin, OSHA is seeking such testing.

Regarding "current MSDS warnings and product stewardship efforts," EPA agrees with THFTF that these vehicles have been important in reducing worker exposures, but they are only as good as the scientific data on which they are based. To ensure that the exposure limits endorsed by MSDSs are sufficiently protective, dermal absorption rate information is needed to better understand the contribution to total exposure from the dermal route.

8. *Dipropylene glycol methyl ether.* ACC's Propylene Glycol Ethers Panel cited a number of acute, subacute, and subchronic toxicity studies on dipropylene glycol methyl ether (CAS No. 34590–94–8), including studies via the dermal route, to support the position that testing this chemical is unnecessary (Ref. 35). None of the studies described in the Panel's comments specifically measure the dermal absorption rate of dipropylene glycol methyl ether nor can dermal absorption rates be derived from the data provided in those studies (Ref. 64). Therefore, EPA is requiring testing of dipropylene glycol methyl ether to determine an *in vitro* dermal absorption rate.

G. Laboratory Capacity

API and THFTF commented that EPA should consider ongoing demands for laboratory services. API noted that government and industry are currently involved in many testing projects, including the voluntary HPV Challenge Program (Ref. 51). API suggested that EPA evaluate laboratory capacity and the combined demand that multiple testing programs will create. Likewise, THFTF warned of the possibility that available laboratory expertise will be overwhelmed by the testing required in this final rule.

In specifying the *in vitro* dermal absorption rate test standard for this rulemaking, EPA concluded that the test standard uses labor and materials efficiently and can be performed in the manner described by a variety of laboratories. The Agency has conducted, in addition to the analysis (Ref. 52) described in the proposal to this rulemaking (Ref. 5), two more recent studies (Refs. 46 and 53) of laboratory capacity associated with its other chemical testing programs. These two studies provided further support to EPA's belief that there is sufficient laboratory capacity to accommodate the testing which is required by this final rule.

The testing required under this rulemaking is not very complicated. The *in vitro* tests are of short duration, generally taking no longer than 24 hours to complete. The Agency has provided test sponsors with 13 months to complete the requirements established under this final rule. EPA does not believe that the relatively modest amount of new testing required (a total of three tests on each of 34 chemicals) will exceed the available laboratory capacity, particularly given the short-term nature of the testing, the relatively low cost of the tests, and the long time period allowed for completing the studies. Furthermore, based on the analyses developed by EPA (Refs. 46, 52, and 53), EPA does not believe the cumulative impacts associated with a variety of its existing chemical testing programs is likely to overwhelm the available laboratory expertise as suggested by API and THFTF.

H. Export Notification

Several issues raised in comments relate to EPA's implementation of TSCA section 12(b) (15 U.S.C. 2611(b)) export notification requirements for chemicals for which the submission of data is required under TSCA section 4. Section 12(b) of TSCA states, in part, that any person who exports or intends to export to a foreign country a chemical substance or mixture for which the submission of data is required under TSCA section 4 must notify the EPA Administrator of such export or intent to export. The Administrator in turn will notify the government of the importing country of EPA's regulatory action with respect to the substance. EPA's regulations implementing TSCA section 12(b) are at 40 CFR part 707, subpart D.

As a general matter, comments on the scope of EPA's regulations under TSCA section 12(b) are beyond the scope of this rulemaking. However, three comments associated with the requirements under TSCA section 12(b) do merit some discussion in this preamble.

1. *Application to chemical in any form.* ACC commented that EPA's statement in its proposed rule that export notification requirements would apply to exporters of the chemical substances subject to the final rule regardless of the form (e.g., byproduct, impurity) in which they are exported constitutes an unprecedented expansion of the TSCA section 12(b) notification requirements.

EPA disagrees with this comment. TSCA section 12(b) and the implementing regulations at 40 CFR part 707 apply, in part, to the export or intended export of a chemical substance for which the submission of data is required under TSCA section 4. Neither the statutory nor the regulatory language restricts this requirement to exporters of chemical substances and mixtures in particular forms, but instead generally extends export notification requirements to exporters of chemical substances and mixtures without regard to the form in which the chemical substances and mixtures are being or will be exported. The language in the proposed rule and in this final rule are not an expansion of the TSCA section 12(b) notification requirements. It is noted, however, that the Agency did not intend to change the current export notification provisions affecting articles which specify that no export notification is required for articles, except polychlorinated biphenyl articles, unless required in specific section 5, 6, or 7 rules. See 40 CFR 707.60(b).

2. *Exporters subject to notification requirement.* ACC states that TSCA section 12(b) limits the imposition of export notification requirements related to TSCA section 4 actions to persons who actually have testing obligations under TSCA section 4. EPA disagrees. TSCA section 12(b)(1) and the implementing regulations at 40 CFR part 707, subpart D apply to any person who "exports or intends to export to a foreign country a chemical substance or mixture for which the submission of data is required under [TSCA section 4]." (15 U.S.C. 2611(b)(1)). Under 40 CFR 707.65(a)(2)(ii), exporters must notify EPA of their first export or intended export to a particular country when data are required under TSCA section 4. EPA believes the language unambiguously requires notification of export by exporters of substances which are the subject of TSCA section 4 actions regardless of whether the exporters themselves are also subject to the underlying TSCA section 4 rules. Thus, exporters of a chemical substance that is covered by data submission requirements under TSCA section 4, including persons who are not otherwise subject to the TSCA section 4 rule itself as manufacturers and/or processors, are subject to export notification requirements under TSCA section 12(b).

3. *Information collection request (ICR).* API suggests that, because this final rule will result in the requirement that export notifications are submitted to EPA for exports or intended exports

of the substances covered by the final rule, this is a new information collection activity that requires OMB review (Ref. 19). Furthermore, API believes that EPA's cost estimates for TSCA section 12(b) notification ignores the biggest costs associated with export notification, which are the internal training and systems necessary to identify exports against the export notification list, tracking of what notifications have already been submitted and to what countries, and so forth. These system costs are magnified when business operations change (e.g., sales, acquisitions, and so forth) and export notification systems need to be adjusted accordingly.

EPA disagrees that this action is a new collection of information requiring OMB review. The information collection activities related to export notification under TSCA section 12(b)(1) are approved under OMB control number 2070–0030 (EPA ICR No. 0795). The methodologies, assumptions, and estimates developed by EPA for implementation of TSCA section 12(b) have been reviewed under notice and comment procedures during the development of the ICR. EPA believes it would be more appropriate to address API's burden concerns in the context of the ICR renewal process and therefore will not respond to them in the context of this final rule.

I. Persons Required to Test

EPA stated in the proposed rule that manufacturers and processors of the chemical substances included in the final rule would be subject to the final rule. As in the past, under the procedures set forth at 40 CFR part 790, the persons subject to the final rule fall into one of two groups, designated here as Tier 1 and Tier 2. Persons in Tier 1 (those who would initially have to comply with the final rule) would be obligated either to: Submit to EPA letters of intent to conduct testing, conduct this testing, and submit the test data to EPA or apply to and obtain from EPA exemptions from testing. Persons in Tier 2 (those who would not have to initially comply with the final rule) would not need to take any action unless they are notified by EPA that they are required to do so. Persons in Tier 1 who obtain exemptions and persons in Tier 2 would nonetheless be subject to providing reimbursement to persons who actually conduct the testing.

Under 40 CFR part 790, EPA traditionally has treated the following persons as being in Tier 2 in TSCA section 4(a) test rules:

- Processors (40 CFR 790.42(a)(2)).
- Manufacturers of less than 500 kg (1,100 lbs) per year ("small-volume manufacturers") (40 CFR 790.42(a)(4)).
- Manufacturers of small quantities for research and development ("Research and Development (R&D) manufacturers") (40 CFR 790.42(a)(5)).

In the proposed test rule, EPA reconfigured the tiers in 40 CFR 790.42 by adding the following persons to Tier 2: Byproduct manufacturers; impurity manufacturers; manufacturers of naturally occurring substances; manufacturers of non-isolated intermediates; and manufacturers of components of Class 2 substances. The Agency also proposed that persons who do not know or cannot reasonably ascertain that they are manufacturing or processing the chemical substances included in the final rule would not be subject to the final rule.

EPA's proposed approach to the "persons required to test" portion of this test rule was intended to clarify subject entities' obligations under the final rule and focus the testing requirements initially on those entities whom EPA believes would be most likely to conduct testing (Ref. 5, pp. 31080–31082). EPA solicited comment on this new approach to the "persons required to test" portion of the test rule, and received a number of comments. After considering these comments, EPA has decided to finalize the approach as proposed, with the addition of provisions related to the "subtiering" of Tier 2 entities (see Ref. 5, pp. 31081–31082, and Unit III.I.3.).

1. *General agreement with EPA's "persons required to test" approach.* All the commenters on the new approach to the "persons required to test" section of the proposed rule agreed that manufacturers of byproducts and impurities and processors are appropriately placed in Tier 2. These commenters also agreed that the persons EPA has put in Tier 1 are appropriately placed in Tier 1. API stated that the approach in the proposed rule "appropriately focuses the rule, will reduce burden and complexity, and will facilitate timely accomplishment of testing." API also agreed with the Agency's rationales for tiering. AFPA stated that the new "persons required to test" approach would provide greater certainty to people about what they must do under the final rule.

ACC/O and ACC/KO additionally agreed with the inclusion of manufacturers of components of Class 2 substances in Tier 2. API agreed with the exclusion of manufacturers or processors who do not know or cannot reasonably ascertain that they are manufacturing or processing a test rule substance.

2. *EPA should retain the ability to move Tier 2 groups to Tier 1.* AFPA, ACC/O, and ACC commented that EPA should retain the flexibility to move Tier 2 groups to Tier 1 on a case-by-case basis. For example, if certain processing activities cause special risks, then processors could be brought into Tier 1 upfront in the proposed rule. If case-specific justifications exist for moving Tier 2 entities to Tier 1, EPA should state these justifications publicly.

EPA agrees that the Agency should retain the ability to elevate Tier 2 entities to Tier 1 on a case-specific basis in future test rules, and where the Agency takes such an action, it will state its justification(s) for doing so. For example, if EPA is able to determine that a chemical is manufactured solely or primarily in the form of a byproduct, EPA may propose to include persons who manufacture that chemical as a byproduct in Tier 1, even though byproduct manufacturers of other chemicals listed in the same proposed rule might otherwise be included in Tier 2. EPA does not agree, however, that risk should be a basis for moving entities from Tier 2 to Tier 1 (see Unit III.I.4.).

EPA will continue to retain flexibility over the status of entities covered by Tier 2 consistent with EPA's flexibility over the narrower group of entities that have been included in Tier 2 in previous test rules; processors, small-quantity manufacturers (i.e., manufacturers of less than 500 kg (1,100 lbs.) of a test rule chemical), and R&D manufacturers (40 CFR 790.42(a)(2), (a)(4), and (a)(5), respectively). In the final rule which established the general Tier 2 status of small-quantity and R&D manufacturers and processors in test rules, EPA stated that it "reserves the right to differ from the general procedure in this final rule by proposing in a specific TSCA section 4 test rule to require R&D manufacturers and/or small-quantity manufacturers to submit exemption applications" (Ref. 69, p. 18882). EPA will also continue to retain the ability to elevate, on a case-specific basis, R&D manufacturers, small-quantity manufacturers, and processors, from Tier 2 to Tier 1. The concept that flexibility can be built into test rules in general is suggested by 40 CFR 790.2, which states in part that "the procedures for test rules are applicable to each test rule in part 799 of this chapter unless otherwise stated in specific test rules in part 799 of this chapter."

The Agency does not intend to specifically identify all individual Tier

2 entities. Rather, these entities would self-identify via the submission of letters of intent to test or exemption applications. EPA expects that, similar to the arrangements typically developed when Tier 1 entities are under an obligation to conduct testing, if Tier 2 entities are required to conduct testing, it would generally be to their benefit to reach agreement on who will actually conduct the testing. The Agency believes that it is unlikely that Tier 2 entities will be required to conduct testing under this final test rule, a view that is shared by ACC which stated that:

> [ACC] is not aware of any substance covered by the testing proposal for which there is likely to be no Tier 1 producer who comes forward [to conduct testing]. Indeed, ACC is not aware of any instance in the past where not a single person initially required to comply with a test rule came forward, such that EPA was required to notify other persons of their obligations under the test rule.

EPA intends to follow the procedures laid out in the regulatory text if it becomes necessary for EPA to call upon persons in Tier 2 to conduct testing. In other words, if EPA does not receive a letter of intent to test from any Tier 1 entities, the Agency will publish a **Federal Register** notice to alert Tier 2 entities to the requirement that they submit letters of intent to test or exemption applications.

3. *Do not subdivide Tier 2 as a general matter, instead subdivide Tier 2 on a case-by-case basis.* In the proposed rule, EPA solicited comments on subdividing Tier 2 to enable the Agency to prioritize which persons in Tier 2 would be required to perform testing, if needed. ACC and API suggested that EPA should not subdivide Tier 2 entities as a general matter, for all test rules. They commented that, if EPA considers requiring Tier 2 entities to conduct testing, the Agency should first determine whether in fact there are no Tier 1 entities, and reevaluate whether the proposed testing is still necessary. If Tier 1 manufacturers do not conduct testing and the testing is still necessary, then EPA should identify upfront which persons in Tier 2 will be required to test. ACC suggests that subtiering the Tier 2 entities could be done on a case-by-case basis as needed, based on the activities that give rise to the need for testing. API argues that there is no basis for distinguishing processors from the various types of manufacturers included in Tier 2, therefore there is no justification for subtiering the Tier 2 entities.

Despite these comments, and although EPA does not anticipate a need for Tier 2 entities to conduct testing under this final rule, EPA has decided to subdivide the Tier 2 entities upfront in this final rule (see Unit V.E.3.e.). Subdividing Tier 2 upfront in test rules may facilitate compliance by requiring Tier 2 manufacturers, when required to comply, to submit letters of intent to test or exemption applications before processors are called upon to do so. The Agency's expectation is that it may generally be less administratively complex for manufacturers to conduct the testing (including coordinating efforts to determine who will actually conduct testing) than for processors to do so. This is because there are generally fewer manufacturers (even as byproducts, impurities, etc.) than processors. EPA also believes that testing costs have traditionally been passed by manufacturers along to processors, and has not received evidence to the contrary. The Agency does not believe at this time that it can justify a subdivision of Tier 2 entities other than between Tier 2 manufacturers and processors. For example, EPA does not believe it would be appropriate to base a subdivision on the activities that give rise to the need for testing (see, e.g., Unit III.I.7.).

4. *Persons who solely manufacture and/or process non-isolated intermediates or naturally occurring substances should not be subject to rules under TSCA section 4.* Commenters provided several reasons for completely exempting these manufacturers from test rule coverage. Certain commenters believe that these entities have never been covered by test rules in the past, and were specifically excluded under the amended proposed rule for hazardous air pollutant (HAP) chemicals (Ref. 70). These commenters pointed out that non-isolated intermediates are exempt from Premanufacture Notification (PMN), the Inventory Update Rule (IUR), PAIR, and general TSCA section 8(a) requirements. One commenter indicated that production of non-isolated intermediates does not contribute to the need for testing or present the same concerns as do other substances introduced into commerce, thus manufacturers of non-isolated intermediates should not be considered subject to test rules. Another commenter suggested that EPA has discretion under TSCA section 4 to specify the classes of persons subject to or exempt from a test rule based on its rationale for requiring testing. The comments suggest, however, that where EPA has case-specific justification(s) (for example, chemical-specific hazard or exposure concerns related to the manufacture of non-isolated intermediates or naturally occurring substances are demonstrated), these categories of manufacturers could be appropriately included as subject to a rule.

EPA does not believe that it would be appropriate to fully exempt manufacturers and processors of non-isolated intermediates and naturally occurring substances from rules under TSCA section 4. Instead, it is generally appropriate to include such entities as persons subject to TSCA section 4 test rules because they are considered manufacturers and processors under TSCA and should be included among those responsible for conducting testing or providing fair and equitable reimbursement to those who have conducted testing. As a general matter, however, EPA intends to place manufacturers of non-isolated intermediates and naturally occurring substances in Tier 2 in test rules unless, for example, the Agency believes such manufacturers are responsible for a disproportionate share of the production volume of a test rule substance, in which case EPA may place them in Tier 1.

The plain language of the statute indicates that testing responsibilities under TSCA section 4(b)(3)(B) are not restricted to those who manufacture or process a test rule chemical for limited uses. Nor is EPA required to demonstrate that particular types of manufacturing or processing contribute to the need for testing (i.e., that a particular type of manufacture plays a direct role in increasing risk, in the case of a rule based on a TSCA section 4(a)(1)(A) finding, or in increasing exposure, in the case of a rule based on a TSCA section 4(a)(1)(B) finding). See TSCA section 4(a). The statute indicates that if EPA finds that the effects associated with manufacture, distribution in commerce, processing, use, or disposal cannot reasonably be determined or predicted (see TSCA section 4(a)(1)(A)(ii) and 4(a)(1)(B)(ii)), then manufacturers and/or processors are generally required to test (see TSCA section 4(b)(3)(B)). For example, the final TSCA section 4 rule for biphenyl (Ref. 77, pp. 37184–37185) stated that TSCA section 4 testing responsibilities are not restricted to only those who manufacture or process a test rule chemical for certain uses. Rather, the persons who manufacture and/or process (depending on the findings made) a test rule chemical are generally subject to the requirements of a final test rule.

In order to ensure that reimbursement of the entity(ies) conducting testing is equitable, as a general matter, EPA does

not believe that it is appropriate for classes of entities otherwise potentially subject to a rule to be dropped from all rule-related obligations (with the exception of persons who do not know or cannot reasonably ascertain that they manufacture or process a test rule substance). There may be circumstances, not present here, when it would be equitable to exempt additional entities from all test rule obligations, but that determination would need to be made on a case-by-case basis.

Persons who solely manufacture a chemical in the form of a non-isolated intermediate are generally exempt from the TSCA section 5 PMN regulations (40 CFR 720.30(h)(8)), the TSCA section 8(a) IUR (40 CFR 710.30(c)), the TSCA section 8(a) PAIR (40 CFR 712.25(d)(2)), and the general TSCA section 8(a) regulations (40 CFR 704.5(d)) for reasons particular to those regulations. However, this does not preclude EPA from treating these persons as manufacturers of chemical substances for purposes of other provisions of TSCA, including TSCA section 4. For example, EPA has stated that:

> chemical substances [which are not intentionally removed from the equipment in which they were manufactured] are considered to be manufactured or processed for a commercial purpose for the purposes of section 8 of the Act.

(Ref. 71, p. 64588).

EPA believes it is generally appropriate to include manufacturers of non-isolated intermediates and naturally occurring substances as persons subject to TSCA section 4 test rules in order to ensure that reimbursement of those who paid the costs of testing is equitable. TSCA section 4(c)(3)(A) requires EPA to order "fair and equitable" reimbursement for test costs under the Agency's reimbursement regulations. Consistent with this purpose, EPA's current "persons required to test" approach distributes the burden of testing and reimbursement equitably among the persons who manufacture and/or process test rule substances, with an exemption for persons who do not know or cannot reasonably ascertain that they manufacture or process a test rule substance.

Even if it were relevant to the question of who is subject to a TSCA section 4 test rule, EPA disagrees with the assertion that the manufacture of non-isolated intermediates does not present any exposure-related concerns. While the amount of chemical substance released as a result of this type of production may generally be expected to be less than is released as a result of other production, manufacturing or processing a chemical as an intermediate does not preclude exposure to that chemical. See Office of Solid Waste final test rule (Ref. 72, p. 22305). The production of non-isolated intermediates presents concerns related to acute exposures, from, e.g., spills, leaks or transfers. In addition, as EPA stated in the test rule for Office of Solid Waste chemicals:

> It is common experience that process waste streams and reactor vessel residues will contain "intermediates." In many instances, these chemicals are released to the environment as fugitive emissions, liquid or solid wastes, and as unreacted feedstock (impurities) in finished products. As such, "intermediates" typically exist as chemicals to which there is potential for human exposure.

(Ref. 72, p. 22305).

EPA believes that, although a person's manufacture of a chemical in the form of a non-isolated intermediate may provide a lesser exposure concern than the manufacture by other persons of the same chemical in other forms, an appropriate accounting of responsibility is provided for in the determination of fair and equitable reimbursement under TSCA, when necessary. TSCA section 4(c)(3)(A) states that "all relevant factors" must be considered by EPA in the promulgation of rules for the determination of reimbursement. Pursuant to this provision, EPA established mechanisms in its general reimbursement rule to allow, as needed, for the case-specific consideration of factors such as exposure to a chemical as a result of each subject person's manufacturing and/or processing activities. See 40 CFR 791.40(a).

Finally, manufacturers and processors of non-isolated intermediates and naturally occurring substances have been subject to test rules in the past, except as proposed in the amended proposals for the testing of certain hazardous air pollutants (HAPs). (Ref. 73, pp. 19696, 19699 and Ref. 70, pp. 67470, 67481). EPA is not adopting the approach taken in the HAPs proposals for this final rule and, as described in Unit V.E., is taking a different position here. TSCA section 4(a) requires testing if findings have been made with regard to certain activities involving chemical substances or mixtures, and, under TSCA section 4(b)(3)(B), manufacturers and/or processors must conduct such testing if findings have been made. TSCA does not distinguish among manufacturers and processors of different forms/production types of a chemical substance or mixture; all are generally subject to the requirements of TSCA section 4.

5. *"Manufacturers of test substances as components of Class 2 substances" should not be included among the persons subject to the final rule.* In the proposed rule, EPA stated that manufacturers of test substances as components of Class 2 substances would be among those entities that would be subject to the final rule, but not initially required to comply (i.e., Tier 2). Class 2 substances are chemical substances having a chemical composition that cannot be represented by a specific, complete chemical structure diagram, because such a substance generally contains two or more different chemical species (not including impurities) (see 40 CFR 720.45(a)(1)(i)). The Agency received a number of comments debating the appropriateness of the proposed Tier 2 status of manufacturers of components of Class 2 substances.

a. ACC and API (Refs. 15 and 19) commented that components of Class 2 substances are not considered under TSCA to have been "manufactured" in their own right unless they have been separated from the Class 2 substance.

EPA disagrees. The Agency considers a substance to be manufactured for purposes of TSCA section 4 even if it is manufactured as a component of another chemical substance, and regardless of its isolation from other components of the combination. EPA maintains that to be regulated under a TSCA section 4 action (for which findings have been made that allow EPA to cover manufacturers), a manufacturer must be a "manufacturer" as defined by TSCA section 3, and manufacture a chemical substance (or mixture) that is subject to a test rule. Under TSCA section 3(7):

> [t]he term 'manufacture' means to import into the Customs territory of the United States (as defined in general headnote 2 of the Tariff Schedules of the United States), produce, or manufacture.

There are no limitations in the definition of "manufacture" or in TSCA section 4 to suggest that if a person imports, produces, or manufactures a test rule substance as part of a complex combination of substances (i.e., a Class 2 substance), as opposed to an isolated component, then the person is not a manufacturer of that test rule substance. Therefore, EPA considers a chemical substance to be manufactured and subject to coverage under TSCA section 4 even if it is manufactured as a component of another chemical substance, and regardless of its isolation from other components of the combination.

EPA has used the term "Class 2 substance" as a way to describe variable composition substances and complex combinations of substances which can separately be considered "chemical substances" under TSCA. If a Class 2 substance is a chemical substance as defined by section 3(2)(A) of TSCA, then EPA may regulate the Class 2 substance itself. Neither the designation of a particular substance as a Class 2 substance, nor EPA's authority to regulate it as a distinct chemical substance under the Act, changes the fact that it may contain any number of individual components which may also be "chemical substances" as defined by TSCA, and therefore, also be subject to EPA's regulatory authority under the Act. See, especially, TSCA section 3(2)(A), which identifies among the set of substances that are "chemical substances":

> . . . any organic or inorganic substance of a particular molecular identity, including any combination of such substances occurring in whole or in part as a result of a chemical reaction or occurring in nature. . .

Thus, if appropriate TSCA section 4(a)(1) findings are made with regard to manufacturing, distribution in commerce, use, and/or disposal activities for a chemical substance, then manufacturers of that substance are subject to the test rule according to TSCA section 4(b)(3), regardless of whether they manufacture the substance as a component of a Class 2 substance or in some other manner.

This is consistent with the position set forth in the proposed methylcyclopentane (MCP) and commercial hexane test rule, stating that:

> . . .manufacturers and processors of MCP or commercial hexane who do so in the course of producing gasoline or other motor or heating fuels are subject to this rule because the Agency's. . .findings are based on the manufacture, processing, and use of MCP and commercial hexane.

(Ref. 75, p. 17864–17865).

Gasoline is a Class 2 substance; commercial hexane is a Class 2 component of gasoline and MCP is one of its C_6 isomer components. In the final rule, EPA dropped the testing requirement for MCP, but kept the requirement for manufacturers of commercial hexane, stating that "[i]f health effects are positive for commercial hexane, then EPA may consider testing the C_6 components individually" (Ref. 76, pp. 3387–3388).

The Agency acknowledges that it has not explicitly required persons who manufacture test substances as components of Class 2 substances to comply with certain test rules in the past. However, the Agency does believe that these persons are manufacturers for purposes of TSCA section 4, and hence are subject to test rules where appropriate findings are made under TSCA sections 4(a)(1) and in accordance with TSCA section 4(b)(3).

b. ACC (Ref. 15) commented that EPA should clarify that it will continue to treat Class 2 substances as distinct chemical substances (with components that are not regulated under the PMN and other TSCA regulations) regardless of the "persons required to test" approaches taken in the OSHA dermal and HAPs proposed rules.

The approach to the identification of "persons required to test" that is being adopted in this final test rule, and which may be applied in other, future test rules, is not intended to modify the status of any chemical substance or entity under other existing TSCA regulations.

c. API (Ref. 19) commented that Tier 2 should include "manufacturers of Class 2 substances that contain a test rule substance" rather than "manufacturers of components of Class 2 substances."

EPA disagrees with this suggested change, and has not implemented it in this final rule. The Agency believes it has the authority under TSCA section 4 to regulate both manufacturers of Class 2 substances themselves (for example, by requiring the testing of a Class 2 substance by manufacturers of that Class 2 substance) and manufacturers of test substances as components of Class 2 substances (for example, by requiring the testing of a chemical substance by manufacturers that produce or import that chemical substance as a component of a Class 2 substance). In this final test rule, persons in the former group are included in Tier 1 of the grouping of persons required to test, whereas persons in the latter group are included in Tier 2.

d. API (Ref. 19) commented that manufacturers of Class 2 substances should not be considered manufacturers of the myriad components in the Class 2 substances unless they isolate a component chemical, for a number of reasons:

- Class 2 substances are distinct chemical substances that are complex and variable in composition, and the Class 2 nomenclature is accurate and useful for representing them.
- A Class 2 stream may contain a substance as a component at some times but not at others.
- Applying TSCA rules to Class 2 substances, rather than to their individual components, does not compromise protection of human health and the environment.
- Because many components of Class 2 substances do not add commercial value to the products, manufacturers of Class 2 substances may not be aware of the presence of test rule substances as components.

As stated in Unit III.I.5.a., EPA does not agree that manufacturers of components of Class 2 substances should only be regulated under TSCA section 4 if they isolate a component substance that is subject to the test rule. TSCA section 4(b)(3)(B) generally provides the authority for the Agency to include all manufacturers and/or processors in the scope of test rules, regardless of whether they isolate a test rule substance from a Class 2 substance.

The inclusion of manufacturers of test substances as components of Class 2 substances as persons subject to this final test rule is not intended to reflect any finding, or determination on the part of EPA that there is a direct connection between a specific manufacturing activity and the potential human health and/or environmental hazards or risks that may be associated with the test rule substance. See also biphenyl final test rule (Ref. 77, pp. 37184–37185). Their inclusion as persons subject to the rule is intended to facilitate the fair and equitable distribution of burden of testing and reimbursement among the persons who manufacture and process test rule substances. For example, there may be cases where large quantities of a component of a Class 2 substance are manufactured, such that the quantity of a particular non-isolated component (that is the subject of a TSCA section 4 test rule) is far greater than the quantity of the same chemical substance manufactured in isolated form by other persons.

The concern that "because many components of Class 2 substances do not add commercial value to the products, manufacturers of Class 2 substances may not be aware of the presence of test rule substances as components" is addressed by the provision in this final test rule which exempts persons from testing obligations where their status as manufacturers or processors of a particular substance is not "known to or reasonably ascertainable by" them.

In response to the comment noting that persons may be aware of the presence of a component of a Class 2 substance in a stream at some times but not others, EPA believes that the reimbursement process under TSCA

section 4 and the implementing regulations at 40 CFR part 791 address the concern; under these provisions, if utilized, persons would be required to provide fair and equitable contributions to test costs. The circumstance of a substance that is known to be produced at only certain times and not others may be a consideration under that process.

e. API (Ref. 19) commented that requiring manufacturers of Class 2 substances to test components of Class 2 substances that are also test substances would be a departure from past regulatory practice under TSCA section 4.

EPA disagrees with the commenter's statement that requiring manufacturers of Class 2 substances to test components that are also test substances that the person manufactures would be a departure from past regulatory practice under TSCA section 4. EPA acknowledges that in general its past practice has not been to impose explicit obligations under TSCA section 4 on persons who manufacture a test substance as a component of a Class 2 substance, unless that person isolates the test substance from the Class 2 substance, although as discussed in Unit III.I.5.a., there have been exceptions.

However, EPA did not explicitly require testing by manufacturers of test substances as components of Class 2 substances in certain previous test rules in part because EPA had determined in light of comments received on the proposals that testing of the Class 2 substance itself would be more appropriate than requiring testing on the individual components of Class 2 substances. See the discussion of the commercial hexane test rule (Ref. 76) in Unit III.I.5.a. In another case, EPA declined to require testing by manufacturers of components of Class 2 substances in a final test rule because it believed that it had provided insufficient notice that such manufacturers would be subject to the test rule. See the clarification to the final test rule covering certain "Office of Water chemicals" (Ref. 78).

As discussed previously, however, TSCA sections 4(c)(3)(A) and 4(c)(4)(A) require EPA to order, where necessary, "fair and equitable" reimbursement from manufacturers and processors for test costs incurred by those who are developing, or who have submitted the required test data. EPA believes that fairness and equity can be best facilitated by including within the pool of persons from whom reimbursement can potentially be sought all persons who can be considered manufacturers or processors under TSCA, subject to narrow, clear exemptions. EPA believes that persons who manufacture test substances as components of Class 2 substances are "manufacturers" under TSCA section 4, and generally should not be exempt from inclusion among those from whom reimbursement could potentially be sought.

6. *Create a de minimis exemption.* API suggests that EPA provide a de minimis exemption like the exemption provided in the amended proposed HAPs rules (Ref. 70, pp. 67470, 67481 and Ref. 73, pp. 19696, 19699) for manufacturers and processors who solely manufacture or process test rule chemicals in amounts less than 1% in a mixture.

EPA is not adopting this suggestion in this final rule. The final rule contains an exemption from all responsibilities associated with the final rule for persons who do not know or cannot reasonably ascertain that they manufacture or process a test rule substance. The final rule also provides Tier 2 status to manufacturers of small-quantities (less than 500 kg/1,100 lb per year or solely for R&D), those who manufacture the test substance as a byproduct, impurity, naturally occurring substance, non-isolated intermediate, or component of a Class 2 substance, and all processors. With respect to manufacturers of small quantities who manufacture the test substance as a component of a Class 2 substance, the 500 kg/1,100 lb cutoff applies to the manufacture of the test substance, not the Class 2 substance. EPA believes that these provisions supply sufficient relief from test rule requirements to lower volume manufacturers and processors. These groups are still subject to reimbursement, however, and they would also potentially be subject to testing.

To the extent that persons who manufacture a test rule chemical in amounts less than 1% in a mixture are not covered by the "known to or reasonably ascertainable by" exemption, and are not otherwise included in Tier 2, they are initially required to comply with the final test rule. EPA believes that Tier 1 status is appropriate for these manufacturers, who produce or import at least 500 kg/1,100 lb of a test rule chemical each year, and who know (or who could reasonably ascertain) that they are manufacturing the chemical.

7. *In determining who is responsible for conducting testing, EPA should consider the data needs the rule is intended to fill and the role of specific manufacturing and processing activities in creating the exposure scenarios the rule is intended to evaluate.* ACC commented that under TSCA section 4(b)(3)(B), responsibility for conducting testing may be imposed on those manufacturers and/or processors engaged in activities for which EPA has determined that available data and experience are insufficient under TSCA section 4(a). Thus, EPA's approach to the "persons required to test" section in a given test rule should depend on the data needs the rule is intended to fill, and the role of the specific manufacturing and processing activities in creating the particular human or environmental exposure scenarios which the rule is intended to evaluate.

TSCA does not limit the persons subject to a test rule solely to specific classes of manufacturers and/or processors based on the data needs the rule is intended to fill, or based on the role of the specific manufacturing and processing activities in creating particular exposures. Rather, persons who manufacture and/or process (depending on the findings made) a test rule chemical are generally subject to the requirements of the test rule. TSCA section 4(b)(3)(B). See also biphenyl final test rule (Ref. 77, pp. 37184–37185), which states that testing responsibilities under TSCA section 4 are not restricted to only those who manufacture or process a test rule chemical for certain uses.

EPA agrees that certain limited exemptions for persons who would otherwise be subject to test rules may be appropriate. However, in order to fully exempt a group of persons otherwise covered by a test rule from responsibilities under the test rule, EPA's view is that there must be an adequate justification for doing so that is consistent with the intent of the statute, and that is applicable only to those persons who it is proposing to exempt, and not any others. For example, in this final rule EPA is exempting manufacturers and processors who "do not know or cannot reasonably ascertain" that they are manufacturing or processing a test rule chemical (see § 799.5115(b)(2) of the regulatory text).

Exempting individual entities or classes of entities from test rule requirements on the basis of a determination that their activities do not relate in some direct way to the data needs the rule is intended to fill or to the exposure scenarios addressed by the rule is not consistent with the intent of the statute. Such exemptions would likely result in the need for multiphase rulemaking, and may in most cases not be possible from a practical standpoint given that EPA often would not have enough information to make such determinations. In addition, exempting

certain individual entities or classes of entities from test rule requirements increases the potential that the burden of testing and reimbursement would be distributed in an inequitable manner among the persons who manufacture and process test rule substances. The Agency believes it is appropriate to generally require manufacturers and/or processors of a test rule chemical to be subject to a rule, rather than to fully exempt individual manufacturers or processors or certain classes of manufacturers or processors from test rule responsibilities.

8. *Tier 2 should not be subject to reimbursement.* AFPA, API, ACC/O, ACC/KO, and ACC commented that subjecting Tier 2 entities to reimbursement would, in large part, eliminate the benefit associated with having a tiered approach. EPA should only require Tier 2 entities to reimburse if they are required to conduct testing in the absence of testing commitments from Tier 1 entities.

EPA does not agree. In order to ensure that test sponsors have the ability to seek equitable reimbursement, Tier 2 entities are subject to reimbursement regardless of whether the entities included in Tier 1 complete the testing required under the rule. EPA addressed this issue in the context of its May 7, 1990 rule amending the testing procedural rule by adding certain groups of manufacturers to Tier 2. EPA stated the following in the final rule:

> Some commenters suggested that chemicals produced solely for R&D [research and development] purposes should be excluded altogether from TSCA section 4 rules. Thus, rather than placing R&D manufacturers in a "second tier," they would not be legally subject unless specified in a particular test rule... EPA does not believe that it should grant a total exemption to R&D manufacturers. TSCA section 4 gives EPA authority to require testing of chemicals manufactured for R&D. Congress did not exempt R&D manufacturers from being subject to TSCA section 4, as in the case of [rules under] sections 5 or 8 of TSCA. In this rule, EPA has lifted the procedural burden imposed on R&D manufacturers by test rules, recognizing that test sponsors would rarely, if ever, seek reimbursement from R&D manufacturers. By maintaining legal authority over R&D manufacturers, however, EPA has reserved the right of a test sponsor to seek reimbursement from all persons legally subject to a test rule.
> (Ref. 69, p. 18883).

The final rule amending the testing procedural rule indicates that persons in Tier 2 are subject to the requirement to conduct testing under a test rule during the period from the effective date of the test rule to the end of the reimbursement period, but will not generally be required to submit letters of intent to test or exemption applications unless no other manufacturer of the chemical submits a letter of intent to test (Ref. 69, p. 18882). In addition, persons in Tier 2 will be required to submit letters of intent to test or exemption applications if a problem occurs with the initiation, conduct, or completion of the required testing or the submission of the required data with respect to a chemical substance included in the test rule.

However, although Tier 2 entities are subject to providing reimbursement, EPA's experience under previous test rules has been that persons who manufacture the largest quantities of a test rule substance have generally found it to be in their best interest to develop cost-sharing arrangements (which typically do not include all persons subject to providing reimbursement) to cover the costs of testing, rather than attempting to reach an agreement regarding reimbursement among the broader group made up of all persons potentially subject to providing reimbursement, or soliciting the involvement of the Agency under the reimbursement regulations at 40 CFR part 791 in developing a reimbursement arrangement. The development of such private cost-sharing arrangements appears to avoid possible difficulties that could be associated with coordinating the larger group of all persons potentially subject to reimbursement under a test rule, and provides flexibility to the parties to the arrangement because it may take any form they choose. If the parties are unable to agree upon a cost-sharing arrangement, they may contact EPA and initiate formal reimbursement procedures under 40 CFR part 791. These procedures would include all persons subject to the rule, i.e., all entities from both Tier 1 and Tier 2.

Other comments related to the issue of reimbursement by Tier 2 entities are listed below:

a. Persons not initially required to comply with a test rule have never been required to reimburse before (ACC, ACC/O, API). EPA disagrees. Since 1990, EPA has included processors, small-quantity manufacturers (i.e., manufacturers of less than 500 kg (1,100 lbs.) of a test rule chemical), and R&D manufacturers in Tier 2 (See 40 CFR 790.42(a)(2), 40 CFR 790.42(a)(4), and 40 CFR 790.42(a)(5), respectively). As a result, for the last decade these entities have been considered subject to test rules, but not initially required to comply with the requirement that letters of intent to test or exemption applications be submitted to EPA. Shifting groups of manufacturers and/or processors to Tier 2 does not "change the legal rights and obligations of persons subject to TSCA section 4 test rules, but would only eliminate some of the paperwork burden associated with compliance." (Ref. 69, p. 18882). In fact, persons included in Tier 2 "would still be subject to test rules (and export notification requirements as specified in TSCA section 12(b)), and would not be exempt from reimbursement claims." (Ref. 69, p. 18882).

The Agency shifted R&D and small-quantity manufacturers to Tier 2 based on its recognition that, in practice, the administrative costs of seeking reimbursement from these entities would likely exceed the reimbursement that might be gained by their participation. Therefore, the filing of exemption applications by R&D and small-quantity manufacturers serves no practical purpose (i.e., there is no need for them to self-identify by submitting exemption applications). As discussed in the proposed rule, processors were originally put in Tier 2 for another reason, i.e., manufacturers would not likely seek reimbursement directly from them, but would rather pass their costs on to processors indirectly via the market. In addition, the large numbers of processors would create administrative difficulties in making testing decisions (Ref. 5, p. 31081).

Persons who are subject to a test rule, but who are not initially required to comply with the test rule have always been potentially subject to reimbursement under the formal reimbursement procedures at 40 CFR part 791. For example, see the interim final rule amending the procedural rule at 40 CFR part 790 (Ref. 74, p. 20654), which states that, where manufacturers and processors are subject to a test rule, processors will automatically be given a conditional exemption from the requirement that letters of intent to test or exemption applications be submitted to EPA. This exemption is conditional because it would be lifted if none of the persons initially required to comply with the rule (i.e., manufacturers) submit a letter of intent to test. In addition, processors may be required to provide reimbursement directly to those sponsoring the testing.

Although Tier 2 entities are subject to reimbursement under this final test rule and have been subject under past test rules (see final rule amending the testing procedural rule at 40 CFR part 790 (Ref. 69), EPA believes that they have not historically participated in reimbursement because other manufacturers have always created cost-

sharing arrangements that did not require their involvement.

b. Tier 1 manufacturers should be those persons who undertake the activities that, for the most part, give rise to the need for testing. As a result, they should be the only ones responsible for reimbursement. EPA should identify upfront in a rule the persons whose activities warrant their contribution to the cost of testing. All of these persons should be included in Tier 1, and reimbursement should only apply to those Tier 1 persons (unless EPA has to resort to requiring entities in Tier 2 to submit letters of intent to test/exemption applications, and then Tier 2 would have to reimburse also) (API). Entities in Tier 1 that obtain an exemption in lieu of testing should generally be the only persons responsible for reimbursing. EPA should retain flexibility to impose costs on Tier 2 entities when circumstances warrant (ACC, ACC/O).

Under TSCA section 4(b)(3)(B), once EPA has made the requisite regulatory findings with respect to a chemical, "each person" who manufactures (or intends to manufacture) and/or processes (or intends to process) the chemical "shall" be required to conduct tests and submit data. Tier 2 entities have "automatic conditional exemptions" from the requirement that they conduct testing (see § 799.5115(c)(3) of the regulatory text). TSCA sections 4(c)(3) and 4(c)(4) indicate that persons granted exemptions from the requirement that testing be conducted and data submitted may be required to reimburse the costs of testing under reimbursement regulations promulgated by the Agency if the persons subject to the rule do not otherwise agree on the amount and method of reimbursement. As a result, although EPA initially exempts Tier 2 entities from requirements associated with testing and the submission of data, these entities are not exempt from the requirement that they reimburse the costs of testing.

EPA does not believe TSCA provides flexibility to impose reimbursement obligations on Tier 2 entities only when it makes a determination that the circumstances warrant it, or based on determinations as to whether particular manufacturers/processors or specific groups of such entities undertake activities that relate directly to the rationale for requiring testing. TSCA section 4 indicates that testing responsibilities are not restricted to those who manufacture or process a test rule chemical in certain forms (such as restricting the requirements of the rule only to Tier 1 entities). Rather, persons who manufacture and/or process (depending on the findings made) a test rule chemical are generally subject to the requirements of a final test rule. TSCA section 4(b)(3)(B). See also biphenyl final test rule (Ref. 77, pp. 37184–37185). EPA has created an exception to this general approach solely for persons who do not know or who cannot reasonably ascertain that they manufacture and/or process a test rule chemical.

c. Reimbursement requirements should only apply to persons who may be required to conduct tests and submit data, i.e., Tier 1 (ACC).

All persons included in either Tier 1 or Tier 2 may be required to reimburse the costs of testing because all manufacturers and processors of the chemical substances included in this final test rule are subject to the final test rule. As the reimbursement regulations (promulgated pursuant to TSCA section 4(c)(3)(A)) provide: "[p]ersons subject to a test rule have an obligation ... either to test or to obtain an exemption and pay reimbursement" (40 CFR 791.2(a)). Tier 2 entities have automatic conditional exemptions from testing requirements, as discussed earlier. Although Tier 2 entities are not as likely to be required to conduct testing as Tier 1 entities, both groups are responsible for reimbursing the person(s) who actually conduct testing.

d. EPA's proposed extension of reimbursement obligations to Tier 2 entities might complicate future efforts to conduct testing under ECAs (ACC, ACC/O).

EPA is not significantly changing the status quo with regard to reimbursement obligations established under previous TSCA section 4 regulations. Persons in Tier 2 under previous test rules have been subject to providing reimbursement. See the final rule amending the testing procedural rule at 40 CFR part 790 (Ref. 69). The primary effect of the approach to "persons required to test" that was proposed and is being adopted in this final rule is to better focus the set of persons included in Tier 1, and to expand and clarify the set of persons included in Tier 2. EPA is unaware of any reason to believe that this approach to "persons required to test" will make it more difficult to develop ECAs.

e. EPA has said that manufacturers of impurities, byproducts, and components of Class 2 substances have not historically participated in testing or reimbursement. This is true of all other entities included in Tier 2 under this final rule. Extending reimbursement to Tier 2 disregards this experience (ACC, ACC/O).

EPA agrees that manufacturers of impurities, byproducts, components of Class 2 substances, and all other entities included in Tier 2 under this final rule have probably not historically participated in testing or reimbursement. However, the likely reason they have not participated is because the costs of testing under test rules promulgated to date have been contributed to by a smaller group of entities subject to the rule (the larger manufacturers of each test rule substance), without the need for EPA's involvement. EPA anticipates that similar cost-sharing arrangements would continue to occur under this final rule and other rules using this revised approach to "persons required to test," as they offer significant advantages to the persons subject to the rule. If EPA were to become involved in reimbursement via the reimbursement procedures at 40 CFR part 791, then all Tier 1 and Tier 2 manufacturers and processors would be included in those proceedings.

9. *EPA should clarify that the approaches to the "persons required to test" sections in the OSHA dermal and HAPs proposed rules will not affect the applicability of requirements under TSCA programs outside those implementing TSCA section 4.* ACC/O and ACC commented that where a particular group (e.g., manufacturers of non-commercial byproducts) is currently exempt under certain TSCA regulations, it should continue to be exempt under those regulations regardless of the "persons required to test" approach taken in test rules under TSCA section 4.

The approach the Agency takes in the "persons required to test" portion of any given test rule is not intended to affect the status of persons under regulations other than those relevant to the given test rule.

J. Economic Impact Analysis

API noted that EPA's Economic Impact Analysis estimates administrative costs only for companies initially required to comply with the final test rule (companies in Tier 1). API believes that this analysis is inappropriate if EPA pursues imposing reimbursement obligations on Tier 2 entities. If reimbursement obligations are imposed on Tier 2 companies, API asserts there will be associated administrative, negotiation, and other costs that EPA should include in its analysis.

EPA disagrees with this comment. Although Tier 2 entities are subject to reimbursement, EPA's experience under past test rules has been that Tier 1

persons have found it to be in their best interest to develop cost-sharing arrangements among themselves to cover the cost of testing. The development of such private cost-sharing arrangements appears to avoid possible difficulties that could be associated with coordinating a larger group of persons subject to reimbursement under a test rule, and provides maximum flexibility to the parties to the arrangement. Because manufacturers in Tier 1 have been identified for each subject chemical (see discussion of economic analysis in Unit VIII. (Ref. 57)), EPA expects that at least one such person will comply with the testing requirements. EPA is not aware of any circumstances in which Tier 1 entities have sought reimbursement from Tier 2 entities either through private agreements or by soliciting the involvement of the Agency under the reimbursement regulations at 40 CFR part 791. Given this consistent experience with previous TSCA testing actions, EPA does not believe that there will be any administrative, negotiation, or any other costs associated with seeking reimbursement from Tier 2 companies.

K. Definition of Small Business

In the preamble of the proposal to this rule (Ref. 5), EPA requested comment on whether the Agency should establish an alternative small business definition to use in the small entity impact analyses for future TSCA section 4(a) test rules, and what size cutoff may be appropriate.

SOCMA commented that the most appropriate definition to use in conducting small entity analyses for TSCA section 4(a) test rules is the employee-based definition established by the U.S. Small Business Administration (SBA), which for most industries classifies firms as small based on the number of employees in the firm. The SBA set the numerical threshold for what is considered small on an industry-by-industry basis. SOCMA believes that this definition provides EPA with a straightforward and appropriate distinction between small and large companies that are closely related to a company's total annual sales. SOCMA also commented that it does not believe that an alternative approach, such as the small business definition from TSCA section 8 would be appropriate for conducting impact analyses for TSCA section 4(a) test rules. However, SOCMA believes if EPA were to pursue a sales volume-based definition of "small business," an appropriate level would be, at a minimum, a total annual sales of $100 million.

EPA did use SBA's size criteria, which SOCMA stated it prefers, in its economic analysis for this final rule. Based on the SBA definitions, EPA has concluded that there are no significant impacts on small entities (Ref. 57). Regarding SOCMA's second comment, EPA notes that SOCMA did not provide its reasoning as to why it considers a definition of small business based on a combination of revenue and production volume inappropriate, nor did it provide any research or justification as to why an appropriate level of annual sales used in such a definition should be set at a minimum of $100 million.

As a more general matter, EPA disagrees with SOCMA's position that the SBA small business size standards are the most appropriate to use in analyzing the impacts of TSCA section 4 testing rules. The Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Act (SBREFA) of 1996, requires that special consideration be given to small businesses affected by proposed Federal regulations. The SBA size standards, which are primarily intended to determine whether a business entity is eligible for government programs and preferences reserved for small businesses (13 CFR 121.101), "seek to ensure that a concern that meets a specific size standard is not dominant in its field of operation." (13 CFR 121.102(b)). See section 632(a)(1) of the Small Business Act. Section 601(3) of RFA establishes as the default definition of "small business" the definition used in section 3 of the Small Business Act, 15 U.S.C. 632, under which the SBA establishes small business size standards for each industrial sector using an employment threshold that entities in that sector may not exceed to be classified as small. (13 CFR 121.201). RFA recognizes that it may be appropriate at times to use an alternate definition of small business for the purpose of analyzing potential regulatory impacts. As such, section 601(3) of RFA provides that an agency may establish a different definition of small business after consultation with the SBA Office of Advocacy and after notice and an opportunity for public comment.

When assessing the potential impacts of test rules on chemical manufacturers, EPA believes that a standard based on total annual sales may provide a more appropriate means to judge the ability of a chemical manufacturing firm to support chemical testing without incurring significant costs or burdens. Therefore, EPA is currently determining what levels of annual sales would provide the most appropriate size cutoff with regard to various segments of the chemical industry usually impacted by TSCA section 4(a) test rules. EPA may propose, following conclusion of its analysis, that an alternative definition based on sales be established in accordance with section 601(3) of the RFA.

IV. Findings

A. What is the Basis for EPA's Final Rule to Test These Chemical Substances?

As indicated in Unit II.B., in order to promulgate a rule under TSCA section 4(a) requiring testing of chemical substances or mixtures, EPA must make certain findings for those chemical substances or mixtures regarding either hazard (TSCA section 4(a)(1)(A)(i)); or exposure (TSCA section 4(a)(1)(B)(i)). EPA is requiring testing of the chemical substances included in this final rule based on its findings under TSCA section 4(a)(1)(B)(i) relating to "substantial production" and "substantial human exposure," as well as findings under TSCA sections 4(a)(1)(B)(ii) and (iii). The chemical substances included in this final rule are listed in § 799.5115(j) of the regulatory text along with their CAS numbers.

In EPA's policy for making findings under TSCA section 4(a)(1)(B)(i) (i.e., the "B" policy), "substantial production" of a chemical substance or mixture is generally interpreted to be aggregate production (including import) volume equaling or exceeding one million pounds per year (Ref. 55, p. 28746). The general "B" policy threshold for "substantial human exposure" of workers is the exposure of 1,000 workers annually to a chemical substance or mixture (Ref. 55, p. 28746). See EPA's "B" policy (Ref. 55) for further discussion on how EPA generally makes decisions under TSCA section 4(a)(1)(B)(i).

EPA finds that, under TSCA section 4(a)(1)(B)(i), each of the 34 chemical substances included in this final rule is produced in "substantial quantities" and there is or may be "substantial human exposure" to each chemical substance (Ref. 56). In addition, under TSCA section 4(a)(1)(B)(ii), EPA believes that there are insufficient data and experience to reasonably determine or predict the effects of the manufacture, processing, or use of these chemical substances, or of any combination of such activities, on human health or the environment. In particular, as discussed

in Unit IV.D., EPA has determined that there are insufficient *in vitro* dermal absorption rate data on these chemicals. EPA also finds that testing of the 34 chemical substances is necessary to develop such data (TSCA section 4(a)(1)(B)(iii)) (see Unit IV.E.). EPA has not identified any "additional factors" as discussed in the "B" policy (Ref. 55, p. 28746) to cause the Agency to use decision making criteria other than the general thresholds described in the policy with respect to the chemicals included in this final rule.

B. Are These Chemical Substances Produced and/or Imported in Substantial Quantities?

Each of the chemical substances included in this final rule is produced and/or imported in an amount equal to or greater than one million pounds per year (Ref. 57), based on information gathered pursuant to the 2002 TSCA section 8(a) IUR (40 CFR part 710). The IUR is the most recently available compilation of TSCA Inventory data, and is contained in the TSCA Chemical Update System. EPA believes that these annual production volumes are "substantial" as that term is used with reference to production in TSCA section 4(a)(1)(B)(i) (Ref. 55).

C. Are a Substantial Number of Workers Exposed to These Chemicals?

EPA finds that the manufacture, processing, and use of the chemical substances included in this action result or may result in exposure to a substantial number of workers. These chemical substances are used in a wide variety of industrial applications which result in potential exposures to workers, as described in the exposure support document for this final rule (Ref. 56).

EPA defines human exposure as the contact with a chemical or agent at the visible exterior of a person (i.e., skin and openings into the body such as mouth and nostrils) (Ref. 58, p. 22891). Worker exposure is the human exposure to a chemical or agent that occurs while a person is working. Worker exposure may have various causes, with chemical releases being a common cause of exposure. Chemical manufacturing and processing plants can release chemicals from pumps as fugitive emissions, from reactor and condenser vents as stack emissions, in the form of a vapor and/or as a particulate. Diffusion and air currents may carry a chemical throughout the plant and workers may breathe air containing the chemical, resulting in exposures. Certain human activities such as manually transferring a chemical from one container to another may also cause exposures.

Each of the chemicals in this final rule was identified in the NOES as having a total worker exposure of 1,000 workers or more (Ref. 56). EPA believes that an exposure of 1,000 workers or more to a chemical substance is or may be "substantial" as that term is used with reference to "human exposure" in TSCA section 4(a)(1)(B)(i) (Ref. 55).

D. Do Sufficient Data Exist for These Chemical Substances?

As discussed in this preamble, dermal absorption rate is an important factor in ascertaining the health effects of the 34 chemicals in this final rule. EPA has determined that for the 34 chemicals for which *in vitro* dermal absorption rate testing is required under this final rule, there is either no dermal absorption rate information available or where there is some information, these data are insufficient to estimate dermal absorption rate. Therefore, existing data are insufficient to reasonably determine or predict the human health effects that may result from dermal exposures to the chemical substances included in this final rule during the manufacturing, processing, or use of the subject chemical substances. This finding is based on the review and analysis of relevant data by the ITC (which included EPA participation), as described in Unit II.A.

E. Is Testing Necessary for These Chemical Substances?

EPA believes that the testing of these 34 subject chemical substances is necessary to determine if the manufacturing, processing, or use of these chemical substances may present an unreasonable risk of injury to human health. In particular, the testing required by this final rule will provide dermal absorption rate data which OSHA can consider together with toxicity data to evaluate the need for skin designations which are used to protect against potential health risks associated with exposures to these chemicals in the workplace. See Unit III.B.3. for a detailed description of this and other data needs that will be filled by the testing required by this final rule.

V. Final Rule

A. What Testing is Required by this Action?

EPA is specifying testing and reporting requirements for the chemical substances listed in Table 2 in § 799.5115(j) of the regulatory text according to the *in vitro* dermal absorption rate test standard set forth in § 799.5115(h) of the regulatory text.

The test standard that will be used under this final rule was refined as described in Unit III.B. of the proposed rule (Ref. 5). In addition, certain modifications which added flexibility to the test standard have been made in response to comments submitted to EPA and addressed in Unit III.E.2. of this final rule.

B. When Will the Testing Imposed by this Final Rule Begin?

Once this final rule is effective, which will be 30 days after its publication in the **Federal Register**, the required testing must be initiated at a time sufficient to allow the final report to be submitted by the deadline indicated in § 799.5115(i) of the regulatory text, i.e., 13 months after the effective date of the final rule.

C. How Must the Studies Required Under this Test Rule be Conducted?

Persons required to comply with this final rule must conduct the necessary testing in accordance with the testing and reporting requirements described in the regulatory text, and with the TSCA Good Laboratory Practice Standards (GLPS) (40 CFR part 792). Clarification was provided in the test standard concerning how data should be reported. The clarification indicates that means and standard deviations must be used when reporting the required determinations. Although the test standard in the proposed rule would have required three separate determinations for each chemical (i.e., one each for Kp, 10-minute, and 60-minute short-term dermal absorption rates), reporting each as a mean and standard deviation was not specified. However, good scientific practice would suggest that the determinations be reported in this way, and EPA believes that this clarification does not substantively change the reporting requirements or their burden and costs (Ref. 57).

D. What Substances Will be Tested Under this Final Rule?

The "Class 1" chemical substances listed in Table 2 in § 799.5115(j) of the regulatory text (i.e., 32 of the 34 chemical substances included in this final rule) must be tested at a purity of at least 99%. The term Class 1 chemical substance refers to a chemical substance having a chemical composition that consists of a single chemical species (not including impurities) that can be represented by a specific, complete structure diagram. In those instances in which the test sponsor(s) believes that a 99% level of purity is unattainable for a given chemical, the sponsor may

request a modification under the procedures described in 40 CFR 790.55.

For the "Class 2" chemical substances listed in Table 2 in § 799.5115(j) of the regulatory text (i.e., 2 of the 34 chemical substances included in this final rule), EPA is requiring that the substance to be tested be any representative form of the chemical substance.

In providing a different approach for identifying the substance to be tested with regard to Class 2 substances, EPA recognizes two characteristics which further distinguish Class 2 from Class 1 chemical substances. First, unlike Class 1 substances, knowledge of the composition of commercial Class 2 substances can vary in quality and specificity from substance to substance. The composition of the chemical species which comprise a Class 2 substance may be:

- Well characterized in terms of molecular formulae, structural diagrams, and compositional percentages of all species present (for example, methyl phenol);
- Less well-characterized, for example, characterized only by molecular formulae, nonspecific structural diagrams, and/or by incomplete or unknown compositional percentages of the species present (for example C_{12}–C_{14} tert-alkyl amines); or
- Poorly characterized because all that is known is the identity of only some of the chemical species present and their percentages of composition, or of only the feedstock and method used to manufacture the substance (for example, nut shell liquors of cashews).

Second, the composition of some Class 2 substances may vary from one manufacturer to another, or, for a single manufacturer, from production run to production run, because of small variations in feedstock, manufacturing methods, or other production variables. A "Class 2" designation most frequently applies to a substance consisting of a combination of different chemical species that are either structurally similar or related by being formed together when a certain chemical reaction or process is carried out on a certain chemical feedstock. Small variations in the feedstock or in chemical production methods or conditions can account for the types of small variations in composition typically allowable within a given Class 2 Inventory listing. By contrast, a "Class 1" designation generally applies to a substance which is an individual chemical whose only variables are its impurities and byproducts.

EPA believes that, for purposes of this final rule which would require the determination of a Kp and two *in vitro* short-term dermal absorption rates, the testing of any representative form of a subject Class 2 substance would be relevant to a determination of whether the chemical substance would or would not present an unreasonable risk to human health. However, EPA would encourage the selection of representative forms of the test substances that meet industry or consensus standards, where they exist. In accordance with TSCA GLPS at 40 CFR part 792, the final study report must include test substance identification information, including name, CAS No., strength, purity, and composition, or other appropriate characteristics. (See 40 CFR 792.185).

E. Am I Required to Test Under this Final Rule?

Under TSCA section 4(a)(1)(B), EPA finds that there are insufficient data and experience to reasonably determine or predict health effects resulting from the manufacture, processing, or use of the chemical substances listed in this rulemaking. As a result, under TSCA section 4(b)(3)(B), manufacturers and processors of these substances are subject to the final rule with regard to those listed chemicals which they manufacture or process.

1. *Am I subject to this final rule?* You are subject to this final rule and may be required to test if you manufacture (which is defined by statute to include import) or process, or intend to manufacture or process, one or more chemical substances listed in Table 2 in § 799.5115(j) of the regulatory text during the time period discussed in Unit V.E.2. However, if you do not know or cannot reasonably ascertain that you manufacture or process a listed test substance (based on all information in your possession or control, as well as all information that a reasonable person similarly situated might be expected to possess, control, or know, or could obtain without an unreasonable burden), you are not subject to the final rule for that listed substance.

2. *When will my manufacture or processing (or my intent to do so) cause me to be subject to this final rule?* You are subject to this final rule if you manufacture or process, or intend to manufacture or process, a substance listed in Table 2 in § 799.5115(j) of the regulatory text at any time from the effective date of the final test rule to the end of the test cost reimbursement period.

The term *reimbursement period* is defined at 40 CFR 791.3(h) and may vary in length for each substance to be tested under a final TSCA section 4(a) test rule, depending on what testing is required and when testing is completed. (See Unit V.E.4.).

3. *Will I be required to test if I am subject to the final rule?* It depends on the nature of your activities. All persons who are subject to this TSCA section 4(a) test rule, which, unless otherwise noted in the regulatory text, incorporates EPA's generic procedures applicable to TSCA section 4(a) test rules (contained within 40 CFR part 790), fall into one of two groups, designated here as Tier 1 and Tier 2. Persons in Tier 1 (those who must initially comply with the final rule) must either: Submit to EPA letters of intent to conduct testing, conduct this testing, and submit the test data to EPA or apply to and obtain from EPA exemptions from testing. Persons in Tier 2 (those who do not have to initially comply with the final rule) need not take any action unless they are notified by EPA that they are required to do so, as described in Unit V.E.3.d. Note that persons in Tier 1 who obtain exemptions and persons in Tier 2 are nonetheless subject to providing reimbursement to persons who actually conduct the testing, as described in Unit V.E.4.

a. *Who is in Tier 1 and Tier 2?* All persons subject to this final rule are considered to be in Tier 1 unless they fall within Tier 2. The following table describes who is in Tier 1 and Tier 2.

TABLE 1.—PERSONS SUBJECT TO THE FINAL RULE: PERSONS IN TIER 1 AND TIER 2

Tier 1 (Persons initially required to comply)	Tier 2 (Persons not initially required to comply)
Persons who manufacture (as defined at TSCA section 3(7)), or intend to manufacture, a test rule substance who are not listed under Tier 2	Tier 2A Persons who manufacture (as defined at TSCA section 3(7)) or intend to manufacture a test rule substance solely as one or more of the following: —As a byproduct (as defined at 40 CFR 791.3(c)); —As an impurity (as defined at 40 CFR 790.3); —As a naturally occurring substance (as defined at 40 CFR 710.4(b)); —As a non-isolated intermediate (as defined at 40 CFR 704.3); —As a component of a Class 2 substance (as described at 40 CFR 720.45(a)(1)(i)); —In amounts of less than 500 kg (1,100 lbs) annually (as described at 40 CFR 790.42(a)(4)); or —In small quantities solely for research and development (as described at 40 CFR 790.42(a)(5)) Tier 2B Persons who process (as defined at TSCA section 3(10)) or intend to process a test rule substance (see 40 CFR 790.42(a)(2))

b. *When is it appropriate for a person required to comply with the rule to apply for an exemption rather than to submit a letter of intent to conduct testing?* You may apply for an exemption if you believe that the required testing will be performed by another person (or a consortium of persons formed under TSCA section 4(b)(3)(A)). You can find procedures relating to exemptions in 40 CFR 790.80 through 790.99, and § 799.5115(c)(2), (c)(5), (c)(7), and (c)(11) of the regulatory text. In this final rule, EPA will not require the submission of equivalence data (i.e., data demonstrating that your substance is equivalent to the substance actually being tested) as a condition for approval of your exemption. Therefore, 40 CFR 790.82(e)(1) and 40 CFR 790.85 do not apply to this final test rule.

c. *What will happen if I submit an exemption application?* EPA believes that requiring the collection of duplicative data is unnecessarily burdensome. As a result, if EPA receives a letter of intent to test from another source or has received (or expects to receive) the test data that are required under this final rule, the Agency will conditionally approve your exemption application under 40 CFR 790.87. The Agency will terminate conditional exemptions if a problem occurs with the initiation, conduct, or completion of the required testing, or with the submission of the required data to EPA. EPA may then require you to submit a letter of intent to test or an exemption application. See 40 CFR 790.93 and § 799.5115(c)(10) of the regulatory text. Persons who obtain exemptions or receive them automatically will nonetheless be subject to providing reimbursement to persons who actually conduct the testing, as described in Unit V.E.4.

d. *What are my obligations if I am in Tier 2?* If you are in Tier 2, you are subject to the final rule and you are responsible for providing reimbursement to persons in Tier 1, as described in Unit V.E.4. You are considered to have an automatic conditional exemption. You do not need to submit a letter of intent to test or an exemption application unless you are notified by EPA that you are required to do so.

If a problem occurs with the initiation, conduct, or completion of the required testing, or the submission of the required data to EPA, the Agency may require you to submit a letter of intent to test or an exemption application. See 40 CFR 790.93 and § 799.5115(c)(10) of the regulatory text. In addition, you will need to submit a letter of intent to test or an exemption application if:

- No manufacturer in Tier 1 has notified EPA of its intent to conduct testing.
- EPA has published a **Federal Register** document directing persons in Tier 2 to submit to EPA letters of intent to conduct testing or exemption applications. (See § 799.5115(c)(4), (c)(5), (c)(6), and (c)(7) of the regulatory text.)

The Agency will conditionally approve an exemption application under 40 CFR 790.87, if EPA has received a letter of intent to test or has received (or expects to receive) the test data required under this final rule.

e. *Subdivision of Tier 2 entities.* In the proposed rule that preceded this final rule, EPA solicited comment on the issue of whether the Agency should prioritize which persons in Tier 2 would be required to perform testing, if needed (Ref. 5, p. 31082). Specifically, the Agency suggested that it could subdivide Tier 2 entities into:

- *Tier 2A.* Tier 2 manufacturers, i.e., those who manufacture, or intend to manufacture, a test rule substance solely as one or more of the following: A byproduct; an impurity; a naturally occurring substance; a non-isolated intermediate; a component of a Class 2 substance; in amounts less than 1,100 lbs. annually; or in small quantities solely for research and development.
- *Tier 2B.* Tier 2 processors, i.e., those who process, or intend to process, a test rule substance (in any form). The terms "process" and "processor" are defined by TSCA section 3(10) and (11), respectively.

After consideration of comments received by the Agency (see Unit III.I.3.), EPA has decided that it will subdivide Tier 2 in the suggested manner, and the final rule regulatory text is structured to reflect this. If the Agency needs testing from persons in Tier 2, EPA will seek testing from persons in Tier 2A before proceeding to Tier 2B. It is appropriate to require manufacturers in Tier 2A to submit letters of intent to test or exemption applications before processors are called upon because the Agency believes that testing costs are traditionally passed by manufacturers along to processors, enabling them to share in the costs of testing (Ref. 74, p. 20654). In addition, "[t]here are [typically] so many processors [of a given test rule chemical] that it would be difficult to include them all in the technical decisions about the tests and in the financial decisions about how to allocate the costs" (Ref. 79, p. 31789).

f. *How did EPA decide who would be in Tier 1 and Tier 2 and who would be excluded from the rule?* Under 40 CFR 790.2, EPA may establish procedures applying to specific test rules that differ from the generic procedures governing TSCA section 4 test rules in 40 CFR part 790. For the purposes of this final rule, EPA is setting forth certain requirements

that differ from those under 40 CFR part 790.

In this test rule, EPA has reconfigured the tiers in 40 CFR 790.42. EPA has added the following persons to Tier 2: Byproduct manufacturers; impurity manufacturers; manufacturers of naturally occurring substances; manufacturers of non-isolated intermediates; and manufacturers of components of Class 2 substances. The Agency took administrative burden and complexity into account in determining who was to be in Tier 1 in this rule. EPA believes that those persons in Tier 1 who will conduct testing under this final rule will generally be large chemical manufacturers who, in the experience of the Agency, have traditionally conducted testing or participated in testing consortia under previous TSCA section 4(a) test rules.

The Agency also believes that byproduct manufacturers, impurity manufacturers, manufacturers of naturally occurring substances, manufacturers of non-isolated intermediates, and manufacturers of components of Class 2 substances historically have not themselves participated in testing or contributed to the reimbursement of those persons who have conducted testing. EPA understands that these manufacturers may include persons for whom the marginal transaction costs involved in negotiating and administering testing arrangements are deemed likely to raise the expense and burden of testing to a level that is disproportionate to the additional benefits of including these persons in Tier 1. Therefore, EPA does not believe that the likelihood of the persons who are being added to Tier 2 actually conducting the testing is sufficiently high to justify burdening these persons with Tier 1 requirements (e.g., submitting requests for exemptions). Nevertheless, these persons, along with all other persons in Tier 2, are subject to reimbursement obligations to persons who actually conduct the testing, as described in Unit V.E.4.

TSCA section 4(b)(3)(B) requires all manufacturers and processors of a chemical substance to test that chemical substance if EPA has made findings for that chemical substance, and therefore issued a TSCA section 4(a) test rule requiring testing. However, practicality must be a factor in determining who is subject to a particular test rule. Thus, persons who do not know or cannot reasonably ascertain that they are manufacturing or processing the substances subject to this final rule, e.g., manufacturers or processors of the substances as trace contaminants who are not aware of these activities, are not subject to the final rule. (See Unit V.E.1. and § 799.5115(b)(2) of the regulatory text.)

4. *How do the reimbursement procedures work?* In the past, persons subject to test rules have independently worked out among themselves their respective financial contributions to those persons who have actually conducted the testing. However, if persons are unable to agree privately on reimbursement, they may take advantage of EPA's reimbursement procedures at 40 CFR part 791, promulgated under the authority of TSCA section 4(c). These procedures include:

- The opportunity for a hearing with the American Arbitration Association.
- Publication by EPA of a **Federal Register** document concerning the request for a hearing.
- The appointment of a hearing officer to propose an order for fair and equitable reimbursement.

The hearing officer may base his or her proposed order on the production volume formula set out at 40 CFR 791.48, but is not obligated to do so. Under this final rule, amounts manufactured as impurities will be included in production volume (40 CFR 791.48(b)), subject to the discretion of the hearing officer (40 CFR 791.40(a)). The hearing officer's proposed order may become the Agency's final order, which is reviewable in Federal court (40 CFR 791.60).

F. What are the Reporting Requirements Under this Final Rule?

A final report must be submitted for each chemical 13 months after the effective date of the final rule, i.e., by the deadline indicated in § 799.5115(i) of the regulatory text. Although EPA originally proposed a deadline of 9 months after the effective date, EPA extended the reporting deadline to 13 months after the effective date in response to public comments. (See Unit III.E.2.f.). EPA is not requiring the submission of interim progress reports for the *in vitro* dermal absorption rate testing required in this final rule. For the short-term studies required by this final rule, interim progress reports would likely yield little useful information. Furthermore, by not requiring interim progress reports for these short-term studies, the overall burden of the final rule will be somewhat reduced.

G. What Would I Need to Do if I Cannot Complete the Testing?

A company that submits a letter of intent to test under this final rule and that subsequently anticipates difficulties in completing the testing by the deadline may submit a request to the Agency to modify the test schedule, pursuant to 40 CFR 790.55. EPA will determine whether modification of the test schedule is appropriate, and may first seek public comment on the modification.

H. Will There be Sufficient Test Facilities and Personnel to Undertake the Testing in this Test Rule?

Various surveys of the availability of test facilities and personnel to handle the additional demand for testing services created by TSCA section 4(a) test rules indicate that available test facilities and personnel will adequately accommodate the testing specified in this final rule (Refs. 46, 52, and 53) (see also Unit III.G.).

I. Might EPA Seek Further Testing of the Chemicals in this Final Rule?

If EPA determines that it needs additional data regarding any of the chemical substances included in this final rule, the Agency might seek further health and/or environmental effects testing for these chemical substances. Should the Agency decide to seek such additional testing, EPA would initiate a separate action under TSCA section 4 for that purpose.

VI. Export Notification

Any person who exports, or who intends to export, one of the chemical substances contained in this final rule in any form is subject to the export notification requirements in TSCA section 12(b)(1) and at 40 CFR part 707, subpart D. However, export notification is generally not required for articles, as provided by 40 CFR 707.60(b).

VII. Decision to Terminate Rulemaking

EPA is withdrawing the *in vitro* dermal absorption rate testing proposed on June 9, 1999 (64 FR 31074) for 13 chemicals: Ethyl ether, isobutyl alcohol, *sec*-butyl alcohol, *o*-dichlorobenzene, *p*-nitrotoluene, *beta*-chloroprene, *n*-amyl acetate, *N*-isopropylaniline, *o*-dinitrobenzene, ethyl bromide, *o*-chlorotoluene, disulfiram, and *N,N*-dimethylaniline. The rationale for the decision to withdraw this proposed testing is presented in this unit.

A. Ethyl Ether

DEPA commented that ethyl ether (CAS No. 60–29–7) should be removed from the rule, in part, because dermal

absorption rate data had previously been developed and because the high volatility of ethyl ether would not allow a dermal absorption rate to be adequately determined under the proposed standard (Ref. 21).

EPA and OSHA have reviewed the dermal absorption rate study by Blank et al., 1967 (*Journal of Investigative Dermatology*. 49:582–589), submitted by DEPA as an attachment to its comments (Ref. 21). The study measured a Kp for an aqueous solution of ethyl ether through a human abdominal epidermal membrane using an *in vitro* static diffusion cell. Barrier function was maintained as verified by measuring penetration of tritiated water. Most other experimental parameters conformed with the standard proposed by EPA for determining an *in vitro* dermal absorption rate. A sensitive gas chromatographic method was used to analyze the receptor fluid in place of radiolabeled compound. It is unclear whether absorption was determined under occluded or unoccluded conditions, but the Kp values are close to theoretical calculations, indicating that ethyl ether evaporation likely did not confound absorption measurements under these experimental conditions. Skin penetration of the neat liquid was not reported, but EPA and OSHA believe this can be estimated using the aqueous Kp value and data on water solubility and liquid density. Therefore, EPA and OSHA believe that this study provides sufficient data for an adequate determination of the dermal absorption rate information sought in this rulemaking and testing of ethyl ether is not required at this time (Ref. 62).

B. Isobutyl Alcohol and Sec-Butyl Alcohol

ACC, in its comment proposing a category approach when testing chemical substances to determine *in vitro* dermal absorption rates, noted that in its suggested aliphatic alcohol category, three of the four possible isomers for butyl alcohol were included in the proposed rule (Ref. 15). ACC stated that given their same molecular weight and functionality, and taking into consideration the likelihood of there being existing dermal absorption rate data for other three-, four-, and five-carbon alcohols, evaluating the three isomers using a structure activity relationship (SAR) approach would appear reasonable, in lieu of testing three chemicals under this rule.

The three butyl alcohols referred to by ACC are isobutyl alcohol (CAS No. 78–83–1), *sec*-butyl alcohol (CAS No. 78–92–2), and *tert*-butyl alcohol (CAS No. 75–65–0). The first two were included in the proposed rule. The third substance, *tert*-butyl alcohol was cited in the proposed rule (Ref. 5) as a chemical substance that was removed from the test list as a result of a 1998 study. The fourth butyl alcohol, not included in the proposed test rule, is *n*-butyl alcohol (CAS No. 71–36–3) which the ITC found to have sufficient dermal absorption rate data.

EPA agrees with ACC that sufficient data on *in vitro* dermal absorption rates have been generated on three, four, and five carbon aliphatic alcohols to adequately predict Kps for isobutyl alcohol and *sec*-butyl alcohol (Ref. 62). *In vitro* dermal absorption rates and Kps using human skin have already been measured for a series of homologous two [ethanol], three [propanol], four [*n*-butanol], and five [pentanol] carbon aliphatic alcohols (Ref. 65). This provides adequate structure activity information to predict the dermal absorption rates for the closely related branched chain alcohols, isobutyl alcohol and *sec*-butyl alcohol, with reasonable accuracy. Therefore, EPA is not requiring the testing of isobutyl alcohol and *sec*-butyl alcohol under this final rule.

C. o-Dichlorobenzene

The Chlorobenzene Producers Association cited two documents to support its position that testing of *o*-dichlorobenzene (CAS No. 95–50–1) is unnecessary (Ref. 31). The Association cited EPA's *Dermal Exposure Assessment: Principles and Applications* (Ref. 42), which described a calculated Kp for *o*-dichlorobenzene. The Association also noted that a study conducted at the North Carolina State University at Raleigh entitled *Percutaneous Absorption of Volatile Compounds* (Ref. 50) analyzed the relative absorption and penetration of *o*-dichlorobenzene on the skin surface in the context of evaluating volatile organic compounds.

The Kp value for *o*-dichlorobenzene cited in the 1992 EPA Report on dermal exposure assessment is estimated from empirical models rather than experimental data and, therefore, does not meet OSHA needs. However, the data developed for *o*-dichlorobenzene in the context of evaluating percutaneous absorption of volatile organic compounds does provide a measure of the dermal absorption rate of *o*-dichlorobenzene. Therefore, testing of *o*-dichlorobenzene is not required in this final rule.

D. p-Nitrotoluene

First Chemical Corporation provided EPA with biological monitoring information (Ref. 17a.), toxicity studies (Ref. 17b.), and specific information on the numbers of workers exposed to *p*-nitrotoluene (CAS No. 99–99–0) (Ref. 17). First Chemical Corporation concluded from the submitted information that *p*-nitrotoluene does not present a significant hazard from dermal contact and proposed that this chemical be removed from the test list. One study (Ref. 17a.) discussed biological monitoring in workers but did not measure dermal absorption. An acute toxicity study with short-term dermal administration to experimental animals was negative (Ref. 17b.). This study also did not attempt to measure dermal absorption, and, therefore is not adequate to eliminate the testing requirement. A submission under section 8(d) of TSCA "found no evidence of skin absorption when a dermal dose of 1.0 g/kg was applied to rabbits" (Ref. 17) but further review by EPA finds no mention of the methodology or data that support this statement in the submission. EPA does not consider the data cited by First Chemical Corporation to be sufficient to determine a dermal absorption rate for *p*-nitrotoluene (Ref. 62).

First Chemical Corporation also submitted data relevant to EPA's finding of substantial human exposure. First Chemical Corporation is the only domestic manufacturer of *p*-nitrotoluene and accounts for the vast majority of the total quantity on the U.S. market. The company provided information on handling procedures, onsite operations, and a summary of the number of workers with potential exposure to the chemical. This summary was based on a survey of onsite operations and inquiries to each offsite company known to handle *p*-nitrotoluene. EPA has reviewed these data and agrees with First Chemical Corporation that the number of workers exposed to *p*-nitrotoluene at its facilities and those of its customers (processors) do not meet the general worker threshold for substantial human exposure that EPA has established to require testing under TSCA section 4(a)(1)(B). EPA has also reviewed the information submitted in response to the TSCA section 8(a) PAIR for *p*-nitrotoluene (Ref. 8). PAIR information for 1994 revealed that another company in the *p*-nitrotoluene market did not use *p*-nitrotoluene in its processes, sell it to its customers, or report any worker exposure, thus making the number of exposed workers reported by First Chemical Corp. the total of the reported worker exposures in the United States. Therefore, EPA is

not requiring testing of *p*-nitrotoluene under this final rule.

E. beta-Chloroprene

DuPont Dow Elastomers (DDE) provided EPA with specific information on production and worker exposure to *beta*-chloroprene (CAS No. 126–99–8) during production and use (Ref. 24). According to DDE, domestic production of *beta*-chloroprene occurs only at DDE's facility in LaPlace, Louisiana. DDE also states that no *beta*-chloroprene is imported. DDE acknowledges that *beta*-chloroprene is manufactured in quantities in excess of one million pounds per year which satisfies the "substantial production" TSCA section 4(a)(1)(B) finding. However, the company maintains that the number of workers exposed to *beta*-chloroprene does not meet the general "substantial human exposure" TSCA section 4(a)(1)(B) finding.

According to DDE, more than 90% of *beta*-chloroprene produced annually is used for the production of dry polychloroprene. Most of the remaining *beta*-choloroprene is used to produce polychloroprene latex, a colloidal suspension of polychloroprene in water. A small portion is used to manufacture a comonomer, subsequently incorporated in polychloroprene polymerization. DDE states that polymer manufacture is the only commercial use of *beta*-chloroprene. From its sole *beta*-chloroprene production facility in Louisiana, DDE produces *beta*-chloroprene monomer to supply its polychloroprene manufacturing operations. DDE, the only domestic producer of *beta*-chloroprene or polychloroprene, handles *beta*-chloroprene at only two of its facilities and the total number of DDE employees at these sites is approximately 500. DDE states that the actual number of the workers exposed via the dermal route is significantly less than the total number of DDE employees at the two facilities that manufacture or handle *beta*-chloroprene. DDE has determined that the total number of workers potentially exposed to *beta*-chloroprene vapor is less than 200. Due to the nature of the *beta*-chloroprene and polychloroprene manufacturing processes, the number of workers with potential exposure to liquid *beta*-chloroprene is apparently significantly less than those potentially exposed to *beta*-chloroprene vapor.

EPA has reviewed the production and worker exposure information submitted by DDE and concurs with DDE in its assessment of the potential number of workers exposed to *beta*-chloroprene. Because the potential number of workers exposed to *beta*-chloroprene does not appear to meet the threshold that EPA generally relies upon in making the TSCA section 4(a)(1)(B) "substantial human exposure" finding on the basis of worker exposure, testing of *beta*-chloroprene is not required under this final rule.

F. n-Amyl acetate

EPA and OSHA have reviewed a dermal absorption study for *n*-amyl acetate (CAS No. 628–63–7) submitted by Union Carbide Corporation (Ref. 47). A Kp and 6–24 hours dermal absorption rates for *n*-amyl acetate were determined. Absorption data were also collected at earlier time points of 10 minutes and 1 hour. The method used an *in vitro* static diffusion cell technique with human cadaver skin and was similar, but not identical, to the test standard for the study required in this final rule. The test substance was a mixed isomer of primary amyl acetate applied neat (65% *n*-amyl acetate) rather than as a pure compound. A sensitive (non-radiolabeled) gas chromatographic technique specific to *n*-amyl acetate was used as a detection method. The anatomical region of the skin and membrane thickness were not stated, although variability in the results and the method of epidermal membrane preparation were found to be acceptable. The receptor fluid was ethanol in water instead of the PEG solution required in the test standard for this final rule; however, it is unlikely that this influenced the results of the study because ethanol in water, as stated previously in Unit III.E.2.o.vii., is generally a suitable receptor fluid. This is the case despite the fact that under this final rule EPA is requiring the use of a PEG solution as the receptor fluid for all hydrophobic chemicals for purposes of consistency. Therefore, EPA and OSHA believe that this study provides sufficient data for an adequate determination of dermal absorption rate and further testing of *n*-amyl acetate is not required under this final rule (Ref. 64).

G. N-Isopropylaniline

Monsanto Company provided EPA with specific information on production and worker exposure to *N*-isopropylaniline (CAS No. 768–52–5) during production and use (Ref. 16). Monsanto Company stated that *N*-isopropylaniline is an intermediate in the production of the pesticide propachlor, the active ingredient in Ramrod branded herbicides, and is produced and consumed at the Monsanto plant in Muscatine, Iowa. No *N*-isopropylaniline is sold or used domestically for any other purpose. Propachlor, which was introduced on the market in 1965, is nearing the end of its commercial life cycle and production of *N*-isopropylaniline has fallen accordingly. Thus, it is anticipated that *N*-isopropylaniline will be produced in amounts far less than the Agency's general "substantial production" threshold of one million pounds per year.

Monsanto Company also provided EPA with a detailed description of the number of workers exposed to *N*-isopropylaniline during production and use. *N*-isopropylaniline is produced and consumed in enclosed systems. Monsanto Company projected a maximum of 35 workers are potentially exposed to *N*-isopropylaniline.

EPA has reviewed the production and worker exposure information submitted by Monsanto Company for *N*-isopropylaniline. EPA has confirmed, via 1998 and 2002 IUR data (see 40 CFR part 710), that manufacture (including import) of *N*-isopropylaniline is below the one million pounds per year threshold which EPA generally relies upon as "substantial production" under TSCA section 4(a)(1)(B). In addition, the potential number of workers exposed to *N*-isopropylaniline does not appear to meet the "substantial human exposure" threshold of exposure equal to or greater than 1,000 workers which EPA generally relies upon in making the TSCA section 4(a)(1)(B) "substantial human exposure" finding on the basis of worker exposure. As a result, testing of *N*-isopropylaniline is not required under this final rule.

H. o-Dinitrobenzene

EPA received no comments in response to its proposal to require that *o*-dinitrobenzene (CAS No. 528–29–0) be tested to determine an *in vitro* dermal absorption rate. In developing a finding for the final rule of "substantial production" under TSCA section 4(a)(1)(B) for this chemical, EPA found that according to 1998 IUR data (see 40 CFR part 710), *o*-dinitrobenzene is no longer produced or imported in amounts equal to or greater than one million pounds per year. The 1998 IUR data became available after the publication of the proposed rule, which made a finding for substantial production based on 1994 IUR data. Also, there were no 2002 IUR data reported for *o*-dinitrobenzene. Because the 1998 IUR data and the lack of 2002 IUR data do not support a finding of substantial production as required under TSCA section 4(a)(1)(B)(i), testing of *o*-dinitrobenzene to determine an *in vitro* absorption rate is not required at this time.

I. Ethyl Bromide, o-Chlorotoluene, Disulfiram, and N,N-Dimethylaniline

In developing findings for the final rule of "substantial production" under TSCA section 4(a)(1)(B) for ethyl bromide (CAS. No. 74–96–4), *o*-chlorotoluene (CAS No. 95–49–8), disulfiram (CAS No. 97–77–8), and *N,N*-dimethylaniline (CAS No. 121–69–7), EPA found that according to 2002 IUR data (see 40 CFR part 710), these four chemical substances are no longer manufactured or imported in amounts equal to or greater than one million pounds per year. Because the 2002 IUR data show manufacture (including import) below the one million pounds per year threshold which EPA generally relies upon as "substantial production" under TSCA section 4(a)(1)(B)(i), testing of ethyl bromide, *o*-chlorotoluene, disulfiram, and *N,N*-dimethylaniline to determine *in vitro* dermal absorption rates is not required at this time.

VIII. Economic Impacts

EPA has prepared an economic assessment entitled *Economic Impact Analysis and Small Entity Impact Analysis of the TSCA Section 4(a) Test Rule for 34 Chemicals Targeted for In Vitro Dermal Absorption Rate Testing* (Ref. 57), a copy of which has been placed in the official public docket. This economic assessment evaluates the potential for significant economic impacts as a result of the testing that would be required by this final rule. The total cost of providing test data on the 34 chemicals that were evaluated in this economic analysis is estimated to be a total of $1.16 million for all 34 chemicals, or $33,987 per chemical (Ref. 57).

While legally subject to this test rule, Tier 2 manufacturers and all processors of a subject chemical would only be required to comply with the requirements of the final rule if they are directed to do so by EPA as described in § 799.5115(c)(5), (c)(7) and (c)(10) of the regulatory text. EPA would require Tier 2 manufacturers or processors to test only if no Tier 1 manufacturer has submitted a letter of its intent to conduct testing, or if, under 40 CFR 790.93, a problem occurs with the initiation, conduct, or completion of the required testing, or the submission of the required data to EPA. Because EPA has identified at least one manufacturer in Tier 1 for each subject chemical, the Agency expects that, for each chemical in this final rule, at least one such person will submit a letter of intent to conduct the required testing and that person will conduct such testing and will submit the test data to EPA. EPA believes, therefore, that there will not be any costs to Tier 2 manufacturers or processors for conducting the testing required by the final rule. In addition, as explained in Unit III.J., EPA is not aware of any circumstances in which Tier 1 entities have sought reimbursement from Tier 2 entities either through private agreements or by soliciting the involvement of the Agency under the reimbursement regulations at 40 CFR part 791. Given this consistent experience with previous test rules, EPA does not believe that there will be any administrative, negotiation, or any other costs associated with seeking reimbursement from Tier 2 companies.

To evaluate the potential for an adverse economic impact of testing on manufacturers of the chemical substances in this final rule, EPA employed a screening approach that compares the annual revenues from the sale of a chemical to the annualized testing costs for that chemical and expresses the testing costs as a percent of revenues generated from each chemical. Annualized testing costs divide testing expenditures into an equivalent, constant yearly expenditure over a longer period of time. To calculate the percent price impact, testing costs (including laboratory and administrative expenditures) are annualized over 15 years using a 7% discount rate. Annualized testing costs are then divided by the estimated annual revenue of the chemical to derive the cost-to-sales ratio.

EPA estimates the annualized cost of testing the 34 chemicals evaluated in the economic analysis to be $3,732 per chemical or a total annualized cost of $126,888 for all 34 chemicals (34 x $3,732) (Ref. 57). In addition, the TSCA section 12(b) export notification that is required for the first export to a particular country of a chemical subject to the final rule, is estimated to be $61.31 for the first time that an exporter must comply with TSCA section 12(b) export notification requirements, and $18.07 for each subsequent export notification submitted by an exporter (Ref. 57). The Agency's estimated total costs of testing (including both laboratory and administrative costs), annualized testing costs, price impacts, and public reporting burden hours for this final rule are presented in the economic impact analysis (Ref. 57).

Price data were available for 26 of the 34 chemicals, with an average cost of $.88 per pound for those 26 chemicals. The price impact of the test costs is a function of the chemical's price per pound and the production volume. For 21 of the 26 chemicals (80.8%) for which price data were available, the price impact is less than 1.0% when the production volume for each chemical is assumed to be one million pounds, which is the threshold for substantial production. The average test cost impact for all 26 chemicals with price data was 0.68%. This means that the testing costs represent, on average, 0.68% of revenues generated from each chemical. The actual impacts are likely to be lower, however, because all of the subject chemicals are produced in volumes of at least one million pounds per year. With a price impact of less than 1.0%, EPA concludes that for these 21 chemicals the potential for adverse economic impacts is low.

For five of the twenty-six chemicals (19.2%) with price data, the price impact is in excess of 1.0%. The average price impact for these five chemicals is 1.96% and the maximum is 3.7%. Again, these impacts occur when the production volumes are assumed to be one million pounds. The actual impacts decline in direct proportion to a chemical's actual production volume above one million pounds. Thus, if the actual production volume is two million pounds, the impact is reduced by 50%. The Agency verified production volumes for these five chemicals based on the 2002 reports to the TSCA Chemical Update System Database, and has found that the actual production volume in each case exceeds 10 million pounds per year. Therefore, the Agency believes that the impact for all five of these chemicals is below 1.0%.

The Agency computed "critical prices" for the remaining eight chemicals for which price data were not available. The "critical price" is the price per pound below which there would be an impact of 1.0% or greater. Assuming a minimum production volume of one million pounds per year and annualized testing costs of $3,732 per chemical, the critical price is $0.37 per pound. Below that price, the testing costs would represent more than 1.0% of the revenues from the chemical at a one million pound production volume level. The average price for the 26 chemicals with actual price data available is $0.88 per pound. Thus, the critical price is substantially below this average. While it cannot be shown conclusively that the price impacts will be less than or greater than 1.0% of the sales for these chemicals, the Agency believes that adverse impacts are unlikely, given that both the chemicals' prices would have to be below $.37 per pound, and the production volume would have to meet the worst-case assumption of one million pounds per year.

On the basis of these calculations, EPA believes that the required chemical testing presents a low potential for adverse economic impact for the majority of the chemicals subject to the final rule. Because the subject chemical substances have relatively large production volumes, the annualized costs of testing, expressed as a percentage of annual revenues, are very small for most chemicals. There are, however, eight chemicals for which it cannot conclusively be shown that the price impact will be below 1.0% of the revenue for these chemicals. For these eight chemicals, companies may choose to use revenue sources other than profits from the individual chemicals to pay for testing. To account for this, the Agency also compared the costs of compliance to company sales data. These calculations were made as part of the Agency's small entity impact analysis (Ref. 57), conducted in accordance with the requirements of the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. These results are presented in Unit X.B.

IX. Materials in the Docket

An official docket was established under docket ID number OPPT–2003–0006. The official public docket includes information considered by EPA in developing this final rule, such as the documents specifically referenced in this action, any public comments received, and other information related to this action. In addition, interested parties should consult documents that are referenced in the documents that EPA has placed in the docket, regardless of whether these referenced documents are physically located in the docket. For assistance in locating documents that are referenced in documents that EPA has placed in the docket, but that are not physically located in the docket, please consult one of the technical persons listed under **FOR FURTHER INFORMATION CONTACT**. The official public docket is available for review as specified in **ADDRESSES**. The following is a listing of the documents referenced in this preamble that have been placed in the official docket for this final rule:

A. Supporting Documentation

1. U.S. Census Bureau. Bridge between NAICS and SIC. 1997 Economic Census. Core Business Statistics Series. Issued June 2000.

2. United States Environmental Protection Agency (USEPA). Laboratory Cost Estimate for *In Vitro* Dermal Absorption Rate Testing—Short-term Absorption Rate. Prepared by Economic and Policy Analysis Branch (EPAB), Economics, Exposure and Technology Division (EETD), OPPT. February 20, 2003.

3. USEPA. Laboratory Cost Estimate for *In Vitro* Dermal Absorption Rate Testing—Long-term Absorption Rate. Prepared by EPAB, EETD, OPPT. March 26, 2003.

4. Background information listed in § 799.5115(h)(8) of the regulatory text:

a. Bronaugh, R.L., Stewart, R.F., and Simon, M. Methods for *in vitro* Percutaneous Absorption Studies VII: Use of Excised Human Skin. *Journal of Pharmaceutical Sciences*. 75:1094–1097. 1986.

b. Bronaugh, R.L. and Stewart, R.F. Methods for *in vitro* Percutaneous Absorption Studies IV: The Flow-Through Diffusion Cell. *Journal of Pharmaceutical Sciences*. 74:64–67. 1985.

c. Bronaugh, R.L., Stewart, R.F., and Storm, J.E. Extent of Cutaneous Metabolism During Percutaneous Absorption of Xenobiotics. *Toxicology and Applied Pharmacology*. 99:534–543. 1989.

d. Walker, J.D., Whittaker, C. and McDougal, J.N. Role of the TSCA Interagency Testing Committee in Meeting the U.S. Government Data Needs: Designating Chemicals for Percutaneous Absorption Rate Testing. *Dermatotoxicology*. F. Marzulli and H. Maibach, Eds. Taylor & Francis, Washington, DC. pp. 371–381. 1996.

e. Bronaugh, R.L., and Collier, S.W. Protocol for *In Vitro* Percutaneous Absorption Studies. *In Vitro Percutaneous Absorption: Principles, Fundamentals, and Applications*. R.L. Bronaugh and H.I. Maibach, Eds. CRC Press, Boca Raton, FL. pp. 237–241. 1991.

B. References

1. Interagency Testing Committee (ITC). Thirty-First Report of the TSCA Interagency Testing Committee to the Administrator; Receipt of Report, Request for Comments, Opportunity to Initiate Negotiations for TSCA Section 4 Testing Consent Agreements. **Federal Register** (58 FR 26898, May 5, 1993) (FRL–4583–4).

2. ITC. Thirty-Second Report of the TSCA Interagency Testing Committee to the Administrator; Receipt of Report, Request for Comments, Notice of Opportunity to Initiate Negotiations for TSCA section 4 Testing Consent Agreements. **Federal Register** (58 FR 38490, July 16, 1993) (FRL–4630–2).

3. ITC. Thirty-Fourth Report of the TSCA Interagency Testing Committee to the Administrator; Receipt of Report and Request for Comments. **Federal Register** (59 FR 35720, July 13, 1994) (FRL–4870–4).

4. ITC. Thirty-Fifth Report of the TSCA Interagency Testing Committee to the Administrator; Receipt of Report, Request for Comments, Solicitation of Interested Parties in Developing Testing Consent Agreement. **Federal Register** (59 FR 67596, December 29, 1994) (FRL–4923–2).

5. USEPA. Proposed Test Rule for *In Vitro* Dermal Absorption Rate Testing of Certain Chemicals of Interest to Occupational Safety and Health Administration. **Federal Register** (64 FR 31074, June 9, 1999) (FRL–5760–3).

6. USEPA. Preliminary Assessment Information and Health and Safety Data Reporting; Addition of Chemicals. (TSCA Sections 8(a) and 8(d) Final Rules for Chemicals contained in the ITC's 31st Report to the EPA Administrator). **Federal Register** (58 FR 68311, December 27, 1993) (FRL–4644–1).

7. USEPA. Preliminary Assessment Information and Health and Safety Data Reporting; Addition of Chemicals. (TSCA sections 8(a) and 8(d) Final Rules for Chemicals contained in the ITC's 32nd Report to the EPA Administrator). **Federal Register** (59 FR 5956, February 9, 1994) (FRL–4745–5).

8. USEPA. Preliminary Assessment Information and Health and Safety Data Reporting; Addition of Chemicals. (TSCA Sections 8(a) and 8(d) Final Rules for Chemicals contained in the ITC's 35th Report to the EPA Administrator). **Federal Register** (60 FR 34879, July 5, 1995) (FRL–4954–9).

9. USEPA. Thirty-Sixth Report of the TSCA Interagency Testing Committee to the Administrator; Receipt of Report, Request for Comments, Solicitation of Use and Exposure Data. **Federal Register** (60 FR 42982, August 17, 1995) (FRL–4965–6).

10. USEPA. Request for Proposals for Enforceable Consent Agreements; Dermal Absorption Rate Testing of Eighty OSHA Chemicals; Solicitation of Interested Parties; Text of Test Protocol. **Federal Register** (61 FR 14773, April 3, 1996) (FRL–5359–3).

11. ARCO Chemical Company. Proposal to conduct *in vivo* dermal absorption rate testing for *tert*-butyl alcohol under an enforceable consent agreement (ECA). Letter from Joan McCuen to Charles M. Auer, OPPT, USEPA. June 26, 1996.

12. ARCO Chemical Company. A letter from Joan McCuen to Keith Cronin, OPPT, USEPA transmitting a dermal absorption rate study (Ref. 12a.). March 23, 1998.

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X. Statutory and Executive Order Reviews

A. Paperwork Reduction Act

The information collection requirements contained in TSCA section 4 test rules have already been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2070–0033 (EPA ICR No. 1139). The information collection activities related to export notification under TSCA section 12(b)(1) are already approved under OMB control number 2070–0030 (EPA ICR No. 0795). This final rule does not contain any new or amended requirements that would require additional review and/or approval by OMB.

The standard chemical testing program involves the submission of letters of intent to test (or exemption applications), study plans, progress reports, and test results. EPA estimates that the information collection activities related to chemical testing for all chemicals in this final rule (representing the submission of letters of intent or exemption applications, study plans, and the final reports; progress reports are not required by this final rule because testing will be completed within about 1 year) would result in an annual public reporting burden of 165 hours per chemical or a total of 5,610 hours for the 34 chemicals (Ref. 57).

The annual public reporting burden related to export notification is estimated to be 0.5 to 1.5 burden hours for each chemical/country combination (Ref. 57). In estimating the total burden hours approved for the information collection activities related to export notification, the Agency has included sufficient burden hours to accommodate any export notifications that may be required by the Agency's issuance of final chemical test rules (Refs. 57, 60, and 61).

For each manufacturer of the 34 chemicals identified in the economic analysis, the parent company (ultimate corporate entity, or UCE) was also identified. The economic analysis identified a total of 84 UCEs that EPA believes would be the likely respondents to the final rule. The public reporting burden for this collection of information is estimated to average 165 hours per chemical. Multiplying by 34 chemicals (34 x 165 = 5,610 hours total), and dividing by 84 UCEs, results in a per respondent estimated burden of 66.8 hours. This burden estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

As defined by PRA and 5 CFR 1320.3(b), "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 which have subsequently changed; 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.

Under PRA, an agency may not conduct or sponsor, and a person is not required to respond to, an information collection request unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and included on the related collection instrument. EPA is amending the table in 40 CFR part 9 to list the OMB approval number for the information collection requirements contained in this final rule. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the display requirements of PRA and OMB's implementing regulations at 5 CFR part 1320. This ICR was previously subject to public notice and comment prior to OMB approval, and given the technical nature of the table, EPA finds that further notice and comment to amend it is unnecessary. As a result, EPA finds that there is "good cause" under section 553(b)(1)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(1)(B), to amend this table without further notice and comment.

B. Regulatory Flexibility Act (RFA)

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, the Agency hereby certifies that this final rule will not have a significant adverse economic impact on a substantial number of small entities. The factual basis for the Agency's determination is presented in the small entity impact analysis prepared as part of the economic analysis for this final rule (Ref. 57), and is briefly summarized here.

Three factors are examined in EPA's small entity assessment (Ref. 57) in order to characterize the potential small entity impacts of this final rule:

- The size of the adverse impact (measured as the ratio of the cost to sales or revenue).
- The total number of small entities that experience the adverse impact.
- The percentage of the total number of small entities that experience the adverse impact.

Section 601(3) of RFA establishes as the default definition of "small business" the definition used in section 3 of the Small Business Act, 15 U.S.C. 632, under which the SBA establishes small business size standards for each industry sector. (13 CFR 121.201). For this final rule, EPA has analyzed the potential small business impacts using the size standards established under this default definition. The SBA size standards, which are primarily intended to determine whether a business entity is eligible for government programs and preferences reserved for small businesses (13 CFR 121.101), "seek to ensure that a concern that meets a specific size standard is not dominant in its field of operation." (13 CFR 121.102(b)). See section 632(a)(1) of the Small Business Act. Industrial sectors are identified by a NAICS code. In most cases, SBA has specified an employee size standard (100; 500; 750; 1,000; or 1,500 employees) or, in some cases, a sales-based, or other industry-specific indicator, cut-off below which an entity in that particular NAICS code would be considered small (Ref. 59).

The SBA employee size standards that apply to most of the NAICS codes that are potentially impacted (Ref. 57) by this final rule range from 500 to 1,500 employees. Size standards for three potentially affected non-manufacturing NAICS are defined in terms of sales, and in each case the standards are $5 million in annual sales, while the standards for the set of possible NAICS where another entity is likely to fall, are expressed in terms of electricity generating capacity (4 million megawatt hours).

Sales and employment data were obtained for the 84 UCEs that manufacture the 34 chemicals subject to this final rule to identify those UCEs that qualify for "small business" status, where data were available. Based on the SBA size standards for the NAICS codes that applied to those UCEs, 25 of the 84 UCEs (30%) were identified as small. The significance of this final rule's impact on these small businesses was analyzed by examining the number of small entities that experienced different levels of costs as a percentage of their sales. In such an analysis, small businesses are placed in the following

categories on the basis of cost-to-sales ratios: less than 1.0%, 1.0% but less than 3.0%, and 3.0% or greater. Of the 25 companies that qualified for small business status according to the SBA size standards, none had a cost-to-sales ratio that exceeded 1.0%. Given these results, EPA concludes that there is not a significant economic impact on these small entities as a result of this final rule.

There were an additional seven UCEs for which the NAICS code, sales, and employment data were not available. Because of this, EPA could not determine whether they are small businesses or assess the potential impacts of the test rule on them. However, it is very unlikely that all seven of these UCEs are small entities. Moreover, given the Agency's analysis for the identified small businesses, which concluded that there is not a significant economic impact on any of them, EPA believes it is reasonable to conclude that even if some of these seven UCEs are small entities, they will not experience a significant economic impact. Consequently, EPA concludes that there will not be a significant economic impact on a substantial number of small entities as a result of this final rule.

In analyzing potential impacts on small entities, RFA recognizes that it may be appropriate at times to use an alternate definition of small business. As such, section 601(3) of RFA provides that an agency may establish a different definition of small business after consultation with the SBA Office of Advocacy and after notice and an opportunity for public comment. Even though the Agency has used the default SBA definition of small business to conduct its analysis of potential small entity impacts for this final rule, EPA does not believe that the SBA size standards are generally the best standards to use in assessing potential impacts of TSCA section 4(a) test rules on small entities. EPA believes that a standard based on total annual sales, such as the definition found in TSCA (40 CFR 704.3), may provide a more appropriate means to determine the ability of a chemical manufacturing firm to support testing without significant costs or burdens. EPA is determining what level of annual sales would provide the most appropriate size cutoff with regard to various segments of the chemical industry usually impacted by TSCA section 4(a) test rules, but has not yet reached a determination. Therefore, as previously stated in this unit, the RFA determination for this final rule is based on an analysis using the default SBA size standards. In the proposal to this rule, EPA requested comment on whether the Agency should establish an alternate small business definition to use in small entity impact analyses for future TSCA section 4(a) test rules, and what size cutoff may be appropriate. The comment received on this subject and the Agency's response are in Unit III.K.

Although EPA has not yet pursued the establishment of an alternate definition for use in the analysis conducted for this final rule, the analysis does present the results of calculations using a standard based on total annual sales. Under the TSCA definition at 40 CFR 704.3, a firm is classified as small if it has either total annual sales below $40 million and annual production or importation volume less than or equal to 100,000 pounds, or, annual sales below $4 million. Of the 84 UCEs subject to the final rule, a maximum of 9 can be classified as small under the TSCA definition, with data unavailable for an additional 7 firms. None of those 9 firms will be affected at the level of 1.0% or greater. Impacts could not be determined for the 7 firms whose size was unknown, but as with the analysis conducted using the SBA size standards, the Agency believes it is reasonable to conclude that under the referenced TSCA definition of small, the 7 UCEs will not experience significant economic impacts as a result of the final rule.

The estimated costs of the TSCA section 12(b) export notification, which, as a result of this final rule, would be required for the first export to a particular country of a chemical subject to the rule, is estimated to be $61.31 for the first time that an exporter must comply with TSCA section 12(b) export notification requirements, and $18.07 for each subsequent export notification submitted by that exporter (Refs. 57, 60, and 61). EPA has concluded that the costs of TSCA section 12(b) export notification would have a negligible inpact on exporters of the chemicals in this final rule, regardless of the size of the exporter.

Therefore, the Agency certifies that this final rule will not have a significant adverse economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), EPA has determined that this regulatory action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or for the private sector in any 1 year. The analysis of the costs associated with this action are described in Unit VIII. In addition, since EPA does not have any information to indicate that any State, local, or tribal government manufactures or processes the chemicals covered by this action such that this final rule would apply directly to State, local, or tribal governments, EPA has determined that this final rule does not significantly or uniquely affect small governments. Accordingly, this final rule is not subject to the requirements of sections 202, 203, 204, and 205 of UMRA.

D. Executive Order 13132

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."

This 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. This final rule establishes testing and recordkeeping requirements that apply to manufacturers (including importers) and processors of certain chemicals. Because EPA has no information to indicate that any State or local government manufactures or processes the chemical substances covered by this action, this final rule does not apply directly to States and localities and will not affect State and local governments. Thus, Executive Order 13132 does not apply to this final rule. Although Executive Order 13132 was not yet in effect when EPA developed the proposed rule, its predecessor, Executive Order 12875, was and EPA's conclusions under Executive Order 13132 are consistent with EPA's considerations under Executive Order 12875.

E. Executive Order 13175

Under Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000), this final rule does not have tribal implications

because it will not have substantial direct effects on tribal governments, 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, as specified in the Order. As indicated above, EPA has no information to indicate that any tribal government manufactures or processes the chemical substances covered by this action. Thus, Executive Order 13175 does not apply to this final rule. Although Executive Order 13175 was not yet in effect when EPA developed the proposed rule, its predecessor, Executive Order 13084, was and EPA's conclusions under Executive Order 13175 are consistent with EPA's considerations under Executive Order 13084.

F. Executive Order 13045

This final rule does not require special consideration pursuant to the terms of Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because it is not likely to have an annual effect on the economy of $100 million or more and it does not have a potential effect or impact on children. This final rule establishes testing and recordkeeping requirements that apply to manufacturers (including importers) and processors of certain chemicals, and will result in the production of information that will assist the Agency and others in determining whether the chemical substances in this final rule present potential risks, allowing the Agency and others to take appropriate action to investigate and mitigate those risks.

G. Executive Order 13211

This final rule is not a "significant energy action" as defined in Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. As such, the Agency has concluded that this final rule is not likely to have adverse energy effects.

H. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113 section 12(d) (15 U.S.C 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless 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, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Because this final rule involves technical standards, the Agency conducted a search to identify potentially applicable voluntary consensus standards. No such standards were identified and none were brought to the Agency's attention in comments. Therefore, EPA has decided to use the *in vitro* dermal absorption rate test standard finalized in this document. This standard was based on the peer reviewed method of Bronaugh and Collier which was published in 1991 (Ref. 13) and refined by a panel of Federal scientists from ITC member and liaison agencies (including, for example, CPSC, DoD, EPA, FDA, NIOSH, and OSHA). The method was further refined by this panel in response to public comments.

I. Executive Order 12898

Pursuant to Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), the Agency has considered environmental justice-related issues with regard to the potential impacts of this action on the environmental and health conditions in minority and low-income populations. The Agency believes that the information collected under this final rule will assist EPA and others in determining the hazards and risks associated with the chemicals covered by the final rule. Although not directly impacting environmental justice-related concerns, this information will better enable the Agency to protect human health and the environment.

J. Congressional Review Act

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

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 799

Environmental protection, Chemicals, Hazardous substances, Laboratories, Reporting and recordkeeping requirements.

Dated: April 4, 2004.

Susan B. Hazen,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

■ Therefore, 40 CFR chapter I is amended as follows:

■ 1. By amending part 9 as follows:

PART 9—[AMENDED]

■ a. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ b. In § 9.1, the table is amended by adding an entry for § 799.5115 in numerical order under the indicated heading to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Identification of Specific Chemical Substance and Mixture Testing Requirements	
* * * * *	
799.5115	2070–0033
* * * * *	

* * * * *

■ 2. By amending part 799 as follows:

PART 799—[AMENDED]

■ a. The authority citation for part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

■ b. By adding § 799.5115 to subpart D to read as follows:

§ 799.5115 Chemical testing requirements for certain chemicals of interest to the Occupational Safety and Health Administration.

(a) *What substances will be tested under this section?* Table 2 in paragraph (j) of this section identifies the chemical substances that must be tested under this section. For the chemical substances identified as "Class 1" substances in Table 2 in paragraph (j) of this section, the purity of each chemical substance must be 99% or greater, unless otherwise specified in this section. For the chemical substances identified as "Class 2" substances in Table 2 in paragraph (j) of this section, a representative form of each chemical substance must be tested.

(b) *Am I subject to this section?* (1) If you manufacture (including import) or intend to manufacture, or process or intend to process, any chemical substance listed in Table 2 in paragraph (j) of this section at any time from May 26, 2004, to the end of the test data reimbursement period as defined in 40 CFR 791.3(h), you are subject to this section with respect to that chemical substance.

(2) If you do not know or cannot reasonably ascertain that you manufacture or process a chemical substance listed in Table 2 in paragraph (j) of this section during the time period described in paragraph (b)(1) of this section (based on all information in your possession or control, as well as all information that a reasonable person similarly situated might be expected to possess, control, or know, or could obtain without an unreasonable burden), you are not subject to this section with respect to that chemical substance.

(c) *If I am subject to this section, when must I comply with it?* (1)(i) Persons subject to this section are divided into two groups, as set forth in Table 1 of this paragraph: Tier 1 (persons initially required to comply) and Tier 2 (persons not initially required to comply). If you are subject to this section, you must determine if you fall within Tier 1 or Tier 2, based on Table 1 of this paragraph.

TABLE 1.—PERSONS SUBJECT TO THE RULE: PERSONS IN TIER 1 AND TIER 2

Persons initially required to comply with this section (Tier 1)	Persons not initially required to comply with this section (Tier 2)
Persons not otherwise specified in column 2 of this table that manufacture (as defined at TSCA section 3(7)) or intend to manufacture a chemical substance included in this section.	A. Persons who manufacture (as defined at TSCA section 3(7)) or intend to manufacture a chemical substance included in this section solely as one or more of the following: —As a byproduct (as defined at 40 CFR 791.3(c)); —As an impurity (as defined at 40 CFR 790.3); —As a naturally occurring substance (as defined at 40 CFR 710.4(b)); —As a non-isolated intermediate (as defined at 40 CFR 704.3); —As a component of a Class 2 substance (as described at 40 CFR 720.45(a)(1)(i)); —In amounts of less than 500 kilograms (kg) (1,100 lbs) annually (as described at 40 CFR 790.42(a)(4)); or —For research and development (as described at 40 CFR 790.42(a)(5)). B. Persons who process (as defined at TSCA section 3(10)) or intend to process a chemical substance included in this section (see 40 CFR 790.42(a)(2)).

(ii) Table 1 in paragraph (c)(1)(i) of this section expands the list of persons specified in § 790.42(a)(2), (a)(4), and (a)(5) of this chapter, who, while legally subject to this section, must comply with the requirements of this section only if directed to do so by EPA under the circumstances set forth in paragraphs (c)(4) through (c)(7) and (c)(10) of this section.

(2) If you are in Tier 1 with respect to a chemical substance listed in Table 2 in paragraph (j) of this section, you must, for each test required under this section for that chemical substance, either submit to EPA a letter of intent to test or apply to EPA for an exemption from testing. The letter of intent to test or the exemption application must be received by EPA no later than June 25, 2004.

(3) If you are in Tier 2 with respect to a chemical substance listed in Table 2 in paragraph (j) of this section, you are considered to have an automatic conditional exemption and you will be required to comply with this section with regard to that chemical substance only if directed to do so by EPA under paragraphs (c)(5), (c)(7), or (c)(10) of this section.

(4) If no person in Tier 1 has notified EPA of its intent to conduct one or more of the tests required by this section on any chemical substance listed in Table 2 in paragraph (j) of this section by June 25, 2004, EPA will publish a **Federal Register** document that would specify the test(s) and the chemical substance(s) for which no letter of intent has been submitted, and notify manufacturers in Tier 2A of their obligation to submit a letter of intent to test or to apply for an exemption from testing.

(5) If you are in Tier 2A with respect to a chemical substance listed in Table 2 in paragraph (j) of this section, and if you manufacture this chemical substance as of May 26, 2004, or within 30 days after publication of the **Federal Register** document described in paragraph (c)(4) of this section, you must, for each test specified for that chemical substance in the document described in paragraph (c)(4) of this section, either submit to EPA a letter of intent to test or apply to EPA for an exemption from testing. The letter of intent to test or the exemption application must be received by EPA no later than 30 days after publication of the document described in paragraph (c)(4) of this section.

(6) If no manufacturer in Tier 1 or Tier 2A has notified EPA of its intent to conduct one or more of the tests required by this section on any chemical substance listed in Table 2 in paragraph (j) of this section within 30 days after the publication of the **Federal Register** document described in paragraph (c)(4) of this section, EPA will publish another **Federal Register** document that would specify the test(s) and the chemical substance(s) for which no letter of intent has been submitted, and notify processors in Tier 2B of their obligation to submit a letter of intent to test or to apply for an exemption from testing.

(7) If you are in Tier 2B with respect to a chemical substance listed in Table 2 in paragraph (j) of this section, and if you process this chemical substance as of May 26, 2004, or within 30 days after publication of the **Federal Register** document described in paragraph (c)(6) of this section, you must, for each test specified for that chemical substance in the document described in paragraph (c)(6) of this section, either submit to EPA a letter of intent to test or apply to EPA for an exemption from testing. The

letter of intent to test or the exemption application must be received by EPA no later than 30 days after publication of the document described in paragraph (c)(6) of this section.

(8) If no manufacturer or processor has notified EPA of its intent to conduct one or more of the tests required by this section for any of the chemical substances listed in Table 2 in paragraph (j) of this section within 30 days after the publication of the **Federal Register** document described in paragraph (c)(6) of this section, EPA will notify all manufacturers and processors of those chemical substances of this fact by certified letter or by publishing a **Federal Register** document specifying the test(s) for which no letter of intent has been submitted. This letter or **Federal Register** document will additionally notify all manufacturers and processors that all exemption applications concerning the test(s) have been denied, and will give the manufacturers and processors of the chemical substance(s) an opportunity to take corrective action.

(9) If no manufacturer or processor has notified EPA of its intent to conduct one or more of the tests required by this section for any of the chemical substances listed in Table 2 in paragraph (j) of this section within 30 days after receipt of the certified letter or publication of the **Federal Register** document described in paragraph (c)(8) of this section, all manufacturers and processors subject to this section with respect to that chemical substance who are not already in violation of this section will be in violation of this section.

(10) If a problem occurs with the initiation, conduct, or completion of the required testing or the submission of the required data with respect to a chemical substance listed in Table 2 in paragraph (j) of this section, under the procedures in §§ 790.93 and 790.97 of this chapter, EPA may initiate termination proceedings for all testing exemptions with respect to that chemical substance and may notify persons in Tier 1 and Tier 2 that they are required to submit letters of intent to test or exemption applications within a specified period of time.

(11) If you are required to comply with this section, but your manufacturing or processing of a chemical substance listed in Table 2 in paragraph (j) of this section begins after the applicable compliance date referred to in paragraphs (c)(2), (c)(5), (c)(7), or (c)(10) of this section, you must either submit a letter of intent to test or apply to EPA for an exemption. The letter of intent to test or the exemption application must be received by EPA no later than the day you begin manufacturing or processing.

(d) *What must I do to comply with this section?* (1) To comply with this section you must either submit to EPA a letter of intent to test, or apply to and obtain from EPA an exemption from testing.

(2) For each test with respect to which you submit to EPA a letter of intent to test, you must conduct the testing specified in paragraph (h) of this section and submit the test data to EPA.

(3) You must also comply with the procedures governing test rule requirements in part 790 of this chapter, as modified by this section, including the submission of letters of intent to test or exemption applications, the conduct of testing, and the submission of data; Part 792—Good Laboratory Practice Standards of this chapter; and this section. The following provisions of 40 CFR part 790 do not apply to this section: Paragraphs (a), (d), (e), and (f) of § 790.45; paragraph (a)(2) and paragraph (b) of § 790.80; and § 790.48.

(e) *If I do not comply with this section, when will I be considered in violation of it?* You will be considered in violation of this section as of 1 day after the date by which you are required to comply with this section.

(f) *How are EPA's data reimbursement procedures affected for purposes of this section?* If persons subject to this section are unable to agree on the amount or method of reimbursement for test data development for one or more chemical substances included in this section, any person may request a hearing as described in 40 CFR part 791. In the determination of fair reimbursement shares under this section, if the hearing officer chooses to use a formula based on production volume, the total production volume amount will include amounts of a chemical substance produced as an impurity.

(g) *Who must comply with the export notification requirements?* Any person who exports, or intends to export, a chemical substance listed in Table 2 in paragraph (j) of this section is subject to part 707, subpart D, of this chapter.

(h) *How must I conduct my testing?* The chemical substances identified by Chemical Abstract Service Registry Number (CAS No.) and chemical name in Table 2 in paragraph (j) of this section must be tested as follows:

(1) *Applicability.* This *in vitro* dermal absorption rate test standard must be used for all testing conducted under this section. In certain instances, modifications to the test standard may be considered. The procedures for applying for a modification to the test standard are specified in 40 CFR 790.55.

(2) *Source.* The test standard is based on the Protocol for *In Vitro* Percutaneous Absorption Rate Studies, referenced in paragraph (h)(8)(v) of this section.

(3) *Purpose.* In the assessment and evaluation of the characteristics of a chemical substance or mixture for which testing is required under this section (test substance), it is important to determine the rate of absorption of the test substance in cases where dermal exposure to the test substance in the workplace may result in systemic toxicity. This test standard is designed to develop data that describe the rate at which test substances are absorbed through the skin so that the body burden of a test substance resulting from dermal exposure in the workplace can be better evaluated.

(4) *Principles of the test standard.* This test standard describes procedures for measuring a permeability constant (Kp) and two short-term dermal absorption rates for test substances in liquid form. The test standard utilizes *in vitro* diffusion cell techniques which allow absorption studies to be conducted with human cadaver skin. *In vitro* diffusion studies are necessary for measuring a Kp. This test standard specifies the use of static or flow-through diffusion cells and non-viable human cadaver skin. It also requires the use of radiolabeled test substances unless it can be demonstrated that procedures utilizing a non-radiolabeled test substance are able to measure the test substance with a sensitivity equivalent to the radiolabeled method.

(5) *Test procedure*—(i) *Choice of membrane*—(A) *Skin selection.* Human cadaver skin must be used in all testing conducted under this test standard. This test standard does not require use of live skin, or the maintenance of skin viability during the course of the experiment. However, the time elapsed between death and harvest of tissue must be reported.

(B) *Number of skin samples.* Data for the determination of a Kp must be obtained from a minimum of six skin samples and the skin samples must come from at least three different human subjects (two skin samples from each subject) in order to allow for biological variation between subjects. Data for the determination of each short-term (i.e., 10 minute and 60 minute) absorption rate must be obtained from a minimum of six skin samples and the skin samples must come from at least three different human subjects (two skin samples from each subject)

(C) *Anatomical region.* In order to minimize the variability in skin absorption measurements for these tests, samples of human cadaver skin must be obtained from the abdominal region of human subjects of known source and disease state.

(D) *Validation of human cadaver skin barrier.* Prior to conducting an experiment with the test substance, barrier properties of human cadaver skin must be pretested either by:

(*1*) Measuring the absorption of a standard compound such as tritiated water as discussed, for example, in the reference in paragraph (h)(8)(i) of this section;

(*2*) Determining an electrical resistance to an alternating current, at up to two volts; or

(*3*) Measuring trans-epidermal water loss from the stratum corneum.

(ii) *Preparation of membrane.* Full thickness skin must not be used. A suitable membrane must be prepared from skin either with a dermatome at a thickness of 200 to 500 micrometers (um), or with heat separation by treating the skin at 60° C for 45 seconds to 2 minutes after which the epidermis can be peeled from the dermis. These epidermal membranes can be stored frozen (-20° C) for up to 3 months, if necessary, if they are frozen quickly and the barrier properties of the samples are confirmed immediately prior to commencement of the experiment.

(iii) *Diffusion cell design.* Either static or flow-through diffusion cells must be used in these studies. To ensure that an increase in concentration of the test substance in the receptor fluid does not alter penetration rate, the testing laboratory must verify that the concentration of the test substance in the receptor fluid is less than 10% of the initial concentration in the donor chamber. Concentration of the neat (i.e., undiluted) liquid must be taken as the density of the test substance.

(iv) *Temperature.* Skin must be maintained at a physiological temperature of 32° C during the test.

(v) *Testing hydrophobic chemicals.* When testing hydrophobic chemicals, polyethoxyoleate (polyethylene glycol (PEG) 20 oleyl ether) must be added to the receptor fluid at a concentration of 6%.

(vi) *Vehicle.* If the test substance is a liquid at room temperature and does not damage the skin during the determination of Kp, it must be applied neat. If the test substance cannot be applied neat because it is a solid at room temperature or because it damages the skin when applied neat, it must be dissolved in water. If the concentration of a hydrophobic test substance in water is not high enough so that a steady-state absorption can be obtained, the test substance must be dissolved in isopropyl myristate. A sufficient volume of liquid must be used to completely cover the skin and provide the amount of test substance as described in paragraph (h)(5)(vii) of this section.

(vii) *Dose*—(A) *Kp.* A Kp must be determined for each test chemical. An "infinite dose" of the test substance must be applied to the skin to achieve the steady-state rate of absorption necessary for calculation of a Kp. Infinite dose is defined as the concentration of a test substance required to give an undepletable reservoir on the surface of the skin. The actual concentration required to give an undepletable reservoir on the surface of the skin depends on the rate of penetration of the test substance. Preliminary studies may be necessary to determine this concentration. Percutaneous absorption must be determined under occluded (i.e., covered) conditions unless it is demonstrated that such conditions cause leakage of material or damage to the skin membrane as a result of unrealistically high pressures or excessive hydration. Skin barrier integrity must be verified at the end of the experiment by the methods discussed in paragraph (h)(5)(i)(D) of this section.

(B) *Short-term absorption rates.* Short-term absorption rates must be determined for all test chemicals. The dose of test chemical applied to the skin must be sufficient to completely cover the exposed skin surface. A minimum of four diffusion cells must be set up using skin from a single subject. Two diffusion cells must be terminated at 10 minutes. The remaining two diffusion cells must be terminated at 60 minutes. Skin absorption at each sampling time is the sum of the receptor fluid levels and the absorbed test substance that remains in the skin, as discussed, for example, in the reference in paragraph (h)(8)(iii) of this section. Unabsorbed chemical must be removed from the skin surface by washing gently with soap and water. This experiment must be repeated with skin from two additional subjects. In order to ensure reliable short-term absorption rates, percutaneous absorption must be determined under occluded conditions unless it is demonstrated that such conditions cause leakage of material or damage to the skin membrane as a result of unrealistically high pressures or excessive hydration.

(viii) *Study duration*—(A) *Kp.* The *in vitro* dermal absorption rate test must be performed until at least four absorption measurements per diffusion cell experiment are obtained during the steady-state absorption portion of the experiment. A preliminary study may be useful to establish time points for sampling. The required absorption measurements can be accomplished in an hour or two with fast-penetrating chemicals but may require 24 hours or longer for slow-penetrating chemicals. Unabsorbed test substance need not be removed from the surface of the skin after each experiment.

(B) *Short-term absorption rates.* The test substance must be applied to skin for durations of 10 and 60 minutes. At the end of the study, the unabsorbed test substance must be removed from the surface of the skin with soap and water and the amount absorbed into the skin and receptor fluid must be determined, as discussed, for example, in the reference in paragraph (h)(8)(iii) of this section.

(6) *Results*—(i) *Kp.* The Kp must be calculated by dividing the steady-state rate of absorption (measured in micrograms (ug) x hr^{-1} x centimeters $(cm)^{-2}$) by the concentration of the test substance (measured in ug x cm^{-3}) applied to the skin. (For example, if the steady-state rate is 1 microgram x hr^{-1} x cm^{-2} and the concentration applied to the skin is 1,000 micrograms x cm^{-3}, then the Kp value is calculated to be 0.001 cm x hr^{-1}.) The mean and standard deviation of the calculated Kp values for all diffusion cell experiments must be determined.

(ii) *Short-term absorption rate.* The absorption rates (ug x hr^{-1} x cm^{-2}) must be determined from the total amount of test substance found in the receptor fluid and skin after the 10-minute and 60-minute exposures for each diffusion cell experiment. The mean and standard deviation of 10-minute short-term absorption rates from all experiments must be calculated. The mean and standard deviation of 60-minute short-term absorption rates from all experiments must also be calculated.

(7) *Test report.* In addition to compliance with the TSCA Good Laboratory Practice Standards (GLPS) at 40 CFR part 792, the following specific information must be collected and reported by the date in paragraph (i) of this section:

(i) *Test systems and test methods.* (A) A description of the date, time, and location of the test, the name(s) of the person(s) conducting the test, the location of records pertaining to the test, as well as a GLPS statement. These statements must be certified by the signatures of the individuals performing the work and their supervisors.

(B) A description of the source, identity, and purity of the test substance and the source, identity, and handling of the test skin. There must be a detailed description of the test procedure and all materials, devices used and doses tested, as well as a detailed description and illustration of static or flow-through cell design. There must also be a description of the skin preparation method, including measurements of the skin membrane thickness.

(C) A description of the analytical techniques to be used, including their accuracy, precision, and detection limits (in particular for non-radiolabeled tests), and, if a radiolabel is used, there must be a description of the radiolabel (e.g., type, location of, and radiochemical purity of the label).

(D) All data must be clearly identified as to dose and specimen. Derived values (means, permeability coefficient, graphs, charts, etc.) are not sufficient.

(ii) *Conduct of study.* Data must be collected and reported on the following:

(A) Monitoring of testing parameters.

(B) Temperature of chamber.

(C) Receptor fluid pH.

(D) Barrier property validation.

(E) Analysis of receptor fluid for radioactivity or test chemical

(iii) *Results.* The mean Kp and mean short-term absorption rates must be presented along with their standard deviations and the number of diffusion cell experiments. In addition, all raw data from each individual diffusion cell must be retained to support the calculations of permeability constants and short-term absorption rates. When a radiolabeled test substance is used, a full balance of the radioactivity must be presented, including cell rinsing and stability of the test substance in the donor compartment.

(8) *References.* For background information on this test standard, the following references may be consulted. These references are available under docket ID number OPPT–2003–0006 at the EPA Docket Center, Rm. B102–Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC, from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

(i) Bronaugh, R.L., Stewart, R.F., and Simon, M. Methods for *In Vitro* Percutaneous Absorption Studies VII: Use of Excised Human Skin. *Journal of Pharmaceutical Sciences.* 75:1094–1097. 1986.

(ii) Bronaugh, R.L. and Stewart, R.F. Methods for *In Vitro* Percutaneous Absorption Studies IV: The Flow-Through Diffusion Cell. *Journal of Pharmaceutical Sciences.* 74:64–67. 1985.

(iii) Bronaugh, R.L., Stewart, R.F., and Storm, J.E. Extent of Cutaneous Metabolism During Percutaneous Absorption of Xenobiotics. *Toxicology and Applied Pharmacology.* 99:534–543. 1989.

(iv) Walker, J.D., Whittaker, C. and McDougal, J.N. Role of the TSCA Interagency Testing Committee in Meeting the U.S. Government Data Needs: Designating Chemicals for Percutaneous Absorption Rate Testing. *Dermatotoxicology.* F. Marzulli and H. Maibach, Eds. Taylor & Francis, Washington, DC. pp. 371–381. 1996.

(v) Bronaugh, R.L., and Collier, S.W. Protocol for *In Vitro* Percutaneous Absorption Studies. *In Vitro Percutaneous Absorption: Principles, Fundamentals, and Applications.* R.L. Bronaugh and H.I. Maibach, Eds. CRC Press, Boca Raton, FL. pp. 237–241. 1991.

(i) *Reporting requirements.* The reports submitted under this section must include the information specified in paragraph (h)(7) of this section. A final report for each chemical substance must be received by EPA by June 27, 2005, unless an extension is granted in writing pursuant to 40 CFR 790.55.

(j) *Designation of specific chemical substances for testing.* The chemical substances identified by chemical name, CAS No., and class in Table 2 of this paragraph must be tested in accordance with the testing requirements in paragraph (h) of this section and the requirements described in 40 CFR part 792.

TABLE 2.—CHEMICAL SUBSTANCES DESIGNATED FOR TESTING

CAS No.	Chemical name	Class
75–05–8	Acetonitrile	1
75–15–0	Carbon disulfide	1
75–35–4	Vinylidene chloride	1
77–73–6	Dicyclopentadiene	1
77–78–1	Dimethyl sulfate	1
78–59–1	Isophorone	1
78–87–5	Propylene dichloride	1
79–20–9	Methyl acetate	1
79–46–9	2-Nitropropane	1
91–20–3	Naphthalene	1
92–52–4	Biphenyl	1
98–29–3	*tert*-Butylcatechol	1
100–00–5	*p*-Nitrochlorobenzene	1
100–01–6	*p*-Nitroaniline	1
100–44–7	Benzyl chloride	1

TABLE 2.—CHEMICAL SUBSTANCES DESIGNATED FOR TESTING—Continued

CAS No.	Chemical name	Class
106–42–3	*p*-Xylene	1
106–46–7	*p*-Dichlorobenzene	1
107–06–2	Ethylene dichloride	1
107–31–3	Methyl formate	1
108–03–2	1-Nitropropane	1
108–90–7	Chlorobenzene	1
108–93–0	Cyclohexanol	1
109–66–0	Pentane	1
109–99–9	Tetrahydrofuran	1
110–12–3	Methyl isoamyl ketone	1
111–84–2	Nonane	1
120–80–9	Catechol	1
122–39–4	Diphenylamine	1
123–42–2	Diacetone alcohol	1
127–19–5	Dimethyl acetamide	1
142–82–5	*n*-Heptane	1
150–76–5	*p*-Methoxyphenol	1
25013–15–4	Vinyl toluene	2
34590–94–8	Dipropylene glycol methyl ether	2

(k) *Effective date* This section is effective on May 26, 2004.

[FR Doc. 04–9409 Filed 4–23–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 083–0436a; FRL–7650–4]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). The revisions concern stack monitoring, source sampling, and the emission of volatile organic compounds from bakery ovens. We are approving local rules that are administrative or regulate this emission source under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on June 25, 2004 without further notice, unless EPA receives adverse comments by May 26, 2004. If we receive such comments. we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

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

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

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

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

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726

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

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

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

Table of Contents

I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the date that they were adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVUAPCD	1080	Stack Monitoring	12/17/92	09/28/94
SJVUAPCD	1081	Source Sampling	12/16/93	05/24/94
SJVUAPCD	4693	Bakery Ovens	05/16/02	08/06/02

By operation of law the submittals of Rules 1080 and 1081 were found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review. On August 30, 2002, the submittal of Rule 4693 was found to meet the completeness criteria.

B. Are there other versions of these rules?

Rule 1080 is a District-wide merger of the following individual county SIP rules:

- Fresno County Rule 108, Source Monitoring (approved on August 22, 1977, 42 FR 42219).
- Kern County Rule 108, Stack Monitoring (approved on July 6, 1982, 47 FR 29233).
- Kings County Rule 108.1, Stack Monitoring (approved on August 4, 1978, 43 FR 34468).
- Madera County Rule 109, Source Monitoring (approved on November 18, 1983, 48 FR 52450).
- Merced County Rule 108, Stack Monitoring (approved on February 1, 1984, 49 FR 3988).
- San Joaquin County Rule 108, Stack Monitoring (approved on November 7, 1978, 43 FR 51771).
- Stanislaus County Rule 108, Stack Monitoring (approved on August 18, 1978, 43 FR 36624).
- Tulare County Rule 108, Stack Monitoring (approved on June 18, 1982, 47 FR 26385).

Rule 1081 is a District-wide merger of the following individual county SIP rules:

- Fresno County Rule 108.1, Source Sampling (approved on August 22, 1977, 42 FR 42219).
- Kern County Rule 108.1, Source Sampling (approved on August 22, 1977, 42 FR 42219).
- Kings County Rule 108, Source Monitoring (approved on August 4, 1978, 43 FR 34468).
- Madera County Rule 110, Source Sampling (approved on November 18, 1983, 48 FR 52450).
- Merced County Rule 108.1, Source Sampling (approved on June 14, 1978, 43 FR 25689).
- San Joaquin County Rule 108.2, Source Test Methods (approved on June 18, 1982, 47 FR 26385).
- Stanislaus County Rule 108.1, Source Sampling (approved on August 22, 1977, 42 FR 42219).
- Tulare County Rule 108.1, Source Sampling (approved on August 22, 1977, 42 FR 42219).

Rule 4693 is a new rule.

C. What Is the Purpose of the Submitted Rule or Rule Revisions?

The purpose of Rules 1080 and 1081 revisions is to simplify the SIP by merging the related SIP rules from eight individual counties into one District-wide rule.

The purpose of Rule 4693 is to regulate VOC emissions from bakery ovens. VOCs help produce ground-level ozone, smog, and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA), must require Reasonably Available Control Technology (RACT) for major sources in ozone nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). The SJVUAPCD is a severe ozone nonattainment area. There are major sources of VOC in the commercial bakery oven source category exceeding 25 tons per year VOC emissions. Therefore, Rule 4693 must fulfill the requirements of RACT. Rules 1080 and 1081 are administrative and procedural rules that need not fulfill the requirements of RACT for ozone or BACM/BACT for PM–10.

The following guidance documents were used for reference:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans,* U.S. EPA, 40 CFR part 51.
- *Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,* U.S. EPA (May 25, 1988) (the Bluebook).
- *Guidance Document for Correcting Common VOC & Other Rule Deficiencies,* U.S. EPA Region IX (August 21, 2001) (the Little Bluebook).

B. Do the Rules Meet the Evaluation Criteria?

We believe the rules are consistent with the relevant policy and guidance regarding enforceability, SIP relaxations, and fulfilling the requirements of RACT.

The TSDs have more information on our evaluation.

C. EPA Recommendation to Further Improve the Rules

The TSD describes an additional rule revision that does not affect EPA's current action but is recommended for the next time the local agency modifies Rule 1080.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this, so we are finalizing the approval without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by May 26, 2004, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective

without further notice on June 25, 2004. This will incorporate these rules into the federally-enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this direct final rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

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

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 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 June 25, 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: April 2, 2004.

Sally Seymour,

Acting Regional Administrator, Region IX.

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

PART 52 [AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(197)(i)(C)(*5*), (199)(i)(D)(*8*), and (303)(i)(C)(*3*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(197) * * *

(i) * * *

(C) * * *

(*5*) Rule 1081, originally adopted on April 11, 1991 and amended on December 16, 1993.

* * * * *

(199) * * *

(i) * * *

(D) * * *

(*8*) Rule 1080, originally adopted on June 18, 1992 and amended on December 17, 1992.

* * * * *

(303) * * *

(i) * * *

(C) * * *

(*3*) Rule 4693, adopted on May 16, 2002.

* * * * *

[FR Doc. 04–9279 Filed 4–23–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 304–0446c; FRL–7651–6]

Interim Final Determination to Stay and/or Defer Sanctions, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is making an interim final determination to stay and/or defer imposition of sanctions based on a proposed approval of revisions to the

South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP) published elsewhere in today's **Federal Register**. The revisions concern South Coast Air Quality Management District Rule 1132—Further Control of VOC Emissions from High-Emitting Spray Booth Facilities.

DATES: This interim final determination is effective on April 26, 2004. However, comments will be accepted until May 26, 2004.

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

You can inspect copies of the submitted rule revisions, EPA's technical support document (TSD), and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the submitted rule revisions by appointment at the following locations: Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105; California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814; and, South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765–4182.

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

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, EPA Region IX, at either (415) 947–4111, or *wamsley.jerry@epa.gov*.

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

I. Background

On September 13, 2002 (67 FR 57957), we published a limited approval and limited disapproval of SCAQMD Rule 1132 as adopted locally on January 19, 2001, and submitted by the State on May 8, 2001. We based our limited disapproval action on certain deficiencies in the submittal. This disapproval action started a sanctions clock for imposition of offset sanctions 18 months after October 15, 2002, and highway sanctions 6 months later, pursuant to section 179 of the Clean Air Act (CAA) and our regulations at 40 CFR 52.31.

On March 5, 2004, SCAQMD adopted revisions to Rule 1132 that were intended to correct the deficiencies identified in our limited disapproval action. On April 1, 2004, the State submitted these revisions to EPA. In the Proposed Rules section of today's **Federal Register**, we have proposed approval of this submittal because we believe it corrects the deficiencies identified in our September 13, 2002, disapproval action. Based on today's proposed approval, we are taking this final rulemaking action, effective on publication, to stay and/or defer imposition of sanctions that were triggered by our September 13, 2002, limited disapproval.

EPA is providing the public with an opportunity to comment on this stay/deferral of sanctions. If comments are submitted that change our assessment described in this final determination and the proposed full approval of revised SCAQMD Rule 1132, we intend to take subsequent final action to reimpose sanctions pursuant to 40 CFR 51.31(d). If no comments are submitted that change our assessment, then all sanctions and sanction clocks will be permanently terminated on the effective date of a final rule approval.

II. EPA Action

We are making an interim final determination to stay and/or defer CAA section 179 sanctions associated with SCAQMD Rule 1132 based on our concurrent proposal to approve the State's SIP revision as correcting deficiencies that initiated sanctions.

Because EPA has preliminarily determined that the State has corrected the deficiencies identified in EPA's limited disapproval action, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date, and EPA will consider any comments received in determining whether to reverse such action.

EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has reviewed the State's submittal and, through its proposed action, is indicating that it is more likely than not that the State has corrected the deficiencies that started the sanctions clocks. Therefore, it is not in the public interest to initially impose sanctions or to keep applied sanctions in place when the State has most likely done all it can to correct the deficiencies that triggered the sanctions clocks. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiencies prior to the rulemaking approving the State's submittal. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to stay and/or defer sanctions while EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

III. Statutory and Executive Order Reviews

This action stays and/or defers federal sanctions and imposes no additional requirements.

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

This action is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action.

The administrator certifies that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

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

This action 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 rule 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.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply to this rule because it imposes no standards.

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to Congress and the Comptroller General. However, section 808 provides that any rule for which the issuing agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). EPA has made such a good cause finding, including the reasons therefor, and established an effective date of April 26, 2004. 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 rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 25, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which 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, Intergovernmental regulations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 12, 2004.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 04–9281 Filed 4–23–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 304–0446a; FRL–7651–3]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from several source categories such as aerospace manufacturing and coating, metal parts coating, wood products coating, and fiberglass composite manufacturing. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on June 25, 2004 without further notice, unless EPA receives adverse comments by May 26, 2004. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, or e-mail to *steckel.andrew@epa.gov*, or submit comments at *http://www.regulations.gov*.

You can inspect copies of the submitted SIP revisions, EPA's technical support documents (TSDs), and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the submitted SIP revisions by appointment at the following locations: Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460; California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814; and, South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765–4182.

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

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, EPA Region IX, at either (415) 947–4111, or *wamsley.jerry@epa.gov*.

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

Table of Contents

I. The State's Submittal

A. What Rule did the State Submit?

Table 1 lists the rule we are approving with the dates that it was adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule Title	Adopted	Submitted
SCAQMD	1132	Further Control of VOC Emissions from High-Emitting Spray Booth Facilities.	03/05/04	04/01/04

On April 8, 2004, EPA found this rule submittal met the completeness criteria in 40 CFR part 51 Appendix V. These criteria must be met before formal EPA review can begin.

B. Are There Other Versions of This Rule?

EPA incorporated a prior version of Rule 1132 into the SIP with a limited approval and limited disapproval (see 67 **Federal Register** (FR) 57957, September 13, 2002). This version of Rule 1132 was adopted by the SCAQMD Governing Board on January 19, 2001. There are no extant submittals of Rule 1132 beyond the submittal in today's action.

C. What is the purpose of the submitted rule revisions?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. SCAQMD Rule 1132 is a rule designed to reduce VOC emissions at industrial sites engaged in high emitting spray booth operations such as aerospace manufacturing facilities, miscellaneous metal parts coating operations, wood products coating operations, and fiberglass composite manufacturing facilities. VOCs are emitted during the preparation and coating of the given substrate, as well as the drying phase of the coating process. Rule 1132 establishes a 65% VOC emission reduction requirement from controls in effect on January 19, 2001. This requirement may be met by add-on controls, coating formulation, or a combination of either technique.

SCAQMD's March 5, 2004, amendments to Rule 1132 included these significant changes to the January 19, 2001, version within the SIP.

—A definition was added for Approved Emission Factors that identifies the United Emission Factors for Open Molding of Composites (UEF), or any other emission factors approved by USEPA, CARB, and SCAQMD. The UEF have also been added to the rule in Attachment A.

—An equation was added that specifies how a composite manufacturer is to use the UEF in their Alternative Compliance Plan's (ACP) compliance demonstration. This equation excludes the use of the factor for non-atomizing gel coat applications until this factor is verified by further testing.

—The alternative compliance option requiring a 71.5% facility-wide control was deleted and replaced by the rule's standard 65% compliance requirement. An ACP developed under this provision is subject to review and approval by USEPA, CARB, and SCAQMD.

—The compliance schedule for using an ACP was updated and clarified.

—A change of condition application must now be filed for spray booths operating under high flow rate and low VOC loading.

The TSD has more information about the rule.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). The SCAQMD regulates an ozone nonattainment area (see 40 CFR part 81), so Rule 1132 must fulfill RACT.

Guidance and policy documents that we use to help evaluate specific enforceability and RACT requirements consistently include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.

2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook).

3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).

B. Does the rule meet the evaluation criteria?

We believe Rule 1132 is consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. This rule improves the SIP by seeking additional VOC emission reductions from these high VOC emitting facilities beyond a baseline established by the SCAQMD regulations in place on January 19, 2001.

In our September 13, 2002, final action, we identified Rule 1132 provisions which did not meet the evaluation criteria. SCAQMD has remedied these two deficiencies. First, section (d)(1) was revised to include approved emission factors and an estimation protocol for composite manufacturers to use in demonstrating compliance. Second, section (d)(3) delimits "director's discretion" by allowing for CARB and EPA review of ACPs submitted under this provision. However, the amendment to section (d)(3) removes the requirement for a 71.5% emission reduction and replaces it with the rule's standard 65% requirement; consequently, this amendment warrants further discussion.

The amendment to section (d)(3) does not represent a weakening of the SIP for several reasons. First, since there was no way to determine initially how many firms, if any, would use this compliance option, the SCAQMD SIP did not take credit for the 6.5% emission reduction difference. Second, since initial rule adoption on January 19, 2001, no sources have used this compliance option; so, there is no resulting increase in VOC emissions due to this amendment. Third, should EPA's Economic Incentives Rule apply to a given ACP, then EPA can require that ACP include an added 6.5% VOC emission reduction requirement. Finally, the amendment allows for CARB and EPA review of ACPs submitted under this provision; thus, removing the enforceability problems related to "director's discretion" that existed in the prior version of the rule.

The TSD has more information on our evaluation.

C. EPA Recommendations To Further Improve the Rule

The TSD describes additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agency modifies the rules.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by May 26, 2004, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on June 25, 2004. This action will incorporate this rule into the federally enforceable SIP and end all sanctions and Federal Implementation Plan obligations associated with our September 13, 2002 action.

III. Statutory and Executive Order Reviews

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

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 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 June 25, 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 12, 2004.

Wayne Nastri,

Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(324) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(324) Amended regulation for the following AQMD was submitted on April 1, 2004, by the Governor's designee.

(i) Incorporation by reference.

(A) South Coast Air Quality Management District.

(*1*) Rule 1132, adopted on January 19, 2001 and amended on March 5, 2004.

[FR Doc. 04–9282 Filed 4–23–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[AZ 116–0059a; FRL–7651–1]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the maintenance plan for the Morenci area in Greenlee County, Arizona and granting the request submitted by the State to redesignate this area from nonattainment to attainment for the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide (SO_2). Elsewhere in this **Federal Register,** we are proposing approval and soliciting written comment on this action; if adverse written comments are received, we will withdraw the direct final rule and address the comments received in a new final rule; otherwise no further rulemaking will occur on this approval action.

DATES: This rule is effective June 25, 2004, without further notice, unless we receive adverse comments by May 26, 2004. If EPA receives adverse comments, we will publish a timely withdrawal in the **Federal Register** and inform the public that this rule will not take effect.

ADDRESSES: Please mail or e-mail your comments to Wienke Tax, Air Planning

Office (AIR–2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105. Telephone: (520) 622–1622. E-mail: *tax.wienke@epa.gov*. Comments may also be submitted through the **Federal Register** Web site at *http://www.regulations.gov*. We prefer electronic comments.

You can inspect copies of EPA's **Federal Register** document and Technical Support Document (TSD) at our Region 9 office during normal business hours (*see* address above). Due to increased security, we suggest that you call at least 24 hours prior to visiting the Regional Office so that we can make arrangements to have someone meet you. The **Federal Register** notice and TSD are also available as electronic files on EPA's Region 9 Web page at *http://www.epa.gov/region09/air*.

You may inspect and copy the rulemaking docket for this notice at the following location during normal business hours. Environmental Protection Agency, Region 9, Air Division, Air Planning Office (AIR–2), 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the State Implementation Plan (SIP) materials are also available for inspection at the address listed below: Arizona Department of Environmental Quality, 1110 W. Washington Street, First Floor, Phoenix, AZ 85007, Phone: (602) 771–4335.

FOR FURTHER INFORMATION CONTACT: Wienke Tax, U.S. EPA Region 9, (520) 622–1622, *tax.wienke@epa.gov*, or *www.epa.gov/region09/air*.

SUPPLEMENTARY INFORMATION: Elsewhere in this **Federal Register,** we are proposing approval and soliciting written comment on this action. Throughout this document, "we," "us," and "our" mean U.S. EPA.

Table of Contents

I. Summary of Action

We are approving the maintenance plan for the Morenci SO_2 nonattainment area.[1] We are also approving the State of Arizona's request to redesignate the Morenci area from nonattainment to attainment for the primary SO_2 NAAQS.

II. Introduction

A. What National Ambient Air Quality Standards Are Considered in Today's Rulemaking?

Sulfur dioxide is the subject of this action. The NAAQS are safety thresholds for certain ambient air pollutants set to protect public health and welfare. SO_2 is among the ambient air pollutants for which we have established a health-based standard.

SO_2 causes adverse health effects by reducing lung function, increasing respiratory illness, altering the lung's defenses, and aggravating existing cardiovascular disease. Children, the elderly, and people with asthma are the most vulnerable. SO_2 has a variety of additional impacts, including acidic deposition, damage to crops and vegetation, and corrosion of natural and man-made materials.

There are both short- and long-term primary NAAQS for SO_2. The short-term (24-hour) standard of 0.14 parts per million (ppm) is not to be exceeded more than once per year. The long-term standard specifies an annual arithmetic mean not to exceed 0.030 ppm.[2] The primary standards were established in 1972. (*See* 40 CFR 50.4.)

B. What Is a State Implementation Plan?

The CAA requires States to attain and maintain ambient air quality equal to or better than the NAAQS. The State's commitments for attaining and maintaining the NAAQS are outlined in the State Implementation Plan (or SIP) for that State. The SIP is a planning document that, when implemented, is designed to ensure the achievement of the NAAQS. Each State currently has a SIP in place, and the Act requires that SIP revisions be made periodically as necessary to provide continued compliance with the standards.

SIPs include, among other things, the following: (1) An inventory of emission sources; (2) statutes and regulations adopted by the State legislature and executive agencies; (3) air quality analyses that include demonstrations that adequate controls are in place to meet the NAAQS; and (4) contingency measures to be undertaken if an area fails to attain the standard or make reasonable progress toward attainment by the required date.

The State must make the SIP available for public review and comment through a public hearing, it must be adopted by the State, and submitted to us by the Governor or her/his designee. We take federal action on the SIP submittal, thus rendering the rules and regulations federally enforceable. The approved SIP serves as the State's commitment to take actions that will reduce or eliminate air quality problems. Any subsequent revisions to the SIP must go through the formal SIP revision process specified in the Act.

C. What Is the Background for This Action?

1. When Was the Nonattainment Area Established?

The Phelps Dodge Morenci Incorporated (PDMI) operation was the largest SO_2 point source in the Morenci nonattainment area during its operation. PDMI was located next to the Morenci copper mine, one of the largest copper-producing operations in North America. The Phelps Dodge smelter was located in the Gila River airshed, just north of the Gila River at an altitude of about 4500 feet above sea level. PDMI was located close to the community of Morenci, in eastern Greenlee County, near the Arizona/New Mexico State boundary.

The details of the initial designation of the Morenci SO_2 nonattainment area are provided in footnote 1 in this **Federal Register** notice. On the date of enactment of the 1990 CAA Amendments, SO_2 areas meeting the conditions of section 107(d) of the Act, including the pre-existing SO_2 nonattainment areas, were designated nonattainment for the SO_2 NAAQS by operation of law. Thus, the Morenci area remained nonattainment for the primary SO_2 NAAQS following enactment of the 1990 CAA Amendments on November 15, 1990.

[1] For the definition of the Morenci nonattainment area, see 40 CFR 81.303. EPA designated the entire area of Greenlee County as nonattainment for SO_2 on March 3, 1978 for lack of a State recommendation. EPA approved the State's request that the SO_2-affected portion of Greenlee County be limited to the townships surrounding Morenci on April 10, 1979 (44 FR 21261). Townships T3S,R28E; T3S, R29E; T3S, R30E; T4S, R28E; T4S, R29E; T4S, R30E; T5S, R28E; and T5S, R29E comprise the nonattainment area. Township T5S, R30E is designated as "cannot be classified." Morenci is a town in eastern Greenlee County near the border of Arizona and New Mexico.

[2] The secondary SO_2 NAAQS (3-hour) of 0.50 ppm is not to be exceeded more than once per year. Secondary NAAQS are promulgated to protect welfare. The Morenci area is not classified nonattainment for the secondary standard, and this action relates only to the primary NAAQS.

2. How Has the SIP Addressed CAA Provisions?

As required by the CAA, Arizona submitted a State implementation plan (SIP) for all major sources in the State in January 1972. EPA disapproved the portion of the 1972 Arizona SIP related to smelters (37 FR 10849 and 37 FR 15081) on May 31 and July 27, 1972. On November 30, 1981, EPA proposed conditional approval of Arizona's Multipoint Rollback (MPR) SIP revision (46 FR 58098). On June 3, 1982, Arizona submitted SIP revisions to correct the conditional approval. EPA formally approved Arizona's revised MPR rule as a final rulemaking on January 14, 1983 (48 FR 1717). To complete the Arizona SO_2 SIPS, EPA required that Arizona submit the necessary fugitive emissions control strategies and regulations for existing smelters by August 1, 1984.

3. What Is the Current Status of the Area?

On December 31, 1984, the PDMI smelter was permanently deactivated. Dismantling of the Morenci facility began in 1995 and was complete by December 1996. On October 29, 1997, ADEQ confirmed that the facility was dismantled and no longer existed at the former site. The area remains sparsely settled, and there are minor industrial or commercial activities such as cotton gins, a construction company, and a Federal correctional institute in or near the nonattainment area that produce small quantities of SO_2 emissions.

Currently, there are no operating ambient SO_2 monitors in the Morenci area. We do not expect the cumulative impact of the sources in and around Morenci to cause a violation of the NAAQS. No significant new sources have located in the area, and the smelter was the obvious cause of past violations. These are two additional reasons why our action today is appropriate.

Ambient air quality monitoring data from 1980 to 1984 indicate there were numerous exceedances of the SO_2 NAAQS during the last three years of the smelter operation, primarily in 1983. The following table summarizes the ambient monitoring data from 1980 through 1985.

Year	No. of 24 hour exceedances	1st High (ppm)	2nd High (ppm)	Annual average (ppm)
1980	13	0.211	0.210	0.038
1981	18	0.211	0.203	0.053
1982 [1]	1	0.175	0.091	0.009
1983	15	0.263	0.204	0.046
1984	3	0.196	0.163	0.037
1985 [1]	0	0.006	0.005	0.002

[1] Years that did not have complete data.
Source: EPA AIRS/AQS Database.

Since by far the largest source of SO_2 in the area was the smelter, it was not necessary to continue monitoring for this pollutant once the source was permanently shut down. Currently, there are no operating ambient SO_2 monitors in the Morenci area.

D. What Are the Applicable Clean Air Act (CAA) Provisions for SO_2 Nonattainment Area Plans?

The air quality planning requirements for SO_2 nonattainment areas are set out in subparts 1 and 5 of Part D of title I of the Act. We have issued guidance in a General Preamble describing our views on how we will review SIPs and SIP revisions submitted under title I of the Act, including those containing SO_2 nonattainment area and maintenance area SIP provisions. 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992). The General Preamble discusses our interpretation of the title I requirements, and lists SO_2 policy and guidance documents.

1. What Statutory Provisions Apply?

CAA Sections 191 and 192 address requirements for SO_2 nonattainment areas designated subsequent to enactment of the 1990 CAA Amendments and areas lacking fully approved SIPs immediately before enactment of the 1990 Clean Air Act Amendments. Morenci falls into neither of these categories and is therefore subject to the requirements of subpart 1 of part D of title I of the CAA (sections 171–179B). Section 172 of this subpart contains provisions for nonattainment plans in general; these provisions were not significantly changed by the 1990 CAA Amendments. Among other requirements, CAA Section 172 provides that SIPs must assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) shall be implemented as expeditiously as practicable and shall provide for attainment.

E. What Are the Applicable Provisions for SO_2 Maintenance Plans and Redesignation Requests?

1. What are the Statutory Provisions?

a. CAA Section 107(d)(3)(E).

The 1990 CAA Amendments revised section 107(d)(3)(E) to provide five specific requirements that an area must meet in order to be redesignated from nonattainment to attainment:

(1) The area must have attained the applicable NAAQS;

(2) The area has met all relevant requirements under section 110 and part D of the Act;

(3) The area has a fully approved SIP under section 110(k) of the Act;

(4) the air quality improvement must be permanent and enforceable; and,

(5) the area must have a fully approved maintenance plan pursuant to section 175A of the Act.

b. CAA Section 175A

CAA section 175A provides the general framework for maintenance plans. The maintenance plan must provide for maintenance of the NAAQS for at least 10 years after redesignation, including any additional control measures as may be necessary to ensure such maintenance. In addition, maintenance plans are to contain such contingency provisions as we deem necessary to assure the prompt correction of a violation of the NAAQS that occurs after redesignation. The contingency measures must include, at a minimum, a requirement that the state will implement all control measures contained in the nonattainment SIP prior to redesignation. Beyond these provisions, however, CAA section 175A does not define the content of a maintenance plan.

2. What General EPA Guidance Applies to Maintenance Plans?

Our primary general guidance on maintenance plans and redesignation requests is a September 4, 1992 memo from John Calcagni, entitled "Procedures for Processing Requests to Redesignate Areas to Attainment" ("Calcagni Memo"). Specific guidance on SO_2 redesignations also appears in a January 26, 1995 memo from Sally L. Shaver, entitled "Attainment Determination Policy for Sulfur Dioxide Nonattainment Areas" ("Shaver Memo").

Guidance on SO_2 maintenance plan requirements for an area lacking ambient monitoring data, if the area's historic violations were caused by a major point source that is no longer in operation, is found in an October 18, 2000 memo from John S. Seitz entitled "Redesignation of Sulfur Dioxide Nonattainment Areas in the Absence of Monitored Data" ("Seitz Memo"). The Seitz memo exempts eligible areas from the maintenance plan requirements of continued monitoring.

3. What Are the Requirements for Redesignation of Single-Source SO_2 Nonattainment Areas in the Absence of Monitored Data?

Our historic redesignation policy for SO_2 has called for eight quarters of clean ambient air quality data as a necessary prerequisite to redesignation of any area to attainment. The Seitz memo provides guidance on SO_2 maintenance plan requirements for an area lacking monitored ambient data, if the area's historic violations were caused by a major point source that is no longer in operation. In order to allow for these areas to qualify for redesignation to attainment, this policy requires that the maintenance plan address otherwise applicable provisions, and include:

(1) Emissions inventories representing actual emissions when violations occurred; current emissions; and emissions projected to the 10th year after redesignation;

(2) Dispersion modeling showing that no NAAQS violations will occur over the next 10 years and that the shut down source was the dominant cause of the high concentrations in the past;

(3) Evidence that if the shut down source resumes operation, it would be considered a new source and be required to obtain a permit under the Prevention of Significant Deterioration provisions of the CAA; and

(4) A commitment to resume monitoring before any major SO_X source commences operation.

III. Review of the Arizona State Submittals Addressing These Provisions

A. Is the Maintenance Plan Approvable?

1. Did the State Meet the CAA Procedural Provisions?

On June 21, 2002, ADEQ submitted to EPA the "Morenci Sulfur Dioxide Nonattainment Area State Implementation and Maintenance Plan" and request to redesignate the area to attainment. The State verified that it had adhered to its SIP adoption procedures. On October 30, 2002, we found that the submittal met the completeness criteria in 40 CFR part 51, Appendix V, which must be satisfied before EPA formal review.

2. Does the Area Qualify for Review under the Seitz Memo?

a. Were the Area's Violations Caused by a Major Point Source of SO_X Emissions That Is No Longer in Operation?

As discussed above, the only major source of SO_X emissions within the Morenci nonattainment area was the Phelps Dodge Morenci Incorporated (PDMI) copper smelter, which ceased operation in 1984. The last recorded 24-hour or annual average exceedances of the primary NAAQS at PDMI occurred in 1984. All monitors owned and operated by Phelps Dodge and by ADEQ in the vicinity of the PDMI smelter were removed by early 1985, the smelter operating permits expired, the smelting equipment was removed over a period of years, and the smelter was completely dismantled by December 1996. No new sources of SO_2 of the magnitude of PDMI have been located in the area. Thus, Morenci meets this criterion for review under the Seitz Memo.

b. Has the State Met the Requirements of the Seitz Memo?

As discussed below, the State has addressed the requirements in the Seitz Memo for emissions inventories, modeling, permitting of major new sources, and agreement to commence monitoring if a new major source locates in the area. Therefore, the State has met the special criteria in the Seitz Memo for approval of maintenance plans and redesignation requests.

(1) Emissions Inventory. The State provided the three emissions inventories specified in the Seitz Memo for the sources in, and within 50 kilometers of, the Morenci nonattainment area. For a representative year when the copper smelter was in operation (1984), direct SO_X emissions from smelting operations were 82,432 tons per year (tpy). ADEQ identified 186.5 tpy SO_X emissions in, or within 50 kilometers of, the nonattainment area in 1999 based on potential to emit (PTE), and ADEQ projected 208 tpy SO_X emissions based on PTE in, or within 50 kilometers of, Morenci in the 10th year after redesignation (2015). However, actual emissions in 1998 and 1999 were 4.1 and 1.2 tpy, respectively. We conclude that the inventories are complete, accurate, and consistent with applicable CAA provisions and the Seitz Memo.

(2) Modeling. Past EPA policy memoranda on SO_2 redesignations all ask for dispersion modeling. The Seitz memo asks for dispersion modeling of all point sources within 50 km of the nonattainment area boundary. The submittal identifies only a single point source in the nonattainment area, the Phelps Dodge Morenci Mine (PDMM), with year 2000 SO_2 emissions of 3.3 tpy, and year 2015 projected emissions of 3.6 tpy. The submittal also identifies five sources in the 50 km boundary area, each of which emitted less than one ton SO_2 per year in 1999. Screening dispersion modeling was performed with ISCST3 using conservative assumptions about the source parameters and the meteorology. According to the screening modeling, the maximum ambient air concentration due to the largest of the remaining sources is less than five percent of any of the SO_2 NAAQS.

The October 18, 2000 Seitz memo requires a modeling analysis that shows point sources were the dominant sources contributing to high SO_2 concentrations in the airshed. While MPR has been accepted by EPA for modeling of smelters, as a rollback method it assumes that the monitored SO_2 violations are completely due to the smelter being modeled. Thus, it cannot be relied upon for this analysis. Instead, screening modeling can be used to show that non-smelter sources have only an insignificant contribution. Since their emissions have changed relatively little since the time that the smelter shut down and was dismantled, this same screening modeling shows that the non-smelter sources were insignificant in the past, and hence the smelter was the dominant source contributing to past high SO_2 concentrations. EPA therefore finds that the ambient SO_2 modeling requirement for redesignations and maintenance plans is met.

(3) Permitting of New Sources. For the Morenci SO_2 nonattainment area, the nonattainment area new source review (NSR) permit program responsibilities are held by ADEQ. ADEQ administers the preconstruction review and permitting provisions of Arizona

Administrative Code (AAC), Title 18, Chapter 2, Articles 3 and 4. All new major sources and modifications to existing major sources are subject to the NSR requirements of these rules. We have not yet fully approved the ADEQ NSR rules. ADEQ's SIP-approved NSR rules are at AAC R9–3–302.

Section 172(c)(5) requires NSR permits for the construction and operation of new and modified major stationary sources anywhere in nonattainment areas. We have determined that areas being redesignated from nonattainment to attainment do not need to comply with the requirement that an NSR program be approved prior to redesignation provided that the area demonstrates maintenance of the standard without part D nonattainment NSR in effect. The rationale for this decision is described in a memorandum from Mary Nichols dated October 14, 1994 ("Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment"). We have determined that the maintenance demonstration for Morenci does not rely on nonattainment NSR. Prevention of Significant Deterioration (PSD) is the replacement for NSR, and part of the obligation under PSD is for a new source to review increment consumption and maintenance of the air quality standards. PSD also requires preconstruction monitoring. Therefore, the State need not have a fully approved nonattainment NSR program prior to approval of the redesignation request.

ADEQ has a PSD permitting program (A.A.C. R9–3–304 is the SIP-approved rule) that was established to preserve the air quality in areas where ambient standards have been met. The State's PSD program for all criteria pollutants except PM–10 was approved into the SIP effective May 3, 1983 (48 FR 19878). The federal PSD program for PM–10 was delegated to the State on March 12, 1999. The PSD program requires stationary sources to undergo preconstruction review before facilities are constructed, modified, or reconstructed and to apply Best Available Control Technology (BACT). These programs will apply to any major source wishing to locate in the Morenci area once the area is redesignated to attainment. The ADEQ commitment to treat any major source in or near Morenci as "new" under the PSD program satisfies the preconstruction permit provision of the Seitz memo as one of the prerequisites to redesignation.

(4) Monitoring. ADEQ has confirmed that the State commits to resume monitoring before any major source of SO_2 commences to operate. Moreover, the PSD permit program requires that permit applicants conduct preconstruction monitoring to identify baseline concentrations. Together, these commitments address the monitoring provision of the Seitz Memo.

c. Has the State Met the Remaining Maintenance Plan Provisions?

As discussed above, CAA Section 175A sets forth the statutory requirements for maintenance plans, and the Calcagni and Shaver memos cited above contain specific EPA guidance. The only maintenance plan element not covered by the Seitz Memo is the contingency provision. CAA Section 175A provides that maintenance plans "contain such contingency provisions as the Administrator deems necessary to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area."

The Morenci Maintenance Plan includes the State's commitment to continue to implement and enforce measures necessary to maintain the SO_2 NAAQS. ADEQ's current operating permit program places limits on SO_2 emissions from existing sources. Should an existing facility want to upgrade or increase SO_2 emissions, the facility would be subject to the PSD program. Should a new facility be constructed in the Morenci area, the facility would also be subject to PSD as required in the Calcagni memo.

If these measures prove insufficient to protect against exceedances of the NAAQS, the State has also committed to adopt, submit as a SIP revision, and implement expeditiously any and all measures needed to ensure maintenance of the NAAQS.

The Calcagni Memo emphasizes the importance of specific contingency measures, schedules for adoption, and action levels to trigger implementation of the contingency plan. Since there are no remaining sources of SO_2 emissions of the magnitude of the Phelps Dodge smelter and there is no SO_2 monitoring in the Morenci area, we agree with the State that this level of specificity is not appropriate, and we conclude that the State's commitment satisfactorily addresses the CAA provisions. Since there are neither significant SO_2 sources nor SO_2 monitoring in the Morenci area, we agree with the State that the State's PSD permitting program is sufficient to track future air quality trends and to assure that the Morenci area will not violate the NAAQS. If the State identifies the potential for a NAAQS violation through the permitting process, the State would ascertain what measures would be needed to avoid the violation.

B. Has the State Met the Redesignation Provisions of CAA Section 107(d)(3)(E)?

1. Has the Area Attained the 24-hour and Annual SO_2 NAAQS?

As discussed above, the normal prerequisite for redesignation is submittal of quality-assured ambient data with no violations of the SO_2 NAAQS for the last eight consecutive quarters. However, the Seitz Memo recognizes that states should be provided an opportunity to request redesignation where there is no longer monitoring but where there is no reasonable basis for assuming that SO_2 violations persist after closure of the sources that were the primary or sole cause of these violations. Morenci is such an area, and the State has submitted convincing evidence that no major stationary sources of SO_x emissions remain in operation in or within 50 kilometers of the area that might cause a violation of the SO_2 NAAQS.

2. Has the Area Met All Relevant Requirements Under Section 110 and Part D of the Act?

CAA Section 110(a)(2) contains the general requirements for SIPs (enforceable emission limits, ambient monitoring, permitting of new sources, adequate funding, etc.) and part D contains the general provisions applicable to SIPs for nonattainment areas (emissions inventories, reasonably available control measures, demonstrations of attainment, etc.). Over the years, we have approved Arizona's SIP as meeting the basic requirements of CAA Section 110(a)(2), and the CAA Part D requirements for Morenci addressed primarily by the regulations applicable to the Phelps Dodge facility during the period of its operation. The State has thus met the basic SIP requirements of the CAA.

3. Does the Area Have a Fully Approved SIP Under Section 110(k) of the Act?

We examined the applicable SIP, and also looked at the disapprovals listed in 40 CFR 52.125 and no disapprovals remain relevant to the applicable SIP. Arizona has a fully-approved SIP with respect to the Morenci area.

4. Has the State Shown That the Air Quality Improvement in the Area Is Permanent and Enforceable?

Yes. The Maintenance Plan shows that the exclusive cause of past SO_2 NAAQS violations (the Phelps Dodge copper smelter in Morenci) no longer

exists. As a result, there is no reason to expect that SO_2 ambient concentrations will exceed background levels.

5. Does the Area Have a Fully Approved Maintenance Plan Pursuant to Section 175a of the Act?

Yes. As discussed above, we are approving the Morenci Maintenance Plan in this action.

IV. Final Action

We are approving the Maintenance Plan for the Morenci area under CAA Sections 110 and 175A. We are also approving the State's request to redesignate the Morenci area to attainment of the primary SO_2 NAAQS.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the State plan and redesignate the area if relevant adverse comments are filed. This rule will be effective June 25, 2004 without further notice unless relevant adverse comments are received by May 26, 2004. If we receive such comments, this action will be withdrawn before the effective date. All public comments received will then be addressed in a subsequent final rule based on the proposed action. We will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective June 25, 2004.

V. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 25, 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* CAA section 307(b)(2).)

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: March 30, 2004.

Laura Yoshii,

Acting Regional Administrator, Region IX.

■ Parts 52 and 81, chapter I, title 40 of the Code of Federal Regulations are 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 D—Arizona

■ 2. Section 52.120 is amended by adding paragraph (c)(114) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(114) The following plan was submitted on June 21, 2002, by the Governor's designee.

(i) Incorporation by reference.

(A) Arizona Department of Environmental Quality.

(*1*) Morenci Sulfur Dioxide Nonattainment Area State

Implementation and Maintenance Plan, adopted by the Arizona Department of Environmental Quality on June 21, 2002.

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. In § 81.303 the SO_2 table is amended by revising the entry for the Morenci area to read as follows:

§ 81.303 Arizona.

* * * * *

ARIZONA–SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * * * * * * *				
Morenci:				
T3S, R28E [2]				x
T3S, R29E				x
T3S, R30E				x
T4S, R28E [2]				x
T4S, R29E				x
T4S, R30E				x
T5S, R28E [2]				x
T5S, R29E [2]				x
T5S, R30E			x	
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[2] That portion in Greenlee County.

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[FR Doc. 04–9277 Filed 4–23–04; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7652–9]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of partial deletion of the West Virginia Ordnance Works Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region III announces the partial deletion of portions of the West Virginia Ordnance Works (WVOW) site from the National Priorities List (NPL). The NPL constitutes appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended. EPA and the State of West Virginia have determined that all appropriate responses under CERCLA have been implemented at the portions of the site being deleted from the NPL and that no further cleanup by responsible parties is appropriate. Moreover, EPA and the State of West Virginia have determined that response actions conducted at the site to date remain protective of public health, welfare, and the environment.

DATES: *Effective Date:* April 26, 2004.

ADDRESSES: Comprehensive information on this release is available for viewing at the site information repositories at the following locations:

Mason County Public Library, 508 Viand Street, Point Pleasant, WV 25550, (304) 675–0894. Hours of Operation: Monday through Thursday, 10 a.m.–8 p.m., and Friday through Saturday, 10 a.m.–5 p.m.

U.S. EPA Region III Library, 1650 Arch Street, Philadelphia, PA 19103–2029, (215) 814–5254. Hours of Operation: Monday through Friday, 8 a.m.–5 p.m.

U.S. Army Corps of Engineers, Huntington District, 502 8th Street, Huntington, WV 25701, (800) 822–8413 or (304) 399–5388. Hours of Operation: Monday through Friday, 8 a.m.–4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Potosnak, PE, Remedial Project Manager, U.S. EPA Region III (3HS13), 1650 Arch Street, Philadelphia, PA 19103–2029, (215) 814–3362.

SUPPLEMENTARY INFORMATION: The portions of the site to be deleted from the NPL are the Operable Unit 10 (OU–10) South Acids Area, Cooling Tower Area, and Toluene Storage Areas; the Expanded Site Investigation 1 (ESI–1) Magazine Area; the ESI–4 Red Water Outfall Sewer; the ESI–6 Motorpool/ Maintenance Area; and the ESI–7 Former Sewage Treatment Plant.

A Notice of Intent to Delete for this site was published March 3, 2004 (69 FR 9988). The closing date for comments on the Notice of Intent to Delete was April 2, 2004. EPA received no comments.

EPA identifies releases which appear to present a significant risk to public health, welfare, or the environment, and it maintains the NPL as the list of those releases. Releases on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund. Any release deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Reporting and recordkeeping requirements, Superfund.

Dated: April 15, 2004.

Richard J. Kampf,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region III.

[FR Doc. 04–9286 Filed 4–23–04; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 040122024–4105–02; I.D. 010904A]

RIN 0648–AR75

Fisheries of the Northeastern United States; Tilefish Fishery; Reinstatement of Permit Requirements for the Tilefish Fishery

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

ACTION: Final rule; reinstatement of the permit requirements for the tilefish fishery.

SUMMARY: NMFS reinstates the permit requirements for commercial tilefish vessels. These permit requirements were set aside in a recent Federal Court Order (Court Order) on the grounds that the limited access program contained in the Tilefish Fishery Management Plan (FMP) violated National Standard 2 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Court found that there was insufficient support for the various limited access permit criteria in the administrative record for the FMP. NMFS is reinstating these permit requirements based on additional information in the form of a supplemental administrative record to the FMP (supplemental record) provided by the Mid-Atlantic Fishery Management Council (Council) that supports and explains the basis for the limited access permit criteria contained in the FMP. This action also allocates the remainder of the fishing year 2004 (November 1, 2003 - October 31, 2004) tilefish total allowable landings (TAL) to the various limited access permit categories according to the regulations, based upon a projection of tilefish landings through the effective date of this rule, and using dealer reports. This action will enable NMFS to manage the tilefish fishery in accordance with the provisions of the Magnuson-Stevens Act by preventing overfishing, and ensuring that the stock rebuilding objective of the FMP is achieved.

DATES: Effective May 31, 2004.

ADDRESSES: Copies of the Final Environmental Impact Statement (FEIS) prepared for the FMP may be obtained by contacting Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 South New Street, Dover, DE 19904. The FEIS, which was completed in 2001, contained a complete analysis of the impacts of the permit requirements contained in the FMP. Because nothing has changed since the FEIS was completed that would affect that determination, further analysis under the National Environmental Policy Act (NEPA) is unnecessary. Copies of the final rule, including the Final Regulatory Flexibility Analysis (FRFA), the supplemental record, and the small entity compliance guide are available upon request from Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930–2298. The final rule, including the FRFA, and the small entity compliance guide are also accessible via the Internet at *http://www.nero.nmfs.gov*.

FOR FURTHER INFORMATION CONTACT: Douglas W. Christel, Fishery Policy Analyst, (978) 281–9141, fax (978) 281–9135, e-mail *Douglas.Christel@noaa.gov*.

SUPPLEMENTARY INFORMATION: This final rule reinstates measures contained in the FMP, which was approved by NMFS on behalf of the Secretary of Commerce (Secretary) on May 10, 2001. Details concerning the rationale behind the need for this rulemaking to reinstate the permit requirements of the tilefish fishery were provided in the preamble to the proposed rule (69 FR 6635, February 11, 2004) and are only summarized here.

Background

The tilefish fishery is managed by the Council under the FMP, which was implemented on November 1, 2001 (66 FR 49136; September 26, 2001). Measures in the FMP include a limited entry program; a tiered commercial quota based on the limited entry program; permit and reporting requirements for commercial vessels, operators, and dealers; a prohibition on the use of gear other than longline gear by limited access tilefish vessels; and an annual specification and framework adjustment process.

On May 15, 2003, the Court Order set aside the regulations pertaining to the permit requirements for commercial tilefish vessels specified under § 648.4(a)(12). In its order, the Court concluded that the tilefish limited access program violated National Standard 2 of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) because it was not based on the best scientific information available. In doing so, the Court rendered inoperative the vessel operator permit requirements under § 648.5(a), the vessel reporting requirements under § 648.7(b)(2)(ii), the observer coverage regulations under § 648.11(a), and the incidental catch limit under § 648.292. The Court held that the Secretary must adopt a plan that is based on the best scientific information available, which may be the existing plan, but only if the evidence in the administrative record (record) clearly supports it.

A supplemental record has been compiled that describes in detail the steps taken by the Council and the Tilefish Committee in developing the limited access program alternatives contained in the FMP, and the rationale behind their selection of a preferred limited access program. This supplemental record does not change any determinations made in the FEIS implementing the FMP. As a result, the qualification criteria used to qualify vessels for the three limited access permit categories is not changed by this rule. Therefore, vessels that held limited access tilefish permits prior to the Court's decision will remain in the permit category they initially qualified for. A summary of the supplemental record is contained in the preamble of the proposed rule and a copy of the full supplemental record is available from the Regional Administrator (see **ADDRESSES**).

Based upon the supplemental record, this action reinstates the vessel permitting requirements of the FMP, specified under § 648.4(a)(12). Since the yearly tilefish TAL is distributed among the limited access permit categories, this action also distributes the remaining tilefish TAL for the 2004 fishing year among the reestablished permit categories according to the regulations at § 648.290. The 2004 tilefish TAL for the entire fishing year was set at 1.995 million lb (904,932 kg). The TAL is first reduced by 5 percent to account for incidental catch of tilefish. The remaining 1,895,250 lb (861,477 kg) is then distributed among the limited access permit categories, with Full-time Tier 1 vessels allocated 66 percent, or 1,250,865 lb (567,392 kg); Full-time Tier 2 vessels allocated 15 percent, or 284,288 lb (128,953 kg); and Part-time vessels allocated 19 percent, or 360,098 lb (163,340 kg). Through this final rule, the allocations for each permit category are reduced by the amount of tilefish projected to have been landed between the start of the fishing year (November 1, 2003) through the effective date of the final rule, May 31, 2004, to determine the amount of tilefish TAL remaining for each permit category for the remainder of the 2004 fishing year.

Because the Court Order rendered inoperative the vessel reporting requirements specified under § 648.7(b)(2)(ii), vessels that held limited access permits under the FMP prior to the Court Order have not been required to report their landings within a 24–hour period through the interactive voice response (IVR) system. Although many of these vessels have continued to report their landings through the IVR system, the only required and, therefore, reliable means of monitoring the tilefish TAL has been through the dealer weighout (DWO) system. Because reliable real-time DWO data are currently only available through September 2003, DWO data reflecting the daily landings of limited access tilefish vessels from November 1, 2002, through May 31, 2003, were used to determine landings for the November 1, 2003, through May 31, 2004, period. This information represents the most accurate information available. As a result, dealer reports were used to project tilefish landings attributable to limited access tilefish vessels through the effective date of this final rule. A total of 998,582 lb (452,957 kg) of tilefish was projected to be harvested by limited access vessels between November 1, 2002, and May 31, 2003. Based on this projection, during this period, Full-time Tier 1 vessels landed 665,278 lb (301,770 kg) of tilefish, Full-time Tier 2 vessels landed 173,997 lb (78,925 kg) of tilefish, and Part-time vessels landed 159,307 lb (72,262 kg) of tilefish. As explained above, these amounts have been subtracted from the initial TAL allocated to each permit category. Accordingly, based upon the procedure specified above, the remaining tilefish TAL available for the remainder of the 2004 fishing year is as follows: Full-time Tier 1 vessels are allocated 585,587 lb (265,622 kg), Full-time Tier 2 vessels are allocated 110,291 lb (50,028 kg), and Part-time vessels are allocated 200,791 lb (91,079 kg).

This action also removes the prohibition of the use of all gear other than longline gear for limited access tilefish vessels, which was struck down by the Court. This prohibition is removed due to a lack of information to support reinstating the ban on the use of gear other than longline gear in the directed tilefish fishery.

The purpose of this action is to prevent overfishing and ensure that the stock rebuilding objective of the FMP is achieved. Although the regulatory text for the tilefish permitting requirements was set aside by the Court Order, NMFS never formally removed these regulations from 50 CFR part 648. Therefore, this final rule does not contain any new regulatory language to reinstate the permit requirements.

Comments and Responses

The comment period on the proposed rule ended March 12, 2004. Two comments were received.

Comment 1: The commenter suggested that the stock rebuilding schedule for the FMP should have been developed with a lower initial TAL and should have included quota reductions every year thereafter. In addition, the quota allocated for the Full-Time Tier 1 category should be reduced by 60 percent and that any research set aside should be allocated no more than 0.5 percent of the TAL.

Response: The tilefish stock rebuilding schedule was implemented to provide a constant harvest strategy that would significantly reduce fishing mortality every year throughout the 10–year rebuilding time frame. This schedule has at least a 50–percent probability of rebuilding the stock within the rebuilding time frame. This rebuilding strategy fully complies with the Magnuson-Stevens Act. The quota allocated to various limited access permit categories reflects the percentage of the overall tilefish landings from 1988 through 1998 by vessels qualifying for each permit category. This management scheme was adopted by the Council and later approved by the Secretary. The final rule implementing the FMP incorporated the provisions contained in the Council's omnibus Framework Adjustment 1 (66 FR 42156; August 10, 2001), which allowed the Council to recommend a research set aside (RSA) up to 3 percent of the yearly tilefish TAL. The Council's recommendation, and the RSA ultimately implemented by NMFS, provided a means to compensate valuable research, the results of which will accrue to the benefit of the tilefish resource and those dependent on it.

Comment 2: The commenter supported reinstating the tilefish permit categories, but contested the percentage of the quota allocated to the limited access permit categories in the FMP. The commenter alleged that the percentages do not reflect the historical landings of the current participants in each permit category. The commenter suggested that the Council should reassess the basis used to calculate the allocation percentages for the limited access permit categories.

Response: The Court Order set aside the vessel permit requirements at § 648.4(a)(12). The only focus of this rule is to reinstate this section of the regulations. This comment relates to the percentage of the quota that is allocated to the limited access permit categories. These percentages are specified at § 648.290. Therefore, this comment is outside the scope of this rulemaking. A separate Council action, either through a framework adjustment or amendment to the FMP, and rulemaking by NMFS, would be required to modify the percentage of the quota allocated to the limited access permit categories.

Changes From the Proposed Rule

In § 648.2, the definition for "Fishing year" is revised to include the fishing year for the tilefish fishery by including the phrase, "For the tilefish fishery, from November 1 through October 31 of the following year."

In § 648.4(a)(12)(ii), the reference to the regulations specifying the tilefish trip limits contained at § 648.252 is revised to read § 648.292 to correct this reference to the tilefish trip limit regulations.

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Included in this final rule is the Final Regulatory Flexibility Analysis (FRFA) that contains the items required by 5 U.S.C. 604(a). The FRFA consists of the Initial Regulatory Flexibility Analysis (IRFA), the comments and responses to the proposed rule, and the analyses completed in support of this action. A copy of the IRFA is available from the Council (see **ADDRESSES**).

The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated in its entirety here.

Final Regulatory Flexibility Analysis

Statement of Objective and Need

A description of the reasons why this action is being considered, and the objectives of and legal basis for this action are contained in the preamble to the proposed rule and are not repeated here.

Summary of Significant Issues Raised in Public Comments

Comments received prior to the close of the comment period for the proposed rule focused on the measures contained within the proposed rule and did not reference the analysis contained in the IRFA or the economic impacts of the rule. For a summary of the comments received, refer to "Comments and Responses" in the preamble of this final rule.

Description and Estimate of the Number of Small Entities to Which the Rule Will Apply

A description and estimate of the number of small entities to which the rule will apply is provided in the IRFA and IRFA summary contained in the Classification section of the proposed rule and is only summarized here.

The universe of vessels impacted by this action are those vessels that qualified for a limited access permit under the requirements established in the FMP, and those vessels that hold an incidental tilefish permit. A total of 32 vessels qualified for limited access permits under the limited access criteria established in the FMP. In addition, there are currently 1,650 vessels that held an open access Incidental tilefish permit prior to the Court Order. However, vessels have not been required to obtain any Federal permit to land tilefish since the Court Order. Therefore, a precise assessment of the number of vessels landing tilefish as incidental catch is not possible at this time. All of the affected businesses (fishing vessels) are considered small entities under the standards described by the Small Business Administration.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

There are no recordkeeping, reporting, or other compliance costs forthcoming from this action.

Steps Taken to Minimize Economic Impacts on Small Entities

Management measures contained in this action would not alter the determinations made in the FEIS and described in the FMP. Section 4.9.3 of the FMP provides an analysis of the economic impacts resulting from the various quota alternatives and limited entry alternatives considered in the FMP. The FMP considered six limited entry alternatives as a means of controlling effort in the tilefish fishery. Each of these alternatives consisted of at least two different limited access categories, Full-time and Part-time, having different qualifying criteria. The alternatives are summarized as follows:

Option 1: Part-time – At least 10,000 lb (4,536 kg) in 1year 1988–1993, and at least 10,000 lb (4,536 kg) in 1 year between 1994–1998; Full-time - At least 50,000 lb (22,680 kg) in 1 year 1988–1993, and at least 25,000 lb (11,340 kg) per year for 2 years during 1994–1998.

Option 2: Part-time – Same as Option 1; Full-time, Tier 1 - At least 250,000 lb (113,400 kg) per year for 3 years between 1993–1998, and at least 1 lb (0.45 kg) of tilefish landed prior to the June 15, 1993, control date; Full-time, Tier 2 - At least 30,000 lb (13,608 kg) per year for 3 years 1993 and 1998, and at least 1 lb (0.45 kg) of tilefish landed prior to the June 15, 1993, control date.

Option 3: Part-time – At least 10,000 lb (4,536 kg) in 1 year between 1988 and June 15, 1993; Full-time - Same as Option 1.

Option 4: Part-time – Same as Option 3; Full-time - At least 50,000 lb (22,680 kg) in 1 year between 1988 and June 15, 1993.

Option 5: Part-time – At least 10,000 lb (4,536 kg) in 1 year between 1977 and June 15, 1993; Full-time - At least 50,000 lb (22,680 kg) in 1 year between 1977 and June 15, 1993.

Option 6: Part-time – Same as Option 1, or 28,000 lb (12,701 kg) in 1 year between 1984 and 1993; Full-time, Tier 1 - Same as Option 2; Full-time, Tier 2 - Same as Option 2.

The Council's preferred alternative was Option 6, which was made effective through the final rule implementing the FMP. This final rule reinstates Option 6. This action minimizes the economic impacts of the overall TAL established in the FMP by dividing the TAL among the vessels that qualify under each limited access category. This enables those vessels that are dependent on the tilefish fishery (those vessels in the Full-time, Tier 1 category) to continue to harvest their share of the annual TAL in a manner that maximizes their total revenues. Furthermore, by maintaining the incidental catch limit of 5 percent of the yearly TAL and by distributing the remaining 2004 tilefish TAL among the limited access vessels as specified above, any increase in incidental tilefish landings resulting from the Court Order will not affect the ability of limited access vessels to land their portion of the yearly TAL.

If the limited entry program were not reinstated, those vessels that are dependant on the tilefish resource would be faced with the uncertainty of when the overall quota would be harvested, forcing them to fish in a manner that would not maximize their total revenues. Furthermore, in the absence of a limited entry program, a derby fishery for tilefish could occur. A derby fishery could result in large quantities of tilefish entering the market, reducing the price received by the vessel, and reducing total revenues. A derby fishery would also increase safety concerns.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the action a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide (the guide) was prepared. Copies of the guide will be sent to all holders of commercial Federal tilefish permits. The guide will also be available on the Internet at *http://www.nero.noaa.gov*. Copies of the guide can also be obtained from the Regional Administrator (see **ADDRESSES**).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 20, 2004.

Rebecca Lent,

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

■ For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.2, the definition for "Fishing year" is revised to read as follows:

§ 648.2 Definitions.

* * * * *

Fishing year means:

(1) For the Atlantic sea scallop and Atlantic deep-sea red crab fisheries, from March 1 through the last day of February of the following year.

(2) For the NE multispecies, monkfish and skate fisheries, from May 1 through April 30 of the following year.

(3) For the tilefish fishery, from November 1 through October 31 of the following year.

(4) For all other fisheries in this part, from January 1 through December 31.

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■ 3. In § 648.4, paragraph (a)(12)(ii) is revised to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(12) * * *

(ii) *Tilefish incidental catch permit.* A vessel of the United States that is subject to these regulations and that has not been issued a limited access tilefish

permit is eligible for and may be issued a tilefish incidental catch permit to possess or land tilefish in or from the tilefish management unit. Such vessel is subject to the restrictions in § 648.292.

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§ 648.14 [Amended]

■ 4. In § 648.14, paragraph (cc)(6) is removed and reserved.

§ 648.294 [Removed and reserved]

■ 5. Section 648.294 is removed and reserved.

[FR Doc. 04–9438 Filed 4–23–04; 8:45 am]
BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 80
Monday, April 26, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

[Doc. No. CN–03–007]

RIN 0581–AC34

Revision of User Fees for 2004 Crop Cotton Classification Services to Growers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) is proposing to raise user fees for cotton producers for 2004 crop cotton classification services under the Cotton Statistics and Estimates Act in accordance with the formula provided in the Uniform Cotton Classing Fees Act of 1987. The 2003 user fee for this classification service was $1.45 per bale. This proposal would raise the fee for the 2004 crop to $1.65 per bale. The proposed fee and the existing reserve are sufficient to cover the costs of providing classification services, including costs for administration and supervision.

DATES: Comments must be received on or before May 11, 2004.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to Norma McDill, Deputy Administrator, Cotton Program, AMS, USDA, STOP 0224, 1400 Independence Avenue, SW., Washington, DC 20250–0224. Comments should be submitted in triplicate. Comments may also be submitted electronically to: *cottoncomments@usda.gov*. or Regulations.gov, *http://www.regulations.gov*. All comments should reference the docket number and the date and the page of this issue of the **Federal Register**. All comments received will be available for public inspection during regular business hours at the above office in Rm. 2641–South Building, 1400 Independence Avenue, SW., Washington, DC. A copy of this notice may be found at: *www.ams.usda.gov/cotton/rulemaking.htm*.

FOR FURTHER INFORMATION CONTACT: Norma McDill, Deputy Administrator, Cotton Program, AMS, USDA, Room 2641–S, STOP 0224, 1400 Independence Avenue, SW., Washington, DC 20250–0224. Telephone (202) 720–2145, facsimile (202) 690–1718, or e-mail *norma.mcdill@usda.gov*.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Executive Order 12988

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

Regulatory Flexibility Act

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

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. There are an estimated 35,000 cotton growers in the U.S. who voluntarily use the AMS cotton classing services annually, and the majority of these cotton growers are small businesses under the criteria established by the Small Business Administration (13 CFR 121.601). The increase above the 2003 crop level as stated will not significantly affect small businesses as defined in the RFA because:

(1) The fee represents a very small portion of the cost-per-unit currently borne by those entities utilizing the services. (The 2003 user fee for classification services was $1.45 per bale; the fee for the 2004 crop would be increased to $1.65 per bale; the 2004 crop is estimated at 18,300,000 bales).

(2) The fee for services will not affect competition in the marketplace; and

(3) The use of classification services is voluntary. For the 2003 crop, 18,224,000 bales were produced; and, almost all of these bales were voluntarily submitted by growers for the classification service.

(4) Based on the average price paid to growers for cotton from the 2002 crop of 44.5 cents per pound, 500 pound bales of cotton are worth an average of $222 each. The proposed user fee for classification services, $1.65 per bale, is less than one percent of the value of an average bale of cotton.

Paperwork Reduction Act

In compliance with OMB regulations (5 CFR part 1320), which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), the information collection requirements contained in the provisions to be amended by this proposed rule have been previously approved by OMB and were assigned OMB control number 0581–0009 under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

It is anticipated that the proposed changes, if adopted, would be made effective July 1, 2004, as provided by the Cotton Statistics and Estimates Act.

Fees for Classification under the Cotton Statistics and Estimates Act of 1927

The user fee charged to cotton producers for High Volume Instrument (HVI) classification services under the Cotton Statistics and Estimates Act (7 U.S.C. 473a) was $1.45 per bale during the 2003 harvest season as determined by using the formula provided in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102–237. The fees cover salaries, costs of equipment and supplies, and other overhead costs, including costs for administration, and supervision.

This proposed rule establishes the user fee charged to producers for HVI classification at $1.65 per bale during the 2004 harvest season.

Public Law 102–237 amended the formula in the Uniform Cotton Classing Fees Act of 1987 for establishing the

producer's classification fee so that the producer's fee is based on the prevailing method of classification requested by producers during the previous year. HVI classing was the prevailing method of cotton classification requested by producers in 2003. Therefore, the 2004 producer's user fee for classification service is based on the 2003 base fee for HVI classification.

The fee was calculated by applying the formula specified in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102–237. The 2003 base fee for HVI classification exclusive of adjustments, as provided by the Act, was $2.28 per bale. An increase of 1.61 percent, or 4 cents per bale, increase due to the implicit price deflator of the gross domestic product added to the $2.28 would result in a 2004 base fee of $2.32 per bale. The formula in the Act provides for the use of the percentage change in the implicit price deflator of the gross national product (as indexed for the most recent 12-month period for which statistics are available). However, gross *national* product has been replaced by gross *domestic* product by the Department of Commerce as a more appropriate measure for the short-term monitoring and analysis of the U.S. economy.

The number of bales to be classed by the United States Department of Agriculture from the 2004 crop is estimated at 17,662,245 bales. The 2004 base fee was decreased 15 percent based on the estimated number of bales to be classed (1 percent for every 100,000 bales or portion thereof above the base of 12,500,000, limited to a maximum adjustment of 15 percent). This percentage factor amounts to a 35 cents per bale reduction and was subtracted from the 2004 base fee of $2.32 per bale, resulting in a fee of $1.97 per bale.

With a fee of $1.97 per bale, the projected operating reserve would be 32.37 percent. The Act specifies that the Secretary shall not establish a fee which, when combined with other sources of revenue, will result in a projected operating reserve of more than 25 percent. Accordingly, the fee of $1.97 must be reduced by 32 cents per bale, to $1.65 per bale, to provide an ending accumulated operating reserve for the fiscal year of not more than 25 percent of the projected cost of operating the program. This would establish the 2004 season fee at $1.65 per bale.

Accordingly, § 28.909, paragraph (b) would be revised to reflect the increase of the HVI classification fee from $1.45 to $1.65 per bale.

As provided for in the Uniform Cotton Classing Fees Act of 1987, as amended, a 5 cent per bale discount would continue to be applied to voluntary centralized billing and collecting agents as specified in § 28.909(c).

Growers or their designated agents receiving classification data would continue to incur no additional fees if only one method of receiving classification data was requested. The fee for each additional method of receiving classification data in § 28.910 would remain at 5 cents per bale, and it would be applicable even if the same method were requested. The fee in § 28.910(b) for an owner receiving classification data from the central database would remain at 5 cents per bale, and the minimum charge of $5.00 for services provided per, monthly billing period would remain the same. The provisions of § 28.910(c) concerning the fee for new classification memoranda issued from the central database for the business convenience of an owner without reclassification of the cotton will remain the same.

The fee for review classification in § 28.911 would be increased from $1.45 to $1.65 per bale.

The fee for returning samples after classification in § 28.911 would remain at 40 cents per sample.

A 15-day comment period is provided for public comments. This period is appropriate because it is anticipated that the proposed changes, if adopted, would be made effective July 1, 2004, as provided by the Cotton Statistics and Estimates Act.

List of Subjects in 7 CFR Part 28

Administrative practice and procedure, Cotton, Cotton samples, Grades, Market news, Reporting and recordkeeping requirements, Standards, Staples, Testing, Warehouses.

For the reasons set forth in the preamble, 7 CFR part 28 is proposed to be amended as follows:

PART 28—[Amended]

1. The authority citation for 7 CFR part 28, subpart D, continues to read as follows:

Authority: 7 U.S.C. 471–476.

2. In § 28.909, paragraph (b) is revised to read as follows:

§ 28.909 Costs.

* * * * *

(b) The cost of High Volume Instrument (HVI) cotton classification service to producers is $1.65 per bale.

* * * * *

3. In § 28.911, the last sentence of paragraph (a) is revised to read as follows:

§ 28.911 Review classification.

(a) *** The fee for review classification is $1.65 per bale.

* * * * *

Dated: April 21, 2004.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–9427 Filed 4–23–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2004–NM–35–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 Series Airplanes and Model Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all BAE Systems (Operations) Limited Model BAe 146 series airplanes and Model Avro 146–RJ series airplanes. This proposal would require performing a detailed inspection for chafing of the fuel quantity indication (FQI) system wiring, and any applicable corrective actions. These actions are necessary to prevent possible failure of the FQI system, which could cause the flightcrew to act on misleading information and possibly lead to in-flight fuel exhaustion. This action is intended to address the identified unsafe condition.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2004–NM–35–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2004–NM–35–AD" in the

subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer; International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2004–NM–35–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2004–NM–35–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all BAE Systems (Operations) Limited Model BAe 146 series airplanes and Model Avro 146–RJ series airplanes. The CAA reports that there have been occurrences of chafing of the fuel quantity indication (FQI) system wiring against the vertical flange between the p-clips that secure the FQI wiring to the wing. This condition, if not corrected, could result in failure of the FQI system, which could cause the flightcrew to act on misleading information, possibly leading to in-flight fuel exhaustion.

Explanation of Relevant Service Information

BAE Systems (Operations) Limited has issued Inspection Service Bulletin (ISB) 28–030, dated February 21, 2003, which describes procedures for performing a detailed inspection of the FQI system wiring for chafing, and procedures for any applicable corrective actions. Corrective actions include replacement of p-clips with new p-clips, installation of spiral wrapping and tie-wraps around the wiring loom, and replacement of wires found to show chafing beyond limits specified in the ISB with new wires. Accomplishment of the actions specified in the ISB is intended to adequately address the identified unsafe condition. The CAA classified this ISB as mandatory and issued airworthiness directive 007–02–2003, dated May 2003, to ensure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

These airplane models are manufactured in the United Kingdom 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 has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

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

Differences Between Proposed AD and ISB

Operators should note that, although the referenced ISB describes procedures for reporting inspection findings to the manufacturer, this proposed AD would not require that action. The FAA does not need this information from operators.

The service bulletin refers to a "visual inspection" for chafing and damage to wire looms and protective wrapping. We have determined that the procedures in the service bulletin should be described as a "detailed inspection." Note 1 has been included in this AD to define this type of inspection.

Cost Impact

The FAA estimates that 54 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $7,020, or $130 per airplane.

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

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and

the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Docket 2004–NM–35–AD.

Applicability: All Model BAe 146 series airplanes and Model Avro 146–RJ series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the fuel quantity indication (FQI) system, which could cause the flightcrew to act on misleading information and possibly lead to in-flight fuel exhaustion, accomplish the following:

Inspection and Corrective Actions

(a) Within 2 months after the effective date of this AD, perform a detailed inspection of the wiring of the FQI system for chafing, and do any applicable corrective actions prior to further flight, in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin 28–030, dated February 21, 2003.

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

No Reporting Requirement

(b) Although BAE Systems (Operations) Limited Inspection Service Bulletin 28–030, dated February 21, 2003, describes procedures for reporting inspection findings to the manufacturer, this AD does not require that action.

Alternative Methods of Compliance

(c) 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 British airworthiness directive 007–02–2003, dated May 2003.

Issued in Renton, Washington, on April 16, 2004.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–9381 Filed 4–23–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–297–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–301, –311, and –315 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–8–301, –311, and –315 airplanes. This proposal would require determining the modification number of the angle of attack (AOA) sensor vanes; testing the movement of the affected vanes to evaluate sticking against both the upper and the lower vane travel end stops; and corrective action, if necessary. This action is necessary to prevent an incorrect AOA indication to the stall warning system in flight, which could result in an inadvertent stall and consequent loss of control of the airplane. This action is intended to address the identified unsafe condition.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–297–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain "Docket No. 2002–NM–297–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Westbury, New York.

FOR FURTHER INFORMATION CONTACT: Ezra Sasson, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, New York Aircraft Certification Office, FAA, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7320; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to

change the compliance time and a request to change the service bulletin reference as two separate issues.

- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–297–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–297–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model DHC–8–301, –311, and –315 airplanes. TCCA advises that the manufacturer of the angle of attack (AOA) sensor vane has determined that a damper within the AOA sensor in some vanes can leak oil. Such leakage could cause the vane to stick against the upper or the lower travel end stop. Although no problems with sticking AOA vanes have been reported on the subject airplanes, other airplanes using similar sensor designs have experienced AOA split indications during takeoff roll, which resulted in rejected takeoffs. A sticking vane would provide the stall warning system with an incorrect AOA reading at airspeeds below approximately 100 knots; above airspeeds of 110 knots, the airflow would release a stuck vane. This condition, if not corrected, could result in an incorrect AOA indication to the stall warning system in flight, which could cause an inadvertent stall and consequent loss of control of the airplane.

Explanation of Relevant Service Information

Bombardier has issued Alert Service Bulletin A8–27–94, Revision "A", dated February 5, 2002, which describes procedures for an initial movement test of the AOA sensor vane to evaluate sticking against both the upper and the lower vane travel end stops. The service bulletin also includes procedures for related investigative and corrective actions.

The initial movement test includes placing a gram gauge (dynamometer) against the AOA sensor vane, and recording the gauge reading as the vane is moved away from both the upper and the lower travel end stops. The related investigative action is repeating the movement test one time for sensor vanes that have measurements of less than 110 grams.

The related corrective action is replacing any AOA sensor vane if any movement shows certain gram gauge readings from either the upper or lower position. If the gram gauge reading is between 110 and 170 grams, the service bulletin recommends replacing the AOA sensor vane within six months or 1,000 flight hours, whichever occurs first. If a gram gauge reading is 170 grams or more, the service bulletin recommends replacing the AOA sensor vane within 5 calendar days. The service bulletin specifies that only post-MOD "J" sensors be used for replacement.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

TCCA classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–2001–46, dated December 3, 2001, to ensure the continued airworthiness of these airplanes in Canada.

Bombardier Alert Service Bulletin A8–27–94, Revision "A", dated February 5, 2002, references Rosemount Aerospace Alert Service Bulletin 0861CAB–27A–07, dated September 28, 2001, as an additional source of service information for doing the vane movement test of the AOA sensors. The Rosemount service bulletin is included in the Bombardier service bulletin. This service bulletin also includes procedures for sending reports of test findings to Rosemount Aerospace, and for sending removed sensors to Rosemount Aerospace for modification.

FAA's Conclusions

This airplane model is manufactured in Canada and is 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, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

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

Differences Among the Proposed AD, Service Bulletins, and the Canadian Airworthiness Directive

The Rosemount Aerospace service bulletin (which is included in the Bombardier service bulletin) contains procedures for sending reports of test findings to Rosemount, and for sending removed sensors to Rosemount for modification. This proposed AD would not include those requirements.

Both the Bombardier service bulletin and the Canadian airworthiness directive have a compliance time for the initial movement test, and for replacement of certain sensor vanes of 1,000 flight hours or 6 months, whichever occurs first. This proposed AD would require that operators perform the initial test within 1,000 flight hours or 18 months after the effective date of this proposed AD, whichever occurs first; and the replacement within 1,000 flight hours or 18 months, whichever occurs first, after accomplishing the movement test in which certain measurements are found. We find that this compliance time represents an appropriate interval for affected airplanes to continue to operate without compromising safety. This difference has been coordinated with TCCA.

Cost Impact

The FAA estimates that 57 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection to determine the modification letter, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S.

operators is estimated to be $3,705, or $65 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket 2002–NM–297–AD.

Applicability: Model DHC–8–301, –311, and –315 airplanes, serial numbers 100 through 583, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent an incorrect angle of attack (AOA) indication to the stall warning system in flight, which could result in an inadvertent stall and consequent loss of control of the airplane, accomplish the following:

Service Bulletin References

(a) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of Bombardier Alert Service Bulletin A8–27–94, Revision "A", dated February 5, 2002.

Note 1: Bombardier Alert Service Bulletin A8–27–94 references Rosemount Aerospace Alert Service Bulletin 0861CAB–27A–07, dated September 28, 2001, as an additional source of service information for testing the AOA sensors. The Rosemount service bulletin is included with the Bombardier service bulletin.

Inspection To Determine Modification

(b) Within 1,000 flight hours or 18 months after the effective date of this AD, whichever occurs first, inspect the right and left AOA sensor vanes to determine whether modification (MOD) "J" has been incorporated. Instead of inspecting the sensors, a review of airplane maintenance records is acceptable if the MOD level of the sensor can be positively determined from that review. If MOD "J" has been incorporated in both sensors, no further action is required by this paragraph.

Movement Tests

(c) For any AOA sensor vane that does not have MOD "J" installed: Prior to further flight following the inspection required by paragraph (b) of this AD, do a movement test of the AOA sensor vane per the service bulletin.

(d) If the result of the movement test in paragraph (c) of this AD is less than 110 grams, repeat the movement test prior to the accumulation of 5,000 flight hours or 24 months after accomplishing the initial test, whichever occurs first. Do the test per the service bulletin.

Corrective Action

(e) If the result of any movement test in paragraph (c) or paragraph (d) of this AD is 110 grams or more, replace the AOA sensor vane with a reworked MOD "J" sensor vane, per the service bulletin, at the applicable time in paragraph (e)(1), (e)(2), or (e)(3) of this AD.

(1) If the result of the movement test in paragraph (c) of this AD is between 110 and 169 grams inclusive, replace the sensor vane at the earlier of 1,000 flight hours, or 18 months after accomplishing the movement test in paragraph (c) of this AD.

(2) If the result of any repeat movement test in paragraph (d) of this AD is between 110 and 169 grams inclusive, replace the sensor vane at the earlier of 1,000 flight hours or 6 months after accomplishing the movement test in paragraph (d) of this AD.

(3) If the result of the movement test is 170 grams or more, replace the sensor vane within 5 days after accomplishing the movement test in paragraph (c) or paragraph (d) of this AD.

Parts Installation

(f) As of the effective date of this AD, no person may install a sensor vane, part number 861CAB, on any airplane unless MOD "J" has been incorporated.

Reporting and Parts Modification

(g) Although the Rosemount service bulletin contains procedures for sending test findings to the manufacturer, and for sending removed parts to the manufacturer for modification, this AD does not require those actions.

Actions Accomplished Per Previous Release of Service Bulletin

(h) Actions accomplished before the effective date of this AD per Bombardier Alert Service Bulletin A8–27–94, dated October 25, 2001, are considered acceptable for compliance with the corresponding action specified in this AD.

Alternative Methods of Compliance

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

Note 2: The subject of this AD is addressed in Canadian airworthiness directive CF–2001–46, dated December 3, 2001.

Issued in Renton, Washington, on April 16, 2004.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–9382 Filed 4–23–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–106681–02]

RIN 1545–BA59

Modification of Check the Box; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document corrects a notice of proposed rulemaking (REG–

106681–02) that was published in the **Federal Register** on Thursday, April 1, 2004 (69 FR 17117) that clarifies that qualified REIT subsidiaries, qualified subchapter S subsidiaries, and single owner eligible entities that are disregarded as entities separate from their owners are treated as separate entities for purposes of any Federal tax liability for which the entity is liable.

FOR FURTHER INFORMATION CONTACT: James M. Gergurich, (202) 622–3070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking (REG–106681–02) that is the subject of this correction is under section 856 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking and notice of public hearing (REG–106681–02) contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the notice of proposed rulemaking and notice of public hearing (REG–106681–02) which is the subject of FR. Doc. 04–7088, is corrected as follows:

§ 1.1361–4 [Corrected]

1. On page 17119, column 1, § 1.1361–4, paragraph (a)(6)(i), line 3, the language "otherwise not treated as a corporation" is corrected to read "generally not treated as a corporation".

Cynthia E. Grigsby,

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

[FR Doc. 04–9311 Filed 4–23–04; 8:45 am]

BILLING CODE 4830–01–P

POSTAL SERVICE

39 CFR Part 111

Merged Five-Digit and Five-Digit Scheme Pallets for Periodicals, Standard Mail and Package Services Mail

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the *Domestic Mail Manual* (DMM) to allow mailers to place (to merge) onto the same 5-digit pallet or 5-digit scheme pallet (using DMM labeling list L001) both carrier route packages of flat-size and irregular parcel mailpieces, and 5-digit presort destination packages of flat-size mailpieces not meeting the criteria for the automated flat sorting machine (AFSM) 100, as well as 5-digit presort destination packages of irregular parcel mailpieces.

Current DMM M045 mailing standards allow mailers to place 5-digit packages and carrier route packages of flat-size pieces together only on 5-digit metro pallets, 3-digit pallets, sectional center facility (SCF) pallets, and (for Periodicals mail only) area distribution center (ADC) pallets, and (for Standard Mail and Package Services mail) auxiliary service facility (ASF) and bulk mail center (BMC) pallets, or when mailers prepare mailings under the advanced preparation options in DMM M900.

DATES: Submit comments on or before May 26, 2004.

ADDRESSES: Mail or deliver comments to the Manager, Mailing Standards, ATTN: Neil Berger, U.S. Postal Service, 1735 N. Lynn Street, Room 3025, Arlington, VA 22209–6038. Written comments may also be submitted by facsimile transmission to (703) 292–4058. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the Postal Service Headquarters Library, 11th Floor North, 475 L'Enfant Plaza, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Neil Berger, Mailing Standards, at (703) 292–3645; or Thomas L. DeVaughan, Package Services, at (703) 292–3640.

SUPPLEMENTARY INFORMATION: Current pallet preparation standards in DMM M045.3.0 prohibit mailers from placing 5-digit packages and carrier route packages of flat-size pieces together on either 5-digit scheme or 5-digit pallets. These standards permit the placement together of such packages beginning with the "5-digit metro" pallet level.

The current prohibition applies generally to packages of flats including upgraded flat sorting machine (UFSM) 1000-compatible automation flats and irregular parcels, which are generally flat-shape pieces that exceed the maximum dimensions for flats, although the operational need for this prohibition is relevant only to flat-size pieces compatible with the automation flat sorting machine 100 (AFSM 100). Keeping 5-digit packages separate from carrier route packages on 5-digit and 5-digit scheme pallets allows 5-digit packages to be properly identified and distributed in processing facilities so that the pieces can be further sorted down to the carrier route level on AFSM 100 equipment. The DMM criteria for AFSM 100-compatible flats (DMM C820.2.0) can be viewed using *Postal Explorer* at *http://pe.usps.gov*.

The 5-digit packages of non-AFSM 100-compatible flat-size pieces (that is, flats compatible with the UFSM 1000 are generally further sorted down to carrier routes at the delivery unit where the carriers are located and not at the mail processing facility. As a consequence, it is more practical to have the 5-digit packages of UFSM 1000-compatible flats prepared on the same 5-digit or 5-digit scheme pallets with the corresponding carrier route packages so that both the carrier route and noncarrier route mail can be cross-docked at the mail processing facility to the delivery unit.

Adding these merged pallets to the current pallet sort levels should improve operational efficiencies and increase customer service. DMM C820.3.0 contains the criteria for UFSM 1000-compatible flats. Unlike the limitations under the advance preparation options under DMM M920, M930, and M940, merging of mailpieces onto 5-digit, and 5-digit scheme pallets under proposed M045.3.0, can be accomplished without limitations (*i.e.*, use of the "A" and "C" or the "B" and "D" indicators in the City State Product, along with a 5% threshold for 5-digit packages).

Because the maximum weight of Standard Mail must be less than 16 ounces, and the maximum physical size permitted for Standard Mail Enhanced Carrier Route (ECR) flats, mailers would not see as many merged pallet opportunities with Standard Mail as with Periodicals and Bound Printed Matter mail.

This proposed rule also standardizes the presentation and language of the mailing standards used for pallet preparation and labeling in DMM E230, L001, L802, M011, M041.5.0, and M045.3.0, including the standards for Package Services irregular parcels and for Standard Mail and Package Services machinable parcels.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. of 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed revisions to the *Domestic Mail Manual*, incorporated in the Code of Federal Regulations. *See* 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend the following sections of the Domestic Mail Manual as set forth below:

Domestic Mail Manual (DMM)

* * * * *

E Eligibility

* * * * *

E200 Periodicals

* * * * *

E230 Carrier Route Rates

* * * * *

2.0 Rate Application

2.1 Preparation

[Revise 2.1 to read as follows:]

Preparation to qualify eligible pieces for carrier route rates is optional and need not be performed for all carrier routes in a 5-digit area. Carrier route rates apply to copies that are prepared in carrier route packages of six or more addressed pieces each subject to these standards:

a. *Letter-size mailings.* Carrier route rates apply to carrier route packages that are sorted into carrier route, 5-digit carrier routes, or 3-digit carrier routes trays, under M220. Trays may be palletized under M045.

b. *Nonletter-size mailings.* Carrier route rates apply to carrier route packages that are sorted onto pallets prepared under M045, M920, M930, or M940, as appropriate, or prepared in carrier route, 5-digit scheme carrier routes, or 5-digit carrier routes sacks under M220. Sacks may be palletized under M045.

* * * * *

L Labeling Lists

L000 General Use

[Revise heading of L001 to read as follows:]

L001 5-Digit Scheme—Periodicals Flats and Irregular Parcels, Standard Mail Flats, and Package Services Flats and Irregular Parcels

[Revise introductory text to read as follows:]

L001 describes the 5-digit scheme sort list for Periodicals flats and irregular parcels, Standard Mail flats, and Package Services flats and irregular parcels destined for multiple 5-digit ZIP Codes served by a single delivery unit. When the 5-digit scheme sort is used, mail for the 5-digit ZIP Codes shown in Column A must be combined on pallets or in sacks as follows:

* * * * *

[Revise heading of L802, and the summary to read as follows:]

L802 BMC/ASF Entry—Periodicals, Standard Mail, and Package Services Mail Summary

L802 describes the service area by individual 3-digit ZIP Code prefix for mixed automation rate Periodicals, Standard Mail, and Package Services mailings entered at an ASF or BMC.

* * * * *

M Mail Preparation and Sortation

M000 General Preparation Standards

M011 Basic Standards

1.0 TERMS AND CONDITIONS

* * * * *

1.2 Presort Levels

Terms used for presort levels are defined as follows:

[Revise items f, g, j, l, and m, to read as follows:]

* * * * *

f. *5-digit scheme carrier routes (pallets and sacks) for Periodicals flats and irregular parcels, Standard Mail flats, Bound Printed Matter flats (sacks only); and Bound Printed Matter irregular parcels (pallets only):* the ZIP Code in the delivery address on all pieces in carrier route packages is one of the 5-digit ZIP Codes processed by the USPS as a single scheme, as shown in L001.

g. *5-digit scheme (pallets) for Periodicals flats and irregular parcels and Bound Printed Matter flats and irregular parcels:* the ZIP Code in the delivery address on all pieces is one of the 5-digit ZIP Codes processed by the USPS as a single scheme, as shown in L001.

* * * * *

j. *Merged 5-digit pallets:* Must include carrier route packages, and/or automation rate 5-digit packages and/or Presorted rate 5-digit packages under M045, M920, M930, or M940, as appropriate.

* * * * *

l. *Merged 5-digit scheme pallet:* Must include carrier route packages, and/or automation rate 5-digit packages and/or Presorted rate 5-digit packages under M045, M920, M930, or M940, as appropriate, and that are part of a single scheme as shown in L001.

m. *5-digit metro pallets for Periodicals flats and irregular parcels, Standard Mail flats, and Bound Printed Matter flats and irregular parcels:* the 5-digit ZIP Codes on pieces in carrier route, automation rate, and Presorted rate packages are all destined for the same mail processing facility listed in L006.

* * * * *

1.3 Preparation Instructions

For purposes of preapraring mail:

[Revise items o through r to read as follows:]

* * * * *

o. *A merged 5-digit sort for Periodicals flats and irregular parcels and Standard Mail flats prepared as packages on pallets* yields merged 5-digit pallets that contain carrier route packages and/or automation rate 5-digit packages and/or Presorted rate 5-digit packages. The merged 5-digit sort is optional for Periodicals flats and irregular parcels and Standard Mail flats prepared in sacks under M920. Sacks or pallets prepared for a merged 5-digit destination that contain only a single rate level of package(s) (only carrier route package(s) or only automation rate 5-digit package(s) or only Presorted rate 5-digit package(s)) or that contain only two rate levels of package(s) are still considered to be merged 5-digit sorted and are labeled accordingly.

p. *A merged 5-digit scheme sort for Periodicals flats and irregular parcels and Standard Mail flats prepared in sacks under M920* yields merged 5-digit scheme sacks that contain carrier route packages, and/or automation rate 5-digit packages and/or Presorted rate 5-digit packages for those 5-digit ZIP Codes that are part of a single scheme as shown in L001. Sacks prepared for a merged 5-digit scheme destination that contain only a single rate level of package(s) (only carrier route package(s) or only automation rate 5-digit package(s) or only Presorted rate 5-digit package(s)) or that contain only two rate levels of package(s) or that contain packages for only one of the schemed 5-digit ZIP Codes are still considered to be merged 5-digit scheme sorted and are labeled accordingly. If preparation of merged 5-digit scheme sacks is performed, it must be done for all 5-digit scheme destinations in L001.

q. *A merged 5-digit scheme sort for Periodicals flats and irregular parcels and Standard Mail flats and bound Printer Matter flats and irregular parcels prepared as packages on pallets under M045, M920, M930, or M940,* as appropriate, yields merged 5-digit scheme pallets that contain carrier route packages, and/or automation rate 5-digit packages and/or Presorted rate 5-digit packages for those 5-digit ZIP Codes that are part of a single scheme as shown in L001. Pallets prepared for a merged 5-

digit scheme destination that contain only a single rate level of package(s) (only carrier route package(s) or only automation rate 5-digit package(s) or only Presorted rate 5-digit package(s)) or that contain only two rate levels of package(s) or that contain packages for only one of the schemed 5-digit ZIP Codes are still considered to be merged 5-digit scheme sorted and are labeled accordingly. If preparation of merged 5-digit scheme pallets is performed, it must be done for all 5-digit scheme destinations in L001.

r. *A 5-digit metro sort for Periodicals flats and irregular parcels, Standard Mail flats, and Bound Printed Matter flats and irregular parcels prepared as packages on pallets* results in 5-digit metro pallets containing carrier route, 5-digit, and 3-digit packages (automation and Presorted) for the 5-digit ZIP Codes listed in L006. The ZIP Codes in L006 are treated as a single presort destination, with no further separation by 5-digit ZIP Code required. The 5-digit metro sort is optional and need not be done for all possible destinations in L006.

* * * * *

M041 General Standards

* * * * *

5.0 Preparation

* * * * *

5.6 Mail on Pallets

[Combine current 5.6g and 5.6h into new 5.6g and redesignate current 5.6i as new 5.6h to read as follows:]

* * * * *

f. For Bound Printed Matter irregular parcels, Presorted and Carrier Route rate mail may be combined on all pallet levels. For Bound Printed Matter flats, Presorted and Carrier Route rate mail may be combined on all levels of pallet except as provided in 5.6g.

g. Except for mail prepared with detached address labels, sacks of Periodicals flats and irregular parcels, Standard Mail flats and irregular parcels, and Bound Printed Matter flats and irregular parcels, carrier route rate mail must be prepared on separate 5-digit pallets from automation rate and/or Presorted rate mail. Presort destination packages of Periodicals flats and irregular parcels, Standard Mail flats, and Bound Printed Matter flats and irregular parcels, may be prepared on pallets under M045, M920, M930, or M940, as appropriate.

h. Periodicals flats and irregular parcels, Standard Mail flats, and Bound Printed Matter flats and irregular parcels, prepared in packages on pallets may copalletize (merge) carrier route mail, 5-digit automation rate mail, and 5-digit Presorted rate mail on the same 5-digit, and 5-digit scheme pallet under M045, M920, M930, or M940, as appropriate.

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M045 Palletized Mailings

* * * * *

3.0 PALLET PRESORT AND LABELING

[Revise 3.1 by redesignating current 3.1e through 3.1i as 3.1g through 3.1k, respectively; by redesignating and amending current 3.1c and 3.1d as 3.1e and 3.1f, respectively; by redesignating and amending current 3.1a and 3.1b as 3.1b and 3.1c, respectively; and by adding new 3.1a and 3.1d to read as follows:]

3.1 Periodicals—Packages, Sacks, or Trays

[Revise introductory text to read as follows:]

Pallets must be prepared under M041 in the sequence listed below and completed at each required level before the next optional or required level is prepared. Unless indicated as optional, all sort levels are required under the conditions shown. For mailings of sacks or trays on pallets, pallet preparation begins with 3.1e. Pallets must be labeled according to the Line 1 and Line 2 information listed below and under M031. All pallets prepared under 3.1 may contain firm packages. Packages of Periodicals nonletters (flats and irregular parcels) may also be palletized using the advanced presort options in M920, M930, or M940.

a. *Merged 5-Digit Scheme (required).* Permitted for packages only. Not permitted for packages containing noncarrier route AFSM 100-compatible flats under C820. Required for packages containing all other flats or irregular parcels. Pallet must contain carrier route packages, and may contain automation rate, and/or Presorted rate packages for the same 5-digit scheme under L001. For 5-digit destinations not part of L001, merged 5-digit pallet preparation begins with 3.1d. Pallet labeling:

(1) Line 1: L001.

(2) Line 2: "PER" or "NEWS," as applicable; followed by "FLTS" or "IRREG," as applicable; followed by "CR/5D SCHEME."

b. *5-Digit Scheme Carrier Routes (required).* Permitted for packages only. Pallet must contain only carrier route packages for the same 5-digit scheme under L001. For 5-digit destinations not part of L001, 5-digit carrier routes pallet preparation begins with 3.1e. Pallet labeling:

(1) Line 1: L001.

(2) Line 2: "PER" or "NEWS," as applicable; followed by "FLTS" or "IRREG," as applicable; followed by "CARRIER ROUTES" or "CR–RTS;" followed by "SCHEME" or "SCH."

c. *5-Digit Scheme (required).* Permitted for packages only. Not permitted for packages containing AFSM 100-compatible flats under C820. Required for packages containing all other flats and irregular parcels. Pallet must contain only 5-digit packages of automation rate and/or Presorted rate mail for the same 5-digit scheme under L001. For 5-digit destinations not part of L001, 5-digit pallet preparation begins with 3.1f. Pallet labeling:

(1) Line 1: L001.

(2) Line 2: "PER" or "NEWS," as applicable; followed by "FLTS" or "IRREG," as applicable; followed by "5D," followed by "BARCODED" or "BC" if pallet contains automation rate mail; followed by "NONBARCODED" or "NBC" if pallet contains Presorted rate mail; followed by "SCHEME" or "SCH."

d. *Merged 5-Digit (required).* Permitted for packages only. Not permitted for packages containing noncarrier route AFSM 100-compatible flats under C820. Required for packages containing all other flats or irregular parcels. Pallet must contain carrier route packages, and may contain automation rate and/or Presorted rate packages for the same 5-digit ZIP Code. Pallet labeling:

(1) Line 1: city, state, and 5-digit ZIP Code destination (see M031 for overseas military mail).

(2) Line 2: "PER" or "NEWS," as applicable; followed by "FLTS" or "IRREG," as applicable; followed by "CR/5D."

e. *5-Digit Carrier Routes (required).* Permitted for packages, sacks, and trays. Pallet may contain only carrier route mail for the same 5-digit ZIP Code. Pallet labeling:

(1) Line 1: city, state, and 5-digit ZIP Code destination (see M031 for overseas military mail).

(2) Line 2: "PER" or "NEWS," as applicable; followed by "FLTS" or "IRREG" or "LTRS," as applicable; followed by "CARRIER ROUTES" or "CR–RTS."

f. *5-Digit (required).* Permitted for packages, sacks, and trays. Pallet may contain only automation rate and/or Presorted rate mail for the same 5-digit ZIP Code or the same 5-digit scheme under L007 (for AFSM 100-compatible flats only under C820). Five-digit scheme (L007) packages are assigned to pallets according to the OEL "label to" 5-digit ZIP Code. Pallet labeling:

(1) Line 1: city, state, and 5-digit ZIP Code destination (see M031 for overseas military mail).

(2) Line 2: "PER" or "NEWS," as applicable; followed by "FLTS" or "IRREG" or "LTRS," as applicable; followed by "5D"; followed by "BARCODED" or "BC" if pallet contains automation rate mail; followed by "NONBARCODED" or "NBC" if pallet contains Presorted rate mail.

g. *5-Digit Metro (optional).* Permitted for packages of flats or irregular parcels, only. Pallet may contain carrier route, automation rate, and/or Presorted rate packages for the 5-digit ZIP Codes in L006, Column A, and for 3-digit ZIP Code groups in L006, Column B. Pallet labeling:

(1) Line 1: L006, Column C.

(2) Line 2: "PER" or "NEWS," as applicable; followed by "FLTS" or "IRREG,"as applicable; followed by "METRO" or "MET"; followed by "BARCODED" or "BC" if pallet contains automation rate mail; followed by "NONBARCODED" or "NBC" if pallet contains carrier route and/or Presorted rate mail.

h. *3-Digit (optional).* Option not available for 3-digit ZIP Code prefixes marked "N" in L002. Permitted for packages, sacks, and trays. Pallet may contain carrier route, automation rate, and/or Presorted rate mail. Pallet labeling:

(1) Line 1: L002, Column A.

(2) Line 2: "PER" or "NEWS," as applicable; followed by "FLTS," "IRREG," or "LTRS," as applicable; followed by "3D"; followed by "BARCODED" or "BC" if pallet contains automation rate mail; followed by "NONBARCODED" or "NBC" if pallet contains carrier route and/or Presorted rate mail.

i. *SCF (required).* Permitted for packages, sacks, and trays. Pallet may contain carrier route, automation rate, and/or Presorted rate mail for the 3-digit ZIP Code groups in L005. Pallet labeling:

(1) Line 1: L002, Column C.

(2) Line 2: "PER" or "NEWS," as applicable; followed by "FLTS," "IRREG," or "LTRS," as applicable; followed by "SCF"; followed by "BARCODED" or "BC" if pallet contains automation rate mail; followed by "NONBARCODED" or "NBC" if pallet contains carrier route and/or Presorted rate mail.

j. *ADC (required).* Permitted for packages, sacks, and trays. Pallet may contain carrier route, automation rate, and/or Presorted rate mail for the 3-digit ZIP Code groups in L004. Pallet labeling:

(1) Line 1: L004.

(2) Line 2: "PER" or "NEWS," as applicable; followed by "FLTS," "IRREG," or "LTRS," as applicable; followed by "ADC"; followed by "BARCODED" or "BC" if pallet contains automation rate mail; followed by "NONBARCODED" or "NBC" if pallet contains carrier route and/or Presorted rate mail.

k. *Mixed ADC (optional).* Permitted for sacks and trays only. Pallet may contain carrier route, automation rate, and/or Presorted rate mail. Pallet labeling:

(1) Line 1: "MXD" followed by city, state, and ZIP Code information for ADC serving 3-digit ZIP Code prefix of entry post office as shown in L004, Column A (label to plant serving entry post office if authorized by processing and distribution manager).

(2) Line 2: "PER" or "NEWS," as applicable; followed by "WORKING."

[Revise 3.2 by redesignating current 3.2d through 3.2i as 3.2f through 3.2k, respectively; by redesignating current 3.2c as 3.2e; by redesignating and amending current 3.2a and 3.2b as 3.2b and 3.2d, respectively; and by adding new 3.2a and 3.2c to read as follows:]

3.2 Standard Mail—Packages, Sacks, or Trays

[Revise introductory text to read as follows:]

Pallets must be prepared under M041 in the sequence listed below and completed at each required level before the next optional or required level is prepared. Unless indicated as optional, all sort levels are required under the conditions shown. For mailings of sacks or trays on pallets, pallet preparation begins with 3.2d. Pallets must be labeled according to the Line 1 and Line 2 information listed below and under M031. Packages of Standard Mail flats may also be palletized using the advanced presort options in M920, M930, or M940.

a. *Merged 5-Digit Scheme (required).* Permitted for packages only. Not permitted for packages containing noncarrier route AFSM 100-compatible flats under C820. Required for packages containing all other flats or irregular parcels. Pallet must contain carrier route packages, and may contain automation rate and/or Presorted rate packages for the same 5-digit scheme under L001. For 5-digit destinations not part of L001, merged 5-digit pallet preparation begins with 3.2c. Pallet labeling:

(1) Line 1: L001.

(2) Line 2: "STD FLATS" or "STD IRREG," as applicable; followed by "CR/5D SCHEME."

b. *5-Digit Scheme Carrier Routes (required).* Permitted for packages only. Pallet must contain only carrier route packages for the same 5-digit scheme under L001. For 5-digit destinations not part of L001, 5-digit carrier routes pallet preparation begins with 3.2d. Pallet labeling:

(1) Line 1: L001.

(2) Line 2: "STD FLTS," or "STD IRREG," as applicable; followed by "CARRIER ROUTES" or "CR–RTS;" followed by "SCHEME" or "SCH."

c. *Merged 5-Digit (required).* Permitted for packages only. Not permitted for packages containing noncarrier route AFSM 100-compatible flats under C820. Required for packages containing all other flats or irregular parcels. Pallet must contain carrier route packages, and may contain automation rate and/or Presorted rate packages for the same 5-digit ZIP Code. Pallet labeling:

(1) Line 1: city, state, and 5-digit ZIP Code destination (see M031 for overseas military mail).

(2) Line 2: "STD FLTS" or "STD IRREG," as applicable; followed by "CR/5D."

d. *5-Digit Carrier Routes (required).* Permitted for packages, sacks, and trays. Pallet may contain only carrier route mail for the same 5-digit ZIP Code. Pallet labeling:

(1) Line 1: city, state, and 5-digit ZIP Code destination (see M031 for overseas military mail).

(2) Line 2: For flats and irregular parcels, "STD FLTS" or "STD IRREG," as applicable; followed by "CARRIER ROUTES" or "CR–RTS." For letters, "STD LTRS;" followed by "CARRIER ROUTES" or "CR–RTS"; followed by "BC" if pallet contains barcoded letters; followed by "MACH" if pallet contains machinable letters; followed by "MAN" if pallet contains nonmachinable letters.

e. *5-Digit (required).* Permitted for packages, sacks, and trays. Pallet may contain only automation rate and/or Presorted rate mail for the same 5-digit ZIP Code or same 5-digit scheme under L007 (for AFSM 100-compatible flats only under C820). Five-digit scheme (L007) packages are assigned to 5-digit pallets according to the OEL "label to" 5-digit ZIP Code. Pallet labeling:

(1) Line 1: city, state, and 5-digit ZIP Code destination (see M031 for overseas military mail).

(2) Line 2: For flats and irregular parcels, "STD FLTS 5D" or "STD IRREG 5D;" as applicable; followed by "BARCODED" or "BC" if pallet contains automation rate mail; followed by "NONBARCODED" or "NBC" if pallet contains Presorted rate mail. For letters, "STD LTRS 5D;" followed by "BC" if pallet contains barcoded letters; followed by "MACH" if pallet contains

machinable letters; followed by "MAN" if pallet contains nonmachinable letters.

f. *5-Digit Metro (optional).* Permitted for packages of flats or irregular parcels, only. Pallet may contain carrier route, automation rate, and/or Presorted rate packages for the 5-digit ZIP Codes in L006, Column A, and for 3-digit ZIP Code groups in L006, Column B. Pallet labeling:

(1) Line 1: L006, Column C.

(2) Line 2: "STD FLTS" or "STD IRREG," as applicable; followed by "METRO" or "MET;" followed by "BARCODED" or "BC" if pallet contains automation rate mail; followed by "NONBARCODED" or "NBC" if pallet contains carrier route and/or Presorted rate mail.

g. *3-Digit (optional).* Option not available for 3-digit ZIP Code prefixes marked "N" in L002. Permitted for packages, sacks, and trays. Pallet may contain carrier route, automation rate, and/or Presorted rate mail. Pallet labeling:

(1) Line 1: L002, Column A.

(2) Line 2: For flats and irregular parcels, "STD FLTS 3D" or "STD IRREG 3D," as applicable; followed by "BARCODED" or "BC" if pallet contains automation rate mail; followed by "NONBARCODED" or "NBC" if pallet contains carrier route and/or Presorted rate mail. For letters, "STD LTRS 3D;" followed by "BC" if pallet contains barcoded letters; followed by "MACH" if pallet contains machinable letters; followed by "MAN" if pallet contains nonmachinable letters.

h. *SCF (required).* Permitted for packages, sacks, and trays. Pallet may contain carrier route, automation rate, and/or Presorted rate mail for the 3-digit ZIP Code groups in L005. Pallet labeling:

(1) Line 1: L002, Column C.

(2) Line 2: For flats and irregular parcels, "STD FLTS SCF" or "STD IRREG SCF," as applicable; followed by "BARCODED" or "BC" if pallet contains automation rate mail; followed by "NONBARCODED" or "NBC" if pallet contains carrier route and/or Presorted rate mail. For letters, "STD LTRS SCF;" followed by "BC" if pallet contains barcoded letters; followed by "MACH" if pallet contains machinable letters; followed by "MAN" if pallet contains nonmachinable letters.

i. *ASF (required, unless package reallocation used under 5.0).* Permitted for packages, sacks, and trays. Pallet may contain carrier route, automation rate, and/or Presorted rate mail for the 3-digit ZIP Code groups in L602. ADC (L004) packages, sacks, or trays are assigned to pallets according to the "label to" ZIP Code for the ADC package, sack, or tray in L004 (letters or flats) or L603 (irregular parcels). AADC (L801) trays are assigned to pallets according to the "label to" ZIP Code for the AADC tray in L801. At the mailer's option, appropriate mixed ADC packages, sacks, or trays and mixed AADC trays may be sorted to ASF pallets according to the "label to" ZIP Code for the mixed ADC or mixed AADC package, sack, or tray in L802. All mixed ADC packages, sacks, and trays and mixed AADC trays must contain only pieces destinating within the ASF in Exhibit E650.5.1. See E650.5.0 for additional requirements for DBMC rate eligibility. Pallet labeling:

(1) Line 1: L602.

(2) Line 2: For flats and irregulars, "STD FLTS ASF" or "STD IRREG ASF," as applicable; followed by "BARCODED" or "BC" if pallet contains automation rate mail; followed by "NONBARCODED" or "NBC" if pallet contains carrier route and/or Presorted rate mail. For letters, "STD LTRS ASF;" followed by "BC" if pallet contains barcoded letters; followed by "MACH" if pallet contains machinable letters; followed by "MAN" if pallet contains nonmachinable letters.

j. *BMC (required).* Permitted for packages, sacks, and trays. Pallet may contain carrier route, automation rate, and/or Presorted rate mail for the 3-digit ZIP Code groups in L601. ADC (L004) packages, sacks, or trays are assigned to pallets according to the "label to" ZIP Code for the ADC package, sack, or tray in L004 (letters or flats) or L603 (irregular parcels). AADC (L801) trays are assigned to pallets according to the "label to" ZIP Code for the AADC tray in L801. At the mailer's option, appropriate mixed ADC packages, sacks, or trays and mixed AADC trays may be sorted to BMC pallets according to the "label to" ZIP Code for the mixed ADC or mixed AADC package, sack, or tray in L802. All mixed ADC packages, sacks, and trays and mixed AADC trays must contain only pieces destinating within the BMC in Exhibit E650.5.1. See E650.5.0 for additional requirements for DBMC rate eligibility. Pallet labeling:

(1) Line 1: L601.

(2) Line 2: For flats and irregular parcels, "STD FLTS BMC" or "STD IRREG BMC," as applicable. For letters, "STD LTRS BMC."

k. *Mixed BMC (optional).* Permitted for sacks and trays only. Pallet may contain carrier route, automation rate, and/or Presorted rate mail. Pallet labeling:

(1) Line 1: "MXD" followed by information in L601, Column B, for BMC serving 3-digit ZIP Code prefix of entry post office (label to plant serving entry post office if authorized by processing and distribution manager).

(2) Line 2: For flats and irregular parcels, "STD FLTS WORKING" or "STD IRREG WORKING," as applicable. For letters, "STD LTRS WORKING."

[Revise 3.3 by redesignating current 3.3e through 3.3j as 3.3g through 3.3l, respectively; by redesignating and amending current 3.3c and 3.3d as 3.3e as 3.3f, respectively; by redesignating and amending current 3.3a and 3.3b as 3.3b and 3.3c, respectively; and by adding new 3.3a and 3.3d to read as follows:]

3.3 Package Services Flats—Packages and Sacks

[Revise introductory text to read as follows:]

Pallets must be prepared under M041 in the sequence listed below and completed at each required level before the next optional or required level is prepared. Unless indicated as optional, all sort levels are required under the conditions shown. Carrier route, and Presorted pieces with a barcode, apply to Bound Printed Matter mailings, only. At the mailer's option, Packages Services flats may be prepared for destination ASF/BMC entry. For mailings of sacks on pallets, pallet preparation begins with 3.3e. Pallets must be labeled according to the Line 1 and Line 2 information listed below and under M031.

a. *Merged 5-Digit Scheme (required).* Permitted for packages only. Not permitted for packages containing noncarrier route AFSM 100-compatible flats under C820. Required for packages containing all other flats. Pallet must contain carrier route packages, and may contain Presorted rate mail for the same 5-digit scheme under L001. For 5-digit destinations not part of L001, merged 5-digit pallet preparation begins with 3.3d. Pallet labeling:

(1) Line 1: L001.

(2) Line 2: "PSVC FLTS CR/5D SCHEME."

b. *5-Digit Scheme Carrier Routes (required).* Permitted for packages only. Pallet must contain only carrier route packages for the same 5-digit scheme under L001. For 5-digit destinations not part of L001, 5-digit carrier routes pallet preparation begins with 3.3e. Pallet labeling:

(1) Line 1: L001.

(2) Line 2: "PSVC FLTS;" followed by "CARRIER ROUTES" or "CR-RTS;" followed by "SCHEME" or "SCH."

c. *5-Digit Scheme (required).* Permitted for packages only. Not permitted for packages containing AFSM 100-compatible flats under C820. Required for packages containing all

other flats. Pallet must contain only 5-digit packages of Presorted rate mail for the same 5-digit scheme under L001. For 5-digit destinations not part of L001, 5-digit pallet preparation begins with 3.3f. Pallet labeling:

(1) Line 1: L001.

(2) Line 2: "PSVC FLTS 5D;" followed by "SCHEME" or "SCH."

d. *Merged 5-Digit (required).* Permitted for packages only. Not permitted for packages containing noncarrier route AFSM 100-compatible flats under C820. Required for packages containing all other flats. Pallet must contain carrier route packages, and may contain Presorted rate mail for the same 5-digit ZIP Code. Pallet labeling:

(1) Line 1: city, state, and 5-digit ZIP Code destination (see M031 for overseas military mail).

(2) Line 2: "PSVC FLTS CR/5D."

e. *5-Digit Carrier Routes (required).* Permitted for packages and sacks. Pallet may contain only carrier route mail for the same 5-digit ZIP Code. Pallet labeling:

(1) Line 1: city, state, and 5-digit ZIP Code destination (see M031 for overseas military mail).

(2) Line 2: "PSVC FLTS;" followed by "CARRIER ROUTES" or "CR–RTS."

f. *5-Digit (required).* Permitted for packages and sacks. Pallet may contain only Presorted rate mail with or without a barcode for the same 5-digit ZIP Code or same 5-digit scheme under L007 (for AFSM 100-compatible flats only under C820). Five-digit scheme (L007) packages are assigned to pallets according to the OEL "label to" 5-digit ZIP Code. Pallet labeling:

(1) Line 1: city, state, and 5-digit ZIP Code destination (see M031 for overseas military mail).

(2) Line 2: "PSVC FLTS 5D;" followed by "BARCODED" or "BC" if pallet contains mail with a barcode; followed by "NONBARCODED" or "NBC" if pallet contains Presorted rate mail; followed by "SCHEME" or "SCH."

g. *5-Digit Metro (optional).* Permitted for packages only. Pallet may contain carrier route and/or Presorted rate mail with or without a barcode for the 5-digit ZIP Codes in L006, Column A, and for the 3-digit ZIP Code groups in L006, Column B. Pallet labeling:

(1) Line 1: L006, Column C.

(2) Line 2: "PSVC FLTS;" followed by "METRO" or "MET;" followed by "BARCODED" or "BC" if pallet contains mail with a barcode; followed by "NONBARCODED" or "NBC" if pallet contains Presorted rate mail; followed by "SCHEME" or "SCH."

h. *3-Digit (optional).* Option not available for 3-digit ZIP Code prefixes marked "N" in L002. Permitted for packages and sacks. Pallet may contain carrier route and/or Presorted rate mail with or without a barcode. Pallet labeling:

(1) Line 1: L002, Column A.

(2) Line 2: "PSVC FLTS 3D;" followed by "BARCODED" or "BC" if pallet contains mail with a barcode; followed by "NONBARCODED" or "NBC" if pallet contains Presorted rate mail.

i. *SCF (required).* Permitted for packages and sacks. Pallet may contain carrier route and/or Presorted rate mail with or without a barcode for the 3-digit ZIP Code groups in L005. Pallet labeling:

(1) Line 1: L002, Column C.

(2) Line 2: "PSVC FLTS SCF;" followed by "BARCODED" or "BC" if pallet contains mail with a barcode; followed by "NONBARCODED" or "NBC" if pallet contains Presorted rate mail.

j. *ASF (required).* Permitted for packages and sacks. Pallet may contain carrier route and/or Presorted rate mail with or without a barcode for the 3-digit ZIP Code groups in L602. ADC (L004) packages or sacks are assigned to pallets according to the "label to" ZIP Code for the ADC package or sack in L004. At the mailer's option, appropriate mixed ADC packages or sacks may be sorted to ASF pallets according to the "label to" ZIP Code for the mixed ADC package or sack in L802. All mixed ADC packages and sacks must contain only pieces destinating within the ASF in Exhibit E751.1.3. See E752.2.0 for additional requirements for DBMC rate eligibility. Pallet labeling:

(1) Line 1: L602.

(2) Line 2: "PSVC FLTS ASF;" followed by "BARCODED" or "BC" if pallet contains mail with a barcode; followed by "NONBARCODED" or "NBC" if pallet contains Presorted rate mail.

k. *BMC (required).* Permitted for packages and sacks. Pallet may contain carrier route and/or Presorted rate mail with or without a barcode for the 3-digit ZIP Code groups in L601. ADC (L004) packages or sacks are assigned to pallets according to the "label to" ZIP Code for the ADC package or sack in L004. At the mailer's option, appropriate mixed ADC packages or sacks may be sorted to BMC pallets according to the "label to" ZIP Code for the mixed ADC package or sack in L802. All mixed ADC packages and sacks must contain only pieces destinating within the BMC in Exhibit E751.1.3. See E752.2.0 for additional requirements for DBMC rate eligibility. Pallet labeling:

(1) Line 1: L601.

(2) Line 2: "PSVC FLTS BMC.

l. *Mixed BMC (optional).* Permitted for sacks only. Pallet may contain carrier route and/or Presorted rate mail with or without a barcode. Pallet labeling:

(1) Line 1: "MXD," followed by information in L601, Column B, for BMC serving 3-digit ZIP Code prefix of entry post office (label to plant serving entry post office if authorized by processing and distribution manager).

(2) Line 2: "PSVC FLTS WORKING."

3.4 Package Services Irregular Parcels—Packages and Sacks

[*Revise introductory text to read as follows:*]

Pallets must be prepared under M041 in the sequence listed below and completed at each required level before the next optional or required level is prepared. Unless indicated as optional, all sort levels are required under the conditions shown. Carrier route applies to Bound Printed Matter mailings, only. At the mailer's option, Packages Services irregular parcels may be prepared for destination ASF/BMC entry. For mailings of sacks on pallets, pallet preparation begins with 3.4e. Pallets must be labeled according to the Line 1 and Line 2 information listed below and under M031.

a. *Merged 5-Digit Scheme (required).* Permitted for packages only. Pallet must contain carrier route packages, and may contain Presorted rate packages for the same 5-digit scheme under L001. For 5-digit destinations not part of L001, merged 5-digit pallet preparation begins with 3.4c. Pallet labeling:

(1) Line 1: L001.

(2) Line 2: "PSVC IRREG CR/5D SCHEME."

b. *5-Digit Scheme (required).* Permitted for packages only. Pallet must contain only 5-digit packages of Presorted rate mail for the same 5-digit scheme under L001. For 5-digit destinations not part of L001, 5-digit pallet preparation begins with 3.4d. Pallet labeling:

(1) Line 1: L001.

(2) Line 2: "PSVC IRREG 5D;" followed by "SCHEME" or "SCH."

c. *Merged 5-Digit (required).* Permitted for packages only. Pallet must contain carrier route packages, and may contain Presorted rate packages for the same 5-digit ZIP Code. Pallet labeling:

(1) Line 1: city, state, and 5-digit ZIP Code destination (see M031 for overseas military mail).

(2) Line 2: "PSVC IRREG CR/5D."

d. *5-Digit (required).* Permitted for packages and sacks. Pallet may contain only Presorted rate mail for the same 5-digit ZIP Code. Pallet labeling:

(1) Line 1: city, state, and 5-digit ZIP Code destination (see M031 for overseas military mail).

(2) Line 2: "PSVC IRREG 5D."

e. *5-Digit Metro (optional).* Permitted for packages only. Pallet may contain carrier route and/or Presorted rate packages for the 5-digit ZIP Codes in L006, Column A, and for 3-digit ZIP Code groups in L006, Column B. Pallet labeling:

(1) Line 1: L006, Column C.

(2) Line 2: "PSVC IRREG;" followed by "METRO" or "MET."

f. *3-Digit (optional).* Option not available for 3-digit ZIP Code prefixes marked "N" in L002. Permitted for packages and sacks. Pallet may contain carrier route and/or Presorted rate mail. Pallet labeling:

(1) Line 1: L002, Column A.

(2) Line 2: "PSVC IRREG 3D."

g. *SCF (required).* Permitted for packages and sacks. Pallet may contain carrier route and/or Presorted rate mail for the 3-digit ZIP Code groups in L005. Pallet labeling:

(1) Line 1: L002, Column C.

(2) Line 2: "PSVC IRREG SCF."

h. *ASF (required).* Permitted for packages and sacks. Pallet may contain carrier route and/or Presorted rate mail for the 3-digit ZIP Code groups in L602. ADC (L004) packages or sacks are assigned to pallets according to the "label to" ZIP Code for the ADC package or sack in L004. At the mailer's option, appropriate mixed ADC packages or sacks, may be sorted to ASF pallets according to the "label to" ZIP Code for the mixed ADC package or sack in L802. All mixed ADC packages and sacks must contain only pieces destinating within the ASF in Exhibit E751.1.3. See E752.2.0 for additional requirements for DBMC rate eligibility. Pallet labeling:

(1) Line 1: L602.

(2) Line 2: "PSVC IRREG ASF."

i. *BMC (required).* Permitted for packages and sacks. Pallet may contain carrier route and/or Presorted rate mail for the 3-digit ZIP Code groups in L601. ADC (L004) packages or sacks are assigned to pallets according to the "label to" ZIP Code for the ADC package or sack in L004. At the mailer's option, appropriate mixed ADC packages or sacks, may be sorted to BMC pallets according to the "label to" ZIP Code for the mixed ADC package or sack in L802. All mixed ADC packages and sacks must contain only pieces destinating within the BMC in Exhibit E751.1.3. See E752.2.0 for additional requirements for DBMC rate eligibility. Pallet labeling:

(1) Line 1: L601.

(2) Line 2: "PSVC IRREG BMC."

j. *Mixed BMC (optional).* Permitted for sacks only. Pallet may contain carrier route and/or Presorted rate mail. Pallet labeling:

(1) Line 1: "MXD," followed by information in L601, Column B, for BMC serving 3-digit ZIP Code prefix of entry post office (or labeled to plant serving entry post office if authorized by processing and distribution manager).

(2) Line 2: "PSVC IRREG WORKING."

3.5 Machinable Parcels—Standard Mail and Package Services

Pallets must be prepared under M041 in the sequence listed below and completed at each required level before the next optional or required level is prepared. Unless indicated as optional, all sort levels are required under the conditions shown. At the mailer's option, Inter-BMC/ASF and Intra-BMC/ASF Parcel Post may be prepared on pallets under this section. Combined mailings of Standard Mail and Package Services machinable parcels must also meet the standards in M073. DBMC rate eligibility applies to Standard Mail, Bound Printed Matter, and Parcel Select parcels, only. At the mailer's option, Packages Services parcels may be prepared for destination ASF/BMC entry. Pallets must be labeled according to the Line 1 and Line 2 information listed below and under M031.

a. *5-Digit Scheme (optional).* Pallet may contain parcels for the same 5-digit scheme under L606. Pallets need not be prepared for all 5-digit scheme destinations. For 5-digit destinations not part of L606, or for which scheme sorts are not performed, 5-digit pallets are prepared under 3.5b. Pallet labeling:

(1) Line 1: L606.

(2) Line 2: "STD MACH 5D SCHEME" or "PSVC MACH 5D SCHEME," as applicable.

b. *5-Digit (required).* Optional for Standard Mail if 3/5 rates are not claimed. Pallet may contain parcels for the same 5-digit ZIP Code. Pallet labeling:

(1) Line 1: City, state, and 5-digit ZIP Code destination (see M031 for military mail).

(2) Line 2: "STD MACH 5D" or "PSVC MACH 5D" as applicable.

c. *ASF (required if claiming DBMC rates, otherwise optional).* Not available for the Buffalo, NY ASF in L602. Pallets must contain only parcels for the 3-digit ZIP Code groups in L602. See E650.5.0 and E751.1.3 for additional requirements for DBMC rate eligibility.

(1) Line 1: L602.

(2) Line 2: "STD MACH ASF" or "PSVC MACH ASF," as applicable.

d. *BMC (required).* Pallets must contain only parcels for the 3-digit ZIP Code groups in L601. See E650.5.0 and E751.1.3 for additional requirements for DBMC rate eligibility. Pallet labeling:

(1) Line 1: L601.

(2) Line 2: "STD MACH BMC" or "PSVC MACH BMC," as applicable.

e. *Mixed BMC (optional).* Pallet labeling:

(1) Line 1: "MXD," followed by information in L601, Column B, for BMC serving 3-digit ZIP Code prefix of entry post office (or labeled to plant serving entry post office if authorized by processing and distribution manager).

(2) Line 2: "STD MACH WKG" or "PSVC MACH WKG," as applicable.

* * * * *

An appropriate amendment to 39 CFR part 111 to reflect these changes will be published if the proposal is adopted.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 04–9415 Filed 4–23–04; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 083–0436b; FRL–7650–5]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). The revisions concern stack monitoring, source sampling, and the emission of volatile organic compounds from bakery ovens. We are proposing to approve local rules that are administrative or regulate this emission source under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by May 26, 2004.

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

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

Air and Radiation Docket and Information Center, U.S.

Environmental Protection Agency (Mail Code 6102T), Room B–102, 1301 Constitution Avenue, NW., Washington, DC 20460.
California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.
San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

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

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

SUPPLEMENTARY INFORMATION: This proposal addresses the approval of local SJVUAPCD Rules 1080, 1081, and 4693. In the Rules section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: April 2, 2004.

Sally Seymour,

Acting Regional Administrator, Region IX.

[FR Doc. 04–9280 Filed 4–23–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 304–0446b; FRL–7651–5]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from several source categories such as aerospace manufacturing and coating, metal parts coating, wood products coating, and fiberglass composite manufacturing. We are proposing to approve a local rule to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by May 26, 2004.

ADDRESSES: Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, or e-mail to *steckel.andrew@epa.gov*, or submit comments at *http://www.regulations.gov.*

You can inspect copies of the submitted SIP revisions, EPA's technical support documents (TSDs), and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the submitted SIP revisions by appointment at the following locations: California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814; and, South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765–4182.

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

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, EPA Region IX, at either (415) 947–4111, or *wamsley.jerry@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses SCAQMD Rule 1132—Further Control of VOC Emissions from High-Emitting Spray Booth Facilities. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: April 12, 2004.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 04–9283 Filed 4–23–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[AZ 116–0059b; FRL–7652–1]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the maintenance plan for the Morenci area in Arizona and grant the request submitted by the State to redesignate this area from nonattainment to attainment for the National Ambient Air Quality Standards for sulfur dioxide (SO_2).

DATES: Comments on this proposal must be received by May 26, 2004.

ADDRESSES: Comments should be mailed or emailed to Wienke Tax, Office of Air Planning (AIR–2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, *tax.wienke@epa.gov.* Comments may also be submitted through *http://www.regulations.gov.* We prefer electronic comments. You can inspect copies of EPA's **Federal Register** document and Technical Support (TSD) document at our Region 9 office during normal business hours (see address above). Due to increased security, we suggest that you call at least 24 hours prior to visiting the Regional Office so we can make arrangements to have someone meet you. The **Federal Register** notice and TSD are also available on EPA's Web Page at *http://www.epa.gov/region09/air.*

Copies of the State Implementation Plan (SIP) materials are also available for inspection at the address listed below: Arizona Department of Environmental Quality, 1110 W. Washington Street, First Floor, Phoenix, AZ 85007, Telephone (602) 771–4335.

FOR FURTHER INFORMATION CONTACT: Wienke Tax, Air Planning Office (AIR–2), Air Division, U.S. EPA, Region 9, telephone: (520) 622–1622. E-mail: *tax.wienke@epa.gov*, or check *www.epa.gov/region09/air.*

SUPPLEMENTARY INFORMATION: In the Rules and Regulations section of this **Federal Register**, we are approving the maintenance plan for the Morenci SO_2 nonattainment area. We are also approving the State of Arizona's request to redesignate the Morenci area from nonattainment to attainment for the primary SO2 NAAQS. We are taking these actions without prior proposal because we believe that the revision and request are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: March 30, 2004.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 04–9278 Filed 4–23–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 450

[FRL–7644–2]

RIN 2040–AD42

Effluent Limitations Guidelines and New Source Performance Standards for the Construction and Development Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; Withdrawal.

SUMMARY: On June 24, 2002, EPA published a proposal that contained several options for the control of storm water discharges from construction sites, including effluent limitations guidelines and new source performance standards. We have selected the option in that proposal that continues to rely on the range of existing programs, regulations, and initiatives at the Federal, State, and local level for the control of storm water discharges from construction sites rather than a new national effluent guideline or other new rule. EPA determined that uniform national technology-based standards are not the most effective way to address storm water discharges from construction sites at this time. Instead, EPA believes that it is better at this time to rely on the existing National Pollutant Discharge Elimination System (NPDES) storm water program, which requires permit coverage for discharges associated with construction activity disturbing at least one acre of land, and also requires municipalities to reduce their stormwater discharges of pollutants to the maximum extent practicable, which can include implementation of tailored local programs to reduce pollutant discharges from construction sites.

DATES: For judicial review purposes, this action is considered issued as of 1 p.m. eastern daylight time (e.d.t.) on May 10, 2004, as provided in 40 CFR 23.2. Under section 509(b)(1) of the Clean Water Act, judicial review of the Administrator's action regarding effluent limitations guidelines and standards can only be had by filing a petition for review in the United States Court of Appeals within 120 days after the decision is considered issued for purposes of judicial review.

ADDRESSES: The docket for today's action is available for public inspection at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: For technical information regarding today's action, please contact Mr. Jesse W. Pritts at (202) 566–1038 or send e-mail to: *pritts.jesse@epa.gov*. For economic information, please contact Mr. George Denning at (202) 566–1067 or send e-mail to: *denning.george@epa.gov*.

SUPPLEMENTARY INFORMATION:

General Information

A. What Entities Are Potentially Interested in This Action?

Entities potentially interested in this action include businesses that conduct construction and development activities.

Category	Examples of regulated entities	Examples of common North American Industry Classification System (NAICS) codes
Industry	Builders, Developers, General Contractors and Heavy Construction operators that perform construction activities.	233, 234

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be interested in today's action. If you have questions this action, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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

1. Docket

We have established an official public docket for this action under Docket ID No. OW–2002–0030. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. The official public docket is the collection of materials that 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 Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. To view docket materials, please call ahead to schedule an appointment. Every user is entitled to copy 266 pages per day before incurring a charge. The Docket may charge 15 cents for each page over the 266-page limit plus an administrative fee of $25.00.

2. Electronic Access

You may access this **Federal Register** document electronically through the

EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. 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 identified in section B.1.

C. What Other Information Is Available To Support This Action?

You can obtain electronic copies of this action as well as copies of the two major supporting documents at EPA Dockets at *http://www.epa.gov/edocket/* and *http://www.epa.gov/waterscience/guide/construction*.

- "Development Document for Final Action for Effluent Guidelines and Standards for the Construction and Development Category" (EPA–821–B–04–001) referred to in the preamble as the Technical Development Document (TDD). This document presents the technical information that formed the basis for our decisions in today's action, including information on the costs and performance of the pollutant reduction technologies we considered.
- "Economic Analysis for Final Action for Effluent Guidelines and Standards for the Construction and Development Category" (EPA–821–B–04–002) referred to in the preamble as the Economic Analysis (EA). This document presents the methodology employed to assess economic impacts and environmental benefits of the options we considered for today's action and the results of the analysis.

Table of Contents

I. Legal Authority

This action withdraws the proposed effluent limitations guidelines and new source performance standards that EPA proposed for the construction and development industry at 40 CFR part 450 and the revisions to 40 CFR part 122 (67 FR 42644, June 24, 2002). We take this action pursuant to sections 301, 304, 306, 308, 402 and 501 of the Clean Water Act, 33 U.S.C. 1311, 1314, 1316, 1318, 1342 and 1361.

II. Background

A. Clean Water Act

Congress adopted the Clean Water Act (CWA) to "restore and maintain the chemical, physical, and biological integrity of the nation's waters" (section 101(a), 33 U.S.C. 1251(a)). To achieve this goal, the CWA prohibits the discharge of pollutants into navigable waters except in compliance with the statute. CWA section 402 requires most "point source" discharges to obtain NPDES permits issued by EPA or authorized State or tribal agencies.

Following enactment of the Federal Water Pollution Control Amendments of 1972 (Pub. L. 92–500, October 18, 1972), EPA and the States issued NPDES permits to thousands of dischargers, both industrial (*e.g.*, manufacturing, energy and mining facilities) and municipal (sewage treatment plants). EPA promulgated effluent limitations guidelines and standards for many industrial categories. NPDES permits incorporate these requirements when permit authorities issue them.

The Water Quality Act of 1987 (Pub. L. 100–4, February 4, 1987) amended the CWA. The CWA was clarified by defining municipal and industrial storm water discharges as point sources. Industrial storm water dischargers, municipal separate storm sewer systems and other storm water dischargers designated by EPA must obtain NPDES permits pursuant to section 402(p) (33 U.S.C. 1342(p)).

B. NPDES Storm Water Permit Program

EPA's initial 1990 storm water regulations identified construction as one of several types of industrial activity requiring an NPDES permit. These "Phase I" storm water regulations require operators of large construction sites to apply for permits (40 CFR 122.26(b)(14)(x)). A large-site construction activity is one that will discharge storm water runoff from the construction site through a municipal separate storm sewer system (MS4) or otherwise to waters of the United States and meets one or more of the following conditions:

- Will disturb five acres or greater;
- Will disturb less than five acres but is part of a larger common plan of development or sale if the larger common plan of development will ultimately disturb five acres or more;
- Is designated by the NPDES permitting authority.

The 1999 "Phase II" storm water regulations generally extend permit coverage to sites one acre or greater (40 CFR 122.26(b)(15)). Collectively, the Phase I and II storm water rules address approximately 97.5% of the annual construction acreage in the U.S. (64 FR 68731) and require permits of over 5,000 municipalities. Additional information on the NPDES storm water program can be found at *http://cfpub.epa.gov/npdes/home.cfm?program_id=6*.

1. Storm Water Permits for Construction: General and Individual

Pursuant to the NPDES Phase I storm water regulations at 40 CFR 122.26, EPA and the States started issuing permits for storm water discharges from large construction sites in 1992. The Phase II regulations require smaller sites to obtain permits starting in March 2003. Construction sites can be regulated through either general or individual permits.

a. General Permits

General permits cover the vast majority of construction sites governed by the NPDES regulations. EPA and States use general permits to cover a group of similar dischargers under one permit (see 40 CFR 122.28). General permits simplify the application process for the industry, provide uniform requirements across covered sites, and reduce administrative workload for the permit authorities. EPA and the States published documents containing the construction general permits, along with forms and related procedures. To be covered under a general permit, the permittee (either the developer, builder or contractor for a construction project)

typically submits a Notice of Intent (NOI) to the permit authority. The NOI replaces the lengthier application package that is used for an individual NPDES permit. By submitting the NOI, the permittee generally agrees to the conditions in the published permit. While the specific provisions of State general permits vary, all generally require the permittee to prepare a storm water pollution prevention plan (SWPPP), install and maintain best management practices (BMPs) to prevent soil erosion and control construction site runoff, and conduct periodic inspections of their construction sites. Permittees generally may begin land disturbance activities after a specified period following NOI submission unless the permit authority notifies them otherwise.

To discontinue permit coverage, an operator must generally complete final stabilization of the site and transfer responsibility to another party (*e.g.*, a developer transferring land to a home builder) or, for a residential property, complete temporary stabilization and transfer the property to the homeowner. The permittee generally submits a Notice of Termination (NOT) form to the permit authority when the appropriate permit conditions are satisfied.

EPA's Construction General Permit (CGP) covers discharges from construction activities in five States, the District of Columbia, Puerto Rico, U.S. territories, and specifically designated portions of other States (*e.g.*, most land in Indian Country and Federal facilities). The current CGP became effective on July 1, 2003, and is available on EPA's Web site at *http://cfpub.epa.gov/npdes/stormwater/cgp.cfm*. The CGP covers any site with one or more acres of disturbed land, including smaller sites that are part of a larger common plan of development or sale, and replaces and updates previous EPA permits. Construction activities on Indian Country land in EPA Region 4 are covered by a separate construction permit.

b. Individual Permits

A permit authority can require any site to apply for an individual permit rather than a general permit. The individual permit is most often used for complex projects and/or projects in sensitive watersheds. Additionally, a construction site owner or operator may request an individual permit.

2. Municipal Storm Water Permits and Local Government Regulation of Construction Activity

Local governments have a role in the co-regulation of construction industries along with States and EPA. In general, the Phase I rule requires that local governments (or MS4s) serving populations of 100,000 or more obtain permits. The Phase II rule extends coverage to most other MS4s in urbanized areas. NPDES permitting agencies may designate additional MS4s outside of urbanized areas for permit coverage based on State-specific criteria. Permitted MS4s are responsible for overseeing long-term maintenance of storm water management facilities and implementation of appropriate erosion and sediment controls at construction sites within their jurisdiction. A variety of State and municipal regulations addressing erosion and sediment control and storm water runoff from construction activities have been in place for some time, but under the NPDES storm water regulations all permitted MS4s are required to develop such programs.

EPA's storm water regulations require that each municipality develop a local storm water management program in order to properly control discharges into, and out of, its MS4. MS4s also have the option to accept end-of-pipe treatment limitations in connection with their stormwater discharges, but MS4s rarely, if ever, pursue this option. The Phase II MS4 regulations contain explicit requirements for a local program to control storm water discharges from construction activities and to manage "post-construction" (long-term) runoff. Phase I MS4s are required to develop programs to control discharges resulting from construction activities and submit them with their permit application. The permit authority uses this application to develop permit requirements to reduce pollutants in discharges to the maximum extent practicable. *See* 40 CFR 122.26(d) for descriptions of the Phase I MS4 program and 40 CFR 122.34 for a description of the Phase II MS4 program. EPA has provided guidance to permit authorities and MS4s that recommends appropriate components and activities for a well-operated local storm water management program, including appropriate erosion and sediment controls for active construction sites and post-construction storm water management measures. Guidance materials can be found on EPA's Web site at *http://www.epa.gov/npdes/stormwater*.

C. Effluent Guidelines Program

Effluent limitations guidelines and standards (called "effluent guidelines" or "ELGs") are technology-based requirements for categories of point source dischargers. These limitations are incorporated into NPDES permits. The effluent guidelines are based on the degree of control that can be achieved using different levels of pollution control technology, as defined in Title III of the CWA and outlined below.

1. Best Practicable Control Technology Currently Available (BPT)

In guidelines for a point source category, we may define BPT effluent limits for conventional, toxic, and non-conventional pollutants. In evaluating BPT, we generally look at a number of factors. We consider the age of the equipment and facilities, the processes employed and any required process changes, engineering aspects of the control technologies, non-water quality environmental impacts (including energy requirements), and such other factors as the Administrator deems appropriate (CWA section 304(b)(1)(B)). Traditionally, we establish BPT effluent limitations based on the average of the best performance of facilities within the category of similar ages, sizes, processes or other common characteristics. Where existing performance is uniformly inadequate, we may require higher levels of control than currently in place in a category if we determine that the technology can be practically applied (*see* "A Legislative History of the Federal Water Pollution Control Act Amendments of 1972," U.S. Senate Committee of Public Works, No. 93–1, January 1973, p. 1468).

In addition, we consider the total cost of treatment technologies in relation to the effluent reduction benefits achieved. This inquiry is generally designed to determine, among other things, whether the additional reductions from adopting a potential BPT technology are "wholly out of proportion to the costs of achieving such marginal level of reduction" (*see* "A Legislative History of the Federal Water Pollution Control Act Amendments of 1972," 1973, p. 170). The inquiry does not require us to quantify benefits in monetary terms, although we generally attempt to do so where feasible. *See,* for example, *American Iron and Steel Institute* v. *EPA*, 526 F. 2d 1027 (3rd Cir., 1975).

In balancing costs against the benefits of effluent reduction, we generally consider the volume and nature of expected discharges after application of BPT, the general environmental effects of pollutants, and the cost and economic impacts of the required level of pollution control. The Act does not require EPA to consider water quality problems attributable to particular point sources, or water quality improvements in particular bodies of water when selecting BPT. Rather, the Act provides

for water-quality based effluent limitations (WQBELs) over and above the technology-based limitations established through ELGs to address any water quality issues that may remain after technology-based limitations have been applied (CWA section 301(b)(1)(C)). Accordingly, we did not consider water quality in particular receiving waters in developing today's action. *See Weyerhaeuser Company* v. *Costle*, 590 F. 2d 1011 (D.C. Cir. 1978).

2. Best Available Technology Economically Achievable (BAT)

In general, BAT effluent guidelines (CWA section 304(b)(2)) represent the best available technology economically achievable for reducing discharges of toxic and non-conventional pollutants of direct discharging facilities in the subcategory or category. The factors we consider in assessing BAT include the cost of achieving BAT effluent reductions, the age of equipment and facilities involved, the processes employed, engineering aspects of the control technology, potential process changes, non-water quality environmental impacts (including energy requirements), and such factors as the Administrator deems appropriate. We retain considerable discretion in assigning the weight to be accorded to these factors. An additional statutory factor we consider in setting BAT is "economic achievability." Generally, we determine the economic achievability on the basis of the total cost to the subcategory and the overall effect of the rule on the industry's financial health. As with BPT, where existing performance is uniformly inadequate, we may base BAT upon technology transferred from a different subcategory or from another category. In addition, we may base BAT upon manufacturing process changes or internal controls, even when these technologies are not common industry practice.

3. Best Conventional Pollutant Control Technology (BCT)

The 1977 amendments to the CWA required EPA to identify effluent reduction levels for conventional pollutants associated with BCT technology for discharges from existing point sources. EPA generally follows a methodology for evaluating potential BCT limitations using a two-part "cost reasonableness" test. We explained the methodology for the development of BCT limitations in July 1986 (51 FR 24974).

Section 304(a)(4) designates the following as conventional pollutants: biochemical oxygen demand (BOD_5), total suspended solids (TSS), fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional. The Administrator designated oil and grease as an additional conventional pollutant on July 30, 1979 (44 FR 44501). Sediment, which is a primary pollutant of concern at construction sites, is commonly measured as TSS.

4. New Source Performance Standards (NSPS)

NSPS reflect effluent reductions that are achievable based on the best available demonstrated control technology. New facilities have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. As a result, NSPS should represent the greatest degree of effluent reduction attainable through the application of the best available demonstrated control technology for all pollutants (*i.e.*, conventional, non-conventional, and priority pollutants). In establishing NSPS, CWA section 306 directs us to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impacts and energy requirements.

5. Pretreatment Standards

The CWA also defines standards for indirect discharges, *i.e.*, discharges into publicly owned treatment works (POTWs). These are Pretreatment Standards for Existing Sources (PSES) and Pretreatment Standards for New Sources (PSNS) under section 307(b) and (c). Because we did not identify any specific discharges directly to POTWs, we did not consider PSES or PSNS for the Construction and Development Category. The information that we reviewed indicates that the vast majority of construction sites discharge either directly to waters of the U.S. or through MS4s. In some urban areas, construction sites discharge to combined sewer systems (*i.e.*, sewers carrying both storm water and domestic sewage through a single pipe) which lead to POTWs. Sediment is susceptible to treatment in POTWs using technologies commonly employed such as primary clarification. As a result, we do not expect pollutants in construction site runoff that are discharged to POTWs to pass-through without treatment. In addition, we have no evidence of sediment from construction sites causing interference with or sludge contamination at POTWs.

6. Effluent Guidelines Plan and Consent Decree

Clean Water Act section 304(m) requires us to publish a plan every two years that consists of three elements. First, under section 304(m)(1)(A), we are required to establish a schedule for the annual review and revision of existing effluent guidelines in accordance with section 304(b). Section 304(b) applies to ELGs for direct dischargers and requires us to revise such regulations as appropriate. Second, under section 304(m)(1)(B), we must identify categories of sources discharging toxic or nonconventional pollutants for which we have not published BAT ELGs under section 304(b)(2) or new source performance standards under section 306. Finally, under section 304(m)(1)(C), we must establish a schedule for promulgating BAT and NSPS for the categories identified under subparagraph (B) not later than three years after they are identified in the 304(m) plan. Section 304(m) does not apply to pretreatment standards for indirect dischargers, which we promulgate pursuant to section 307(b) and 307(c) of the Act.

On October 30, 1989, Natural Resources Defense Council, Inc. (NRDC), and Public Citizen, Inc., filed an action against EPA in which they alleged, among other things, that we had failed to comply with section 304(m). Plaintiffs and EPA agreed to a settlement of that action in a consent decree entered on January 31, 1992. (*Natural Resources Defense Council, et al.* v. *Whitman*, D.D.C. Civil Action No. 89–2980). The consent decree, which has been modified several times, established a schedule by which we are to propose and take final action for eleven point source categories identified by name in the decree and for eight other point source categories identified only as new or revised rules, numbered 5 through 12. We selected the Construction and Development (C&D) category as the subject for New or Revised Rule #10. The decree, as modified, calls for the Administrator to sign a proposed ELG for the C&D category no later than May 15, 2002, and to take final action on that proposal no later than March 31, 2004. A settlement agreement between the parties, signed on June 28, 2000, provided for EPA to develop regulatory options applicable to discharges from construction, development and redevelopment, covering site sizes included in the Phase I and Phase II NPDES storm water rules (*i.e.*, one acre or greater). We also agreed to develop options including numeric effluent limitations for sedimentation and turbidity; control of construction site pollutants other than sedimentation and turbidity (*e.g.*, discarded building materials, concrete truck washout,

trash); BMPs for controlling post-construction runoff; BMPs for construction sites; and requirements to design storm water controls to maintain pre-development runoff conditions where practicable. The settlement agreement also provided for us to issue guidance to MS4s and other permittees on maintenance of post-construction BMPs identified in the proposed ELGs. We developed options and considered all of these provisions, as discussed in the June 24, 2002, proposal. We did not issue guidance for MS4s and other permittees on maintenance of post-construction BMPs at the time of the June 24, 2002, proposal because the proposal did not contain proposed requirements for post-construction BMPs. However, EPA continues to develop and issue a range of guidance materials to support continued implementation of the program.

III. Summary of Proposed Rule

On June 24, 2002, we published a proposal (67 FR 42644) that contained three options to control storm water runoff from construction sites. Option 1 proposed to modify the existing NPDES regulations to incorporate a series of inspection and certification provisions for site owners and operators. Option 1 would have applied to all construction sites that disturb one or more acres of land and that are required to obtain an NPDES permit under the provisions of 40 CFR 122.26(b)(14)(x) and 122.26(b)(15). Option 2 proposed to create a new part 450 that would codify certain provisions of the EPA construction general permit and establish inspection and certification provisions for site owners and operators as BPT, BAT, BCT and NSPS limitations. These requirements would have applied to all construction sites that disturb five or more acres of land and that are required to obtain an NPDES permit under the provisions of 40 CFR 122.26(b)(14)(x). Option 3 did not establish new regulatory requirements, but instead explained how we would rely on continued implementation of the existing program. In addition to these three options, we solicited comment on implementing Option 1 with applicability to sites with five or more acres of disturbed land (as opposed to one acre as in Option 1). The June 24, 2002, **Federal Register** notice (67 FR 42644) contains detailed descriptions of the regulatory options.

IV. Summary of Comments Received and Significant Changes Since Proposal

One hundred five organizations and individuals submitted comments on a range of issues in the proposal. You can find detailed responses to all comments, including the ones summarized here, in our comment response document in the official public docket. Among the most prevalent comments were those questioning the need for new regulations in light of existing programs at the Federal, State, and local level as well as specific comments on our costing, economics and environmental benefits analyses. A number of comments were submitted specifically opposing our proposal of New Source Performance Standards (NSPS). Other comments requested that we re-propose the guideline to incorporate requirements for post-construction storm water management BMPs, and to include more stringent requirements for erosion and sediment controls.

Many commenters were concerned that we were proposing options (Options 1 and 2) that had a low benefit-cost ratio and felt we should not promulgate a rule where the costs outweighed the benefits to such an extent. In a similar vein, several commenters indicated that we did not account for some substantial benefits. We did make changes to our benefits estimation methodologies since the time of proposal, but there are still a range of benefits that cannot be quantified and/or monetized. However, the costs continue to be substantially greater than the monetized benefits of Option 1 and 2.

The National Association of Home Builders (NAHB), the National Multi Housing Council and the National Apartment Association commented on certain issues with our methodology. They also provided data to replace assumptions EPA had made on the duration of projects, timing of expenditures, and financial independence of a firm's individual projects from other projects. We reviewed the information and found that it contained valid assumptions for the modeling. Thus, we now consider single- and multi-family projects to be independent (not cross-subsidized by other projects) and have set the duration of single-family projects to four years and multi-family projects to nine years. However, we still assume that all costs related to erosion and sediment controls are incurred in the first year of a project. This assumption would result in a slight overestimation of the annual costs of the options, since costs incurred in future years would not be discounted back to present values.

We also made changes to the costing analyses since the proposal. For the proposal, we only examined a subset of existing State erosion and sediment control programs in order to establish the baseline of existing requirements. Since then, we conducted a more detailed evaluation of the programs of all 50 States. This allowed us to construct a more accurate baseline and to calculate compliance costs for the regulatory options on a State-by-State basis. The evaluation for this action still does not fully capture the requirements in place at the county, municipal and conservation district level. As a result, we may have overestimated both the incremental costs and the sediment removals.

We also updated the best management practice (BMP) assumptions in the costing model. Based on a review of existing State programs, we found that all 50 States require basic sediment controls such as silt fencing, inlet protection and check dams as part of their existing programs. In addition, all States require permittees to prepare a SWPPP or equivalent document, such as an erosion and sediment control plan, clearing and grading plan or storm water management plan. The requirements of these plans are essentially equivalent to the requirements for a SWPPP contained in the EPA CGP. The only notable differences between existing programs and the requirements contained in the EPA CGP are variations in the size of sediment basins required, the requirement for installing sediment traps for smaller sites, the time allowed for providing stabilization of exposed soil areas, and the frequency of site inspections. As a result, the cost model we developed for this action only calculates costs of the options we considered for these four elements.

We also updated the unit cost values. For sediment basins and sediment traps, we used at proposal a cost curve for dry extended detention basins. *See* Thomas R. Schueler and Heather K. Holland, eds., "The Economics of Stormwater Treatment: An Update," *The Practice of Watershed Protection*, Ellicott City, MD, Center for Watershed Protection, 2000, p. 402. However, the costs of dry extended detention basins (which are permanent storm water management facilities) can differ significantly from the costs of temporary sediment basins and sediment traps due to differences in their intended functions and design parameters. Therefore, for the analysis supporting today's action, we instead used values for sediment basins contained in a report issued by EPA in 1993 (*see* U.S. Environmental Protection Agency, *Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters*, EPA 840–B–92–002, Washington, U.S. Environmental Protection Agency, 1993, p. 4–78). We also examined several

more up-to-date references in order to determine if current unit costs vary significantly from the values reported in this document. We examined a number of individual unit cost entries for sediment basins and sediment traps contained in 32 references, including county bonding estimates and State department of transportation contract bids, and found that the values reported in the 1993 document are still valid for sediment basins and sediment traps. Therefore, we used these values for the analysis in support of today's action. As a result of these changes, we believe that the costing analysis presents a much more accurate estimate of the costs of compliance for the regulatory options we considered.

We also revised the pollutant loading estimates for this action. For the proposal, we estimated reductions in pollutant loadings by using the per-site loads from the economic analysis for the Phase II NPDES Storm Water rule and estimates of BMP removals based on our best professional judgment (BPJ). We received several comments that this approach was not clear and that the basis for our BPJ estimates was not fully described. For today's action, we estimated soil erosion on an ecoregion basis using the Revised Universal Soil Loss Equation (*see* K.G. Renard, *et al., Predicting Soil Erosion by Water: A Guide to Conservation Planning with the Revised Universal Soil Loss Equation (RUSLE),* Agriculture Handbook No. 703, Washington, U.S. Govt. Print. Off., 1997) and county-level soil data. We estimated loadings reductions using the SEDCAD model (*see* Richard C. Warner and Pam Schwab, *SEDCAD 4 for Windows 95/98 & NT. Design Manual and User's Guide,* Ames, IA, Civil Software Design, 1998). We believe that this resulted in a much more accurate estimate of the removals attributable to the various regulatory options we considered.

We also made changes in our benefits assessment methodologies. For the proposal, we estimated the total reduction in discharge of turbidity and suspended solids nationally and then calculated avoided costs associated with reduced water storage capacity in reservoirs, reduced need for navigational dredging, and reduced drinking water treatment costs. We received several comments that indicated there were potentially other benefits that we did not quantify (such as improvements in water quality and associated changes in designated uses, ecological benefits, and human health impacts). For the analysis in support of this action, we calculated monetized benefits of the regulatory options using the National Water Pollution Control Assessment Model (NWPCAM) developed by Research Triangle Institute for EPA (*see* Research Triangle Institute, *National Water Pollution Control Assessment Model (NWPCAM) v. 2.0,* Research Triangle Park, NC, Research Triangle Institute, 2000). We believe that the NWPCAM model is a significant improvement over the methodology we used for the proposed rule analysis. We have used NWPCAM to value benefits in other recent effluent guidelines rulemakings, such as Concentrated Animal Feeding Operations and Meat and Poultry Products. You can find additional information on our loadings analysis and benefits assessment in section VIII, in the development document, and the public docket.

V. Decision Not To Establish Effluent Limitations Guidelines

We have decided not to promulgate effluent limitations guidelines and standards for the construction and development industry and instead have selected the option that relies on the range of existing programs, regulations, and initiatives at the Federal, State, and local level for the control of storm water runoff from construction sites. This option was identified in the June 2002 proposal as Option 3. We made this decision for numerous reasons.

The existing NPDES storm water regulations already require permits for the vast majority of construction sites and municipalities nationwide. The Phase I regulations first required permits for construction sites disturbing 5 or more acres in 1992. The Phase II regulations added permitting requirements for small construction sites disturbing between 1 and 5 acres in early 2003. EPA estimates that the Phase I and II construction site storm water regulations combined require permits for approximately 400,000 construction sites annually. In addition, the Phase I regulations require permits for MS4s that include requirements that they address construction site runoff within their municipal boundaries. Currently, there are nearly 1,000 medium and large MS4 operators permitted, or in the final stages of being permitted, under the NPDES storm water program. The Phase II regulations required permits of small municipalities beginning in 2003. Small municipalities must also develop a program to address construction site runoff within their municipal boundaries. The Phase II permitting requirements add over 5,000 municipalities to the program. The Phase I and II municipal permitting requirements combined require permits for nearly all of the urbanized area in the United States. Since the NPDES regulations already contain permitting requirements for most construction sites disturbing at least 1 acre, and the municipal permitting requirements also address construction site runoff that occurs within municipal boundaries, EPA believes that construction site storm water discharges are already being adequately addressed through the existing program.

The total annual costs of the proposed ELGs (Option 2) would be more than half a billion dollars. EPA believes that these costs are simply too high and are disproportionately large when compared to the incremental loading reductions over the existing program that would be attributable to the proposed ELG. Our modeling indicates that the existing Phase I and Phase II permit programs as of the year 2003 were already capable of controlling approximately 80–90% of sediment runoff from construction sites, and the proposed rule would remove only 1% more. Furthermore, continued implementation of the Phase II municipal programs and revisions to State construction general permits will likely result in continued improvements in the level of control for construction site storm water discharges nationwide. This will reduce the sediment loading reductions estimated to result from the proposed Option 2 to an even smaller incremental amount. Moreover, EPA estimates that under Option 2 between 673 and 5,178 jobs would be displaced each year—an impact that would fall predominantly on small businesses. The high economic impacts for this industry, coupled with the finding that a national rule would remove only about 1% of the overall loads, persuades EPA that we should not promulgate an ELG based on the June 2002 proposal. EPA concludes that employing the flexibility inherent in the existing programs is a better approach to addressing remaining sediment loadings at this time.

A. Existing Programs

When we began developing effluent guidelines for the construction and development industry, we expected to find that the existing State and local erosion and sediment control programs were not well developed. At the time of proposal, we had evaluated a subset of existing State programs to compare their requirements to those of the EPA Construction General Permit (CGP). Since proposal, we have evaluated the programs of all 50 States and have determined that these requirements generally are comparable to and in some cases exceed those of the EPA CGP. All

50 States require basic sediment controls such as silt fencing, inlet protection and check dams as part of their existing programs. In addition, all States require permittees to prepare a storm water pollution prevention plan (SWPPP) or equivalent document, such as an erosion and sediment control plan, clearing and grading plan or storm water management plan. The requirements of these plans are essentially equivalent to the requirements for a SWPPP contained in the EPA CGP. The only notable differences between existing programs and the requirements contained in the EPA CGP are variations in the size of sediment basins required, the requirement for installing sediment traps for smaller sites, the time allowed for providing stabilization of exposed soil areas, and the frequency of site inspections. We thus compared the existing State requirements with those of the EPA CGP for each of these components. The results of this evaluation are as follows:

- All 50 States require preparation of a SWPPP, erosion and sediment control plan, or equivalent document;
- 41 States require inspections of the site at least once every 14 days;
- 30 States require sediment basins with at least 3,600 cubic feet of storage per acre disturbed for areas draining ten acres or more;
- 27 States require stabilization of soils within 14 days after construction activities have temporarily or permanently ceased on any portion of the site; and
- 22 States require sediment traps for smaller sites.

In many cases where the State-level requirements are not equivalent to those contained in the EPA CGP, we expect that local requirements will be equivalent to or even more stringent than those contained in the EPA CGP. We received comments from both NAHB and NRDC citing examples of this. Due to the information burden of collecting this sort of data and the significant analytical complexity of calculating costs and loadings reductions at a level finer than at the State-level, we did not comprehensively collect information on programs currently in place for counties, municipalities, or conservation districts. However, as noted before, municipalities permitted under the Phase I and Phase II storm water regulations are required to develop programs that control discharges of runoff from active construction sites within their jurisdiction to the maximum extent practicable.

Moreover, we have determined that some of the States that do not have equivalent requirements to those contained in the EPA CGP are located in arid or semi-arid areas of the country. In these States, the additional pollutant load reduction that would result from implementing more stringent requirements is likely minimal, since these areas do not experience a significant amount of rainfall. For example, four of the States (Colorado, Montana, North Dakota and Wyoming) that do not have sediment basin requirements equivalent to the EPA CGP have urbanized areas that are located predominately in arid or semi-arid areas.

Using modeling data, we have determined that existing State and Federal requirements, once fully implemented,[1] will likely result in removal of approximately 80–90% of sediment loads that would otherwise be discharged from active construction sites. This suggests that existing programs are already quite good. Our modeling data indicate that imposing the requirements in the EPA CGP as a uniform technology floor nationwide as proposed, however, would result in an additional capture of relatively little additional sediment—approximately 1% more.

EPA's decision not to go forward with an ELG at this time was also influenced by the Agency's estimate of the relatively small portion of the overall sediment problem the options EPA considered would have addressed. EPA estimates that Option 2 would have resulted in reductions of approximately 1,000,000 tons per year of sediment loadings. While the total amount of sediment reduction may appear quite large, it is small in comparison to the sediment reduction attributable to the existing program and the sediment currently discharged from other sources. As an example, the United States Department of Agriculture (USDA) estimated in the 2001 Natural Resources Inventory (*http://www.nrcs.usda.gov/technical/land/nri01/*) that sediment eroded by water from cropland is approximately 1 billion tons per year. The small amount of expected sediment reductions in comparison to the reductions due to the existing program and the sediment loadings originating from sources outside the scope of this program reinforces our decision not to promulgate effluent limitations guidelines and standards at this time.

The remainder of the sediment being discharged from construction sites nationwide would be extremely difficult to capture using the technologies contained in our proposal for a number of reasons. Principal among these reasons is the varying soil types and topography found at construction sites. Certain soil types (*e.g.*, clay) do not settle readily even in sediment ponds that hold stormwater runoff for many days. Even where the runoff itself is amenable to treatment using sediment controls, the topography does not always allow for large sediment basins. We believe that these kinds of site-specific considerations are best addressed by local permit authorities and municipal storm water programs at this time.

B. Cost

We also considered the high incremental cost of imposing technology requirements equivalent to the CGP nationwide and determined that the overall cost in absolute dollars spent annually and the resulting annual job displacement was disproportionate to the incremental pollutant reductions that would be achieved. At proposal, EPA estimated the cost of the proposed ELG (Option 2) at $505 million annually. As a result of further analysis conducted since proposal in response to comments received, EPA now estimates that the cost of the proposed ELG would be $585 million annually. Even using the smaller $505 million figure, the ELG would have imposed considerable annual costs on the national economy, with little corresponding pollutant reduction when compared to the existing program.

We are also concerned that, in addition to substantial costs, the ELG considered by EPA would result in significant job displacement. Our estimates for job displacement range from 461 (with a market-based cost pass-through assumption) to 3,847 (with a 0% cost pass-through assumption) annually. Moreover, the cost and job displacement impacts caused by imposing these requirements nationwide would be felt primarily by small businesses. Because of the importance of this sector to the national economy, we determined these economic impacts to be substantial. These impacts also support our decision not to establish effluent limitations guidelines at this time.

Some commenters suggested that the cost of the proposed ELGs per pound of pollutant removed was low by EPA's traditional standards. At proposal, we

[1] Under Phase II, small municipalities and small construction sites were required to obtain permit coverage by March 10, 2003. As most Phase II municipalities are still early in their first permit terms, and storm water programs by nature require a certain amount of local optimization, we believe it likely that many such programs have yet to reach their full potential.

estimated a cost of approximately $0.01 per pound of TSS removed. For this action, we have revised this estimate considerably, based primarily on a significant reduction in estimated removals. We now estimate a cost of approximately $0.29 per pound of TSS removed. While this is still within the range that EPA has considered acceptable in past cost-reasonableness analyses, we believe the small relative magnitude of these reductions (approximately 1% of total loads generated at construction sites and approximately 0.1% of estimated discharges from cropland), the nature of the pollutants (primarily sediment), the fact that discharges occur only through storm water, and the existence of increasingly effective local erosion and sediment control programs in all urbanized areas, support our conclusion that the cost of the ELGs does not justify a national rule at this time. While no one of these factors in isolation would necessarily lead us to this conclusion, we believe that collectively they support it.

C. The Importance of Flexibility

The purpose of an effluent limitations guideline is generally to set a technology-based minimum standard of pollution control on dischargers within a given industrial sector. EPA has determined, due largely to the wide variability of conditions under which the construction industry operates, that imposing such national, uniform standards is not the most effective means of controlling sediment discharges from construction sites at this time.

As described above, there is currently variability among the State programs addressing sediment discharges from construction sites, although all require permits that contain provisions to address construction site storm water runoff, such as development of a SWPPP or similar instrument. Moreover, imposing uniform requirements commensurate with the CGP would be very costly, with little incremental pollutant reduction over the existing program. We considered the possibility of crafting a national ELG that incorporated flexibility to allow permit writers to impose different measures in areas where some types of controls would be less effective than in other locations (*e.g.*, different requirements based on varying soil types). The goal of such a flexible approach would be to retain controls on sediment discharge where such controls would yield the best results, while minimizing the considerable costs of such controls where they would do little good. We ultimately concluded that, at this time, the complexity that would result from such national standards threatened to make the ELG too unwieldy. The existing permit programs already have the necessary flexibility and, in the Agency's opinion, constitute the better tool to address sediment discharges at construction sites at this time. EPA has provided, and will continue to provide, guidance to local authorities on how best to reduce construction site discharges to the maximum extent practicable on a site-specific basis.

Moreover, NPDES permits issued by States are generally submitted to EPA in draft form before issuance, are subject to public notice and comment, and are judicially reviewable. This applies to both permits for construction site operators, and to permits for municipalities that must develop effective programs to control construction site storm water discharges. Hence, EPA may exercise oversight authority to object to inadequate State permits, and the public may comment on, and ultimately challenge in court, permits that they deem inadequate.

D. Additional Information

EPA is authorized to promulgate BPT/BAT limitations only where we determine that the technologies identified satisfy each element of the statutory test. For BPT, for example, the technology in question must be "best," "practicable" and "currently available." For BAT, the technology basis for the limitations must be "best," "available" and "economically achievable." Hence, EPA need not make a determination that a given technology is economically achievable if that technology is not "best" or otherwise fails another statutory requirement. *See, BP Exploration & Oil, Inc.* v. *EPA*, 66 F.3d 784, 796–97 (6th Cir. 1995). Rather, EPA is authorized to decline to promulgate a nationally applicable effluent limitations guideline where we determine that a national categorical rulemaking is not the best tool to address the problem at hand. Such is the case with today's decision. For the various reasons cited in this action, and further discussed in our responses to comments (*e.g.*, high cost, low rate of pollutant reduction compared to the existing program, adequate existing programs, preference for site-specific flexibility), we have determined that none of the technologies considered for this category is "best" at this time, and therefore we decline to promulgate an ELG for this category.

The NPDES construction site storm water management regulations have been in place for large sites since 1990 (permits were first required in 1992) and small sites since 1999 (permits were first required in 2003). We expect that implementation of the NPDES permitting program is continuing to raise awareness of erosion and sediment control issues across the industry and leading to improvements in runoff control. This is especially true for operators of smaller sites, which only recently were required to obtain permits. We received many comments questioning the need for additional regulations at this time, given that a large portion of the NPDES program is just being implemented. We agree that since the permitting requirement for discharges from "small" sites (disturbing at least one, but less than five, acres) is now in force, it makes sense to allow additional time for the existing program to be more fully implemented before deciding the need for additional regulation through effluent limitations guidelines.

In the meantime, there are a number of other maturing EPA programs and initiatives that are expected to lead to significant reductions in discharges from construction sites, including:

- Total Maximum Daily Loads (TMDLs) are now being developed at an accelerating pace, which will lead to increased water-quality based management of construction site runoff where sediment and nutrients from such sites contribute to impairments;
- EPA's National Management Measures to Control Nonpoint Source Pollution from Urban Areas, which is a draft technical guidance and reference document for use by State, local, and tribal managers in the implementation of nonpoint source pollution management programs. It contains information on measures for reducing pollution of surface and ground water from urban areas and controlling construction site storm water runoff;
- EPA's Office of Enforcement and Compliance Assurance (OECA) Construction Workgroup has worked with the Associated General Contractors of America (AGC), NAHB and other trade groups to prepare "Federal Environmental Requirements for Construction". This workgroup will also soon release a guide to managing storm water and other environmental requirements for contractors and others who work together in construction and development;
- EPA's Office of Policy, Economics and Innovation through the Sector Strategies Program is partnered with AGC to promote industry-wide

performance improvements in managing storm water using Environmental Management Systems, regulatory burden reduction, and performance measurement; and

• The Construction Industry Compliance Assistance Center, which steers contractors to EPA and State storm water requirements and assistance resources (*see http://www.cicacenter.org/*).

As a result of these and other initiatives at the Federal, State, and local level, the sediment reductions we estimated under an ELG for this industry may well be achieved anyway. We expect that the combination of these EPA programs and continued implementation of State, county, and local programs will eventually control the majority of these discharges.

We received comments indicating that there are technologies that would provide incremental pollutant reductions that were not included in our BCT analysis (such as phasing, limiting amount of land exposed at one time, improving sediment basin designs, etc.). For the purposes of today's action, we did not apply the BCT cost test because BPT effluent limitations guidelines themselves were determined not to be feasible or appropriate. While these technologies would provide incremental reductions, they do not change the overall decision process because all of the factors discussed above (high costs, low sediment reduction, effective local programs, need for flexibility) still apply. As a result, we are not promulgating effluent limitations guidelines based on BCT.

We considered the same options for BAT as BPT. We are not aware of any additional technically feasible and economically achievable technologies for the removal of toxics (*i.e.*, priority metals and organic chemicals) and non-conventional pollutants beyond those we considered for BPT. In fact, we do not have data indicating that these pollutants are found in construction site runoff nationwide. As a result, we are not promulgating effluent limitations guidelines based on BAT.

We also did not consider additional options for NSPS. At the time of the proposal, we sought comment on various ways EPA might approach NSPS for the construction industry. We have decided not to promulgate NSPS because we have determined that discharges associated with construction activity generally are not appropriately characterized as "new sources." The CWA defines "new source" as "any source, *the construction of which* is commenced after the publication of proposed regulations * * *" EPA believes that this definition is best read to generally exclude construction sites. To include construction activity itself within the definition of a "new source" would be to view construction sites as things that are themselves constructed. EPA sought comment on this interpretation of the statute in the June 24, 2002, proposal. This is not, in EPA's view, the best way to read this provision of the CWA. EPA's interpretation of the statute does not, however, foreclose the possibility that the Agency might at a future point promulgate an effluent limitations guideline set in accordance with BPT, BCT and/or BAT. Because construction sites themselves are not "new sources," NSPS is not applicable and the Agency has decided to withdraw the NSPS proposed on June 24, 2002.

For these reasons, we have determined that at this time the existing permit requirements along with existing programs and initiatives at the Federal, State, and local level are adequate to control discharges from active construction sites. Not promulgating effluent limitations guidelines allows for continued implementation of the existing storm water program through appropriately tailored State and local control programs within the existing general and individual permitting systems. This approach allows maximum flexibility for permitting authorities to continue to regulate construction sites reflecting site-specific conditions such as soil types and rainfall patterns, and to develop alternative control strategies or other BMP requirements to respond to local water quality concerns.

E. Other Options

We eliminated Option 1 from consideration because site inspection and certification requirements by themselves are not technology-based standards (though they may be an important operational component of other technology-based standards) and thus do not constitute an effluent limitations guideline. We eliminated this option from consideration after receiving many comments indicating that these provisions would be too burdensome, especially for small businesses. In addition, many commenters questioned the environmental benefits of such requirements. We agree that these provisions would have been burdensome. Indeed, our analysis indicates that these provisions would have had an aggregate cost of approximately $278 million annually. Furthermore, we lack the tools to evaluate the pollutant loading reductions that would likely result from such provisions; we also lack any data that indicates that such provisions would result in notable improvements in implementation of the existing program. At present, site inspections are required under the existing stormwater programs regulating construction activity. We believe at this time that the timing of inspections, as well as any certification requirements, are best determined by permitting authorities in accordance with existing Federal, State and local requirements reflecting local conditions (*e.g.*, rainfall patterns).

As noted above, under the June 28, 2000, Settlement Agreement, EPA agreed to develop options that included BMPs for controlling post-construction runoff and requirements to design storm water controls to maintain pre-development runoff conditions where practicable. Prior to publishing the proposed rule, EPA developed such options, including an option that would require developers to implement post-construction stormwater controls to reduce pollutant discharges by 80% from uncontrolled levels and maintain peak post-development flows at pre-development levels. EPA ultimately decided, however, not to propose controls on post-construction flows for several reasons. (67 FR 42644, 42660 (June 24, 2002))

First of all, EPA noted that the choice of such controls has traditionally been left to State and local governments, who use a variety of regulatory and non-regulatory programs (such as land use planning) to address post-construction runoff to protect infrastructure and achieve local resource goals. The Clean Water Act recognizes the primary responsibility of States in the planning and use of land and water resources (section 101(b), 33 U.S.C. 1251(b)). Furthermore, many of the approaches used by State and local governments to address post-construction flows, such as low impact development, do not lend themselves to uniform standards, but require integration with land use decisions and site design. EPA supports these approaches and does not want to limit local flexibility. In addition, EPA determined that adopting uniform national standards for post construction flows would be very expensive. For the particular option that would have required maintaining peak post-construction flows at pre-development level, EPA estimated national costs of about $3.3 billion per year. This includes only monetized costs, and does not include costs such as safety and communities preferences for sewer design, road width, sidewalk placement, and other amenities that might be

adversely impacted by the need to minimize impervious surface in order to maintain pre-development flows. The primary benefit of this option would have been the reduction in adverse impacts to small streams from increased peak flows during storm events. Based on preliminary effort to quantify these benefits, EPA believes that the high costs of this option are likely disproportionate to the benefits.

A number of other issues were raised, both by other Federal agencies during interagency review of the proposed rule, and subsequently by commenters, which EPA considered in its decision not to propose and promulgate post-construction stormwater controls (*see e.g.*, March 30, 2004, letter from Thomas M. Sullivan, Chief Counsel for Advocacy, Small Business Administration, to Benjamin Grumbles, Acting Asst Administrator for Water, USEPA, and accompanying March 30, 2004, Memorandum from Kevin Bromberg, Assistant Chief Counsel for Advocacy, to Marvin Rubin, Chief Environmental Engineering Branch, Engineering and Analysis Division, USEPA Office of Water; March 30, 2004, letter from Mary E. Peters, Administrator, Federal Highway Administration, to Benjamin H. Grumbles, Acting Asst Administrator for Water, USEPA; and March 31, 2004, letter from A. Bryant Applegate, Director, America's Affordable Communities Initiative, U.S. Department of Housing and Urban Development, to Jesse Pritts, P.E., USEPA). Concerns were raised about a number of human health and safety risks potentially associated with structural and non-structural BMPs to address stormwater runoff. EPA has included materials in the record describing these risks.

EPA's analysis indicated that the average incremental cost of construction and post-construction controls for a single family house would have ranged from about $1,000 to $2,200, depending on the degree of implementation of the Phase II stormwater program. These cost increases were projected to make new homes unaffordable for between 135,000 and 325,000 families. These estimates accounted only for up-front capital costs. They did not include the costs that homeowners would ultimately bear through fees and local property taxes for long-term maintenance of the control structures.

Concerns were also raised about impacts of post-construction stormwater requirements on small businesses and employment. EPA estimated that up to 800 construction firms, almost all of which are small, might close as a result of these requirements. About 1,300 firms would experience impacts in excess of 3% of gross revenues, and about 8,000 firms would experience impacts in excess of 1% of gross revenues. EPA has traditionally used these threshold to evaluate impacts on small businesses. Net job losses in the economy were estimated at between 9,000 and 18,000 jobs, depending on whether infrastructure cost savings were assumed or not.

Finally, concerns were raised about the impacts of post-construction controls on road and highway construction. Roadways are generally limited to fairly narrow, linear rights-of-way that may lack sufficient land to construct structural BMPs (detention basins). LID controls are also not practical because roadways are by definition impervious, and need to be able drain water quickly from road surfaces for safety reasons. If land for infiltration beside the roadway is limited, it will likely not be possible to maintain pre-construction runoff patterns.

For all of these reasons, EPA is reaffirming its decision not to propose and promulgate post-construction stormwater controls.

VI. Compliance Cost Estimates of Options We Considered

Since we are not promulgating effluent guidelines for the construction and development industry, there are no compliance costs associated with today's action. However, we did estimate costs for the regulatory options we considered. You can find more information on the costing analysis in the Development Document and in the public record for this action.

We estimate that the national annual compliance costs of the options we considered, in 2002 dollars, are $278 million annually for Option 1 and $585 million annually for Option 2.

We evaluated per-site costs individually for a series of model construction sites. We based per-site costs on model construction sites that reasonably represent common construction site features and factors related to State regulations, topography, and hydrology. Using estimates of the amount of new construction acreage developed annually in the U.S. obtained from the 1997 USDA National Resources Inventory (*http://www.nrcs.usda.gov/technical/NRI/1997/national_results.html*) and the U.S. Census Bureau, we computed State total costs by multiplying modeled per-site costs by the number of construction sites in each land use/site-size combination for 48 States. Costs for Alaska and Hawaii, as well as the U.S. territories were not estimated because we lacked sufficient data for these areas. However, since there is little construction in these areas compared to national development rates, we expect that excluding these costs has little impact on the results we obtained. We calculated national-level costs by summing State costs.

We used a three-step process to compute the total national compliance costs of the options we considered:

(1) Estimated model site costs using national average unit costs;

(2) Calculated model site costs using State-specific cost adjustment factors; and

(3) Summed State totals to produce the national compliance cost estimates.

We collected and compiled data on State construction general permits, erosion and sediment control regulations, and storm water management regulations to determine if existing State programs were at least equivalent to requirements contained in the July 2003 EPA CGP. To determine whether a State program was equivalent to the EPA CGP, we focused on six main areas:

(1) Requirements for preparing a storm water pollution prevention plan (SWPPP) or equivalent document and for installing general erosion and sediment controls (such as silt fencing, inlet protection and soil stabilization);

(2) The amount of time allowed for stabilization of exposed soil when construction activities have temporarily or permanently ceased;

(3) Requirements for installing sediment traps for drainage areas of less than 10 acres;

(4) Requirements for installing sediment basins for drainage areas of 10 or more acres;

(5) Requirements for removing accumulated sediment from sediment controls when sediment storage capacity has been reduced by at least 50%; and

(6) Requirements to conduct inspections at least every 7 days OR every 14 days and following rainfall of 0.5 inches or more.

We found that many States have requirements similar to those contained in the EPA construction general permit, which is the basis for the requirements contained in Option 2. No States currently have requirements equivalent to the inspection and certification provisions of Options 1 and 2. For each State, we determined if certain key BMPs are required and for what construction site size a particular BMP is required. We used this information to determine the baseline BMP sizes and quantities for each of the 24 model

construction sites in each State across the U.S. We then calculated the incremental BMP quantities and size increases by comparing these sizes and quantities with those required under each regulatory option. For sediment basins and sediment traps, we also noted the size of the BMP required by the State program. Where a State program did not note a sediment basin size, we assumed based on BPJ that the baseline size was 1,800 cubic feet per acre.

VII. Economic Impact Analysis of Options We Considered

Since we are not promulgating effluent guidelines for the construction and development industry, there are no economic impacts associated with today's action. However, we did conduct an analysis of the economic impacts of the options we considered for today's action. Our economic analysis describes the impacts of the options in terms of firm financial stress, employment effects, and market changes, such as housing prices. In addition, the Economic Analysis contains information on the impacts on sales and prices for residential construction. This section presents selected information from the economic analysis that supports this action. For more complete information on the economic analysis, you may review the economic analysis and the official public docket for this action.

A. Description of Economic Activity

For the purposes of these analyses, the Construction and Development Category is comprised of industries that are involved in building, developing and general contracting (NAICS 233) as well as heavy construction (NAICS 234). We estimated that in 1997 there were approximately 262,000 employer establishments in construction and development industries. By subtracting establishments that are engaged in remodeling and establishments that are unlikely to disturb more than 5 acres of land, we estimated that under Option 2 about 82,883 establishments (of which about 84% are small businesses) would potentially be affected. Census data for 2002 were not available for today's action.

B. Methodologies for Estimating Economic Impacts

We assessed how incremental costs of the options considered would be shared by developers and home builders, home buyers, and society using a cost pass-through (CPT) analysis and a partial equilibrium analysis. We analyzed these impacts on projects, firms and markets. We analyzed impacts on consumers and on the national housing market, regional markets and the U.S. economy. Moreover, we analyzed economic impacts to small businesses.

We estimated project-level costs and impacts for a series of model projects to evaluate the options we considered. The models establish baseline economic and financial conditions for C&D projects and assess the significance of the change in cash flow that results from the incremental compliance costs.

We conducted the economic impact analyses using three CPT scenarios. We analyzed the regulatory cost impacts on the model projects using zero and 100% CPT. In the first scenario (100% CPT), we assumed that the developer-builder can pass through all of the incremental compliance costs to the final customer (*e.g.*, the new home buyer, office lessee, or taxpayer). Under this scenario, we assume all costs are borne by the customer in the form of higher prices for completed construction. In the second scenario (zero CPT), we assumed that the builder-developer cannot pass any of the cost increases through, and therefore must absorb all of the costs. For the market analysis, we used a partial equilibrium model with a market-based CPT and reflecting price elasticities observed in the marketplace.

The outputs of the project and firm models include the cost increases that might fall on consumers under the 100 percent CPT scenario and the reductions in profits that industry might incur under the zero percent CPT scenario. In the market models, we analyzed the likely changes in market variables such as prices and quantities that could occur with each option.

To estimate firm-level impacts, we developed the costs per housing start and then assessed the effect of the annual compliance costs of the options at the firm level on key business ratios and other financial indicators. We examined impacts on the gross profit, current ratio, debt-to-equity ratio and return on net worth. Industry publications cite these financial ratios as particularly relevant to the construction industry (see D. Linda Kone, *Land Development,* Washington, Home Builders Press, 2000, and M. Benshoof, "An Inside Look at Builders" Books," *Housing Economics,* Washington, National Association of Home Builders, 2001). Two of the ratios are based on operating income (gross profit, return on net worth), and two are based on the balance sheet statement (current ratio, debt to equity). We examined the compliance cost impacts by calculating the values of each ratio with and without the compliance costs, using a zero CPT assumption and a market-based CPT assumption.

We used the changes in financial ratios to develop probability distributions of changes in financial status. We used these distributions to estimate the number of firms that might experience financial stress based on the likelihood that their financial ratios might fall below benchmark criteria we assume are indicators of financial stress. We define financial stress as a situation where the firm may have to change their way of doing business to adjust to the changing business climate. The most extreme adjustments are associated with downsizing or closure, but financial stress does not necessarily imply either of these. We then combined the number of firms estimated to experience financial stress with employment figures for the relevant size firms to estimate the numbers of employees that could potentially be affected by the options we considered. These effects might not occur if the firms experiencing financial stress are able to respond to the changing conditions without downsizing or closing. Our analyses project that 31 firms would experience financial stress and 673 employees would be displaced under Option 2, with the market-based cost pass-through assumption. Using the zero cost pass-through assumption, we estimate that 258 firms would experience financial stress and 5,178 employees would be displaced under Option 2.

We used the Small Business Administration's definitions of "small entity", which includes firms ranging from $5.0 million in gross revenue for NAICS 23311 (Land subdivision and development) to $27.5 million in gross revenue for the majority of industries within NAICS 233 and 234. The small entities potentially impacted by the options we considered are small land developers, small residential construction firms, small commercial, institutional, industrial and manufacturing building firms, and small heavy construction firms. We estimated that under Option 2 the number of small firms that would have compliance costs exceeding 1% of revenue to be 1,376–1,811 and the number with compliance costs exceeding 3% of revenue to be 42–571, under the zero cost pass-through assumption. Under the market-based CPT assumption, we estimated that 0–213 firms would have compliance costs exceeding 1% of revenue and 0–71 firms would have compliance costs exceeding 3% of revenue. The ranges are a result of two different distributions we used to model impacts across firms of varying revenue.

VIII. Pollutant Reductions and Environmental Benefits of Options We Considered

Since we are not promulgating effluent guidelines for the construction and development industry, there are no pollutant reductions or environmental benefits associated with today's action. However, we did estimate reductions in discharge of pollutants and the associated water quality improvements and environmental benefits of the options we considered.

A. Pollutant Reduction Estimation

We estimated that Option 2 would result in approximately 1,000,000 tons per year of sediment load reduction. There are no reductions attributable to Option 1. Under Option 2, additional reductions would also likely occur in the discharge of other pollutants that may be associated with sediment, such as phosphorus and certain metals. Due to data limitations regarding the amounts of pollutants attached to sediment from construction sites, we did not estimate national reductions for any pollutants other than sediment. To the extent there are additional discharges, local programs are best to address them at this time.

Our estimate of 1,000,000 tons of annual sediment reduction differs significantly from the estimate at the time of proposal. For the proposal, we made a BPJ estimation of the incremental sediment reductions of the options. This estimation assumed a degree of non-compliance with the existing NPDES storm water regulations. For the analysis in support of today's action, we assumed full compliance with existing regulations. This is consistent with EPA's analysis for other ELGs. Furthermore, we conducted modeling that considered regional soil types and regional-specific pollutant removal estimates of various technologies used on model construction sites. As a result of these changes and the use of modeling, the estimates of pollutant reductions attributable to the options in support of today's action are much lower than EPA had estimated at proposal.

B. Environmental Benefits Estimation

For this action analysis, we calculated benefits using the National Water Pollution Control Assessment Model (NWPCAM). NWPCAM is a national-scale water quality model that simulates water quality and economic benefits resulting from water pollution control policies. NWPCAM characterizes water quality of the Nation's network of rivers and streams and, to a limited extent, its lakes. The model can translate spatially varying water quality changes resulting from different pollution control policies to reflect the value individuals place on water quality improvements. In this way, NWPCAM can estimate economic benefits of the regulatory options that we considered.

We calculated economic benefits using a four-parameter continuous Water Quality Index (WQI4), representing a composite measure of water quality. We calculated benefits for each State at the local and non-local scales. Local benefits represent the value that a State population is willing to pay for improvements to waters within the State, while non-local benefits represent the value that a State population is willing to pay for improvements to waters in all other States in the conterminous 48 States. Using this approach, the sum of local and non-local benefits represented a total WTP of approximately $19.5 million annually (2002 dollars) for Option 2. We could not attribute any benefits to Option 1.

Some categories of economic benefits, such as reduced need for navigational dredging, reduced loss of water storage capacity in reservoirs, and reduced drinking water and industrial water treatment costs, were not included in this estimate. For the proposal, these benefits were estimated to have annual value of $22 million for Option 2. Since proposal, we have substantially reduced our estimate of the reduction in sediment loading that would result from the proposed ELG. We expect the monetized benefits of these categories estimated at proposal would be correspondingly reduced.

IX. Non-Water Quality Environmental Impacts

Sections 304(b) and 306 of the CWA require us to consider the "non water quality" environmental impacts when setting effluent limitations guidelines and standards. As described in the June 2002 proposal, we did consider the non-water quality environmental impacts of the options we developed. We estimated, however, that these impacts would be negligible. We are not promulgating effluent guidelines for the construction and development industry. Therefore, there are no non-water quality environmental impacts associated with today's action.

X. Statutory and Executive Order Reviews

Today's action does not constitute a rule under section 551 of the Administrative Procedure Act. 5 U.S.C. 551. Hence, requirements of other regulatory statutes and Executive Orders that generally apply to rulemakings (*e.g.*, the Unfunded Mandate Reform Act) do not apply to this action.

Dated: March 31, 2004.

Michael O. Leavitt,

Administrator.

[FR Doc. 04–7865 Filed 4–23–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 2001–8876]

RIN 2127–AG92

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

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

ACTION: Withdrawal of rulemaking.

SUMMARY: In 2001, the agency granted a petition for rulemaking submitted by the United States Motorcycle Manufacturers Association, Inc. (USMMA). Petitioners asked NHTSA to amend the Federal motor vehicle lighting standard to allow a lower minimum mounting height for side reflex reflectors on motorcycles. The granting of the petition commenced agency rulemaking on the petition. Before taking further action in this area, the agency would like to expand its knowledge base with further research and more supporting data. Accordingly, this document withdraws the open rulemaking.

FOR FURTHER INFORMATION CONTACT: The following persons at the NHTSA, 400 Seventh Street, SW., Washington, DC 20590.

For non-legal issues, you may call Mr. Richard VanIderstine, Office of Crash Avoidance Standards (Telephone: (202) 366–2720) (Fax: (202) 366–7002).

For legal issues, you may call Mr. George Feygin, Office of Chief Counsel (Telephone: (202) 366–2992) (Fax: (202) 366–3820).

SUPPLEMENTARY INFORMATION:

I. Background

FMVSS No. 108, *Lamps, Reflective Devices, and Associated Equipment,* establishes lighting requirements for motor vehicles. Table IV of FMVSS No. 108 specifies that all reflex reflectors on motorcycles (including side reflectors) be located not less than 15 inches (381 mm) nor more than 60 inches (1524

mm) above the road surface.[1] USMMA petitioned the agency to allow for a lower minimum mounting height of 300 mm, instead of 381 mm.

Petitioners gave several reasons for their request. First, petitioners stated that the lower minimum mounting height would harmonize the Federal standard with the reflector mounting requirements of Europe and Asia, thus affording "global" motorcycle manufacturers certain cost savings opportunities associated with selling a common product in multiple markets.

Second, petitioners believed that lowering the height of the side reflectors would increase safety with respect to illumination by approaching vehicles. In support of their statement, USMMA noted that a lower reflector height would increase the distance between the motorcycle and the approaching vehicle at the point where the reflex reflector illumination occurs. *I.e.,* if the reflector were lowered to 300 mm, an approaching vehicle would illuminate it sooner.[2]

[1] Reflex reflectors are devices that are used on vehicles to give an indication of presence to an approaching driver by reflecting light from the headlamp of the approaching vehicle.

[2] To examine the USMMA petition, please go to *http://dms.dot.gov/* (Docket No. NHTSA–2001–8876–12).

Finally, petitioners noted that the vehicle lighting beam patterns have undergone significant improvements in recent years. As a result, petitioners stated, better lighting beam patterns contribute to better reflex reflector performance, even at the lower minimum height of 300 mm.

We granted USMMA's petition by letter dated September 7, 2001. The agency did not issue a notice of proposed rulemaking or any other rulemaking document subsequent to the granting of the petition.

II. Reason for Withdrawal

After careful evaluation of the issues presented by the USMMA petition, the agency has decided to obtain additional data to provide a better assessment of the need for or desirability of proceeding with a rulemaking action to amend side reflex reflector mounting height. While USMMA asserted that the lower reflector mounting height would increase visibility of motorcycles, petitioners did not provide any data in support of their position. The agency would like to obtain additional data on the validity of USMMA's assertion.

In order to ensure that lower reflector mounting height would not reduce motorcycle conspicuity, the agency is further studying this issue by incorporating investigation of this question into a comprehensive research program dealing with motorcycle conspicuity. The program will evaluate not only reflex reflector height, but also headlamp placement; new motorcycle conspicuity treatments; and the effect of passenger car daytime running lamps on conspicuity of motorcycles.[3] We anticipate that this research program will conclude in early 2005. Rather than proceed with a rulemaking on reflex reflector height at this time, we prefer a comprehensive approach that will take into account the knowledge and data gained from the research program. Accordingly, for the reasons discussed above, NHTSA is withdrawing the open rulemaking on the USMMA petition.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued: April 19, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04–9257 Filed 4–23–04; 8:45 am]

BILLING CODE 4910–59–P

[3] For more information on this research program, please go to: *http://www.nhtso.dot.gov/people/injury/pedbimot/motorcycle/motorcycle03/Mcycle%20Safety%20Progrom.pdf.*

Notices

Federal Register
Vol. 69, No. 80
Monday, April 26, 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

Farm Service Agency

Information Collection; Tobacco Marketing Quotas and Price Support

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) is seeking comments from all interested individuals and entities on the extension and revision of a currently approved information collection associated with the Tobacco Marketing Quota and Price Support program. The regulations used to administer these activities are authorized by the Agricultural Adjustment Act of 1938, as amended and the Agricultural Act of 1949, as amended.

DATES: Comments on this notice must be received on or before June 25, 2004, to be assured of consideration.

ADDRESSES: The Farm Service Agency invites interested persons to submit comments on the collection of information. Comments may be submitted by any of the following methods;

- *E-Mail:* Send comments to *tobcomments@wdc.usda.gov.*
- *Fax:* Submit comments by facsimile transmission to: (202) 720–0549.
- *Mail:* Send comments to Director, Tobacco Division, FSA, USDA, 1400 Independence Avenue, SW., Room 5750-S, STOP 0514, Washington, DC 20250–0514.
- *Hand Delivery or Courier:* Deliver comments to the above address.

Comments on the information collection requirements may also be sent to Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Comments may be inspected in the Tobacco Division at the address shown above during normal business hours. Visitors are encouraged to call ahead at (202) 720–7413 to facilitate entry into the building. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. to 8 p.m., eastern standard time, Monday through Friday.

FURTHER INFORMATION CONTACT: Joe Lewis Jr., Tobacco Division, (202) 720–0795 or *joe_lewis@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Tobacco Marketing Quota and Price Support Program, 7 CFR parts 711, 723 and 1464.

OMB Control Number: 0560–0058.

Expiration Date: September 30, 2004.

Type of Request: Extension and Revision of a Currently Approved Information Collection.

Abstract: Information collected from tobacco producers and owners of farms with tobacco allotments or quotas is needed to properly establish tobacco acreage allotments and marketing quotas for farms. This information is also needed to transfer quota between farms and to determine price support eligibility. Due to the fact that tobacco marketing quotas are highly regulated, information is needed to show the following: (a) Where tobacco acreage is planted, (b) how much tobacco is planted, and (c) where and how much tobacco is marketed. Tobacco marketed in excess of a farm marketing quota is subject to a marketing penalty equal to 75 percent of the previous year's average market price to producers.

Information collected from tobacco dealers, auction warehouses, processors and others involved in the marketing, buying, or handling of tobacco is needed to effectively administer the marketing quota provisions of the tobacco program. In order to accurately account for the production and marketing of tobacco on an individual farm basis, records and reports are needed from persons that acquire or handle producer tobacco. In order to determine if any tobacco in excess of a farm marketing quota has been marketed, these persons must maintain records and make reports on their purchases and sales of tobacco. Warehouse operators must maintain records and make reports showing the sales and purchases of tobacco handled by the warehouse. These reports are reviewed to ensure that excess tobacco is not marketed without being subject to marketing quota penalties.

Information collected from domestic manufacturers of cigarettes is needed to establish the national marketing quotas for burley and flue-cured tobacco. By statute, the national marketing quota is based, in part, on the amount of tobacco the domestic cigarette manufacturers intend to purchase from the next crop year. The domestic cigarette manufacturers must also report their actual purchases and maintain records that support their purchases of producer tobacco.

Estimate of Burden: Public reporting burden for all information collection related to the tobacco program is estimated to average 7.75 minutes per response.

Respondents: Individual tobacco producers, allotment or quota owners, tobacco auction warehouses, dealers and others involved in the marketing or buying of tobacco which may include small and medium sized businesses and five domestic manufacturers.

Estimated Number of Respondents:

Tobacco Producers: 314,236.
Dealers, Warehouses and Others: 300.
Domestic Cigarette Manufacturers: 5.
Total: 314,541.

Estimated Number of Responses per Respondent:

Tobacco Producers: 3.
Dealers, Warehouses and Others: 15.
Domestic Cigarette Manufacturers: 2.
Total: 20.

Estimated Total Annual Burden on Respondents:

Tobacco Producers: 121,766 hours.
Dealers, Warehouses and Others: 581 hours.
Domestic Cigarette Manufacturers: 1 hours.
Total: 122,348 hours.

Comment is invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic,

mechanical or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the request of Office of Management and Budget approval.

Signed in Washington, DC, on April 20, 2004.

Michael W. Yost,

Acting Administrator, Farm Service Agency.

[FR Doc. 04–9418 Filed 4–23–04; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Advisory Committee on Emerging Markets: Nominations

SUMMARY: Notice is hereby given that nominations are being sought for fifteen (15) qualified persons to serve on the Advisory Committee on Emerging Markets (the Committee). The role of the Committee is to provide information and advice, based upon knowledge and expertise of the members, useful to the Department of Agriculture (USDA) in implementing the Emerging Markets Program (EMP). The Committee also advises USDA on ways to increase the involvement of the U.S. private sector in emerging markets in food and rural business systems and reviews proposals submitted to the Program for funding technical assistance activities.

DATES: Written nominations must be received by the Foreign Agricultural Service (FAS) by 5 p.m. on May 26, 2004.

ADDRESSES: All nominating materials should be sent to Mr. Douglas Freeman, Foreign Agricultural Service, Room 4932—Stop 1042, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–1042. Forms may also be submitted by fax to (202) 720–9361.

FOR FURTHER INFORMATION CONTACT: Persons interested in serving on the Committee, or in nominating individuals to serve, should contact Mr. Douglas Freeman, Foreign Agricultural Service, by telephone (202) 720–4327, by fax (202) 720–9361, or by electronic mail to *emo@fas.usda.gov* and request Form AD–755 and Form SF–181. Persons with disabilities who require an alternative means for communication of information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION: The Committee is authorized by section 1542 of the Food, Agriculture, Conservation and Trade Act of 1990, as amended. The overall purpose of the Committee is to provide USDA with information that may be useful in carrying out the provisions of the Emerging Markets Program. The Committee is composed of representatives of the various sectors of the food and rural business systems of the United States. More information about the purpose and function of the Committee and about the Emerging Markets Program may be found at the FAS/Emerging Markets Program Web site: *http://www.fas.usda.gov/mos/em-markets/em-markets.html.* Form AD–755 is required and is available on the EMP home page at *http://www.fas.usda.gov/mos/em-markets/Form%20AD–755.doc.* Form SF–181 is requested, but optional, and is available at *http://www.opm.gov/forms/pdfimage/sf181.pdf.* The members of the Committee are appointed by the Secretary of Agriculture and serve at the discretion of the Secretary. Committee members serve without compensation, but can receive reimbursement for travel expenses to attend committee meetings, if requested, in accordance with USDA travel regulations.

The Committee has a balanced membership of up to 20 members, representing a broad cross-section of the U.S. agricultural and agribusiness industry. All appointments will expire two years from the date of appointment. The Secretary may renew an appointment for one or more additional terms.

Most meetings will be held in Washington, DC, though other locations may be selected on an occasional basis. Committee meetings will be open to the public, unless the Secretary of Agriculture determines that the Committee will be discussing issues, the disclosure of which justify closing all or a portion of a meeting, in accordance with 5 U.S.C. 552b(c).

Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, physical handicap, marital status, or sexual orientation. To ensure that the work of the Committee takes into account the needs of the diverse groups served by USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent the interest of minorities, women and persons with disabilities.

Members should have experience, expertise and knowledge of international agriculture and of trade and development issues as they affect emerging markets. No person, company, producer, farm organization, trade association or other entity has a right to representation on the Committee. In making selections, every effort will be made to maintain balanced representation of the various broad industries within the United States as well as geographic diversity.

Signed in Washington, DC, on April 9, 2004.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 04–9420 Filed 4–23–04; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF INTERIOR

Bureau of Land Management

[OR–930–6333–DT; HAG 04–0111]

Notice of Availability (NOA) Record of Decision (ROD) for the Clarification of Provisions Relating to the Aquatic Conservation Strategy in the 1994 Record of Decision for the Northwest Forest Plan; National Forests and Bureau of Land Management Districts Within the Range of the Northern Spotted Owl; Western Oregon and Washington, and Northwestern California

AGENCY: Forest Service, USDA; Bureau of Land Management, USDI.

ACTION: Notice of availability of record of decision.

SUMMARY: In accordance with the National Environmental Policy Act, the Federal Land Policy and Management Act, and the National Forest Management Act, the USDI Bureau of Land Management and the USDA Forest Service announce the decision to amend selected portions of the 1994 Record of Decision for the Northwest Forest Plan. The Aquatic Conservation Strategy (ACS) of the Northwest Forest Plan is intended to maintain or restore watersheds. The Under Secretary of Agriculture and the Assistant Secretary of the Interior have made limited changes to clarify how to implement the ACS. Projects needed to achieve Northwest Forest Plan goals have been delayed or stopped due to misapplication of certain passages in the ACS. The agencies are responding to the underlying need for increased agency success planning and implementing projects, to the extent that the current

wording has hindered the agencies' ability to follow Northwest Forest Plan principles and achieve its goals.

ADDRESSES: Copies of the ROD may be requested from the address below or accessed on line at *http://www.reo.gov/acs/*. ACS EIS, 333 SW. First Avenue, P.O. Box 3623, Portland, Oregon 97208; FAX: (503) 808–2255 [please address fax to "ACS EIS"].

FOR FURTHER INFORMATION CONTACT: Joyce Casey, USDA Forest Service, P.O. Box 3623, Portland, Oregon 97208; phone (503) 808–2286; E-mail: *jcasey01@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The ROD for the Clarification of Provisions Relating to the Aquatic Conservation Strategy in the 1994 Record of Decision for the Northwest Forest Plan makes limited changes to language within Attachment A of the 1994 (ROD) for the Northwest Forest Plan. These changes amend Forest Service and Bureau of Land Management plans throughout the Northwest Forest Plan area. The limited changes clarify that the proper scale for federal land managers to evaluate progress toward achievement of the ACS objectives is the fifth-field watershed and larger scales. Current land allocations, standards and guidelines, and Northwest Forest Plan goals and objectives would be retained. Readers should note that the Under Secretary of Agriculture for Natural Resources and the Environment and the Assistant Secretary of the Interior for Land and Minerals Management are the responsible officials for this proposed action. Therefore, no administrative review ("appeal") through the Forest Service will be available on the Record of Decision (ROD) under 36 CFR part 217, and no administrative review ("protest") through the Bureau of Land Management will be available on the ROD under 43 CFR 1610.5–2. The decision is effective upon signature of the Record of Decision by the responsible officials.

Dated: March 22, 2004.

Linda Goodman,

Regional Forester, Region 6, Forest Service.

Dated: March 19, 2004.

Elaine M. Brong,

State Director, Oregon/Washington, Bureau of Land Management.

[FR Doc. 04–9363 Filed 4–23–04; 8:45 am]

BILLING CODE 4310–33–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Jersey Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting with briefing session of the New Jersey Advisory Committee will convene at 10 a.m. and adjourn at 3:30 p.m. on Tuesday, May 4, 2004, at the New Jersey State House Annex, Room 4, 125 W. State Street, Trenton, New Jersey 08625. The Committee will review the status of current activities and plan new projects. For its briefing session, the Committee has invited New Jersey Governor James McGreevey to comment on civil rights protection efforts by state government, to describe state implementation of the Committee's recommendations regarding law enforcement policies and practices, and to respond to the Committee's statement of concern on employment of Asian Americans in State government.

Persons desiring additional information, or planning a presentation to the Committee, should contact Edward Darden of the Eastern Regional Office, 202–376–7533 (TTY 202–376–8116). Hearing-impaired persons who plan to attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least seven (7) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 20, 2004.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 04–9384 Filed 4–23–04; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Advanced Technology Program Advisory Committee

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Advanced Technology Program Advisory Committee, National Institute of Standards and Technology (NIST), will meet Thursday, May 13, from 9 a.m. to 3 p.m. The Advanced Technology Program Advisory Committee is composed of nine members appointed by the Director of NIST; who are eminent in such fields as business, research, new product development, engineering, education, and management consulting. The purpose of this meeting is to review and make recommendations regarding general policy for the Advanced Technology Program (ATP), its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include an update of the Economic Assessment Office—New ATP Research Directions and Results, a Competition Update, a discussion on Assessment of State Technology Programs and an open discussion. A discussion scheduled to begin at 1 p.m. and to end at 3 p.m. on May 13, 2004, on ATP budget issues will be closed. Agenda may change to accommodate Committee business. All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Please submit your name, time of arrival, email address and phone number to Carolyn Peters no later than Friday, May 7, 2004, and she will provide you with instructions for admittance. Ms. Peters's e-mail address is *carolyn.peters@nist.gov* and her phone number is 301/975–5607.

DATES: The meeting will convene Thursday, May 13, 2004, at 9 a.m. and will adjourn at 3 p.m. on Thursday, May 13, 2004.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Employees' Lounge, Gaithersburg, Maryland 20899. Please note admittance instructions under the **SUMMARY** paragraph.

FOR FURTHER INFORMATION CONTACT: Carolyn J. Peters, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–1004, telephone number (301) 975–5607.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on December 24, 2003, that portions of the meeting of the Advanced Technology Program Advisory Committee which involve discussion of proposed funding of the Advanced Technology Program may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because that portion will divulge matters the premature disclosure of which would be

likely to significantly frustrate implementation of proposed agency actions.

Dated: April 20, 2004.

Hratch G. Semerjian,

Acting Director.

[FR Doc. 04–9452 Filed 4–23–04; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042004A]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Applications for five scientific research permits (1476, 1477, 1478, 1479, 1480).

SUMMARY: Notice is hereby given that NMFS has received five scientific research permit applications relating to Pacific salmon and steelhead. All of the proposed research is intended to increase knowledge of species listed under the Endangered Species Act (ESA) and to help guide management and conservation efforts.

DATES: Comments or requests for a public hearing on the applications must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific daylight-saving time on May 26, 2004.

ADDRESSES: Written comments on the applications should be sent to Protected Resources Division, NMFS, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737. Comments may also be sent via fax to 503–230–5435 or by e-mail to *resapps1.nwr@NOAA.gov*.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, Portland, OR (ph.: 503–231–2005, Fax: 503–230–5435, e-mail: *Garth.Griffin@noaa.gov*). Permit application instructions are available at *http://www.nwr.noaa.gov*.

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

The following listed species and evolutionarily significant units (ESUs) are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): endangered natural and artificially propagated upper Columbia River (UCR); threatened Snake River (SR) fall; threatened lower Columbia River (LCR).

Steelhead (*O. mykiss*): endangered UCR, threatened LCR.

Chum salmon (*O. keta*): threatened Columbia River (CR).

Authority

Scientific research permits are issued in accordance with Section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et. seq*) and regulations governing listed fish and wildlife permits (50 CFR 222–226). NMFS issues permits/modifications based on findings that such permits and modifications: (1) are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policy of section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA.

Applications Received

Permit 1476

The University of Washington (UW) is requesting a 5–year research permit to annually capture, handle, and kill juvenile endangered UCR chinook salmon and steelhead in the mainstem upper Columbia River, the Wenatchee River, Nason Creek, and the Chiwiwa Rearing Pond in Washington State. The purpose of the research is to look into the interactions between listed salmonids and avian predators in the Columbia River. The study would benefit the salmon and steelhead by helping managers learn more about where and how often the birds are killing listed juvenile outmigrants in the Columbia River an interaction that is thought to be a potentially significant source of mortality. Managers would then use that information to determine if predator control is needed or could be effective in helping recover the listed salmonids. The UW proposes to (a) collect live fish from hatchery releases, (b) collect already dead fish at juvenile bypass facilities, and (c) use beach seines, boat electrofishing, and minnow traps to capture other fish in the mainstem Columbia River. The fish captured in the mainstem would immediately be released. The fish collected from the hatchery releases would be intentionally killed to develop a collection of reference samples and to determine the amount of nutrients in their bodies.

Permit 1477

The Idaho Cooperative Fish and Wildlife Research Unit (ICFWRU) is requesting a 5–year research permit to annually capture, tag, and release adult threatened LCR chinook salmon and SR fall chinook salmon in the Columbia River estuary. The purpose of the research is to gain a better understanding of what habitat types the fish use as they prepare to re-enter the Columbia River for their upstream migration. The research will benefit the fish by helping managers understand more about this relatively unknown stage in the fishes' life cycle and thereby better manage the resources upon which they depend. It will also help managers understand more about what negative anthropogenic impacts are occurring in the estuary and, it is to be hoped, thereby mitigate their effects. The ICFWRU proposes to capture using hook-and-line angling equipment a small number of adult fish. These fish will be anesthetized, fitted with radio telemetry tags (and passive integrated transponder tags (PIT-tags) if the fish does not already have one), allowed to recover, and released. They will then be tracked with radio equipment to determine where they go in the estuary. The ICFWRU does not expect to kill any of the fish being captured.

Permit 1478

The U.S. Geological Survey (USGS) is requesting a 5–year research permit to annually handle juvenile threatened LCR chinook salmon, LCR steelhead, and CR chum salmon in selected streams in southwestern Washington. The purpose of the research is to assess the effects of land use on urban streams, and determine how they compare with other streams in the basin and with streams nationwide. The study could potentially benefit listed species by helping society manage streams affected by urban land use and possibly by focusing stream rehabilitation on areas used by salmon and steelhead. The USGS proposes to capture the fish (using backpack electrofishing), anesthetize them, measure them, allow to them recover, and release them. The USGS does not intend to kill any of the fish being captured, but a small percentage may die as an unintended result of the research activities.

Permit 1479

The USGS is requesting a 5–year research permit to annually handle juvenile threatened LCR chinook salmon and adult and juvenile

threatened LCR steelhead in selected streams in southwestern Washington. The purpose of the research is to investigate the efficacy of nutrient enhancement in increasing juvenile fish growth and condition and thereby determining how effective it can be with respect to restoring juvenile salmonid production in watersheds identified as nutrient deficient. The study will benefit listed species by (a) helping managers determine the feasibility of implementing nutrient enhancement as a salmon habitat restoration technique; (b) enhancing juvenile fish growth and condition and thereby increasing over-winter survival, smolt outmigration, and adult returns; and (c) ultimately helping restore salmon populations in the Pacific Northwest. The USGS proposes to capture juvenile fish (using backpack electrofishing), anesthetize them, measure and weigh them, mark them with visual implants (VI) or VI mark and tag them with PIT-tags, allow to them recover, and release them. The USGS does not intend to capture adult fish but some may be in the areas being fished and will be avoided as much as possible. The USGS does not intend to kill any of the fish being captured, but a small percentage of the juvenile fish may die as an unintended result of the research activities. The USGS does not expect to kill any of the adult fish being captured.

Permit 1480

The USGS is requesting a 5–year research permit to annually take adult and juvenile endangered UCR chinook and steelhead in three tributaries to the Methow River in Washington State. The purpose of the research is to monitor the contribution these streams make to chinook and steelhead production in the Methow subbasin both before and after human-made passage barriers in the streams have been removed. The research will benefit the fish by generating information on the effectiveness of such restoration actions in the area, and that information, in turn, will be used to guide other such efforts throughout the region. The USGS proposes to capture the fish–using weirs/traps and backpack electrofishing equipment anesthetize them, PIT-tag them (if they are large enough), allow them to recover, and release them. Several instream PIT-tag interrogation sites will be put into place to monitor the fish in the tributaries. In addition, tissue samples will be taken from some of the fish. The USGS does not intend to kill any of the fish being captured, but a small percentage may die as an unintended result of the research activities.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the applications, associated documents, and comments submitted to determine whether the applications meet the requirements of section 10(a) of the ESA and Federal regulations. The final permit decisions will not be made until after the end of the 30–day comment period. NMFS will publish notice of its final action in the **Federal Register.**

Dated: April 20, 2004.

Ann Garrett,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–9437 Filed 4–23–04; 8:45 am]

BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection; Comment Request—Procedures for Export of Noncomplying Products

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed three year extension of approval of information collection requirements in regulations codified at 16 CFR part 1019, which establish procedures for export of noncomplying products. These regulations implement provisions of the Consumer Product Safety Act, the Federal Hazardous Substances Act, and the Flammable Fabrics Act that require persons and firms to notify the Commission before exporting any product that fails to comply with an applicable standard or regulation enforced under provisions of those laws. The Commission is required by law to transmit the information relating to the proposed exportation to the government of the country of intended destination. The Commission will consider all comments received in response to this notice before requesting approval of this collection of information from the Office of Management and Budget.

DATES: Written comments must be received by the Office of the Secretary not later than June 25, 2004.

ADDRESSES: Written comments should be captioned "Collection of Information—Procedures for Export of Noncomplying Products" and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at *cpsc-os@cpsc.gov.*

FOR FURTHER INFORMATION CONTACT: For information about the proposed collection of information, or to obtain a copy of 16 CFR part 1019, call or write Linda L. Glatz, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; (301) 504–7671.

SUPPLEMENTARY INFORMATION:

A. Estimated Burden

Based on a review of the number of export requests received by the CPSC during the last three years, the Commission staff estimates that approximately 55 notifications will be received from an estimated 45 firms per year. The staff further estimates that the average time for each response is one hour, for a total of 55 hours of annual burden. The annualized cost to respondents would be approximately $1,350.00. (55 hours at $24.48/hour based on total compensation for all civilian workers in the U.S., September 2003, Bureau of Labor Statistics.)

B. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be mininized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: April 20, 2004.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 04–9341 Filed 4–23–04; 8:45 am]

BILLING CODE 6355–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Submission for OMB Emergency Review

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), submitted the following two information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, (PRA 95) (44 U.S.C. Chapter 35). The Corporation requested that OMB review and approve its emergency request by April 30, 2004, for a period of six months. A copy of these ICRs, with applicable supporting documentation, may be obtained by contacting the Corporation for National and Community Service, Office of Research and Policy Development, Mr. Kevin Cramer, (202) 606–5000, Ext. 232 or by e-mail at *KCramer@cns.gov.*

The initial 60-day **Federal Register** notice for Performance Measurement in AmeriCorps was published on January 21, 2004. The initial 60-day **Federal Register** notice for Learn and Serve America Program and Performance Reporting System was published on January 9, 2004. The comment period for these notices have elapsed, and, since the Corporation has requested OMB's approval of these emergency requests by April 30, 2004, there will be not enough time for the public to provide further comments through this **Federal Register** notice prior to the requested approval date.

Part I

Type of Review: Emergency request.
Agency: Corporation for National and Community Service.
Title: Performance Measurement in AmeriCorps: Surveys of Members, Organizations and End Beneficiaries.
OMB Number: None.
Agency Number: None.
Affected Public: Nonprofit organizations, Individuals or households, State, local or tribal government.
Total Respondents: 4,000.
Frequency: One time.
Average Time Per Response: Ten (10) minutes.
Estimated Total Burden Hours: 676 hours.
Total Burden Cost (capital/startup): None.
Total Burden Cost (operating/maintenance): None.

Part II

Type of Review: Emergency request.
Agency: Corporation for National and Community Service.
Title: Learn and Serve America Program and Performance Reporting System.
OMB Number: None.
Agency Number: None.
Affected Public: Nonprofit organizations, State, local or tribal government.
Total Respondents: 2668.
Frequency: One time.
Average Time Per Response: .95 hour.
Estimated Total Burden Hours: 2542 hours.
Total Burden Cost (capital/startup): None.
Total Burden Cost (operating/maintenance): None.
Description: Under the authority of the National and Community Service Act of 1990, as amended, the Corporation was charged with employing its service programs, including AmeriCorps and Learn and Serve America, to address "the unmet human, educational, environmental, and public safety needs of the United States;" to "renew the ethic of civic responsibility and the spirit of community throughout the United States;" and to "encourage citizens * * * to engage in full-time or part-time national service." In the fall of 2003, Congress directed the Corporation to report on its efforts to improve its performance measurement systems.

Moreover, on February 27, 2004, the President signed an Executive Order on National and Community Service "to strengthen the ability of programs authorized under the national service laws to build and reinforce a culture of service, citizenship, and responsibility throughout our Nation, and to institute reforms to improve accountability and efficiency in the administration of those programs." The Executive Order states that, as part of its continuous improvement, the Corporation should assist programs in adopting performance measures to ensure accountability for performance and results. This order furthers the finding of the OMB's Program Assessment Rating Tool (PART) that the Corporation needs to develop its capacity to identify demonstrable performance results.

Because almost all of the programs under Learn and Serve America and a large number of programs in AmeriCorps operate on an academic calendar, and because the schedule for GPRA submissions has been moved up from February to November, it is incumbent upon the Corporation to have these survey instruments available to the various respondents no later than April of 2004. Therefore, the Corporation has requested OMB's emergency review and approval by April 30, 2004, so that it can provide outcome based data for the 2004 Performance and Accountability Report, as requested by Congress, by November, 2004. If the Corporation is granted approval by OMB for these two information collection activities, the Corporation will publish another **Federal Register** notice which will allow the public the opportunity to provide comments directly to the Corporation's OMB desk officer.

Dated: April 19, 2004.

David Reingold,

Director, Office of Research and Policy Development.

[FR Doc. 04–9342 Filed 4–23–04; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0066]

Federal Acquisition Regulation; Submission for OMB Review; Professional Employee Compensation Plan

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0066).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning professional employee compensation Plan. A request for public comments was published at 69 FR 5511 on February 5, 2004. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of

information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before May 26, 2004.

ADDRESSES: Submit comments including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0066, Professional Employee Compensation Plan, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Craig Goral, Acquisition Policy Division, GSA (202) 501–3856.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR 22.1103 requires that all professional employees shall be compensated fairly and properly. Accordingly, a total compensation plan setting forth proposed salaries and fringe benefits for professional employees with supporting data must be submitted to the contracting officer for evaluation.

B. Annual Reporting Burden

Respondents: 8,670.
Responses Per Respondent: 1.
Total Responses: 8,670.
Hours Per Response: .5.
Total Burden Hours: 4,335.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, 1800 F Street, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0066, Professional Employee Compensation Plan, in all correspondence.

Dated: April 20, 2004.

Ralph J. DeStefano,

Acting Director, Acquisition Policy Division.

[FR Doc. 04–9247 Filed 4–23–04; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 25, 2004.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 20, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: New.
Title: Early Reading First (ERF) National Evaluation.
Frequency: On Occasion; one time—consent forms.
Affected Public: Individuals or household; Businesses or other for-profit; Not-for-profit institutions.
Reporting and Recordkeeping Hour Burden:

Responses: 5,685.

Burden Hours: 2,256.

Abstract: The proposed data collection is necessary to complete the national evaluation of Early Reading First. The ERF national evaluation will use a regression discontinuity design, including a baseline and two follow-up assessment points, to determine the extent to which the additional funds and technical assistance given to ERF grantees change the instructional content and children's outcomes compared to the content and outcomes in the absence of ERF. The evaluation will also explore the extent to which variations in program quality and implementation are associated with differences in participant outcomes. The respondents for this research initiative include children, parents, teachers and preschool directors. The evaluation results will be used by policymakers to document ERF's effectiveness, understand best practices, and inform decisions about expansion.

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 2531. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Department of Education, 400 Maryland Avenue, SW., Potomac Center South, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at 540–776–7742. 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. 04–9362 Filed 4–23–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.328C]

Office of Special Education and Rehabilitative Services; Special Education—Training and Information for Parents of Children with Disabilities—Community Parent Resource Centers

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2004; correction and re-opening.

SUMMARY: On March 10, 2004, we published in the **Federal Register** (69 FR 11400) a notice inviting applications and providing other information for the Community Parent Resource Centers FY 2004 grant competition authorized under the Individuals with Disabilities Education Act, as amended (IDEA).

On page 11401, first column, under paragraph (b) of the Competitive Preference Priorities section, the references to Empowerment Zones or Enterprise Communities are corrected to read "Empowerment Zones, Enterprise Communities or Renewal Communities".

In order to provide an opportunity for an applicant from a Renewal Community to submit its application, this notice also reopens the Community Parent Resource Centers FY 2004 grant competition and invites additional applications from any eligible applicant.

Deadline for Transmittal of Applications: May 3, 2004.

FOR FURTHER INFORMATION CONTACT: Lisa Gorove, U.S. Department of Education, 400 Maryland Avenue, SW., room 4630, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–5045.

If you use a telecommunications device for the deaf (TTD), 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 by contacting the following office: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8207.

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: April 21, 2004.

Troy R. Justesen,

Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 04–9446 Filed 4–23–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Centers for Independent Living; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Catalog of Federal Domestic Assistance (CFDA) Number: 84.132A.

Applications Available: April 27, 2004.

Deadline for Transmittal of Applications: May 26, 2004.

Deadline for Intergovernmental Review: July 26, 2004.

Eligible Applicants: To be eligible to apply, an applicant must—

(a) be a consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agency;

(b) have the power and authority to—

(1) carry out the purpose of part C of title VII of the Rehabilitation Act of 1973, as amended (the Act) and perform the functions listed in section 725(b) and (c) of the Act and subparts F and G of 34 CFR part 366 within a community located within a State or in a bordering State; and

(2) receive and administer—

(i) funds under 34 CFR part 366;

(ii) funds and contributions from private or public sources that may be used in support of a center for independent living (center); and

(iii) funds from other public and private programs;

(c) be able to plan, conduct, administer, and evaluate a center consistent with the standards and assurances in section 725(b) and (c) of the Act and subparts F and G of 34 CFR part 366;

(d) either—

(1) not currently be receiving funds under part C of chapter 1 of title VII of the Act; or

(2) propose the expansion of an existing center through the establishment of a separate and complete center (except that the governing board of the existing center may serve as the governing board of the new center) at a different geographical location;

(e) propose to serve one or more of the geographic areas that are identified as unserved or underserved by the States and territories listed under *Estimated Number of Awards*; and

(f) submit appropriate documentation demonstrating that the establishment of a new center is consistent with the design for establishing a statewide network of centers in the State plan of the State or territory whose geographic area or areas the applicant proposes to serve.

Estimated Available Funds: $343,215.

Estimated Range of Awards: $13,844 to $154,046.

Estimated Average Size of Awards: $38,135.

Estimated Number of Awards: 9, distributed in the following manner:

States and territories	Estimated available funds	Estimated number of awards
American Samoa	$154,046	1
Kansas	27,630	1
New Jersey	69,222	5
South Dakota	27,630	1
Virginia	64,687	1

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: This program provides support for planning, conducting, administering, and evaluating centers that comply with the standards and assurances in section 725 of the Act, consistent with the design included in the State plan for establishing a statewide network of centers.

Program Authority: 29 U.S.C. 796f–1.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR parts 364 and 366.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.
Estimated Available Funds: $343,215.
Estimated Range of Awards: $13,844 to $154,046.
Estimated Average Size of Awards: $38,135.
Estimated Number of Awards: 9, distributed in the following manner:

States and territories	Estimated available funds	Estimated number of awards
American Samoa	$154,046	1
Kansas	27,630	1
New Jersey	69,222	5
South Dakota	27,630	1
Virginia	64,687	1

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* To be eligible to apply, an applicant must—

(a) be a consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agency;

(b) have the power and authority to—

(1) carry out the purpose of part C of title VII of the Act and perform the functions listed in section 725(b) and (c) of the Act and subparts F and G of 34 CFR part 366 within a community located within a State or in a bordering State; and

(2) receive and administer—

(i) funds under 34 CFR part 366;

(ii) funds and contributions from private or public sources that may be used in support of a center; and

(iii) funds from other public and private programs;

(c) be able to plan, conduct, administer, and evaluate a center consistent with the standards and assurances in section 725(b) and (c) of the Act and subparts F and G of 34 CFR part 366;

(d) either—

(1) not currently be receiving funds under part C of chapter 1 of title VII of the Act; or

(2) propose the expansion of an existing center through the establishment of a separate and complete center (except that the governing board of the existing center may serve as the governing board of the new center) at a different geographical location;

(e) propose to serve one or more of the geographic areas that are identified as unserved or underserved by the States and territories listed under *Estimated Number of Awards;* and

(f) submit appropriate documentation demonstrating that the establishment of a new center is consistent with the design for establishing a statewide network of centers in the State plan of the State or territory whose geographic area or areas the applicant proposes to serve.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 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/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.132A.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U. S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8207. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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: April 27, 2004.

Deadline for Transmittal of Applications: May 26, 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: July 26, 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:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

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 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. The Centers for Independent Living program— CFDA Number 84.132A is one of the programs included in the pilot project. If you are an applicant under the Centers for Independent Living program, 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 shall 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 any 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 applicant'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 the Centers for Independent Living program 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 you have initiated an e-Application for this competition; and

2. (a) The e-Application system is unavailable for 60 minutes or more between the hours 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 the Centers for Independent Living program at: *http://e-grants.ed.gov*.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are in 34 CFR 366.27.

2. *Review and Selection Process:* An additional factor we consider in selecting an application for an award is comments regarding the application, if any, by the State Independent Living Council in the State in which the applicant is located.

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 Notification (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, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), one measure has been developed for evaluating the effectiveness of this program: the number of individuals who leave nursing homes and other institutions for community-based housing due to independent living services provided by a center.

All grantees will be expected to submit an annual performance report documenting their success in addressing this performance measure, as well as the standards and assurances in section 725 of the Act.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: James Billy, U.S. Department of Education, 400 Maryland Avenue, SW., room 3326, Switzer Building, Washington, DC 20202–2740. Telephone: (202) 205–9362 or by e-mail: *james.billy@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: April 20, 2004.

Troy R. Justesen,

Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 04–9447 Filed 4–23–04; 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 for 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 April 30, 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: May 13–May 15, 2004.

Times

May 13

Committee Meetings:

Ad Hoc Committee on NAEP 12th Grade Participation and Motivation: Open session—12:30 p.m. to 4 p.m.

Executive Committee: Open session—4:30 p.m. to 5 p.m.; closed session—5 p.m. to 6 p.m.

May 14

Full Board: Open session—8 a.m. to 10:15 a.m.

Committee Meetings:

Assessment Development Committee: Open session—10:15 a.m. to 12:30 p.m.

Committee on Standards, Design, and Methodology: Open session—10:15 am. to 12:30 p.m.

Full Board: Closed session—12:30 p.m. to1:30 p.m.; open session—1:30 p.m. to 4:30 p.m.

May 15

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: Hyatt Regency Denver, 1750 Welton Street, Denver, CO 80202.

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Operations Officer, National Assessment Governing Board, 800 North Capitol Street, NW., Suite 825, Washington, DC, 2002–4233, 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 May 13, the Ad Hoc Committee on NAEP 12th Grade Participation and Motivation will meet in open session from 12:30 p.m. to 4 p.m. The Executive Committee will meet in open session on May 13 from 4:30 p.m. to 5 p.m. The committee will then meet in closed session from 5 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 May 14, the full Board will meet in open session from 8 a.m. to 10:15 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 hear a report on issues and options for the NAEP 12th Grade World History Assessment.

From 10:15 a.m. to 12:30 p.m. on May 14, 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 May 14, 2004, from 12:30 p.m. to 1:30 p.m. to receive a report on the NAEP 2002 Special Study of Oral Reading at Grade 4. This part of the meeting must be conducted in closed session because the results of this study 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 May 14 from 1:30 p.m.–4:30 p.m. At 1:30 p.m., the Board will discuss the NAEP 2009 Draft Reading Framework. This will be followed by a report to the Board from Charles Smith, Executive Director, NAGB, on NAEP Inclusion and Accommodation Issues from 3:15 p.m. to 4:30 p.m., after which the May 14 session of the Board meeting will adjourn.

On May 15, 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 recommendations of the NAEP 12th Grade Commission 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 May 15, 2004, session of the Board meeting will adjourn.

A final agenda of the May 13–15, 2004 Board meeting can be accessed after May 3, 2004, at *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: April 21, 2004.

Sharif Shakrani,

Deputy Executive Director, National Assessment Governing Board.

[FR Doc. 04–9356 Filed 4–23–04; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Comment Period Extension and Additional Public Scoping Meetings for an Environmental Impact Statement for the Alignment, Construction, and Operation of a Rail Line to a Geologic Repository at Yucca Mountain, Nye County, NV

AGENCY: U.S. Department of Energy.

ACTION: Notice of comment period extension and additional public meetings.

SUMMARY: On April 8, 2004, the U.S. Department of Energy (DOE) published a Notice of Intent (69 FR 18565) announcing its intent to prepare an environmental impact statement (EIS) under the National Environmental Policy Act for the alignment, construction, and operation of a rail line for shipments of spent nuclear fuel, high-level radioactive waste, and other materials from a site near Caliente, Lincoln County, Nevada, to a geologic repository at Yucca Mountain, Nye County, Nevada, and announced three public scoping meetings during a 45-day public comment period ending May 24, 2004. In response to a request from the State of Nevada, DOE is now announcing two additional public meetings, one in Las Vegas, Nevada, and one in Reno, Nevada, and extending the comment period to June 1, 2004.

DATES: The additional public meetings will be held at the following locations. and times:

- Las Vegas, Nevada. Las Vegas Yucca Mountain Information Center, 4101 B Meadows Lane, May 10, 2004, from 4–8 p.m.
- Reno, Nevada. University of Nevada-Reno, Lawlor Event Center-Silver and Blue Room, 15th & North Virginia, May 12, 2004, from 4–8 p.m.

The comment period on the Notice of Intent is being extended to June 1, 2004. DOE will consider comments on the proposed scope of the Rail Alignment EIS received after June 1, 2004, to the extent practicable.

ADDRESSES: Written comments on the scope of this Rail Alignment EIS, questions concerning the proposed action and alternatives, requests for maps that illustrate the Caliente corridor and alternatives, or requests for additional information on the Rail Alignment EIS or transportation planning in general should be directed to: Ms. Robin Sweeney, EIS Document Manager, Office of National Transportation, Office of Civilian Radioactive Waste Management, U.S. Department of Energy, 1551 Hillshire Drive, M/S 011, Las Vegas, NV 89134, telephone 1–800–967–3477, or via the Internet at *http://www.ocrwm.doe.gov* under "What's New."

Issued in Washington, DC, on April 20, 2004.

Margaret S. Y. Chu,

Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 04–9524 Filed 4–23–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–331–006 and RP01–23–008 and RP03–176–004]

Algonquin Gas Transmission Company; Notice of Compliance Filing

April 16, 2004.

Take notice that on April 12, 2004, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the tariff sheets listed in Appendices A and B of the filing to be effective on September 1, 2003 and April 1, 2004, respectively.

Algonquin states that the purpose of this filing is to comply with the Commission's March 30, 2004 "Order on Rehearing and Compliance Filing" issued in Algonquin's Order No. 637 proceeding in the captioned dockets.

Algonquin states that copies of its filing have been served on all affected customers and interested state commissions, as well as to all parties on the official service lists compiled by the Secretary of the Commission in these proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–916 Filed 4–23–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–105–000]

CMS Gas Transmission Company and Bluewater Gas Storage, LLC; Notice of Application

April 16, 2004.

Take notice that on April 8, 2004, CMS Gas Transmission Company (CMSGT), and Bluewater Gas Storage, LLC (Bluewater) filed in the above-referenced docket an application pursuant to Section 3 of the Natural Gas Act (NGA), Part 153 of the Federal Energy Regulatory Commission's (Commission) regulations (18 CFR part 153), Executive Order Nos. 10485 and 12038 and the Secretary of Energy's Delegation Order No. 0204–112, requesting permission to transfer the NGA Section 3 authorization and Presidential Permit currently issued by the Commission to CMSGT in Docket Nos. CP95–331–000 and CP95–332–000, authorizing it to operate certain natural gas pipeline facilities located at the U.S./Canadian international border in St. Clair County, Michigan, to Bluewater, so that Bluewater can operate the same facilities under the same terms and conditions. CMSGT and Bluewater state that the requests are made in order to facilitate the sale of CMSGT's leasehold interest in the border crossing facilities to Bluewater. Both parties request that the Commission expeditiously review the filing and issue an order in this proceeding by July 1, 2004. 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 "e-Library" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676, or for TTY, (202) 502–8659.

Any questions regarding this application should be directed to

Douglas W. Smith, Attorney for Bluewater Gas Storage, LLC, at (202) 298–1800.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Protests and interventions may be filed electronically via the Internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: May 7, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–918 Filed 4–23–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–262–003]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

April 16, 2004.

Take notice that on April 13, 2004, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain tariff sheets, to be effective June 1, 2004.

Natural states that the purpose of this filing is to comply with the Commission's Order Granting Clarification issued on March 29, 2004 (Order). Natural explains that the Order required changes to a prior compliance filing made by Natural in the referenced docket on April 17, 2003. Natural asserts that no tariff changes other than those required by the Order are reflected in this filing.

Natural states that copies of the filing are being mailed to all parties set out of the Commission's official service list in Docket No. RP03–262.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–917 Filed 4–23–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–96–000, et al.]

Mesquite Investors, L.L.C., et al.; Electric Rate and Corporate Filings

April 16, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Mesquite Investors, L.L.C., ANRV Eagle Point, L.P., ANR Venture Eagle Point Company, Okwari UCF LP

[Docket No. EC04–96–000]

Take notice that on April 15, 2004, Mesquite Investors, L.L.C. (Mesquite), ANRV Eagle Point, L.P. (ANRV), ANR Venture Eagle Point Company (ANR Eagle Point) and Okwari UCF LP (Okwari UCF) (jointly, Applicants) filed with the Commission an application pursuant to Section 203 of the Federal Power Act requesting that the Commission: (1) authorize the transfer of Mesquite's, ANRV's and ANR Eagle Point's membership interests in Utility Contract Funding, L.L.C. (UCF) to Okwari UCF; and (2) authorize the subsequent sale and transfer of up to 51 percent of the membership interests thus acquired by Okwari UCF to as yet unidentified purchasers. Applicants requested privileged treatment for certain exhibits pursuant to 18 CFR 3.9 and 388.112. Applicants also requested expedited consideration of this application.

Comment Date: May 6, 2004.

2. Mirant Las Vegas, LLC, Complainant v. Nevada Power Company, Respondent

[Docket No. EL03–229–000]

Take notice that on September 15, 2003, Mirant Las Vegas, LLC (Mirant Las Vegas) filed a complaint against Nevada Power Company (Nevada Power) alleging that the terms and conditions of Nevada Power's Interconnection and

Operating Agreement with Mirant Las Vegas violate Commission policy and precedent and are unjust and unreasonable.

Comment Date: May 6, 2004.

3. Williams Generation Company—Hazelton; Williams Flexible Generation, LLC

[Docket No. ER97–4587–005 and ER00–2469–002]

Take notice that on April 12, 2004, Williams Generation Company—Hazelton and Williams Flexible Generation, LLC pursuant to Part 35 of the Commission's regulations, 18 CFR Part 35, submitted proposed tariff sheets to incorporate the Market Behavior Rules adopted by the Commission's order issued November 17, 2003, *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations,* 105 FERC ¶ 61,218 (2003).

Comment Date: May 30, 2004.

4. Pacific Gas and Electric Company and ETrans LLC

[Docket No. ER02–455–000]

Take notice that on April 13, 2004, Pacific Gas and Electric Company (PG&E) and ETrans LLC, (collectively, Applicants) filed a Notice of Withdrawal stating that they want to withdraw the application previously filed in this docket and to terminate the present proceeding.

Comment Date: May 4, 2004.

5. Electric Generation, LLC

[Docket No. ER02–456–000]

Take notice that on April 13, 2004, Electric Generation LLC (Applicant) filed a Notice of Withdrawal stating that they want to withdraw the application previously filed in this docket and to terminate the present proceeding.

Comment Date: May 4, 2004.

6. Kentucky Utilities Company

[Docket No. ER04–203–002]

Take notice that on April 12, 2004, Kentucky Utilities Company submitted a compliance filing pursuant to the March 11, 2004 Letter Order from the Director of the Division of Tariffs and Market Development-Central.

Comment Date: May 3, 2004.

7. Southeast Chicago Energy Project, LLC

[Docket No. ER04–333–002]

Take notice that on April 12, 2004, Southeast Chicago Energy Project, LLC, tendered a compliance filing pursuant to the Commission's Letter Order issued March 11, 2004 in Docket Nos. ER04–333–000 and ER04–333–000.

Comment Date: May 3, 2004.

8. Central Vermont Public Service Corporation

[Docket Nos. ER04–510–002 and EL04–88–001]

Take notice that on April 12, 2004, Central Vermont Public Service Corporation (Central Vermont) submitted a compliance filing pursuant to the Commission's order issued March 12, 2004 *Central Vermont Public Service Corp.,* 106 FERC ¶ 61,247 (2004). Central Vermont requests an effective date of March 12, 2004.

Central Vermont states that copies of the filing were served upon North Hartland, LLC, the Vermont Department of Public Service, and the Vermont Public Service Board.

Comment Date: May 3, 2004.

9. Commonwealth Edison Company

[Docket No. ER04–595–001]

Take notice that on April 15, 2004, Commonwealth Edison Company (ComEd) filed its response to the Commission's letter issued April 8, 2004 regarding ComEd's February 27, 2004 filing to amend an Interconnection Agreement between ComEd and Cordova Energy Company LLC and change its designation from a rate schedule to a service agreement under ComEd's Open Access Transmission Tariff.

Comment Date: April 20, 2004.

10. Pacific Gas and Electric Company

[Docket No. ER04–725–000]

Take notice that on April 12, 2004, Pacific Gas and Electric Company (PG&E) tendered for filing proposed changes in rates for Sacramento Municipal Utility District (SMUD), to be effective July 1, 2003, developed using a rate adjustment mechanism previously agreed by PG&E and SMUD for First Revised PG&E Rate Schedule FERC Nos. 88 and 91 and Second Revised PG&E Rate Schedule FERC No. 136.

PG&E state that copies of this filing have been served upon SMUD, the California Independent System Operator Corporation, and the California Public Utilities Commission.

Comment Date: May 3, 2004.

11. Sierra Southwest Cooperative Services, Inc.

[Docket No. ER04–728–000]

Take notice that on April 12, 2004, Sierra Southwest Cooperative Services, Inc. tendered for filing Notices of Cancellation, pursuant to 18 CFR 35.15, to reflect cancellation of its Rate Schedules FERC Nos. 1 and 2.

Comment Date: May 3, 2004.

12. Pinpoint Power, LLC

[Docket No. ER04–729–000]

Take notice that on April 12, 2004, Pinpoint Power, LLC (Pinpoint) filed an Agreement for Supplemental Installed Capacity Southwest Connecticut (Agreement) with ISO New England Inc. (ISO–NE) in compliance with Section 205 of the Federal Power Act and the Commission's order issued February 27, 2004 in Docket No. ER04–335–000, *New England Power Pool,* 106 FERC ¶ 61,190 (2004). Pinpoint seeks expedited action on its filing and a waiver of the prior notice filing requirements to allow the Agreement to become effective on June 1, 2004.

Pinpoint states that copies of its filing were sent to ISO–NE.

Comment Date: May 3, 2004.

13. PJM Interconnection, L.L.C.

[Docket No. ER04–742–000]

Take notice that on April 15, 2004, PJM Interconnection, L.L.C. (PJM) submitted the initial annual allocation of financial transmission rights (FTRs) and auction revenue rights (ARRs) for the zone of Commonwealth Edison Company (ComEd), covering the first annual planning period after ComEd's scheduled integration into PJM. PJM requests an effective date of June 1, 2004 for the initial annual FTR and ARR allocation in the ComEd zone, corresponding to the start of the annual planning period in PJM.

PJM states that copies of the filing were served on all PJM members and the utility regulatory commissions in the PJM region.

Comment Date: April 26, 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. E4–919 Filed 4–23–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL04–52–000]

Reporting By Transmission Providers on Vegetation Management Practices Related to Designated Transmission Facilities; Order Requiring Reporting on Vegetation Management Practices Related to Designated Transmission Facilities

Issued April 19, 2004.

Before Commissioners: Pat Wood, III, Chairman; Nora Mead Brownell, Joseph T. Kelliher, and Suedeen G. Kelly.

1. In this order, pursuant to section 311 of the Federal Power Act (FPA),[1] the Commission directs all entities that own, control or operate designated transmission facilities[2] in the lower 48 States (referred to herein as "transmission providers"), whether or not they are otherwise subject to the Commission's jurisdiction as a public utility, to report on the vegetation management practices they now use for those transmission lines and rights-of-ways. In order that this information be received before the summer peak load season, which typically has maximum transmission line loading and continued vegetation growth, this report should be submitted by June 17, 2004 to the Commission, the appropriate State commissions,[3] the North American Electric Reliability Council (NERC) and the relevant reliability authorities.[4] This order is driven by the findings of the Joint U.S.-Canada Task Force Final Blackout Report and benefits customers because better understanding of utility vegetation management practices on transmission lines will help to support improvements to overall grid reliability.

2. Failure to adequately maintain vegetation within transmission line rights-of-way has been identified as a major cause of the August 14, 2003 electric power blackout and as a common factor contributing to many previous regional outages. The vegetation management report required herein will provide the Commission, the States, NERC, reliability authorities and the Congress with valuable information regarding vegetation management problems that could cause line outages, and action taken to alleviate identified vegetation management problems. The Commission will also use this information in cooperation with the NARUC Ad-Hoc Committee on Critical Infrastructure to identify appropriate ways to assure effective vegetation management for electric transmission facilities.

3. The Commission strongly supports legislative reform to provide a clear Federal framework for developing and enforcing mandatory reliability rules. The information collected from the reporting requirement herein will be reflected in a Commission report to Congress on the reliability of the nation's interstate bulk electric systems, consistent with section 311 of the FPA.[5]

Background

4. On August 14, 2003, an electric power blackout occurred over large portions of the Northeast and Midwest United States and Ontario, Canada. The blackout lasted up to two days in some areas of the United States and longer in some areas of Canada. It affected an area with over 50 million people and 61,800 megawatts of electric load. In the wake of the blackout, a joint U.S.-Canada Task Force (Task Force) undertook a study of the causes of that blackout and possible solutions to avoid future such blackouts. In November 2003, the Task Force issued an interim report, describing its investigation and findings and identifying the causes of the blackout.[6] The Task Force's final report, issued on April 5, 2004, verifies and expands the findings of the interim report.

5. The Task Force identified FirstEnergy Corporation's (FirstEnergy) failure to adequately trim trees and manage vegetation in its transmission rights-of-way as one of the four primary causes of the August 14, 2003 blackout.[7] The blackout investigation explained that, during the hour before the cascading blackout occurred, three FirstEnergy 345 kV transmission lines failed as a result of contact between the lines and overgrown vegetation that encroached into the required clearance height for the lines.[8] It stated that "because the trees were so tall * * * each of these [three] lines faulted under system conditions well within specified operating parameters."[9]

6. The Interim Blackout Report also compared the August 2003 blackout with seven previous major outages and concluded that conductor contact with trees was a common factor among the outages.[10] The Task Force emphasized that vegetation management is critical and that many outages can be mitigated or prevented by managing the vegetation before it becomes a problem.[11] It also noted that investigation reports from previous major outages recommended

[1] 16 U.S.C. 825j (2000). Section 311 of the FPA authorizes the Commission to conduct investigations in order to secure information necessary or appropriate as a basis for recommending legislation. Section 311 makes clear that the Commission's authority in conducting such investigations extends to entities otherwise not subject to the Commission's jurisdiction "including the generation, transmission, distribution and sale of electric energy by any agency, authority or instrumentality of the United States, or of any State or municipality * * *."

[2] "Designated transmission facilities" are defined, for the purposes of this order only, as transmission lines with a rating of 230 kV or higher as well as tie-line interconnection facilities between control areas or balancing authority areas (regardless of kV rating) and "critical" lines as designated by the regional reliability council. *See* NERC, August 14, 2003 Blackout: NERC Actions to Prevent and Mitigate the Impacts of Future Cascading Blackouts at 9 n.3 (Feb. 10, 2004).

[3] Some transmission providers are not subject to the jurisdiction of a State Commission. We request, however, that they serve a copy of the report on all State Commissions for States in which their transmission facilities are located.

[4] A reliability authority is the entity responsible for the sale and reliable operation of the interconnected transmission system for its defined "reliability authority area." This term is replacing the term "reliability coordinator" which has the same meaning and is still in common use in many areas. The term reliability authority as used in this order refers to the corporate entity responsible for reliability, which may be called either the reliability authority or the reliability coordinator for its area.

[5] "The Commission shall report to Congress the results of investigations made under authority of this section." 16 U.S.C. 825j.

[6] U.S.-Canada Power System Outage Task Force, Interi Report: Causes of the August 14th Blackout in the United States and Canada (Nov. 2003) (Interim Blackout Report). The Interim Blackout Report is fully replaced by the Final Report.

[7] U.S.-Canada Power System Outage Task Force, Final Blackout Report (April 2004), at 20. The other primary causes identified by the Task Force were inadequate system understanding by FirstEnergy and the East Central Area Reliability Coordination Agreement (ECAR), a NERC Regional Reliability Council, and inadequate situational awareness by FirstEnergy, and failure of the interconnected grid's reliability organizations to provide effective diagnostic support. *Id.* at 17–20.

[8] *Id.* at 57–67.

[9] *Id.* at 58.

[10] *Id.* at 107. The Interim Blackout Report concluded that conductor contact with trees "was an initiating trigger in several of the outages and a contributing factor in the severity of several more * * *. In some of the disturbances, tree contact accounted for the loss of more than one circuit, contributing multiple contingencies to the weakening of the system." *Id.*

[11] *Id.* at 59.

paying special attention to the condition of vegetation on rights-of-way and the need for preventative maintenance in this area.

7. In an October 15, 2003 letter to the chief executive officers of all entities operating control areas or serving as NERC reliability coordinators, NERC listed six categories of "near term" actions, including vegetation management, that would promote reliable operations of the bulk power system.[12] The letter requested that they report to their respective regional councils and to NERC within 60 days that they had completed a review of the listed reliability practices and the status of any necessary corrective actions. With regard to vegetation management, NERC asked that the control area operators and reliability councils report on their efforts to "ensure high voltage transmission line rights-of-way are free of vegetation and other obstructions that could contact an energized conductor within the normal and emergency ratings of each line." [13]

8. NERC posted on its Web site an abbreviated summary of its vegetation management findings. The summary states:

> Some entities did not specifically address the issue of vegetation management. Of those that did, almost all indicated they have an active comprehensive vegetation program in place with rights-of-way patrolled at least annually. One entity indicated it did not yet comply with the heat-sensing portion of the Regional Reliability Council's operating procedure but is taking action to do so in 2004. Some entities patrol by air, some by ground, and some by both. To some extent, the amount of transmission an entity is responsible for determines the type of patrol used. Routine tree trimming is conducted on cycles that range from every three to six years. Local vegetation type and geographic region of the country has an impact on deciding the frequency of the trimming cycle. Typical problems and concerns noted are as follows:
>
> • One entity owns transmission lines located on lands under the jurisdiction of the U.S. Forest Service or Bureau of Land Management. The need for special use permits can impede the ability to remove vegetation from rights-of-way for these circuits.
>
> • One entity cited state and federal restrictions, such as those related to environmental or endangered species regulations, which create concerns because they are not allowed to clear rights-of-way appropriately to ensure reliability."

[12] A copy of the letter is available on the NERC Web site at: *http://www.nerc.com/~filez/blackout.html*. While a list of entities that voluntarily responded is also available on the NERC Web site, the actual responses are not posted on NERC's Web site.

[13] October 15, 2003, NERC letter at 3.

9. In March 2004, the Commission made available to the public a 128-page vegetation management report (Final Vegetation Report), prepared to support the blackout investigation.[14] The report details problems with vegetation management relating to the August 2003 blackout, and the impact of vegetation management on electric reliability. The report concludes that the August 2003 blackout likely would not have occurred had the rights-of-way been maintained for three 345 kV transmission lines that tripped due to tree-line contacts.[15] It also concludes that utilities responsible for the right-of-way maintenance had in place vegetation management programs that were in line with current industry norms. Further, it concludes that current industry "standards" are inadequate and must be improved. The Final Vegetation Report recommends specific practices that would reduce the likelihood of tree and power line conflicts and provides recommendations for the oversight and enforcement of utility vegetation management activities.

10. On April 5, 2004, the Joint Task Force issued its Final Blackout Report. That report verifies the findings of the interim report, including the role of inadequate tree-trimming as an immediate cause of the 345 kV line outages in the Cleveland-Akron area that ultimately precipitated the blackout.

Discussion

11. The Interim and Final Blackout Reports and the Final Vegetation Report all indicate that inadequate maintenance of vegetation on transmission line rights-of-way was a major cause of the August 14, 2003 blackout. Further, the Task Force's analysis of seven other major outages identified tree contacts as an initiating or contributing factor to such outages.

12. It is clear from these reports that a higher standard of performance of vegetation management is critical to minimizing the risk of regional power outages and ensuring the uninterrupted flow of electricity in the nation's interconnected bulk electric systems. As noted above, NERC requested that control area operators and reliability authorities report their efforts to ensure that high voltage transmission line rights-of-way are free of vegetation and other obstructions that could cause a line outage. The information provided in response to NERC's inquiry is useful but incomplete. Further inquiry is necessary to understand the state of the industry's vegetation management programs and to better support industry efforts to improve, and sustain improvement of, industry vegetation management programs and protect the public interest.[16] In addition, a more comprehensive view of the vegetation management practices in the United States will allow the Commission to provide a more complete report to Congress. Accordingly, pursuant to section 311 of the FPA,[17] the Commission is requiring that all transmission providers (whether or not they are otherwise subject to the Commission's jurisdiction as public utilities) that own, control or operate designated transmission facilities in the lower 48 States submit a report containing the following information:[18]

(a) Describe in detail the vegetation management practices and standards that the transmission provider uses for control of vegetation near designated transmission facilities, and indicate the source of any standard utilized (state law or regulation, historical practice, etc.). Describe the clearance assumptions or definition used for the appropriate distance between the vegetation and the facilities. Indicate how the vegetation management practices treat vegetation that encroaches or might reasonably be expected to encroach due to growth prior to the next inspection into the line clearance zone from below, beside, and above the facilities.

(b) "Designated transmission facilities" are defined, for the purposes of this report only, as lines with a rating of 230 kV or higher as well as tie-line interconnection facilities between control areas or balancing authority areas (regardless of kV rating) and "critical" lines as designated by the regional reliability council.[19] List the facilities under transmission provider control that meet this definition.

(c) For each facility identified pursuant to item b), indicate how often the transmission provider inspects that facility for vegetation management purposes. Indicate when the most recent survey of that facility was performed, what kind of survey was used (*e.g.*, helicopter overflight or foot patrol), and indicate what the findings of that survey showed. If the survey led to further action, indicate what action was taken and the date(s) it was performed.

[14] CN Utility Consulting, Utility Vegetation Management Final Report, (March 2004) (Final Vegetation Report). The Final Vegetation Report is available on the Internet at *http://www.ferc.gov/cust-protect/moi/blackout.asp*.

[15] *Id.*, at 26–27.

[16] *See* Final Blackout Report at 59.

[17] *See* note 1, *infra*.

[18] OMB Control Number 1902–0207; expiration date October 31, 2004.

[19] If the reporting utility's regional reliability council has already designated specific lines below 230 kV as "critical," it is those lines which should be included in this report. If the regional reliability council has not already designated such lines, then there is no need for the reporting utility to identify additional "critical" lines below 230 kV nor to request such designation by its regional reliability council for the purpose of this report.

(d) For the facilities identified pursuant to b), indicate whether identified remediation has been completed as of June 14, 2004.

(e) Describe any factors that the respondent believes prevents or unduly delays the performance of adequate vegetation management.

13. The Commission expects that the responses to parts (b) and (c) above should come in two parts. Each transmission provider should submit a general response that contains clear information responding to each question. The transmission providers must also provide a detailed response that addresses the specifics of each part. This detailed response may be filed under the protection of Critical Energy Infrastructure Information.[20]

14. Transmission Providers should submit the report by June 17, 2004 to the Commission, the appropriate State commissions, NERC and the relevant reliability authorities.[21] In circumstances where multiple entities own, control or operate the same transmission facilities, only a single report need be submitted (but the report should identify which entities and lines are being handled through consolidated reporting).

15. Consistent with the Commission's regulations that apply to any filings made with the Commission, contained in 18 CFR 385.2005,[22] the report should be verified by a corporate officer.

Document Availability

16.In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. eastern time) at 888 First Street, NE., Room 2A, Washington DC 20426.

17. From FERC's Home Page on the Internet, this information is available using the eLibrary link. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

18. User assistance is available for eLibrary and the FERC's Web site during normal business hours at *FERCOnlineSupport@ferc.gov* or by calling (866) 208–3676 or for TTY, contact (202) 502–8659.

The Commission orders:

(A) All entities that own, control or operate designated transmission facilities, as defined herein, in the lower 48 States, whether or not they are otherwise subject to the Commission's jurisdiction as public utilities, are directed to submit to the Commission, the appropriate State commissions, the North American Electric Reliability Council (NERC) and the relevant reliability coordinators and reliability authorities, by June 17, 2004, a report on vegetation management practices related to such transmission lines, as discussed in the body of this order.

(B) The Secretary shall promptly publish a copy of this order in the **Federal Register**.

By the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. 04–9359 Filed 4–23–04; 8:45 am]

BILLING CODE 6717–01–P

[20] 18 CFR 388.113(c)(1) (2000).

[21] Utilities in the Western Electricity Coordinating Council (WECC) should also submit the results to WECC.

[22] 18 CFR 385.2005 requires the signer of a filing to verify that: the signer has read the filing signed and knows its contents; the contents are true as stated, to the best knowledge and belief of the signer; and the signer possess full power and authority to sign the filing.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2082–027]

PacifiCorp; Notice of Intent To Prepare an Environmental Impact Statement and Notice of Scoping Meetings and Site Visit and Soliciting Scoping Comments

April 16, 2004.

Take notice that the following hydroelectric application has been filed with Commission and is available for public inspection:

a. *Type of Application:* New major license.

b. *Project No.:* 2082–027.

c. *Date filed:* February 25, 2004.

d. *Applicant:* PacifiCorp.

e. *Name of Project:* Klamath Hydroelectric Project.

f. *Location:* On the Klamath River in Klamath County, Oregon and on the Klamath River and Fall Creek in Siskiyou County, California. The project currently includes 219 acres of Federal lands administered by the Bureau of Reclamation and the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Todd Olson, Project Manager, PacifiCorp, 825 NE. Multnomah, Suite 1500, Portland, Oregon 97232, (503) 813–6657.

i. *FERC Contact:* John Mudre, (202) 502-8902 or *john.mudre@ferc.gov.*

j. *Deadline for Filing Scoping Comments:* June 21, 2004.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. This application is not ready for environmental analysis at this time.

l. The proposed Project consists of four existing generating developments (J.C. Boyle, Copco No. 1, Copco No. 2. and Iron Gate) along the mainstem of the Upper Klamath River, between RM 228 and RM 254, and one generating development (Fall Creek) on Fall Creek, a tributary to the Klamath River at about RM 196. The existing Spring Creek diversion is proposed for inclusion with the Fall Creek Development. The currently licensed East Side, West Side, and Keno Developments are not included in the proposed project.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Scoping Process:* The Commission intends to prepare an Environmental Impact Statement (EIS) on the project in accordance with the National Environmental Policy Act. The EIS will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Scoping Meetings

FERC staff will hold four scoping meetings in the project area. We invite all interested agencies, non-governmental organizations, Native American tribes, and individuals to attend one or more of the meetings and to assist the staff in identifying the scope of environmental issues to be analyzed in the EIS. The times and locations of these meetings are as follows:

Evening Scoping Meetings

When: Tuesday, May 18, 2004, 7 p.m.–9 p.m.

Where: The Klamath County Fair Grounds, 3531 South Sixth Street, Klamath Falls, Oregon.

When: Thursday, May 20, 2004, 7 p.m.–9 p.m.

Where: The Boston Shaft Restaurant, 1801 Fort Jones Road, Yreka, California.

Morning Scoping Meetings

When: Thursday, May 20, 2004, 9 a.m. to noon.

Where: The Hilton Garden Inn, 3609 Bechelli Lane, Redding, California.

When: Friday, May 21, 2004, 9 a.m. to noon.

Where: The Ashland Springs Hotel, 212 East Main Street, Ashland, Oregon.

Copies of the Scoping Document (SD1) outlining the subject areas to be addressed in the EIS are being distributed to the parties on the Commission's mailing list under separate cover. Copies of the SD1 will be available at the scoping meeting or may be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link (*see* item m above).

Site Visit

We also will visit the project facilities on May 18 (Oregon facilities) and 19 (California facilities), meeting at the north end of the Link River Trail, off Lake Shore Drive, Klamath Falls, Oregon on Tuesday, May 18 at 9 a.m., and at the Iron Gate Fish Hatchery parking lot, off Copco Road, on Wednesday, May 19 at 9 a.m. Participants on the site visits will need to provide their own transportation and bring their own lunch.

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EIS; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EIS, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EIS; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

The meetings are recorded by a stenographer and become part of the formal record of the Commission proceeding on the project.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meeting and to assist the staff in defining and clarifying the issues to be addressed in the EIS.

Magalie R. Salas,

Secretary.

[FR Doc. E4–915 Filed 4–23–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–12–000]

Florida Gas Transmission Company; Notice of Informal Settlement Conference

April 16, 2004.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 1 p.m. on Monday, April 26, 2004, and continuing at10 a.m. on Tuesday, April 27 thru Friday, April 30, 2004, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Hollis Alpert at 202–502–8783, *hollis.alpert@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E4–914 Filed 4–23–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL04–5–000]

Policy Statement on Matters Related to Bulk Power System Reliability

Issued April 19, 2004.

Before Commissioners: Pat Wood, III, Chairman; Nora Mead Brownell, Joseph T. Kelliher, and Suedeen G. Kelly.

1. This Policy Statement responds to recommendations in the U.S.-Canada Power System Outage Task Force's (Task Force) Interim and Final Blackout Reports on initiatives the Commission should undertake. This Policy Statement also responds to comments submitted after the Commission's December 1, 2003 public conference, in Docket No. RM04–2–000, on actions the Commission should take to promote reliable transmission service in interstate commerce (December 1 Reliability Conference). As such, the Policy Statement addresses a number of issues that relate to the Commission's role and policies regarding reliability of the nation's interstate bulk power systems. In particular, the Policy Statement clarifies Commission policy with regard to: the need to expeditiously modify existing bulk power system reliability standards,[1] to translate them into clear and enforceable requirements; public utility compliance with industry reliability standards and possible Commission action to address specific bulk power system reliability issues; cost recovery of prudent bulk power system reliability expenditures; the need for communication and cooperation between the Commission and the States; the need for communication and cooperation among

[1] Current industry reliability standards are found in the North American Electricity Reliability Council's (NERC) Planning Standards and the NERC Operating Manual, with operating standards set forth in operating policies contained in the Operating Manual and Appendices. The operating policies include "standards" and "requirements," along with "guidelines" and "criteria." For purposes of this Policy Statement, the term "reliability standards" refers to the entirety of reliability-related policies now in the NERC Operating Manual and Planning Standards and those evolving through the formal standards development process.

the Commission, Canada and Mexico regarding reliability issues; consideration of reliability in Commission decision-making; and limitations on liability. This Policy Statement benefits citizens by providing clarity about this agency's policies to support and take what steps it can under current law to enhance transmission grid reliability.

2. The Commission strongly supports legislative reform to provide a clear Federal framework for developing and enforcing mandatory reliability rules. In the interim, the Commission is issuing this Policy Statement and taking other steps within its existing authority to promote greater reliability of the United States' bulk power system and its operation and to support industry efforts to improve the current voluntary industry based approach.[2]

Background

3. On August 14, 2003, an electric power blackout affected large portions of the Northeast and Midwest United States and Ontario, Canada. The blackout lasted up to two days in some areas of the United States and longer in some areas of Canada. It affected an area with an estimated 50 million people and 61,800 megawatts of electric load.

4. On August 15, 2003, President George W. Bush and Prime Minister Jean Chrétien established a joint U.S.-Canada Power System Outage Task Force (Task Force) to investigate the causes of the blackout and how to reduce the possibility of future outages.

5. During the December 1 Reliability Conference, the Commission conducted a public inquiry into electric reliability. The conference addressed topics related to ensuring the reliability of the nation's bulk power system, including what the Commission should do to promote a reliable bulk power system (Docket No. RM04–2–000). Written comments submitted by John Derrick, Chairman PEPCO Holdings, Inc., on behalf of the Edison Electric Institute (EEI) proposed that the Commission continue to pursue its pending pricing policy for developing transmission infrastructure incentives and build on the NERC structure that is already in place by engaging the industry in a focused, sustained dialogue on (1) Enforcing reliability standards and practices, (2) the six near-term critical reliability elements identified by NERC in an October 15, 2003 inquiry directed to control area operators and reliability coordinators,[3] (3) third-party liability issues, and (4) clarification of the relationship between grid operations, and market and business practices.

6. On April 5, 2004, the Task Force issued a Final Blackout Report,[4] replacing the interim report issued in November 2003.[5] The Final Blackout Report describes the blackout investigation findings and identifies the causes of the blackout. There are four groups of causes that coincided on August 14, 2003 to produce the blackout:

- inadequate system understanding;
- inadequate situational awareness;
- inadequate tree trimming; and
- inadequate reliability coordinator diagnostic support.

Further, the Final Blackout Report indicates that several entities violated NERC operating policies and planning standards, and those violations directly contributed to the start of the blackout. However, the Final Blackout Report finds that due to a variety of institutional issues, the NERC standards are sufficiently unclear, ambiguous and non-specific that it was possible for bulk power system participants to interpret these standards in widely varying ways that, while producing low reliability, could still be considered to comply with the standards.

7. The Final Blackout Report stated that the August 14, 2003 blackout was preventable and provided 46 recommendations to enhance grid reliability, which emphasize comprehensiveness, monitoring, training and enforcement of reliability standards.[6] Several of these recommendations suggest actions the Commission should take to improve bulk power system reliability. For example, the report recommends that the Commission not approve the operation of a new Regional Transmission Organization (RTO) or Independent System Operator (ISO) until the applicant has met the minimum functional requirements of reliability coordinators.[7] In addition, the Final Blackout Report states that the Commission should develop a Commission-approved mechanism for funding NERC and the regional reliability councils to ensure their independence from the parties they oversee,[8] clarify that prudent expenditures and investments for bulk system reliability will be recoverable through transmission rates,[9] and integrate a reliability impact consideration into our regulatory decision-making process.[10] The report also states that operators who initiate load shedding pursuant to approved guidelines should be shielded from liability or retaliation.[11]

8. The Interim Blackout Report indicated (and the Final Blackout Report confirms) that, in the period of time immediately preceding the August 14 blackout, Northeast Ohio had significant reactive power needs. FirstEnergy, a Midwest utility identified as one of the entities whose violations of NERC standards contributed to the blackout, was severely deficient in reactive power to support the Cleveland-Akron area before the blackout. Based on these circumstances, the Commission determined that the availability of reactive power, and more generally, the availability of sufficient generation and transmission facilities in Eastern Ohio are matters deserving more study.[12] The Commission directed FirstEnergy to retain an independent expert to prepare a study of the adequacy of transmission and generation facilities in Northeastern Ohio.[13] FirstEnergy has retained an independent expert as directed and is currently preparing the required study, which will be completed in April, 2004.

9. Responding to the blackout and the blackout investigation, on February 10, 2004, the NERC Board of Trustees approved recommendations to take steps to improve the reliability of the bulk electric system, including a

[2] Concurrent with the issuance of this order, the Commission is issuing an order directing transmission providers to report on their vegetation management practices related to certain overhead interstate transmission lines. Order Requiring Reporting on Vegetation Management Practices Related to Designated Transmission Facilities, 107 FERC ¶ 61, 053(2004).

[3] NERC's six critical reliability elements include: (1) Ensuring that high voltage transmission line rights-of-way are free of vegetation and other obstacles; (2) ensuring sufficient reactive power for voltage support; (3) strengthening where needed the reliability communications protocols between control area operators and reliability coordinators; (4) establishing as necessary more formal means to immediately notify control room personnel about failures of system monitoring and control functions; (5) ensuring that emergency actions plans and procedures are in place; and (6) ensuring that all operating staff are trained and certified in emergency drills.

[4] U.S.-Canada Power System Outage Task Force, Final Report on the August 14th Blackout in the United States and Canada: Causes and Recommendations (April 2004) (Final Blackout Report). The Final Blackout Report is available on the Internet at *http://www.ferc.gov/cust-protect/moi/blockout.osp.*

[5] U.S.-Canada Power System Outage Task Force, Interim Report: Causes of the August 14th Blackout in the United States and Canada (Nov. 2003) (Interim Blackout Report). The Interim Blackout Report is available on the Internet at *http://www.ferc.gov/cust-protect/moi/blockout.osp.*

[6] Final Blackout Report at 139.

[7] Recommendation 6. *Id.* at 147.

[8] Recommendation 2. *Id.* at 143.

[9] Recommendation 4. *Id.* at 146.

[10] Recommendation 9. *Id.* at 147.

[11] Recommendation 8. *Id.*

[12] FirstEnergy Corporation, 105 FERC ¶ 61,372 (2003).

[13] *Id.*

recommendation to review the reliability readiness of reliability coordinators and the major control areas.[14] NERC plans to complete the 20 highest priority reviews by June 30, 2004, inspecting the operators which serve over 80 percent of North America's electric load.

10. The Commission supports NERC's and the industry's efforts to take concrete steps to improve system reliability. Pursuant to an explicit provision in its 2004 appropriation, the Commission is establishing a new reliability division to be staffed with grid-reliability engineering experts in the Office of Markets, Tariffs and Rates, to assure sound integration of reliability and market considerations in Commission decision-making. Members of this division are participating with other industry volunteers in NERC's reliability readiness reviews and supporting the development of new reliability standards.

11. The Congress is currently considering energy legislation, which would address the reliability of the nation's bulk power system based on mandatory industry compliance with enforceable reliability standards. The Commission strongly supports the enactment of legislation containing such a reliability provision. This Policy Statement is intended to be consistent with both current FERC authority and responsibility, and the implementation of such legislation.

Discussion

A. Need for Expeditious Revision of NERC Reliability Standards

12. Over the past 30 years NERC has developed "operating policies and planning standards" with which its members are expected to voluntarily comply. As mentioned above, the operating policies consist of a collection of standards, requirements and guidelines that, together, instruct on the reliable operation of interconnected systems operations and, as currently drafted, place the primary responsibility for reliable operations on control area operators. NERC's planning standards are intended to state the fundamental requirements for planning reliable interconnected bulk electric systems.

13. In 2002, NERC began developing clear and enforceable "reliability standards," under an American National Standards Institute (ANSI)-accredited process, which includes a voting model that provides for open participation and voting by industry stakeholders, weighted by industry segment. These new standards will be clear and unambiguous as to what needs to be done and who needs to do it to achieve reliable grid operations, and will include compliance measures for each standard. NERC is also working to transition its policies away from control area-oriented terminology suited for traditional vertically-integrated utilities and toward the terminology of a functional model that focuses on tasks or functions required for maintaining electric system reliability. The functional model recognizes changes to new industry structures that have emerged from the advent of open access transmission service.[15]

14. The Commission agrees with the critical need to replace the current standards with standards that are clear, unambiguous, measurable and enforceable. To date NERC has completed development of one interim reliability standard, relating to cyber security. NERC has identified approximately twelve additional reliability standards that it plans to develop that, when completed, will replace the existing operating policies and planning standards. NERC and the industry have recently agreed to expedite the development of these new standards and are currently working toward the completion and adoption of new standards by the end of 2004. The Commission supports NERC's commitment and our expectation is that such standards will be enforceable in early 2005.[16]

15. The Final Blackout Report identifies topics that are not currently addressed by NERC standards or are addressed so vaguely as to be ineffective, but are important in maintaining system reliability. Such "gaps" include vegetation management for transmission rights-of-way, line ratings, operator training, adequacy of operator tools, and minimum functional requirements and capabilities for reliability authorities and balancing authorities.[17] The Commission advises NERC and the industry to include these priority matters in the list of topics for which immediate reliability standards must be developed, and to develop such standards as quickly as reasoned deliberation allows.

16. The Commission requests status reports from NERC and the industry on the development of these revised standards. Pursuant to a recommendation in the Final Blackout Report, the Commission is working with the United States and Canadian governments to hold a meeting with NERC and the electric industry about how the findings of the blackout investigation should affect electric reliability standards and regulation, and looks forward to discussing these issues in that meeting.

17. The Commission believes that NERC's reliability standards should represent a floor for grid operator and bulk system participants' reliability efforts, and not a ceiling. Utilities and other entities involved in transmission system reliability should strive toward achieving reliable transmission service and not simply act with the aim of meeting the minimum requirements that have been set forth in manuals and standards.

18. The Commission recognizes that entities may be subject to regional reliability standards developed by NERC's regional reliability councils or State agencies. The Commission supports variations where the transmission provider or other relevant entity can demonstrate that regional reliability standards are necessary to account for physical differences in the bulk power system and are no less stringent than, and not inconsistent with, NERC's reliability standards.[18] Regional or State standards that do not

[14] See Recommendation 3a. The text of the February 10, 2004 document is available on NERC's Web site, *http://www.nerc.com*.

[15] Historically, control areas were established by vertically-integrated utilities to balance the control area's load with its generation, implemented interchange schedules with other control areas, and ensured transmission reliability. Industry restructuring in some areas has led NERC to restate its reliability standards in terms that fit the new—as well as the traditional—industry structures. This means replacing the term "Control Area Operator" with new terms that identify more closely which entity in a more disaggregated industry structure is responsible for complying with each NERC standard. To facilitate the update of its reliability standards, NERC has established the functional model. This model now recognizes a "Balancing Authority Area" as the collection of generation, transmission, and loads within the metered boundaries where a "Balancing Authority" maintains a load-resource balance. A "Reliability Authority Area" is recognized as having borders that may coincide with one or more balancing authority areas. A "Reliability Authority" may direct the "Transmission Operators" or Balancing Authorities to take action, for example, to maintain interconnection reliability operating limits. Also, as the functional model was being developed, the term "Reliability Coordinator" was used on an interim basis before Reliability Authority became the accepted term.

[16] In this vein, the Commission notes NERC's April 5, 2004 announcements of the adoption of (1) Revised Compliance Templates and (2) Interim Guidelines for Reporting and Disclosure of reliability audit results and reliability standards compliance violations.

[17] *See* Final Blackout Report at 21–22.

[18] NERC recently explained that "regional standards may be more stringent than, but may not be inconsistent with or less stringent than, the NERC standards. Both sets of rules apply, and operators must comply with the more stringent one." March 12, 2004 Response to Questions posed by the Senate Committee on Energy and Natural Resources, Michehl Gent, President and CEO of NERC.

account for physical differences and do not produce the same or a higher level of performance are not acceptable. Likewise, we cannot support regional or State reliability standards that result in variations that are less stringent and produce lower reliability than NERC standards. The Commission is concerned, however, that regional variations may create market seams or allow anti-competitive behavior and will watch carefully for any such problems.

19. In summary, we support NERC and industry efforts to translate the existing reliability standards into clear and enforceable standards by early 2005, and we encourage NERC to address the "gaps" in existing reliability standards.

B. Good Utility Practice

20. Nearly all transmission-providing public utilities are members of one of NERC's ten regional reliability councils.[19] NERC has taken the position that all members must voluntarily agree to operate their transmission systems consistent with NERC reliability standards.

21. In Order No. 888, the Commission required that all public utilities that own, control or operate facilities used for transmitting electric energy in interstate commerce have on file an open access, non-discriminatory transmission tariff (OATT).[20] The *pro forma* OATT, issued as part of Order No. 888, contains numerous provisions that reference "Good Utility Practice," [21] some of which specifically relate to the reliable operation of the transmission grid. For example, "Control Area" is defined as a system or systems to which a common automatic generation control scheme is applied in order to, among other things, "maintain scheduled interchange with other control areas, within the limits of Good Utility Practice" and "maintain the frequency of the electric power systems within reasonable limits in accordance with 'Good Utility Practice.'" [22]

22. With regard to network integration transmission service, the OATT provides that a transmission provider is responsible to plan, construct, operate and maintain its Transmission System in accordance with Good Utility Practice [23] and may curtail service consistent with Good Utility Practice to maintain system reliability.[24] Further, the OATT specifically requires that a network customer satisfy its control area requirements by either operating as a control area under NERC and regional reliability council guidelines, contracting with the Transmission Provider or contracting with another entity "consistent with Good Utility Practice, which satisfies NERC and the [applicable regional reliability council] requirements." [25]

23. In this Policy Statement, we clarify that the Commission interprets the term "Good Utility Practice" to include compliance with NERC reliability standards or more stringent regional reliability council standards. Accordingly, public utilities that own, control or operate Commission-jurisdictional transmission systems should operate their systems in accordance with Good Utility Practice as set forth in the Commission's *pro forma* open OATT, including complying with NERC reliability standards.

24. With respect to ISOs and RTOs, they must comply with NERC reliability standards pursuant to both Order No. 888 and Order No. 2000. Order No. 888–A, in discussing the characteristics and functions of ISOs, states that ISOs should comply with "applicable standards set by NERC and the regional reliability council." [26] Likewise, with regard to RTOs, the Commission discussed in Order No. 2000 a specific requirement that RTOs follow NERC standards. The Commission determined that RTOs must have exclusive authority for maintaining the short-term reliability of the grid that it operates. In that context, the Commission concluded that:

> the RTO must perform its functions consistent with established NERC (or its successor) reliability standards, and notify the Commission immediately if implementation of these or any other externally established reliability standards will prevent it from meeting its obligation to provide reliable, non-discriminatory transmission service.[27]

Accordingly, the Commission expects ISOs and RTOs to perform their functions consistent with NERC reliability standards (or with regional variations that are no less stringent than, and not inconsistent with, NERC standards) and the findings and recommendations of NERC audits.

25. In sum, the Commission expects public utilities to comply with NERC reliability standards and to remedy any deficiencies identified in NERC compliance audit reports and recommendations. The Commission will consider taking utility-specific action on a case-by-case basis to address significant reliability problems or compliance with Good Utility Practices, consistent with its authority. A failure to comply with such industry standards could in some circumstances affect Commission determinations as to whether rates are just and reasonable. For example, it may be appropriate to deny full cost recovery in circumstances where a transmission provider fails to provide full reliability of service.[28]

26. Generators, transmission customers and other market participants are also expected to support transmission system reliability, and to obey the directives of a balancing authority or reliability authority for operational reliability in real time. The Commission plans to explore this topic further to determine the best means to ensure that all market participants are held responsible to act to support transmission system reliability.

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[19] NERC's members are the ten regional reliability councils.

[20] Order No. 888, Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 FR 21,540 (1996), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888–A, 62 FR 12,274 (1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888–B, 62 FR 64,688, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom.* Transmission Access Policy Study Group, *et al.* v. FERC, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom.* New York v. FERC, 535 U.S. 1 (2002).

[21] Order No. 888 defined "Good Utility Practice" in section 1.14 of the *pro forma* OATT as follows:

> Any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, *reliability*, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region. (Emphasis added)

[22] *Pro forma* OATT at section 1.6.

[23] *Id.* at section 28.2.

[24] *Id.* at section 33.7.

[25] *Id.* at section 35.2.

[26] Order No. 888–A, FERC Stats. & Regs. ¶ 31,048 at 30,247–48.

[27] Regional Transmission Organizations, Order No. 2000, 65 FR 809 (2000), FERC Stats. & Regs., Regulations Preambles July 1996–December 2000 ¶ 31,089 at 31,106 (1999), *order on reh'g*, Order No. 2000–A, 65 FR 12088 (2000), FERC Stats. & Regs., Regulations Preambles July 1996–December 2000 ¶ 31,092 (2000), *aff'd, Public Utility District No. 1 of Snohomish County, Washington* v. *FERC*, 272 F.3d 607 (D.C. Cir. 2001).

[28] *See, e.g., Village of Freeport, New York* v. *Consolidated Edison Co. of New York, Inc.*, 87 FERC ¶ 61,301 (1999) (setting for hearing whether ConEd followed good utility practice in providing firm transmission service required by the OATT and, if not, what remedies are appropriate); Green Mountain Power Co., 59 FERC ¶ 61,213 at 61,739 (1992).

C. Cost Recovery of Prudent Reliability Expenditures

27. The Commission understands that public utilities may need to expend significant amounts of money to implement measures necessary to maintain bulk electric system reliability, including vegetation management, improved grid monitoring and management tools, and improved operator training. The Commission is also aware that there may be uncertainty about public utilities' ability to recover as additional expenses the expenses necessary to ensure bulk electric system reliability, especially if they are operating under frozen or indexed rates. Further, the blackout investigation Final Blackout Report Recommendation 4 recommends that regulators clarify that prudent expenditures and investments to maintain or improve bulk power system reliability will be recoverable through rates.[29] Accordingly, the Commission assures public utilities that we will approve applications to recover prudently incurred costs necessary to ensure bulk electric system reliability, including prudent expenditures for vegetation management, improved grid management and monitoring equipment, operator training, and compliance with NERC reliability standards and Good Utility Practices.

28. In a Statement of Policy issued September 14, 2001, the Commission provided assurances to regulated entities that the Commission "will approve applications to recover prudently incurred costs necessary to further safeguard the reliability and security of our energy supply infrastructure in response to the heightened state of alert. Companies may propose a separate rate recovery mechanism, such as a surcharge to currently existing rates or some other cost recovery method."[30] The Commission stands by this policy and clarifies that the policy extends to the recovery of prudent reliability expenditures, including those for vegetation management, improved grid management and monitoring equipment, operator training and compliance with NERC standards.

D. Commission Relationship with States on Reliability Issues

29. The Commission recognizes that many aspects of system reliability are within the purview of the states. To maintain and enhance reliability, it is necessary that all those with responsibility for the bulk electric system work together to achieve the common goal of a reliable electric system. Accordingly, the Commission intends to work closely with the states to address vegetation management, jurisdictional overlap issues regarding reliability upgrades, cost recovery, and other reliability-related issues of mutual concern. To date we have been holding such discussions with individual State officials, through the National Association of Regulatory Utility Commissioners, and through interactions on the joint U.S.-Canada Power System Outage System Task Force. We look forward to continuing and strengthening these efforts.

30. With regard to reliability "upgrades," we note that several State and regional entities have asked the Commission to recognize that State or regional reliability rules may be more stringent than those developed by NERC. For example, in follow-up comments to the Commission's December 1 Reliability Conference, the New York State Reliability Council, Northeast Power Coordinating Council and the Western Electricity Coordinating Council all indicated that, while they support efforts to develop enforceable, industry-wide reliability standards, such standards "should represent a floor rather than a ceiling." They stated that it is essential for regional entities to have the ability to promulgate more specific and more stringent regional and local reliability standards. According to these comments, more stringent regional criteria that address unique regional needs or concerns make for a more robust overall bulk electric system and allow greater flexibility when extraordinary events occur.

31. As discussed above, the Commission supports regional standards that are necessary to account for physical differences in the bulk power system and are no less stringent than, and not inconsistent with, NERC's reliability standards. The Commission recognizes that regional criteria may be necessary and that the State and regional entities have legitimate interests in enhancing reliability beyond the level achieved by compliance with NERC standards.

32. We are also interested in working together with the States and NERC to address and remedy any deficiencies in public utility implementation of reliability requirements, or any shortfalls in actual bulk system reliability.

E. Commission Relationship with Canada and Mexico on Reliability Issues

33. The Commission recognizes the common interest of the United States, Canada and Mexico in maintaining a safe and reliable interconnected North American bulk electric system.[31] In this vein, the Commission will work closely and cooperatively with officials designated by the Canadian and Mexican governments to achieve this common interest.

34. Further, the Commission will work closely with Canada to achieve common reliability of the interconnected transmission grid to attain consistent cross-border treatment of reliability standards and regulation as they affect bulk system participants and NERC under current regulatory conditions. When energy legislation is enacted, we will work closely with appropriate Canadian authorities to assure the success of the Electricity Reliability Organization (ERO) and address any issues required to assure that our nations share a reliable electric grid.

F. Recommendations of Blackout Investigation Final Report

35. In addition to recommending that the Commission allow recovery of prudently incurred reliability-related costs, discussed in Section C, above, the April 5 Final Blackout Report recommends or discusses several other actions related to the Commission and its regulation of public utilities. Below we adopt new policies and announce new steps in response to the final report.

Reliability of ISOs and RTOs

36. The Final Blackout Report's Recommendation 6[32] recommends that the Commission not authorize a new RTO or ISO to become operational until the applicant has met the minimum functional requirements for reliability coordinators. In response to this recommendation, the Commission will continue its policy of taking reliability considerations into account before authorizing a new ISO or RTO to become operational. An ISO or RTO must meet all minimum functional requirements for reliability coordinators in order to fulfill its responsibility as reliability coordinator for the area within its footprint.

[29] Final Blackout Report at 146.

[30] Extraordinary Expenditures Necessary to Safeguard National Energy Supplies, 96 FERC ¶ 61,299 at 61,129 (2001).

[31] The northern portion of Baja California Norte, Mexico is interconnected with the western United States and Canada and is part of the WECC, a NERC region.

[32] Final Blackout Report at 147.

Consideration of Reliability Impacts in Commission Decision-Making Process

37. The Final Blackout Report's Recommendation 9[33] recommends that the Commission integrate a formal reliability impact consideration into our regulatory decision-making to ensure Commission actions improve, or at a minimum do not harm, reliability. In response to this recommendation, the Commission will continue its policy of considering the reliability implications of Commission decisions, as appropriate.

Funding of NERC

38. The Final Blackout Report's Recommendation 2[34] recommends that the U.S. and Canadian regulatory authorities develop a regulator-approved mechanism for funding NERC and the regional reliability councils, to ensure their independence from, the parties they oversee. In response, the Commission will appoint a staff task force to report to the Commission on potential mechanisms for funding NERC, the regional reliability councils, and, should energy legislation be passed, the Electricity Reliability Organization, to ensure independence from the utilities they oversee. This staff task force will be directed to work closely with our Canadian counterparts, as well as State regulatory authorities, NERC, the regional reliability councils, and industry participants, to develop funding options and recommendations. Such options should take into account funding mechanisms for current entities, such as NERC and the regional reliability councils, and entities created by the passage of reliability legislation.

Memorandum of Understanding with NERC

39. The Final Blackout Report recommends that government agencies in the U.S. and Canada decide whether to develop individual memoranda of understanding (MOUs) with NERC that would define the agency's working relationship with NERC, government oversight of NERC activities, if appropriate, and the reliability responsibilities of the signatories.[35] In response to this recommendation, the Commission directs staff to draft a MOU which will define NERC's working relationship with the Commission. In addition, this MOU will clarify the appropriate Commission oversight of NERC and the respective reliability responsibilities of both NERC and the Commission. This MOU will be signed by the Chairman, on behalf of the Commission.

G. Limitations on Liability

40. In view of the Commission's interpretation in this Policy Statement that Good Utility Practice includes compliance with NERC reliability standards and NERC compliance audit recommendations, the Commission will consider, on a case-by-case basis, proposals by public utilities to amend their OATTs to include limitations on liability. While this issue has not been resolved on a standardized basis, the Commission has entertained RTO transmission providers' specific proposals to amend their OATTs to include provisions addressing limitations on liability.[36] Such proposals should address the standard for liability (*e.g.*, gross negligence and willful misconduct) and the types of damages for which the public utility may be liable (*e.g.*, direct damages and not consequential or indirect damages).

By the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. 04–9358 Filed 4–23–04; 8:45 am]

BILLING CODE 6717–01–P

[33] Final Blackout Report at 147.

[34] *Id.* at 143.

[35] *Id.*

[36] *See* Wholesale Market Power Platform White Paper (April 28, 2003) (stating that a standard tariff provision limiting liability for transmission providers would be included in the Final Rule Remedying Undue Discrimination through Open Access Transmission Service and Standard Electricity Market Design). *See also* Midwest Independent Transmission System Operator, Inc., 100 FERC ¶ 61,144 (2002) (conditionally accepting for filing a proposed OATT revision that would limit the liability of the Midwest ISO and Midwest ISO transmission owners for certain damages related to services provided under the Midwest ISO OATT); and ISO New England, *et al.*, 106 FERC ¶ 61,280 (2004).

ENVIRONMENTAL PROTECTION AGENCY

[RCRA–2004–0002, FRL–7653–5]

Agency Information Collection Activities: Proposed Collection; Comment Request; Storage, Treatment, Transportation and Disposal of Mixed Wastes, EPA ICR Number 1922.03, OMB Control Number 2050–0181

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request an existing approved collection. This ICR is scheduled to expire on August 31, 2004. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before June 25, 2004.

ADDRESSES: Submit your comments, referencing docket ID number RCRA–2004–0002, to EPA online using EDOCKET (our preferred method), by e-mail to *RCRA-docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, RCRA Docket, mail code 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Kathleen Rafferty, Office of Solid Waste and Emergency Reponse, 5303W, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–0589; fax number: 703–308–8609; e-mail address: *rafferty.kathy@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number RCRA–2004–0002, which is available for public viewing at the RCRA Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing

copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket.*

Affected entities: Entities potentially affected by this action are businesses, state and local governments and tribes.

Title: Storage, Treatment, Transportation and Disposal of Mixed Wastes; EPA ICR Number 1922.03, OMB Control Number 2050–0181.

Abstract: On May 16, 2001, EPA published the Storage, Treatment, Transportation, and Disposal of Mixed Waste final rule (66 FR 27218). This rule amended the RCRA regulations at 40 CFR parts 261, 266, and 268, to provide increased flexibility to facilities in managing low-level mixed waste (LLMW) and naturally occurring and/or accelerator-produced radioactive material (NARM) containing hazardous waste, and to reduce dual regulation of LLMW, which is subject to RCRA and the Atomic Energy Act (AEA), as amended. The storage and treatment conditional exemption in the 2001 rule conditionally exempts LLMW from the regulatory definition of hazardous waste, so long as the use of tanks or containers to store or treat the waste meets the specified conditions and is generated under a single Nuclear Regulatory Commission (NRC) or an NRC Agreement State license. Under the transportation and disposal conditional exemption, LLMW and hazardous NARM waste are exempted from RCRA manifest, transportation, and disposal requirements, so long as generators still comply with manifest, transport, and disposal requirements under the NRC (or NRC-Agreement State) regulations for low-level radioactive waste (LLW) or eligible NARM. Responses are voluntary, however they are required to obtain benefits. 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: 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

Average Annual Reporting and Recordkeeping Hour Burden: 3,079 hours.

- Estimated Average Burden Hours Per Response: 3.68 hours.
- Proposed Frequency of Response: on occasion.
- Estimated Number of Likely Respondents: 835.

Average Annual Reporting and Recordkeeping Cost Burden: $4,000.

- Capital and Start-up Cost: $0.
- Operation and Maintenance: $4,000.

Dated: March 27, 2004.

Robert Springer,

Director, Office of Solid Waste.

[FR Doc. 04–9407 Filed 4–23–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[IN161–1; FRL–7653–4]

Approval of Section 112(l) Delegation of Maximum Achievable Control Technology Standards; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The purpose of this action is to announce that EPA approved a request for delegation of the Maximum Achievable Control Technology (MACT) standards for polyurethane foam, portland cement, hazardous waste combustion, oil and natural gas production, natural gas transmission and storage, publically owned treatment works, pulp and paper—non-combustion, phosphoric acid manufacturing, phosphate fertilizer production, tanks—level 1, containers, surface impoundments, individual drain systems, closed vent systems, equipment leaks—level 1, equipment leaks—level 2, oil-water separators, storage vessels—level 2, generic MACT, pesticide active ingredient production, mineral wool production, and wool fiberglass manufacturing (*i.e.*, 40 CFR part 63, subpart III, LLL, EEE, HH, HHH, VVV, S, AA, BB, OO, PP, QQ, RR, SS, TT, UU, VV, WW, YY, MMM, DDD, and NNN respectively) pursuant to section 112(l) of the Clean Air Act (CAA). The State's mechanism of delegation involves State rule adoption of all existing and future section 112 standards unchanged from the Federal standards. The actual delegation of authority of individual standards was a letter from EPA To the Indiana Department of Environmental Management (IDEM) dated December 29, 2003.

DATES: This action will become effective May 26, 2004.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the approval are available for inspection during normal business hours at the following location:

EPA Region 5, 77 West Jackson Boulevard, AR–18J, Chicago, Illinois 60604.

Please contact Sam Portanova at (312) 886–3189 to arrange a time if inspection of the submittal is desired.

FOR FURTHER INFORMATION CONTACT: Sam Portanova, AR–18J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3189, *portanova.sam@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What Action Is EPA Taking Today?

EPA is notifying the public that delegation of the authority to implement and enforce the MACT standards for polyurethane foam, portland cement, hazardous waste combustion, oil and natural gas production, natural gas transmission and storage, publically owned treatment works, pulp and paper—non-combustion, phosphoric acid manufacturing, phosphate fertilizer production, tanks—level 1, containers, surface impoundments, individual drain systems, closed vent systems, equipment leaks—level 1, equipment leaks—level 2, oil-water separators, storage vessels—level 2, generic MACT, pesticide active ingredient production, mineral wool production, and wool fiberglass manufacturing was approved in a letter from EPA to IDEM dated December 29, 2003.

All notifications, reports and other correspondence required under section 112 standards should be sent to the State of Indiana rather than to the EPA, Region 5, in Chicago. Affected sources should send this information to: Indiana Department of Environmental Management, Office of Air Management, 100 North Senate Avenue, P.O. Box 6015, Indianapolis, Indiana 46206–6015.

II. EPA Approved the Delegation Under What Authority?

Section 112(l) of the CAA enables the EPA to approve State air toxics programs or rules to operate in place of the Federal air toxics program. The Federal air toxics program implements the requirements found in section 112 of the CAA pertaining to the regulation of hazardous air pollutants. Approval of an air toxics program is granted by the EPA if the Agency finds that the State program: (1) Is "no less stringent" than the corresponding Federal program or rule, (2) the State has adequate authority and resources to implement the program, (3) the schedule for implementation and compliance is sufficiently expeditious, and (4) the program is otherwise in compliance with Federal guidance. Once approval is granted, the air toxics program can be implemented and enforced by State or local agencies, as well as EPA.

On November 14, 1995, EPA approved Indiana's program of delegation for part 70 sources (**Federal Register** (60 FR 57118)). On July 8, 1997, EPA approved Indiana's program of delegation for non-part 70 sources (**Federal Register** (62 FR 36460)).

III. Which Standards Has IDEM Submitted to EPA for Approval Under Indiana's Air Toxics Program Delegation Mechanism?

On June 30, 2003, IDEM requested delegation of implementation and enforcement authority of the MACT standards for polyurethane foam, portland cement, hazardous waste combustion, oil and natural gas production, natural gas transmission and storage, publically owned treatment works, pulp and paper—non-combustion, phosphoric acid manufacturing, phosphate fertilizer production, tanks—level 1, containers, surface impoundments, individual drain systems, closed vent systems, equipment leaks—level 1, equipment leaks—level 2, oil-water separators, storage vessels—level 2, generic MACT, pesticide active ingredient production, mineral wool production, and wool fiberglass manufacturing (*i.e.*; 40 CFR part 63, subpart III, LLL, EEE, HH, HHH, VVV, S, AA, BB, OO, PP, QQ, RR, SS, TT, UU, VV, WW, YY, MMM, DDD, and NNN respectively). The State of Indiana's rules 326 Indiana Administrative Code (IAC) 20–22, 326 IAC 20–27, 326 IAC 20–28, 326 IAC 20–30, 326 IAC 20–31, 326 IAC 20–32, 326 IAC 20–33, 326 IAC 20–34, 326 IAC 20–35, 326 IAC 20–36, 326 IAC 20–37, 326 IAC 20–38, 326 IAC 20–39, 326 IAC 20–40, 326 IAC 20–41, 326 IAC 20–42, 326 IAC 20–43, 326 IAC 20–44, 326 IAC 20–45, 326 IAC 20–46, and 326 IAC 20–47 incorporate these MACT standards into the State's rules unchanged from the Federal regulations.

Dated: April 12, 2004.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 04–9406 Filed 4–23–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2004–0084; FRL–7352–9]

Request for Nominations to the Proposed Endocrine Disruptor Methods Validation Advisory Committee (EDMVAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for nominations.

SUMMARY: EPA is inviting nominations of qualified candidates to consider for appointment to the proposed Endocrine Disruptor Methods Validation Advisory Committee (EDMVAC), which is replacing the Endocrine Disruptor Methods Validation Subcommittee (EDMVS) under the National Advisory Council for Environmental Policy and Technology (NACEPT). EPA will consider nominations submitted in response to this notice as well as nominations received from other outreach efforts in selecting EDMVAC members. The purpose of the proposed EDMVAC will be to provide advice and recommendations to EPA on scientific and technical aspects of the Tier I screens and Tier II assays being considered for the Endocrine Disruptor Screening Program (EDSP). The proposed Committee will evaluate relevant scientific issues, protocols, data and interpretations of the data for the assays during the validation process. The proposed EDMVAC will provide advice on the composition of the Tier I screening battery as well.

DATES: Nominations will be accepted until 4 p.m. eastern time on May 26, 2004.

ADDRESSES: Nominations may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To protect personal information from disclosure to the public do not submit nominations materials to the EDMVAC Docket or through any online electronic commenting system.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7404M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Jane Smith, Designated Federal Official, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8476, fax: (202) 564–8283; e-mail address: *smith.jane-scott@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. You may be interested in the nomination of members to the committee set forth in this notice if you are a member of an environmental/public interest organization, a public health organization, an animal welfare organization, academia or Federal agencies, state, local, or tribal

governments. You also may be interested in activities of EPA's EDSP if you produce, manufacture, use, consume, work with, or import pesticides or other chemicals. To determine whether you or your business may have an interest in this notice you should carefully examine section 408(p) of the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996 (Public Law 104–170), 21 U.S.C. 346a(p) and amendments to the Safe Drinking Water Act (SDWA) (Public Law 104–182), 42 U.S.C. 300j–17. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding this action, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically.* You may access this **Federal Register** document electronically through the EPA Internet site under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

Information about the former Endocrine Disruptor Methods Validation Subcommittee, the Endocrine Disruptor Screening Program and related programs is available from *http://www.epa.gov/scipoly/oscpendo/*.

EPA has established an official public docket for the proposed EDMVAC under docket identification (ID) number OPPT–2004–0084. The official public docket consists of the documents related to the activities of the committee and any public comments received. 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. To protect personal information from disclosure to the public, do not submit nominations materials in response to this Notice to the docket or through any online electronic commenting system. Instead, follow the instructions listed under Unit I.C.

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 access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

2. *In person.* The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102–Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0272.

3. *By mail.* You may obtain copies of this document and other related documents from the technical contact person listed under **FOR FURTHER INFORMATION CONTACT**.

C. How Can I Nominate Potential Members to this Proposed Committee?

You may nominate qualified persons for membership to this proposed Committee electronically, by mail, or in person/by courier. Nominations for membership should include a curriculum vitae of the nominee detailing his or her specific area of relevant expertise, as described below in Unit I.D., and a designation of the type of organization the candidate represents according to Unit II.C.

To protect personal information from disclosure to the public, do not submit nominations materials to the EDMVAC Docket or through any online electronic commenting system. Submit your nomination, marked "Attention EDMVAC nominations" by one of these methods:

1. *Electronically*: Submit e-mail nominations to *smith.jane-scott@epa.gov*.

2. *By mail*: Environmental Protection Agency, Confidental Business Information (CBIC), Mail Code 7407M, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *By courier*: Environmental Protection Agency, Attention: Jane Smith, EPA East Building, Room 4106M, 1201 Constitution Ave., NW., Washington, DC 20004–3302, contact phone numbers: 202–564–8476 and 202–564–1656. The room at which submissions are accepted is only open until 4 p.m. If a courier service comes after that time the service will be turned away. Non-uniformed (bicycle, etc.) couriers will be met at the 1201 Constitution Ave. entrance by EPA personnel. Uniformed couriers are admitted to deliver directly to the technical contact.

D. What Should I Consider When Making Nominations?

Potential candidates should be qualified persons with relevant technical scientific expertise (e.g., endocrinology, mammalian toxicology, ecotoxicology, *in vitro* testing, biostatistics, wildlife biology, icthyology); diversity of perspectives on endocrine disruptor screening and testing methods and procedures; and standardization and validation of toxicity test methods.

Candidates with interdisciplinary technical scientific experience described above and former EDMVS subcommittee members are strongly encouraged to apply.

In addition, proposed Committee candidates should be willing to:

- Commit to attend three to four meetings per year for 2 years, most of them in Washington, DC.
- Serve on a subcommittee or working group, as needed.

Nominees not selected for the proposed Committee may be considered for membership on subcommittees or working groups.

When making your nomination, please classify the candidate with respect to the types of organizations represented in Unit II.C. and identify the types of experience of the candidate in the form of a curriculum vitae or other informational document.

II. Background

A. Introduction

EPA's ongoing implementation of the EDSP is science-driven and supported by the recommendations and comments of the Endocrine Disruptor Screening and Testing Advisory Committee, the Science Advisory Panel/Science Advisory Board Joint Panel, and the EDMVS. The Agency's implementation is currently proceeding on three fronts: Priority setting for chemicals to be screened and tested; validation of the Tier I screening methods and Tier II assays; and developing policies and procedures for requiring endocrine disruptor testing. See Unit I.B.1. to learn how to get more information on the EDSP.

B. Proposed Committee Purpose

The proposed EDMVAC is being established in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2 (Public Law 92–463); copies of the Committee Charter have been filed with the appropriate committees of Congress and the Library of Congress. The proposed EDMVAC will support EPA in its scientific activities related to the

validation of assays for the Endocrine Disruptor Screening Program (63 FR 71541) (FRL–6052–9) required by FFDCA as amended in 1996 by FQPA (21 U.S.C. 346a(p)). The proposed EDMVAC is in the public interest and will support EPA in performing its duties and responsibilities.

This function was previously served by the Endocrine Disruptor Methods Validation Subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. The proposed EDMVAC will continue the functions of the EDMVS providing advice and recommendations to EPA on scientific and technical aspects of the Tier I screens and Tier II assays being considered for the Endocrine Disruptor Screening Program. The proposed committee will evaluate relevant scientific issues, protocols, data and interpretations of the data for the assays during the validation process. The proposed EDMVAC will also provide advice on the composition of the Tier I screening battery.

C. Composition and Organization

1. *Membership.* The proposed Committee will be composed of approximately 25 members. An EPA employee will act as the Designated Federal Official (DFO) who will be responsible for providing the necessary staffing, operations, and support for the Committee.

The Agency is seeking qualified senior-level scientists from diverse sectors to be considered for membership on the proposed Committee. The Agency will consider candidates from the types of organizations listed below and other relevant interest areas.

- Federal, State and local government agency.
- Federally recognized Tribe.
- Public health or environmental professional.
- Chemical or pesticide manufacturer and/or user.
- Non-governmental organization, such as environmental group, environmental justice organization, children's advocate, and animal welfare organization.
- Other non-governmental entity, as deemed appropriate.
- Academics.

Establishing a balance and diversity of experience and knowledge in membership is an important consideration in the selection of members.

2. *Subcommittees and workgroups.* Subcommittees and workgroups may be established on an as-needed basis consisting of Committee members, or supplemented with individuals qualified in the area of the subcommittee or workgroup.

3. *Meetings and public involvement.* All Committee meetings will be called, announced, and held in accordance with FACA requirements, including public notice of meetings in the **Federal Register**, open meetings, and an opportunity for interested persons to file comments before or after meetings, or to make statements during the public meetings to the extent time permits.

List of Subjects

Environmental protection, Endocrine disruptors, Endocrine Disruptor Screening Program, Endocrine Disrupor Methods Validation Subcommittee.

Dated: April 8, 2004.

Susan B. Hazen,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 04–9410 Filed 4–23–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7653–7]

Meeting of the National Drinking Water Advisory Council

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, notice is hereby given of the forthcoming meeting of the National Drinking Water Advisory Council (NDWAC or Council). The Council was established under the Safe Drinking Water Act (SDWA), as amended, to provide practical and independent advice, consultation and recommendations to the Agency on the activities, functions and policies related to the implementation of SDWA. The Council will hear presentations and have discussions on topics important to the Environmental Protection Agency's (EPA's) national drinking water program, including, but not limited to: Updates and current issues related to regulatory activities, program implementation concerns, critical water infrastructure protection activities, and status reports on NDWAC workgroups including a report-out from the Contaminant Candidate List workgroup.

DATES: The Council meeting will be held on May 18, 2003, from 8:30 a.m. until 5:30 p.m.; on May 19, 2003, from 8:30 a.m. until 5:30 p.m.; and on May 20, 2003, from 8:30 a.m. until 12 p.m., EDT.

ADDRESSES: The meeting will be held at the Holiday Inn at National Airport, located at 2650 Jefferson Davis Highway, Arlington, Virginia, and is open to the public.

FOR FURTHER INFORMATION CONTACT: Members of the public that would like to attend the meeting, present an oral statement, or submit a written statement, should contact Clare Donaher, by phone at (202) 564–3787, by e-mail at *donaher.clare@epa.gov*, or by regular mail at the U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (M/C 4601M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: In accordance with section 10(a)(2) of Public Law 92–423, "The Federal Advisory Committee Act," EPA is hereby providing notice of a meeting of the National Drinking Water Advisory Council (NDWAC or Council), established under the Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*). The Council encourages the public's input and will allocate one hour during the meeting for this purpose. Oral statements will be limited to five minutes, and it is preferred that only one person present the statement on behalf of a group or organization. To ensure adequate time for public involvement, individuals or organizations interested in presenting an oral statement should notify Clare Donaher by telephone at (202) 564–3787 no later than May 3, 2004. Any person who wishes to file a written statement can do so before or after a Council meeting. Written statements received by May 3, 2004, will be distributed to all members of the Council before any final discussion or vote is completed. Any statements received after the meeting will become part of the permanent meeting file and will be forwarded to the Council members for their information. Any person needing special accommodations at this meeting, including wheelchair access, please contact Clare Donaher (*see* **FOR FURTHER INFORMATION CONTACT** section). Arrangements need to be made at least five business days before the meeting so that appropriate special accommodations can be made.

Dated: April 20, 2004.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 04–9408 Filed 4–23–04; 8:45 am]

BILLING CODE 6560–50–P

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 May 21, 2004.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Vintage Shares, Inc., Waxahachie, Texas, and Vintage Shares Delaware, Inc., Wilmington, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of Vintage Bank, Waxahachie, Texas.

Board of Governors of the Federal Reserve System, April 21, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–9428 Filed 4–23–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

[Docket No. OP–1191]

Policy Statement on Payments System Risk

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Policy Statement; request for comment.

SUMMARY: The Board requests comments on proposed changes to part II of its Policy Statement on Payments System Risk (PSR policy) addressing risk management in payments and securities settlement systems. The purpose of these revisions is to update the policy in light of current industry and supervisory risk-management approaches and new international risk-management standards for payments and securities settlement systems. The key changes include an expansion of the policy's scope to include the Federal Reserve Banks' (Reserve Banks) payments and securities settlement services, revised general risk-management expectations for all systems subject to the policy, and the incorporation of new international risk-management standards for systemically important systems. The Board is also proposing to reorganize the PSR Policy, reversing the current order of parts I and II to provide a more coherent framework for the overall policy and better communicate the Board's objectives with regard to payments system risk. No changes, however, are proposed to the current part I, Federal Reserve Daylight Credit Policies.

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

ADDRESSES: Comments should refer to Docket No. OP–1191 and may be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Please consider submitting your comments through the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*, by e-mail to *regs.comments@federalreserve.gov*, or by fax to the Office of the Secretary at (202) 452–3819 or (202) 452–3102. Policies proposed by the Board and other federal agencies may also be viewed and commented on at *http://www.regulations.gov*. All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Jeff Stehm, Assistant Director ((202) 452–2217), or Doug Conover, Senior Analyst ((202) 452–2887), Division of Reserve Bank Operations and Payment Systems; for the hearing impaired only: Telecommunications Device for the Deaf, (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

Since the early 1980s the Board has published and periodically revised a series of policies encouraging the reduction and management of risks in payments and securities settlement systems.[1] In 1992, the Board issued its "Policy Statement on Payments System Risk," which provided a comprehensive statement of its previously adopted policies regarding payments system risk reduction.[2] Part I of that policy statement covered the provision of intraday credit to Federal Reserve accountholders and Part II of that policy statement covered previous policies on risk management in private large-dollar funds transfer networks, private delivery-against-payment securities systems, offshore dollar clearing and netting systems, and private small-dollar clearing and settlement systems.

In this same period, the Federal Reserve also worked with other central banks and securities regulators to develop standards to strengthen payments and securities settlement infrastructures and to promote financial stability. These efforts initially produced the Lamfalussy Minimum Standards, which were incorporated into the Board's PSR policy in 1994.[3] More recently, this work resulted in the publication of the *Core Principles for Systemically Important Payment Systems* (Core Principles), as well as the *Recommendations for Securities Settlement Systems* (Recommendations).[4] The Core

[1] See 50 FR 21120, May 22, 1985; 52 FR 29255, August 6, 1987; and 54 FR 26104 and 26092, June 21, 1989.

[2] 57 FR 40455, September 3, 1992.

[3] 59 FR 67534, December 29, 1994. The Lamfalussy Minimum Standards were set out in the "Report of the Committee on Interbank Netting Schemes of the Central Banks of the Group of Ten Countries," published by the Bank for International Settlements in November 1990.

[4] The Core Principles were developed by the Committee on Payment and Settlement Systems (CPSS) of the central banks of the Group of Ten countries, and the Recommendations were

Principles extend and replace the Lamfalussy Minimum Standards, while the Recommendations provide, for the first time, explicit standards for securities settlement systems.[5]

In addition to establishing specific standards, the Core Principles and Recommendations call for central banks to state clearly their roles and policies regarding payments and securities settlement systems, assess compliance with the Core Principles and the Recommendations when overseeing relevant systems, and coordinate with other authorities in overseeing systems. Moreover, the Core Principles and Recommendations are intended to apply both to systems operated by central banks and the private sector.

II. Discussion of Planned Policy Changes

The policy changes proposed by the Board include changes to the scope of the policy to include payments and securities settlement systems operated by the Reserve Banks, establishment of clearer risk-management expectations for all systems subject to the policy based on current industry and supervisory risk-management concepts, and incorporation of the Core Principles and Recommendations as the Board's risk-management standards for systemically important payments and securities settlement systems, respectively. The Board is also proposing a new introduction to and reordering of the current parts of the PSR policy in order to provide a more coherent framework for the overall policy and better communicate the Board's concerns and objectives regarding payments system risk. The proposed changes do not affect the current Part I of the PSR Policy that concerns Federal Reserve daylight credit policies except to renumber this part of the policy as the new Part II.

The Board believes that these proposed structural and substantive changes more clearly ground the PSR policy in the Board's high-level objectives, provide a more coherent structure for the overall policy, and better communicate the Board's concerns about risks in the nation's payments and securities settlement system and the implications of these risks for the Federal Reserve. In particular, the introduction to the overall policy was revised to include a clear statement of the Board's public policy objectives and provide a general discussion of the types of risks encountered in settling payments and securities transactions, how those risks arise, and why the Board believes they must be controlled.

A. Changes to the Policy's Scope, Definitions, and Application

The proposed policy extends its scope to include payments and securities settlement systems operated by the Reserve Banks, which is consistent with the Core Principles and the Recommendations. The scope continues to cover those private-sector payments systems that expect to settle an aggregate gross value exceeding $5 billion on any day during the next twelve-month period and extends the same threshold to private-sector securities settlement systems and Reserve Bank payments and securities settlement systems. While the direct application of the policy will be limited to those systems above the threshold, the Board encourages all payments and securities settlement systems to consider the risk-management approach set out in the policy.

The proposed policy also clarifies the definition of a "system" for purposes of applying the policy, defining a system to be a "multilateral arrangement (three or more participants) among financial institutions for the purposes of clearing, netting, and/or settling funds or securities transactions among themselves or between each of them and a central party." This definition also identifies three key characteristics of systems, which would be used individually or in combination, to determine if an arrangement qualifies as a system for purposes of the policy: (1) A set of rules and procedures, common to all participants, that govern the clearing (comparison and/or netting) and settlement of payments or securities transactions, (2) a common technical infrastructure for conducting the clearing or settlement process, and (3) a risk-management or capital structure in which credit losses are ultimately borne by system participants rather than by the system operator, a central counterparty or guarantor, or the system's shareholders. Futures and options clearing organizations and correspondent banking services continue to be excluded from the coverage of the policy.

Finally, new language clarifies how the policy will be applied by the Board, both when the Board exercises its existing authority and, if it does not have direct or exclusive authority, when it works with other authorities to promote the aims of the policy.

B. Changes to the General Policy Expectations

The proposed policy sets out revised risk-management expectations for all systems covered by the policy, including those deemed as systemically important. Under the current policy, systems are asked to identify the risk factors present in their systems, assess whether the system's policies and procedures adequately address the identified risks, and, if necessary, improve their policies and procedures such that risk-management controls are proportional to the nature and magnitude of the risks in the system. The current policy provides limited illustrative examples of risk-management controls that a system might employ to address various risks (for example, credit, liquidity, operational, and legal risks), but does not provide guidance for addressing risk management in an integrated manner. The current policy's general approach was intended to provide flexibility, with an expectation that systems would implement a risk-management framework appropriate for the risks the system poses to the system operator, system participants, and the financial system more broadly. In practice, however, the Board has found that the current policy's approach lacks sufficient structure to provide useful guidance to systems. The proposed revisions continue to provide flexibility but set out four key elements of a sound risk-management framework that the Board believes will provide systems with more structured guidance. These elements are based on a review of current industry and supervisory concepts of sound risk management: (1) Clearly identify risks and set sound risk-management objectives; (2) establish sound governance arrangements; (3) establish clear and appropriate rules and procedures; and, (4) ensure the employment of the resources necessary to implement the system's risk-management objectives and implement effectively its rules and procedures.

C. Incorporation of the Core Principles and Recommendations

The proposed policy adopts the Core Principles and the Recommendations with no modifications and presents them as the Board's standards for systemically important systems. Private-

developed by the CPSS in conjunction with the Technical Committee of the International Organization of Securities Commissions (IOSCO). The full reports on the Core Principles and the Recommendations are available at *http://www.bis.org*.

[5] Both sets of standards are part of the Financial Stability Forum's Compendium of Standards that have been widely recognized and endorsed by U.S. authorities as integral to strengthening global financial stability. Both sets of standards were published by the relevant committees for public comment before being adopted in their final form.

sector systems currently expected to meet the Lamfalussy Minimum Standards would, under the proposed policy, be expected to comply with the Core Principles. Similarly, private-sector systems currently subject to the Board's policy requirements for delivery-against-payment systems would be expected to comply with the relevant portions of the Recommendations. As noted below, the Core Principles and the Recommendations would apply to Reserve Banks' payments and securities settlement systems that meet the relevant policy criteria.

The proposed policy introduces six characteristics that would be used by the Board, on a case-by-case basis, to identify systems, including Federal Reserve systems, that would be considered systemically important. In applying the standards to systemically important systems, the policy seeks to be flexible, recognizing that systems differ in the specific instruments they settle, the markets and institutions they serve, and the legal and regulatory constraints under which they operate. The policy states that these factors will be considered when assessing the way in which a systemically important system addresses any particular standard.

III. Request for Comment

The Board requests comment on the proposed revisions to its Policy on Payments System Risk. In particular, the Board requests comment on whether the scope and application of the revised policy is sufficiently clear and provides the appropriate coverage to achieve the policy's intended objectives. The Board also requests comment on the following specific questions:

1. Do the benefits of a bright line quantitative threshold based on a system's daily gross settlement value outweigh the costs of using more complex factors to determine whether a system is covered by the policy? Should more qualitative or judgmental criteria be used instead? If a quantitative threshold is appropriate, does a threshold of $5 billion a day continue to be reasonable? Should other quantitative criteria be considered?

2. Is the definition of what constitutes a system, and explicit exemptions from this definition, reasonable and appropriate?

3. Do the general policy expectations of a sound risk-management framework, laid out in part B of the revised policy, give more structure and specific guidance to system operators and participants than the current policy's primary focus on types of risks and the general need to manage these risks?

4. In applying the Core Principles and the Recommendations, do the six criteria presented in the proposed policy appear reasonable for determining if a system is systemically important? Are there other factors that the Board should consider when determining whether a system is systemically important?

IV. Regulatory Flexibility Act Analysis

The Board has determined that this proposed policy statement would not have a significant economic impact on a substantial number of small entities. The proposal would require payments and securities settlement systems to address material risks in their systems. The policy would apply to relatively large systems, *i.e.*, those that expect to settle an aggregate gross value exceeding $5 billion on any day during the next twelve month period. Thus, the proposal is designed to minimize regulatory burden on smaller systems that do not raise material risks. Although small financial institutions may participate in payments or securities settlement systems that are subject to the proposed policy, the compliance burden largely falls on system operators and not on individual participants.

V. Competitive Impact Analysis

The Board has established procedures for assessing the competitive impact of rule or policy changes that have a substantial impact on payments system participants.[6] Under these procedures, the Board will assess whether a change would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services due to differing legal powers or constraints, or due to a dominant market position of the Federal Reserve deriving from such differences. If no reasonable modifications would mitigate the adverse competitive effects, the Board will determine whether the expected benefits are sufficient to warrant proceeding with the change despite the adverse effects. The proposed policy revisions provide that Reserve Bank systems will be treated similarly to private-sector systems and thus will have no material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve Banks in providing payments and securities settlement services.

[6] These procedures are described in the Board's policy statement "The Federal Reserve in the Payments System," as revised in March 1990 (55 FR 11648, March 29, 1990).

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. ch. 3506; 5 CFR 1320 Appendix A.1), the Board has reviewed the policy statement under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the policy statement.

VII. Federal Reserve Policy on Payments System Risk

Introduction

Payments and securities settlement systems are critical components of the nation's financial system. The smooth functioning of these systems is vital to the financial stability of the U.S. economy. Given the importance of these systems, the Board has developed this policy to address the risks that payments and securities settlement systems present to the financial system and to the Federal Reserve Banks (Reserve Banks).

In adopting this policy, the Board's objectives are to foster the safety and efficiency of payments and securities settlement systems. These policy objectives are consistent with (1) the Board's long-standing objectives to promote the integrity, efficiency, and accessibility of the payments mechanism; (2) industry and supervisory methods for risk management; and (3) internationally accepted risk-management standards and practices for systemically important

payments and securities settlement systems.[7]

Part I of this policy sets out the key risk-management expectations of the Board that public- and private-sector payments and securities settlement systems should meet in designing and operating such systems. Under the policy, all payments and securities settlement systems that expect to settle an aggregate gross value exceeding $5 billion on any day during the next twelve months are expected to implement a risk-management framework that is appropriate for the risks they pose to the system operator, system participants, and the financial system more broadly. Systemically important payments and securities settlement systems are also expected to meet more specific standards based upon the Core Principles for Systemically Important Payments Systems (Core Principles) and the Recommendations for Securities Settlement Systems (Recommendations), respectively.[8]

Part II of this policy governs the provision of intraday or "daylight" overdrafts in accounts at the Reserve Banks and sets out the general methods used by the Reserve Banks to control their intraday credit exposures.[9] Under this part, the Board expects depository institutions to manage their Federal Reserve accounts effectively and minimize their use of Federal Reserve daylight credit.[10] Although some intraday credit may be necessary, the Board expects that, as a result of this policy, relatively few institutions will consistently rely on intraday credit supplied by the Federal Reserve to conduct their business.

Risks in Payments and Securities Settlement Systems

The basic risks in payments and securities settlement systems are credit risk, liquidity risk, operational risk, and legal risk. In the context of this policy, these risks are defined as follows.[11] [12]

Credit Risk. The risk that a counterparty will not settle an obligation for full value either when due or anytime thereafter.

Liquidity Risk. The risk that a counterparty will not settle an obligation for full value when due.

Operational Risk. The risk of loss resulting from inadequate or failed internal processes, people, and systems, or from external events. This type of risk includes various physical and information security risks.

Legal Risk. The risk of loss because of the unexpected application of a law or regulation or because a contract cannot be enforced.

These risks arise between financial institutions as they settle payments and securities transactions and must be managed by institutions, both individually and collectively.[13] Multilateral payments and securities settlement systems, in particular, may increase, shift, concentrate, or otherwise transform risks in unanticipated ways. These systems also may pose systemic risk to the financial system where the inability of a system participant to meet its obligations when due may cause other participants to be unable to meet their obligations when due. The failure of one or more participants to settle their payments or securities transactions, in turn, could create credit or liquidity problems for other participants, the system operator, or depository institutions. Systemic risk might lead ultimately to a disruption in the financial system more broadly or undermine public confidence in the nation's financial infrastructure.

These risks stem, in part, from the multilateral and time-sensitive credit and liquidity interdependencies among financial institutions. These interdependencies often create complex transaction flows that, in combination with a system's design, can lead to significant demands for intraday credit, either on a regular or on an extraordinary basis. Some level of intraday credit is appropriate to ensure the smooth functioning of payments and securities settlement systems. To the extent that financial institutions or the Reserve Banks are the direct or indirect source of such intraday credit, they may face a direct risk of loss if daylight credit is not extinguished as planned. In addition, measures taken by Reserve Banks to limit their intraday credit exposures may shift some or all of the associated risks to private-sector systems.

The smooth functioning of payments and securities settlement systems is also critical to certain public policy objectives in the areas of monetary policy and banking supervision. The effective implementation of monetary policy, for example, depends on both the orderly settlement of open market operations and the efficient distribution of reserve balances throughout the banking system via the money market and payments system. Likewise, supervisory objectives regarding the safety and soundness of depository institutions must take into account the risks payments and securities settlement systems pose to depository institutions that participate directly or indirectly in, or provide settlement, custody, or credit services to, such systems.

Through this policy, the Board expects financial system participants, including the Reserve Banks, to reduce and control settlement and systemic risks arising in payments and securities settlement systems, consistent with the smooth operation of the financial system. This policy is designed to fulfill that aim by (1) making financial system participants and system operators aware of the types of basic risks that arise in the settlement process and the Board's expectations with regard to risk

[7] For the Board's long-standing objectives in the payments system, see "The Federal Reserve in the Payments System," September 2001, FRRS 9–1550, available at *http://www.federalreserve.gov/paymentsystems/pricing/frpaysys.htm.*

[8] The Core Principles were developed by the Committee on Payment and Settlement Systems of the central banks of the Group of Ten countries (CPSS) and the Recommendations were developed by the CPSS in conjunction with the Technical Committee of the International Organization of Securities Commissions (IOSCO). The full reports on the Core Principles and the Recommendations are available at *http://www.bis.org.*

[9] To assist depository institutions in implementing this part of the Board's payments system risk policy, the Federal Reserve has prepared two documents, the "Overview of the Federal Reserve's Payments System Risk Policy" and the "Guide to the Federal Reserve's Payments System Risk Policy," which are available on line at *http://www.federalreserve.gov/paymentsystems/PSR* or from any Reserve Bank. The "Overview of the Federal Reserve's Payments System Risk Policy" summarizes the Board's policy on the provision of daylight credit, including net debit caps and daylight overdraft fees. The overview is intended for use by institutions that incur only small and infrequent daylight overdrafts. The "Guide to the Federal Reserve's Payments System Risk Policy" explains in detail how these policies apply to different institutions and includes procedures for completing a self-assessment and filing a cap resolution, as well as information on other aspects of the policy.

[10] The term "depository institution," as used in this policy, refers not only to institutions defined as "depository institutions" in 12 U.S.C. 461(b)(1)(A), but also to U.S. branches and agencies of foreign banking organizations, Edge and agreement corporations, trust companies, and bankers' banks, unless the context indicates a different reading.

[11] The term "financial institution," as used in this policy, includes a broad array of types of organizations that engage in financial activity, including depository institutions and securities dealers.

[12] These definitions of credit risk, liquidity risk, and legal risk are based upon those presented in the Core Principles and the Recommendations. The definition of operational risk is based on the Basel Committee on Banking Supervision's "Sound Practices for the Management and Supervision of Operational Risk." See these publications at *http://www.bis.org* for a fuller discussion of these risks.

[13] Several existing regulatory and bank supervision guidelines and policies also are directed at institutions' management of the risks posed by interbank payments and settlement activity. For example, Federal Reserve Regulation F (12 CFR 206) directs insured depository institutions to establish policies and procedures to avoid excessive exposures to any other depository institutions, including exposures that may be generated through the clearing and settlement of payments.

management, (2) providing explicit risk-management standards for systemically important systems, and (3) establishing the policy conditions governing the provision of Federal Reserve intraday credit to account holders. The Board's adoption of this policy in no way diminishes the primary responsibilities of financial system participants generally and settlement system operators, participants, and Federal Reserve accountholders more specifically, to address the risks that may arise through their operation of, or participation in, payments and securities settlement systems.

I. Risk Management in Payments and Securities Settlement Systems

This part sets out the Board's expectations regarding the management of risk in payments and securities settlement systems, including those operated by the Reserve Banks. The Board will be guided by this part, in conjunction with relevant laws and other Federal Reserve policies, when exercising its existing authority in (1) supervising state member banks, bank holding companies, and clearinghouse arrangements, including the exercise of authority under the Bank Service Company Act, where applicable,[14] (2) setting the terms and conditions for the use of Federal Reserve payments and settlement services by system operators and participants, (3) developing and applying policies for the provision of intraday liquidity to Reserve Bank account holders, and (4) interacting with other domestic and foreign financial system authorities on payments and settlement risk-management issues. The Board's adoption of this policy is not intended to exert or create new supervisory or regulatory authority over any particular class of institutions or arrangements for which the Board does not currently have such authority.

Where the Board does not have direct or exclusive supervisory or regulatory authority over systems covered by this policy, it will work with other domestic and foreign financial system authorities to promote effective risk management in payments and securities settlement systems. The Board encourages other relevant authorities to consider the principles embodied in this policy when evaluating the payments and securities settlement risks posed by and to the systems and individual system participants that they oversee, supervise, or regulate. In working with foreign financial system authorities, the Board will be guided by Responsibility D of the Core Principles, Recommendation 18 of the Recommendations, and the "Principles for Cooperative Central Bank Oversight of Cross-border and Multi-currency Netting and Settlement Schemes."[15] The Board believes these international principles provide an appropriate framework for cooperating with foreign authorities to address risks in cross-border, multicurrency, and, where appropriate, offshore payments and securities settlement systems.

A. Scope

This policy applies to public- and private-sector payments and securities settlement systems that expect to settle a daily aggregate gross value of U.S. dollar-denominated transactions exceeding $5 billion on any day during the next twelve months.[16] For purposes of this policy, a payments or securities settlement system is considered to be a multilateral arrangement (three or more participants) among financial institutions for the purposes of clearing, netting, and/or settling payments or securities transactions among themselves or between each of them and a central party, such as a system operator or central counterparty.[17] [18] A system generally embodies one or more of the following characteristics: (1) A set of rules and procedures, common to all participants, that govern the clearing (comparison and/or netting) and settlement of payments or securities transactions, (2) a common technical infrastructure for conducting the clearing or settlement process, and (3) a risk-management or capital structure in which any credit losses are ultimately borne by system participants rather than the system operator, a central counterparty or guarantor, or the system's shareholders.

These systems may be organized, located, or operated within the United States (domestic systems), outside the United States (offshore systems), or both (cross-border systems) and may involve other currencies in addition to the U.S. dollar (multicurrency systems). The policy also applies to any system based or operated in the United States that engages in the settlement of non-U.S. dollar transactions if that system would otherwise be subject to the policy.[19]

This policy does not apply to bilateral relationships between financial institutions and their customers, such as traditional correspondent banking, including traditional government securities clearing services. The Board believes that these relationships do not constitute "a system" for purposes of this policy and that relevant safety and soundness issues associated with these relationships are more appropriately addressed through the banking supervisory process. This policy also does not apply to clearance or settlement systems for exchange-traded futures and options that fall under the oversight of the Commodities and Futures Trading Commission or the Securities and Exchange Commission.

B. General Policy Expectations

The Board expects payments and securities settlement systems within the scope of this policy to implement a risk-management framework appropriate to the risks the system poses to the system operator, system participants, and other relevant parties as well as the financial system more broadly. A risk-management framework is the set of objectives, policies, arrangements, procedures, and resources that a system employs to limit and manage risk. While there are a number of ways to structure a sound risk-management framework, all frameworks should perform certain functions:

- Clearly identify risks and set sound risk-management objectives
- Establish sound governance arrangements
- Establish clear and appropriate rules and procedures
- Employ the resources necessary to achieve the system's risk-management objectives and implement effectively its rules and procedures.

In addition to establishing a risk-management framework that includes

[14] 12 U.S.C. 1861 *et seq.*

[15] The "Principles for Cooperative Central Bank Oversight and Multi-currency Netting and Settlement Schemes' are set out in the *"Report of the Committee on Interbank Netting Schemes of the central banks of the Group of Ten countries" (Lamfalussy Report).* The Lamfalussy Report is available at *http://www.bis.org/cpss/cpsspubl.htm.*

[16] The "next" twelve-month period is determined by reference to the date a determination is being made as to whether the policy applies to a particular system. Aggregate gross value of U.S dollar-denominated transactions refers to the total dollar value of individual U.S. dollar transactions settled in the system which also represents the sum of total U.S. dollar debits (or credits) to all participants prior to or in absence of any netting of transactions.

[17] A system includes all of the governance, management, legal and operational arrangements used to effect settlement as well as the relevant parties to such arrangements, such as the system operator, system participants, and system owners.

[18] The types of systems that may fall within the scope of this policy include, but are not limited to, large-value funds transfer systems, automated clearinghouse (ACH) systems, check clearinghouses, and credit and debit card settlement systems, as well as central counterparties, clearing corporations, and central depositories for securities transactions. For purposes of this policy, the system operator is the entity that manages and oversees the operations of the system.

[19] The daily gross value threshold will be calculated on a U.S. dollar equivalent basis.

these key elements, the Board expects systems it deems systemically important to comply with the more detailed standards set out in Section C.

Identify Risks and Set Sound Risk-Management Objectives. The first element of a sound risk-management framework is the clear identification of all risks that have the potential to arise in or result from the system's settlement process and the development of clear and transparent objectives regarding the system's tolerance for and management of such risks.

System operators should identify the forms of risk present in their system's settlement process as well as the parties posing and bearing each risk. In particular, system operators should identify the risks posed to and borne by them, the system participants, and other key parties such as a system's settlement banks, custody banks, and third-party service providers. System operators should also analyze whether risks might be imposed on other external parties and the financial system more broadly.

In addition, system operators should analyze how risk is transformed or concentrated by the settlement process. System operators should also consider the possibility that attempts to limit one type of risk could lead to an increase in another type of risk. Moreover, system operators should be aware of risks that might be unique to certain instruments, participants, or market practices. System operators should also analyze how risks are correlated among instruments or participants.[20]

Based upon its clear identification of risks, a system should establish its risk tolerance, including the levels of risk exposure that are acceptable to the system operator, system participants, and other relevant parties. The system operator should then set risk-management objectives that clearly allocate acceptable risks among the relevant parties and set out strategies to manage this risk. Risk-management objectives should be consistent with the objectives of this policy, the system's business purposes, and the type of instruments and markets for which the system clears and settles. Risk-management objectives should also be communicated to and understood by both the system operator's staff and system participants.

System operators should re-evaluate their risks in conjunction with any major changes in the settlement process or operations, the instruments or transactions settled, a system's rules or procedures, or the relevant legal and market environments. Systems should revisit their risk-management objectives regularly to ensure that they are appropriate for the risks posed by the system, continue to be aligned with the system's purposes, remain consistent with this policy, and are being effectively adhered to by the system operator and participants.

Sound Governance Arrangements. Systems should have sound governance arrangements to implement and oversee their risk-management frameworks. The responsibility for sound governance rests with a system operator's board of directors or similar body and with the system operator's senior management. Governance structures and processes should be transparent, enable the establishment of clear risk-management objectives, set and enforce clear lines of responsibility and accountability for achieving these objectives, ensure that there is appropriate oversight of the risk-management process, and enable the effective use of information reported by the system operator's management, internal auditors, and external auditors to monitor the performance of the risk-management process.[21] Individuals responsible for governance should be qualified for their positions, understand their responsibilities, and understand their system's risk-management framework. Governance arrangements should also ensure that risk-management information is shared in forms, and at times, that allow individuals responsible for governance to fulfill their duties effectively.

Clear and Appropriate Rules and Procedures. Systems should implement rules and procedures that are appropriate and sufficient to carry out the system's risk-management objectives and that have a well-founded legal basis. Such rules and procedures should specify the respective responsibilities of the system operator, system participants, and other relevant parties. Rules and procedures should establish the key features of a system's settlement and risk-management design and specify clear and transparent crisis management procedures and settlement-failure procedures, if applicable.[22]

Employ Necessary Resources. Systems should ensure that the appropriate resources and processes are in place to allow them to achieve their risk-management objectives and effectively implement their rules and procedures. In particular, the system operator's staff should have the appropriate skills, information, and tools to apply the system's rules and procedures and achieve the system's risk-management objectives. System operators should also ensure that their facilities and contingency arrangements, including any information system resources, are sufficient to meet their risk-management objectives.

The Board recognizes that payments and securities settlement systems differ widely in terms of form, function, scale, and scope of activities and that these characteristics result in differing combinations and levels of risks. Thus, the exact features of a system's risk-management framework should be tailored to the risks of that system. The Board also recognizes that the specific features of a risk-management framework may entail tradeoffs between efficiency and risk reduction. Payments and securities settlement systems will need to consider these tradeoffs when designing appropriate rules and procedures. In considering such tradeoffs, however, it is critically important that systems take into account the costs and risks that may be imposed on all relevant parties, including parties with no direct role in the system. Furthermore, in light of rapidly evolving technologies and risk-management practices, the Board encourages all systems to consider periodically making cost-effective risk-management improvements.

To determine whether a system's current or proposed risk-management framework is consistent with this policy, the Board will seek to understand how a system achieves the four elements of a sound risk-management framework set out above. In this context, it may be necessary for the Board to obtain information from system operators regarding their risk-management framework, risk-management objectives, rules and procedures, significant legal analyses, general risk analyses, analyses of the credit and liquidity effects of settlement disruptions, business continuity plans, crisis management procedures, and other relevant documentation.[23] It may

[20] Where systems have inter-relationships with or dependencies on other systems (*e.g.*, cross-guarantees, cross-collateralization, cross-margining, common operating platforms), system operators should also analyze whether and to what extent any cross-system risks arise and who bears them.

[21] The risk management and internal audit functions should also be independent of those responsible for day-to-day functions.

[22] Examples of key features that might be specified in a system's rules and procedures are controls to limit participant-based risks, such as membership criteria based on participants' financial and operational health, limits on settlement exposures, and the procedures and resources to hedge, margin, or collateralize settlement exposures. Other examples of key features might be business continuity requirements, and loss allocation procedures.

[23] To facilitate analysis of settlement disruptions, systems may need to develop the capability to

Continued

also be necessary for the Board to obtain data or statistics on system activity on an ad-hoc or ongoing basis. All information provided to the Federal Reserve for the purposes of this policy will be handled in accordance with all applicable Federal Reserve policies on information security, confidentiality, and conflicts of interest.

C. Systemically Important Systems

In addition to establishing a risk-management framework that includes the key elements described above, the Board expects systemically important payments and securities settlement systems to comply with the detailed standards set out in this section. To determine whether a system is systemically important for purposes of this policy, the Board may consider, but will not be limited to, one or more of the following factors:

- Whether the system has the potential to create significant liquidity disruptions or dislocations should it fail to perform or settle as expected
- Whether the system has the potential to create large credit or liquidity exposures relative to participants' financial capacity
- Whether the system settles a high proportion of large-value or interbank transactions
- Whether the system settles transactions for critical financial markets.[24]
- Whether the system provides settlement for other systems
- Whether the system is the only system or one of a very few systems for settlement of a given financial instrument.

Systemically important systems are expected to meet specific risk-management standards because of their potential to cause major disruptions in the financial system. The Board, therefore, expects systemically important payments systems to comply with the standards listed in Section C.1. Securities settlement systems of systemic importance are expected to comply with the standards listed in Section C.2. Some systemically important systems, however, may present an especially high degree of systemic risk, by virtue of their high volume of large-value transactions or central role in the operation of critical financial markets. Because all systems are expected to employ a risk-management framework that is appropriate for their risks, the Board may expect these systems to exceed the standards set out below.

The Board acknowledges that payments and securities settlement systems vary in terms of the scope of instruments they settle and markets they serve. It also recognizes that systems may operate under different legal and regulatory constraints and within particular market infrastructures or institutional frameworks. The Board will consider these factors when assessing how a systemically important system addresses a particular standard.

The Board's standards for systemically important payments and securities settlement systems are based, respectively, on the Core Principles and the Recommendations. The Core Principles and the Recommendations are two examples of recent initiatives pursued by the international financial community to strengthen the global financial infrastructure.[25] The Federal Reserve worked closely with other central banks to draft the Core Principles and with other central banks and securities regulators to draft the Recommendations. These standards are part of the Financial Stability Forum's Compendium of Standards that have been widely recognized, supported, and endorsed by U.S. authorities as integral to strengthening the stability of the financial system.

1. Standards for Systemically Important Payments Systems

1. The system should have a well-founded legal basis under all relevant jurisdictions.

2. The system's rules and procedures should enable participants to have a clear understanding of the system's impact on each of the financial risks they incur through participation in it.

3. The system should have clearly defined procedures for the management of credit risks and liquidity risks, which specify the respective responsibilities of the system operator and the participants and which provide appropriate incentives to manage and contain those risks.

4. The system should provide prompt final settlement on the day of value, preferably during the day and at a minimum at the end of the day.

5. A system in which multilateral netting takes place should, at a minimum, be capable of ensuring the timely completion of daily settlements in the event of an inability to settle by the participant with the largest single settlement obligation.

6. Assets used for settlement should preferably be a claim on the central bank; where other assets are used, they should carry little or no credit risk and little or no liquidity risk.

7. The system should ensure a high degree of security and operational reliability and should have contingency arrangements for timely completion of daily processing.

8. The system should provide a means of making payments which is practical for its users and efficient for the economy.

9. The system should have objective and publicly disclosed criteria for participation, which permit fair and open access.

10. The system's governance arrangements should be effective, accountable and transparent.

2. Standards for Systemically Important Securities Settlement Systems

The CPSS–IOSCO Recommendations apply to the full set of institutional arrangements for confirmation, clearance, and settlement of securities transactions, including those related to market convention and pre-settlement activities. As such, not all of these standards apply to all systems. Moreover, the standards applicable to a particular system also will vary based on the structure of the market and the system's design.

While the Board endorses the CPSS–IOSCO Recommendations in their entirety, its primary interest for purposes of this policy is in those standards related to the settlement aspects of securities transactions, including the role of central counterparties and central depositories, the delivery of securities against payment, and related risks. The Board expects that systems engaged in the management or conduct of settling securities transactions and their participants to comply with the expectations set forth in the applicable Recommendations. Securities settlement

simulate credit and liquidity effects on participants and on the system resulting from one or more participant defaults, or other possible sources of settlement disruption. Such simulations may need to include, if appropriate, the effects of changes in market prices, volatilities, or other factors.

[24] The "Interagency Paper on Sound Practices to Strengthen the Resilience of the U.S. Financial System." (Interagency Paper) (68 FR 17809 April 11, 2003) currently defines critical financial markets as the markets for federal funds, foreign exchange, and commercial paper; U.S. government and agency securities; and corporate debt and equity securities.

[25] The Core Principles draw extensively on the previous work of the CPSS, most importantly the Report of the Committee on Interbank Netting Schemes of the Central Banks of the Group of Ten Countries (the Lamfalussy Minimum Standards). The Core Principles extend the Lamfalussy Minimum Standards by adding several principles and broadening the coverage to include systemically important payments systems of all types, including gross settlement systems and hybrid systems, operated by either the public or private sector. The Core Principles also address the responsibilities of central banks in applying the Core Principles.

systems also may wish to consult the *Assessment Methodology for "Recommendations for Securities Settlement Systems"* for further guidance on each standard.[26]

1. Securities settlement systems should have a well-founded, clear and transparent legal basis in the relevant jurisdictions.

2. Confirmation of trades between direct market participants should occur as soon as possible after the trade execution, but no later than the trade date (T+0). Where confirmation of trades by indirect market participants (such as institutional investors) is required, it should occur as soon as possible after the trade execution, preferably on T+0, but no later than T+1.

3. Rolling settlement should be adopted in all securities markets. Final settlement should occur no later than T+3. The benefits and costs of a settlement cycle shorter than T+3 should be evaluated.

4. The benefits and costs of a central counterparty should be evaluated. Where such a mechanism is introduced, the central counterparty should rigorously control the risks it assumes.

5. Securities lending and borrowing (or repurchase agreements and other economically equivalent transactions) should be encouraged as a method for expediting the settlement of securities transactions. Barriers that inhibit the practice of lending securities for this purpose should be removed.

6. Securities should be immobilized or dematerialized and transferred by book entry in central securities depository to the greatest extent possible.

7. Central securities depositories should eliminate principal risk linking securities transfers to funds transfers in a way that achieves delivery versus payment.

8. Final settlement should occur no later than the end of the settlement day. Intraday or real time finality should be provided where necessary to reduce risks.

9. Central securities depositories that extend intraday credit to participants, including central securities depositories that operate net settlement systems, should institute risk controls that, at a minimum, ensure timely settlement in the event that the participant with the largest payment obligation is unable to settle. The most reliable set of controls is a combination of collateral requirements and limits.

10. Assets used to settle the ultimate payment obligations arising from securities transaction should carry little or no credit or liquidity risk. If central bank money is not used, steps must be taken to protect central securities depository members from potential losses and liquidity pressures arising from the failure of the cash settlement agent whose assets are used for that purpose.

11. Sources of operational risk arising in the clearing and settlement process should be identified and minimized through the development of appropriate systems, controls and procedures. Systems should be reliable and secure, and have adequate, scalable capacity. Contingency plans and backup facilities should be established to allow for the timely recovery of operations and completion of the settlement process.

12. Entities holding securities in custody should employ accounting practices and safekeeping procedures that fully protect customers' securities. It is essential that customers' securities be protected against the claims of a custodian's creditors.

13. Governance arrangements for central securities depositories and central counterparties should be designed to fulfill public interest requirement and to promote the objectives of owners and users.

14. Central securities depositories and central counterparties should have objective and publicly disclosed criteria for participation that permit fair and open access.

15. While maintaining safe and secure operations, securities settlement systems should be cost-effective in meeting the requirements of users.

16. Securities settlement systems should use or accommodate the relevant international communication procedures and standards in order to facilitate efficient settlement of cross-border transactions.

17. Central securities depositories and central counterparties should provide market participants with sufficient information for them to identify and evaluate accurately the risks and costs associated with using the central securities depository or central counterparty services.

18. Securities settlement systems should be subject to transparent and effective regulation and oversight. Central banks and securities regulators should cooperate with each other and with other relevant authorities.

19. Central securities depositories that establish links to settle cross-border trades should design and operate such links to reduce effectively the risks associated with cross-border settlement.

[26] Bank for International Settlements (November 2002). Available at *http://www.bis.org.*

By order of the Board of Governors of the Federal Reserve System, April 21, 2004.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 04–9413 Filed 4–23–04; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

DEPARTMENT OF AGRICULTURE

Announcement of Final Meeting of 2005 Dietary Guidelines Advisory Committee and Solicitation of Written Comments

AGENCIES: U.S. Department of Health and Human Services (HHS), Office of Public Health and Science; and U.S. Department of Agriculture (USDA), Food, Nutrition and Consumer Services and Research, Education and Economics.

ACTION: Notice.

SUMMARY: The U.S. Department of Health and Human Services and the U.S. Department of Agriculture (a) provide notice of the final meeting of the Committee and (b) solicit written comments.

DATES: (1) The Committee will meet on May 26 and 27, 2004, 8:30 a.m. to 5:30 p.m. on both days. (2) Written comments on the *Dietary Guidelines* must be received by 5 p.m. e.d.t. on May 12, 2004, to ensure transmittal to and consideration by the Committee prior to this meeting.

ADDRESSES: The meeting will be held at the Holiday Inn Georgetown, located at 2101 Wisconsin Ave., NW., Washington, DC., in the Mirage Ballroom. The closest metro station to the meeting location is the Foggy Bottom station. Holiday Inn Georgetown shuttle service will be provided between the Foggy Bottom metro station and the hotel. Limited parking is available at the hotel; paid parking is also available.

FOR FURTHER INFORMATION CONTACT: HHS Co-Executive Secretaries: Kathryn McMurry or Karyl Thomas Rattay (phone 202–690–7102), HHS Office of Disease Prevention and Health Promotion, Office of Public Health and Science, Room 738-G, 200 Independence Ave., SW., Washington, DC 20201. USDA Co-Executive Secretaries: Carole Davis (phone 703–305–7600), USDA Center for Nutrition Policy and Promotion, 3101 Park Center Drive, Room 1034, Alexandria, Virginia 22302, or Pamela Pehrsson (phone 301–504–0716), USDA Agricultural Research Service, Beltsville Agricultural Research

Center-West, Building 005, Room 309A, Beltsville, Maryland 20705. Additional information is available on the Internet at *www.health.gov/dietaryguidelines.*

SUPPLEMENTARY INFORMATION: *Dietary Guidelines Advisory Committee:* The thirteen-member Committee appointed by the two Departments is chaired by Janet King, Ph.D., R.D., Children's Hospital Oakland Research Institute, Oakland, California. Other members are Lawrence J. Appel, M.D., M.P.H., Johns Hopkins Medical Institutions, Baltimore, Maryland; Yvonne L. Bronner, Sc.D., R.D., L.D., Morgan State University, Baltimore, Maryland; Benjamin Caballero, M.D., Ph.D., Johns Hopkins University Bloomberg School of Public Health, Baltimore, Maryland; Carlos A. Camargo, M.D., Dr.P.H., Harvard University, Boston, Massachusetts; Fergus M. Clydesdale, Ph.D., University of Massachusetts, Amherst, Amherst, Massachusetts; Vay Liang W. Go, M.D., University of California at Los Angeles, Los Angeles, California; Penny M. Kris-Etherton, Ph.D., R.D., Pennsylvania State University, University Park, Pennsylvania; Joanne R. Lupton, Ph.D., Texas A&M University, College Station, Texas; Theresa A. Nicklas, Dr.P.H., M.P.H., L.N., Baylor College of Medicine, Houston, Texas; Russell R. Pate, Ph.D., University of South Carolina, Columbia, South Carolina; F. Xavier Pi-Sunyer, M.D., M.P.H., Columbia University College of Physicians and Surgeons, New York, New York; and Connie M. Weaver, Ph.D., Purdue University, West Lafayette, Indiana.

Purpose of Meeting: The appointment of the Committee reflects the commitment by HHS and USDA to provide sound and current dietary guidance to consumers. The National Nutrition Monitoring and Related Research Act of 1990 (Pub. L. 101–445, Title III) requires the Secretaries of HHS and USDA to publish the *Dietary Guidelines for Americans* at least every five years. During its first meeting, the Dietary Guidelines Advisory Committee decided the science has changed since the 2000 edition of *Nutrition and Your Health: Dietary Guidelines for Americans* and further evaluation of the science was necessary. Therefore, it has conducted a review of current scientific and medical knowledge and will provide a technical report of any recommendations to the Secretaries for the 2005 edition. The agenda will include review and discussion of the Committee's draft report.

Public Participation at Meeting: The meeting is open to the public. Because space is limited, pre-registration is requested. To pre-register, please e-mail *dietaryguidelines@osophs.dhhs.gov*, with "Meeting Registration" in the subject line or call Marianne Augustine at (202) 260–2322 by 5 p.m. e.d.t., May 21, 2004. Registration must include your name, affiliation, phone number, and days attending. Visitors must bring proper identification to attend the meeting. If you require a sign language interpreter, please call Marianne Augustine at (202) 260–2322 by May 12, 2004. Documents pertaining to Committee deliberations for the final meeting, including the draft report, will be available for public inspection and copying in Room 738-G, 200 Independence Avenue, S.W., Washington, D.C., beginning the day before the meeting. All official documents are available for viewing by appointment for the duration of the Committee's term, which terminates after delivery of its final report to the Secretaries. Please call (202) 690–7102 to schedule an appointment to view the documents.

Written Comments: By this notice, the Committee is soliciting submission of written comments, views, information and data pertinent to review of the *Dietary Guidelines for Americans.* For those submitting comments more than 5 pages in length, please provide a 1-page summary of key points related to the comments submitted for the Dietary Guidelines Advisory Committee. For comments with multiple attachments, please provide seventeen copies for distribution to committee members and staff, if feasible. To ensure transmittal to and consideration by the Committee prior to the final meeting, comments must be submitted by 5 p.m. e.d.t., May 12, 2004. Comments should be sent to *dietaryguidelines@osophs.dhhs.gov* or to Kathryn McMurry, HHS Office of Disease Prevention and Health Promotion, Office of Public Health and Science, Room 738-G, 200 Independence Avenue, SW., Washington, DC 20201, (202) 690–7102.

Dated: April 21, 2004.

Capt Penelope S. Royall,

Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion), U.S. Department of Health and Human Services.

Dated: April 21, 2004.

Eric J. Hentges,

Executive Director, Center for Nutrition Policy and Promotion, U.S. Department of Agriculture.

Dated: April 16, 2004.

Caird E. Rexroad,

Acting Associate Administrator, Agricultural Research Service, U.S. Department of Agriculture.

[FR Doc. 04–9385 Filed 4–23–04; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Childhood Immunization Support Project; Notice of Availability of Funds

Announcement Type: New.

Funding Opportunity Number: 04127.

Catalog of Federal Domestic Assistance Number: 93.268.

Key Dates:

Letter of Intent Deadline: May 26, 2004.

Application Deadline: June 25, 2004.

I. Funding Opportunity Description

Authority: Public Health Service Act, Section 317(k)(1), 42 U.S.C. 247b(k)(1), as amended.

Purpose: The purpose of the program is to improve pediatric provider elements necessary for high quality immunization delivery. This program addresses the "Healthy People 2010" focus area of Immunization.

Measurable outcomes of the program will be in alignment with the following performance goals for the National Immunization Program (NIP):

- Ensure that two-year-olds are appropriately vaccinated.
- Reduce the number of indigenous cases of vaccine-preventable diseases (VPDs).

Activities: Awardee activities for this program are as follows: Initiate, conduct, assess and evaluate national and regional activities and interventions to ensure the adoption of the immunization policies and practices in pediatric offices outlined in the "Standards for Childhood and Adolescent Immunization Practices" recommended by the National Vaccine Advisory Committee in February 2002

and endorsed by the American Academy of Pediatrics. These activities include:

1. Quality improvement projects aimed at ensuring pediatricians assess immunization needs of children at all appropriate encounters.

2. Assess the capacity, knowledge and attitudes of pediatricians regarding the immunization schedule and immunization best practices.

3. Implement Regional and Local Chapter applications to increase immunization levels and knowledge among pediatricians.

4. Coordinate, convene and initiate programs and policies leading to implementation of best practices in pediatrician offices.

5. Disseminate best practices and findings of the interventions to the pediatric community.

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:

1. Provide medical, epidemiological, programmatic and educational consultation and technical assistance.

2. Provide national, regional or local data available that will assist in the targeting or evaluation of various initiatives carried out through this project.

3. Assist in coordinating efforts with state and large city immunization programs and other CDC NIP partners.

4. Provide educational and communications materials to support interventions.

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: $200,000.

Approximate Number of Awards: One.

Approximate Average Award: $200,000. (This amount is for the first 12-month budget period, and includes both direct and indirect costs.)

Floor of Award Range: None.

Ceiling of Award Range: $200,000. (This ceiling is for the first budget period.)

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

III.1 Eligible Applicants

Applications may be submitted by public and private nonprofit organizations.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

The organization must represent physicians whose membership vaccinate 50 percent or more of children in the United States. The organization must have regional representation throughout the United States to facilitate grass-roots interventions in health care settings. The organization must be able to document a reliance of members on the organization for technical information and assistance on immunization-related issues. The information may be provided through the organization's annual report as well as membership surveys.

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 Request Application Package

To apply for this funding opportunity use application form Public Health Service Form 5161–1 (OMB Number 0937–0189). Application 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): Your LOI must be written in the following format:

- Maximum number of pages: Two.
- 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.
- Written in plain language, avoid jargon.

Your LOI must contain the following information:

- The name of the organization.
- The primary contact person's name, mailing address, phone number, fax number and e-mail address (if available).
- The mission/activities of the organization.
- The organization membership information, including number of members and professional affiliation of members.

Application: You must submit a project narrative with your application forms. The narrative must be submitted in the following format:

- Maximum number of pages: 20—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.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

- Understanding program objectives, operational plan, coordination with state and local health departments, evaluation plan, staffing and budget. The budget justification will not be counted as part of the stated page limit.

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 vitaes, resumes, organizational charts.

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.

Additional requirements that may require you to submit additional documentation with your application are listed in section "VI.2. Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

LOI Deadline Date: May 26, 2004.

CDC requests that you send a LOI if you intend to apply for this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application, the LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review.

Application Deadline Date: June 25, 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 announcement is the definitive guide on application submission address and deadline. 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 your application 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

Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for state and local governmental review of proposed Federal assistance applications. You should contact your state single point of contact (SPOC) as early as possible to alert the SPOC to prospective applications, and to receive instructions on your state's process. Click on the following link to get the current SPOC list: *http://www.whitehouse.gov/omb/grants/spoc.html.*

IV.5. Funding restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Construction, renovations, purchase or lease of passenger vehicles or vans, or supplementing any applicant expenditures are not allowed.
- Awards will not allow reimbursement of pre-award costs.

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 should be less than 12 months of age.

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.*

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or e-mail to: Valerie Morelli, Centers for Disease Control and Prevention, National Immunization Program, 1600 Clifton Road, NE., MS E–52, Atlanta, GA 30333; (404)639–8091 (phone), (404)639–8828 (fax), *vmorelli@cdc.gov.*

Application Submission Address: Submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management-PA# 04127, 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. *Program Plan (30 points):* Does the applicant address strategies specific to the "Standards of Childhood and Adolescent Immunization Practices" and the needs of pediatric health care providers? Is the action plan to improve pediatric health care provider knowledge of and implementation of sound immunization practices feasible and appropriate?

2. *Capability (25 points):* Is the applicant likely to succeed in implementing proposed activities as measured by past relevant experience, a sound management structure, and staff qualifications, which include the appropriateness of their proposed roles and responsibilities and job descriptions?

3. *Evaluation Plan (20 points):* Does the proposed plan include impact and process evaluation as well as quantitative and qualitative measures for achievement of program objectives? Does the plan call for monitoring of proposed activities?

4. *Background and Need (15 points):* Does the applicant understand the issues related to immunization delivery needs?

5. *Coordination and Collaboration (10 points):* Will the applicant coordinate activities with affiliate and chapter organizations, state and local immunization programs, provider organizations, and other appropriate agencies?

6. *Budget and Justification (Not Scored):* Is the proposed budget adequately justified, reasonable, and consistent with the proposed project activities and this program announcement?

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff, and for responsiveness by NIP. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive

applications according to the criteria listed in the "V.1. Criteria" section above.

V.3. Anticipated Announcement and Award Dates

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 parts 74 and 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–7 Executive Order 12372;
- AR–8 Public Health System Reporting Requirements;
- AR–10 Smoke-Free Workplace Requirements;
- AR–11 Healthy People 2010;
- AR–12 Lobbying Restrictions;
- AR–14 Accounting System Requirements;
- AR–15 Proof of Non-Profit Status;
- AR–20 Conference Support;
- AR–24 Health Insurance Portability and Accountability Act Requirements.

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 an original, plus two hard 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.

f. Measures of Effectiveness

2. Financial status report and annual progress 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 sent 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: Valerie Morelli, Project Officer, CDC National Immunization Program, 1600 Clifton Road, MS E–52, Atlanta, GA 30333; telephone: (404) 639–8091, e-mail: *vmorelli@cdc.gov.*

For budget assistance, contact: Jesse Robertson, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341; telephone: (770)488–2747, e-mail: *jtr4@cdc.gov.*

VIII. Other Information

Copies of the "Standards for Childhood and Adolescent Immunization Practices" may be obtained from the National Immunization Program, Immunization Services Division, Education, Information, and Partnership Branch, 1600 Clifton Road, MS E–52, Atlanta, GA 30333. Telephone (404) 639–8225, or from the NIP Web site, *http://www.cdc.gov/nip.*

Dated: April 20, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–9370 Filed 4–23–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Assessing Transmission and Prevention of Community-Associated MRSA Infection Among Children, Family Members, and Close Contacts

Announcement Type: New.

Funding Opportunity Number: 04101.

Catalog of Federal Domestic Assistance Number: 93.283.

Key Dates:

Letter of Intent Deadline: May 11, 2004.

Application Deadline: June 25, 2004.

I. Funding Opportunity Description

Authority: Sections 317(k)(2) of the Public Health Service Act, [42 U.S.C. 247b(k)(2)], as amended.

Purpose: The purpose of this study is to determine interventions that are effective for controlling and preventing spread of community-associated-methicillin resistant Staphylococcus aureus (CA–MRSA) in families and settings where children are at risk for acquiring CA–MRSA (*e.g.*, day care centers). Many health departments are currently receiving requests from parents and day care centers for guidance on controlling and preventing MRSA infections. This program addresses the "Healthy People 2010" focus area of Immunization and Infectious Diseases.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Infectious Diseases (NCID): To reduce the spread of antimicrobial resistance.

Research Objectives: The objectives of this study are to:

- Determine the role of family members and close contacts of infected children in the transmission of CA–MRSA.
- Determine effectiveness of different interventions in controlling and preventing CA–MRSA among family members and close contacts of children infected with CA–MRSA.

Activities: Awardee activities for this program are as follows:

- Identify cases of CA–MRSA infection among children less than six years old using laboratory findings.
- Administer a questionnaire to participating case-patients, family members, and close contacts (including members of a case-patient's day care center classroom) to identify potential risk factors for acquisition of CA–MRSA and to identify current or prior infection possibly due to CA–MRSA.
- Assess participant's perceptions about MRSA disease, infection control, and general hygiene behaviors.
- Perform a carriage study of participants to determine rates of colonization of Staphylococcus aureus.
- Evaluate the effectiveness of two possible interventions: (1) Only education (basic hygiene, appropriate wound care, bandage handling, basic

infection control and disease recognition), or (2) education plus use of antiseptic soaps and washes (*e.g.*, chlorhexidine) for personal hygiene use by case-patients, their families, and their contacts to prevent transmission.

• Perform a follow-up survey to: (1) Assess changes on participants perceptions about MRSA disease, infection control and general hygiene behaviors; (2) assess perceptions of the effectiveness of the intervention and; (3) identify problems associated with its implementation.

• Perform a follow-up colonization survey among participants to determine the effect of the intervention on carriage of Staphylococcus aureus.

• Monitor case-patients, family members, and close contacts to determine any subsequent infections with CA–MRSA.

• Collect all Staphylococcus aureus isolates from carriage studies and all CA–MRSA infections from children, family members, and contacts. Confirm bacterial identification, antimicrobial susceptibility testing, pulsed-field gel electrophoresis types, and toxin characterization of isolates.

• Analyze S. aureus pulsed-field types using PulseNet-BioNumerics program.

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:

Collaborate with recipient on study design and protocol development:

○ co-develop chart abstraction form.

○ co-develop consent forms and questionnaire for interviews.

○ verify participating institutions meet criteria to fulfill study objectives.

○ participate in pilot-testing of data collection instruments.

Provide scientific and technical assistance:

○ serve as subject matter resource on CA–MRSA during development, implementation, and needed modifications to the study.

○ provide administrative assistance for interactions with CDC funding mechanisms.

Provide laboratory support:

○ develop protocol for appropriate collection and transportation of CA–MRSA isolates.

○ provide molecular epidemiologic classification of CA–MRSA isolates using CDC Staphylococcus Pulsenet.

○ provide toxin testing of staphylococcus isolates.

○ provide reference antimicrobial susceptibility testing.

○ provide technical and scientific laboratory.

Collaborate on development of CA–MRSA prevention and control methods

○ participate with recipient on selection of antiseptics for use in the intervention step of the study.

○ develop educational materials for use with families and study participants.

○ co-develop instruments for measuring effectiveness of prevention methods.

Collaborate in communicating findings of the study

○ compile epidemiologic and laboratory findings for full analysis.

○ perform univariate and multivariate analysis of collected data.

○ present findings at national conferences and in peer-reviewed journals.

Collaborate in translation of study findings to policy and recommendations for prevention and control of CA–MRSA

Participate in improving program performance through consultation and visits with recipient

○ periodically evaluate to determine that appropriate study targets are being met in a timely manner.

Collaborate with recipient to modify study components in response to problems encountered

Facilitate communication of data and results among stakeholders.

Assist in the development of research protocols for IRB review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

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: $104,000.

Approximate Number of Awards: One.

Approximate Average Award: $104,000 (This amount is for the first 12-month budget period, and includes both direct and indirect costs).

Floor of Award Range: None.

Ceiling of Award Range: $104,000.

Anticipated Award Date: July 1, 2004.

Budget Period Length: 12 months.

Project Period Length: Three 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

III.1. Eligible Applicants

Applications may be submitted by:

• State and local governments or their Bona Fide Agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau).

A Bona Fide Agent is an agency/organization identified by the state as eligible to submit an application under the state eligibility in lieu of a state application. If you are applying as a bona fide agent of a state or local government, you must provide a letter from the state or local government as documentation of your status. Place this documentation behind the first page of your application form.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

If your application is incomplete or non-responsive to the requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

This program is designed and intended to support research, therefore only research will be supported under this cooperative agreement. Any applications proposing anything other research will be considered non-responsive.

An LOI is required for this program. Any application received without the prior submission of an LOI will be considered non-responsive.

Eligibility is limited to state and local governments participating or able to participate in the CDC Staphylococcus PulseNet protocol for PFGE, a capability only available to state and local health departments at present. PulseNet is a nationwide database of S. aureus strain types and other strain characteristics, maintained at CDC, to monitor trends in the types and virulence mechanisms of S. aureus isolated in the United States.

Programmatic Priorities (Applicant should possess the following qualifications):

- Successful history of PFGE typing and use of CDC Staphylococcus Pulsenet protocol in a state or local health department. A library of available PFGE patterns of Staphylococcus aureus isolates from the prior years would be preferable.
- Close collaboration with a large healthcare provider to ensure successful collection of case-patient data and appropriate identification and handling of S. aureus isolates.
- History of successful studies in day care centers.
- Documented proportion of pediatric CA–MRSA of all MRSA of greater than 40 percent.
- Working collaboration with microbiology laboratories, such as a laboratory network for identifying CA–MRSA cases in different geographic and demographic settings.

Individuals Eligible to Become Principal Investigators: Any individual with the skills, knowledge, and resources necessary to carry out the proposed research is invited to work with their institution to develop an application for support.

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 Request Application Package

To apply for this funding opportunity, use application form PHS 398 (OMB number 0925–0001 rev. 5/2001). Forms and instructions are available in an interactive format on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

Forms and instructions are also available in an interactive format on the National Institutes of Health (NIH) Web site at the following Internet address: *http://grants.nih.gov/grants/funding/phs398/phs398.html.*

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 Application Submission

Letter of Intent (LOI): A letter of intent is required for this Program Announcement and must be written in the following format:

- Maximum number of pages: two.
- 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.
- Written in plain language, avoid jargon.

Your LOI must contain the following information:

- Descriptive title of the proposed research.
- Name, address, E-mail address, and telephone number of the Principal Investigator.
- Names of other key personnel.
- Participating institutions.
- Number and title of this Program Announcement (PA).

Application: Follow the PHS 398 application instructions for content and formatting of your application. For further assistance with the PHS 398 application form, contact PGO–TIM staff at 770–488–2700, or contact GrantsInfo, Telephone (301) 435–0714, E-mail: *GrantsInfo@nih.gov.*

Your research plan should address activities to be conducted over the entire project period, and should be no more than 20 pages in length.

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. Your DUNS number must be entered on line 11 of the face page of the PHS 398 application form. 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.*

This PA uses just-in-time concepts. It also uses the modular budgeting as well as non-modular budgeting formats. See: *http://grants.nih.gov/grants/funding/modular/modular.htm* for additional guidance on modular budgets. Specifically, if you are submitting an application with direct costs in each year of $250,000 or less, use the modular budget format. Otherwise, follow the instructions for non-modular budget research grant applications.

Additional requirements that may require you to submit additional documentation with your application are listed in section "VI.2. Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

LOI Deadline Date: May 11, 2004. Submission of an LOI is required if you intend to apply for this program. The LOI will not be evaluated or scored. It will be used to gauge the level of interest in this program and to allow CDC to plan the application review. If you do not submit an LOI, you will not be allowed to submit an application.

Application Deadline Date: June 25, 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 announcement is the definitive guide on application submission address and deadline. 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 your application 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

Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for state and local governmental review of proposed federal assistance applications. You should contact your state single point of contact (SPOC) as early as possible to alert the SPOC to prospective applications, and to receive instructions on your state's process.

Click on the following link to get the current SPOC list: *http://www.whitehouse.gov/omb/grants/spoc.html.*

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows: None

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 should be less than 12 months of age.

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or E-mail to: Machel Forney, Public Health Analyst, Division of Healthcare Quality Promotion, National Center for Infectious Diseases, Centers for Disease Control and Prevention, 57 Executive Park Drive South, Room 5015, Mailstop A–07, Atlanta, GA 30329, Telephone: 404–498–1174, E-mail: *MForney@cdc.gov.*

Application Submission Address: Submit the original and five hard copies of your application by mail or express delivery service to: Technical Information Management-PA#04101, 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.

The goals of CDC-supported research are to advance the understanding of biological systems, improve the control and prevention of disease and injury, and enhance health. In the written comments, reviewers will be asked to evaluate the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these goals.

Your application will be evaluated against the following criteria:

1. Background/Need (40 points)

Does the applicant demonstrate a strong understanding of the need to determine interventions that are effective for controlling and preventing spread of community-associated-MRSA in families? Does the applicant illustrate the need for this project? Does the applicant present a clear goal for this project? Has the applicant provided evidence of existing skill and success using molecular epidemiologic techniques (*i.e.*, Staphylococcus PulseNet protocol) for characterizing methicillin-resistant Staphylococcus aureus? Has the applicant demonstrated that the proposed population under study has a high prevalence of community-associated methicillin-resistant Staphylococcus aureus among pediatric population?

2. Capacity (20 Points)

Does the applicant demonstrate that it has the expertise, facilities, and other resources necessary to accomplish the program requirements? Has the applicant provided evidence of existing infrastructure for surveillance for antimicrobial-resistant organisms? Has the applicant provided evidence of successful studies in pediatric settings such as day care centers or pediatric clinics? Has the applicant demonstrated a working collaboration with microbiology laboratories, such as a laboratory network for identifying CA-MRSA cases in different geographic and demographic settings? Has the applicant demonstrated existing close collaboration with a large healthcare provider to ensure successful collection of case-patient data and appropriate identification and handling of Staphylococcus aureus isolates.

3. Operational Plan (15 Points)

Does the applicant present clear, time-phased objectives that are consistent with the stated program goal and a detailed operational plan outlining specific activities that are likely to achieve the objective? Does the plan clearly outline the responsibilities of each of the key personnel?

4. Inclusion of Women and Minorities in Research (5 Points)

Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the design of the study is adequate to measure differences when warranted; and (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

5. Evaluation Plan (10 Points)

Does the applicant present a plan for monitoring progress toward the stated goals and objectives?

6. Measures of Effectiveness (10 Points)

Does the applicant provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement? Are the measures objective/quantitative and do they adequately measure the intended outcome?

7. Budget (Not Scored)

Does the applicant present a detailed budget with a line-item justification and any other information to demonstrate that the request for assistance is consistent with the purpose and objectives of this grant program?

8. Human Subjects (Not Scored)

Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO), and for responsiveness by National Center for Infectious Diseases. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the "V.1. Criteria" section above.

In addition, the following factors may affect the funding decision: Though eligible participants are encouraged to submit an application, a funding preference will be given to potential applicants that:

- Provide evidence of existing skill and success using molecular epidemiologic techniques (*i.e.*, Staphylococcus PulseNet protocol) for characterizing methicillin-resistant Staphylococcus aureus.
- Provide evidence of existing infrastructure for surveillance for antimicrobial-resistant organisms.

• Provide evidence of successful studies in pediatric settings such as day care centers or pediatric clinics.

• Demonstrate that the proposed population under study has a high prevalence of community-associated methicillin-resistant Staphylococcus aureus among pediatric population.

• Demonstrate a working collaboration with microbiology laboratories, such as a laboratory network for identifying CA-MRSA cases in different geographic and demographic settings.

• Demonstrate existing close collaboration with a large healthcare provider to ensure successful collection of case-patient data and appropriate identification and handling of Staphylococcus aureus isolates.

V.3. Anticipated Announcement and Award Dates

Anticipated award date is July 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–1 Human Subjects Requirements.

• AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research.

• AR–7 Executive Order 12372.

• AR–9 Paperwork Reduction Act Requirements.

• AR–10 Smoke-Free Workplace Requirements.

• AR–11 Healthy People 2010.

• AR–12 Lobbying Restrictions.

• AR–22 Research Integrity.

• AR–25 Release and Sharing of Data.

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

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, (use form PHS 2590, OMB Number 0925–0001, rev. 5/2001 as posted on the CDC website) 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. Budget.

e. Additional Requested Information.

f. Measures of Effectiveness.

2. Financial status report and annual progress 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: Dan Jernigan, M.D., Division of Healthcare Quality Promotion, National Center for Infectious Diseases, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., Mailstop A–35, Atlanta, GA 30333, Telephone: 404–639–2621, E-mail: *DJernigan@cdc.gov.*

For financial, grants management, or budget assistance, contact: Jeff Napier, Grants Management Officer, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: (770) 488–2628, E-mail: *JNapier@cdc.gov.*

Dated: April 19, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–9373 Filed 4–23–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Food Safety: Discovering Novel Causes of Foodborne Illness

Announcement Type: New.
Funding Opportunity Number: 04103.

Catalog of Federal Domestic Assistance Number: 93.283.

Key Dates: Letter of Intent Deadline: May 26, 2004.
Application Deadline: June 25, 2004.

I. Funding Opportunity Description

Authority: This program is authorized under section 317(k)(2) of the Public Health Service Act, (42 U.S.C. 247(k)(2)), as amended.

Purpose: The purpose of the program is to better define the burden of foodborne, infectious diarrheal diseases among a broad array of known and potential pathogens, to test for novel pathogens and evaluate new diagnostic tests where the results will advance our knowledge of relative frequency of foodborne pathogens and improve disease surveillance and prevention efforts. This program addresses the "Healthy People 2010" focus area of Food Safety. *See* Attachment II of this announcement as posted on the CDC Web site for more background information.

Measurable outcomes of the program will be in alignment with the following performance goals for the National Center for Infectious Diseases (NCID): Protect Americans from infectious diseases and reduce the spread of antimicrobial resistance.

Research Objectives:

• Develop a collaborative multisite study within Foodborne Diseases Active Surveillance Network (FoodNet) (*see* attachment II for FoodNet description) to expand activities into microbiologic research of potentially important foodborne etiologies of infectious diarrhea.

• Enroll persons with and without diarrhea in a study to determine the potential infectious etiologies of diarrheal illness.

• Determine the demographic and clinical characteristics of infectious etiologies of diarrheal illness.

• Determine major risk factors for the acquisition of diarrheagenic pathogens or antibiotic resistance among enteric pathogens or normal enteric flora.

• Develop and assess culture and non-culture techniques to identify and characterize potential foodborne diarrheal pathogens.

• Serve to evaluate stool samples for infectious etiologies from foodborne outbreaks of unknown etiology among FoodNet sites.

• Characterize antibiotic resistance determinants among pathogens and normal human fecal flora.

• Transfer new diagnostic technology to public health and clinical laboratories.

Activities: Awardee activities of this program are as follows:

• Conduct all activities and studies in a collaborative network of investigators from the study sites, collaborating FoodNet sites, and the Centers for Diseases Control and Prevention (CDC). Study results from individual study sites will be combined for analyses, presentation and manuscripts.

• Develop a study protocol, standard questionnaires, medical chart data abstraction forms and databases in collaboration with study investigators from other FoodNet study sites and CDC.

• Establish clinic-based pediatric and adult patient enrollment in emergency departments and clinics to enroll case-patients presenting with diarrhea and persons without diarrhea (controls). Case-patient enrollment, with the collection of bulk stool specimens, should exceed a minimum of 250 per year. An approximately equal number of control-patients, with bulk stool specimens collected, should be enrolled annually.

• Collect bulk stool specimens from all case- and control-patients and appropriately transport and store them for testing.

• Conduct interviews with case- and control-patients using standardized questionnaires.

• Conduct standardized medical chart abstractions.

• Determine a broad array of bacterial, parasitic, and viral etiologies for diarrhea in all collected stool specimens. An example of a possible testing scheme is demonstrated in Attachment III. Tests proposed by applicants may or may not include, and are not limited to those in the example testing scheme.

• Seek heretofore unknown pathogens in select populations and circumstances.

• Establish a bank of frozen whole stool specimens, isolated pathogens, and nucleic acid extracts from stool specimens collected as part of this study.

• Determine antimicrobial drug susceptibilities for bacterial pathogens and selected normal fecal flora.

• Develop and/or evaluate new diagnostic tests for infectious diarrhea.

• Maintain a database of results using software and database structure which will allow merging data with that from other sites for combined analyses.

• Obtain and maintain all local approvals for human subjects' protection.

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:

• Organize and host initial and yearly investigator's meeting.

• Collaborate with recipients in the consensus development of the study protocols, questionnaires, medical chart abstraction forms and study databases.

• Provide coordination and technical assistance in carrying out project activities, including data analyses, presentations and manuscripts.

• If a proposed project involves research with human subjects and CDC scientists will be co-investigators in that research, assist in the development of a research protocol for IRB review by all institutions participating in the research project. The CDC IRB will review and approve the project initially and on, at least, an annual basis until the research project is completed.

• Making site visits to review progress.

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: Two.

Approximate Average Award: $350,000.

Floor of Award Range: None.

Ceiling of Award Range: $700,000.

Anticipated Award Date: September 1, 2004.

Budget Period Length: 12 months.

Project Period Length: Three 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

III.1. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies, such as:

• Public nonprofit organizations.
• Private nonprofit organizations.
• Universities.
• Colleges.
• Research institutions.
• Hospitals.
• Community-based organizations.
• Faith-based organizations.
• Federally recognized Indian tribal governments.
• Indian tribal organizations.
• State and local governments or their Bona Fide Agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau).
• Political subdivisions of States (in consultation with States).

A Bona Fide Agent is an agency/organization identified by the State as eligible to submit an application under the State eligibility in lieu of a State application. If you are applying as a bona fide agent of a State or local government, you must provide a letter from the State or local government as documentation of your status. Place this documentation behind the first page of your application form.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

If your application is incomplete or non-responsive to the requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements:

This program is designed and intended to support research, therefore only research will be supported under this cooperative agreement. Any applications proposing anything other than research will be considered non-responsive.

An LOI is required for this program. Any application received without the prior submission of an LOI will be considered non-responsive.

Applications from principal participants of the FoodNet must

include a letter of collaboration and support from the research institution responsible for conducting advanced microbiologic testing.

Applications from research institutions conducting advanced microbiologic testing must include a letter of collaboration and support from principal participants of the collaborating FoodNet site.

This research study is intended as an expansion of activities among FoodNet collaborative partners. Other proposed studies within FoodNet will interface with this project. For example, FoodNet investigations into the etiology of outbreaks of unknown etiology will use the laboratory capacity established under this cooperative agreement to conduct advanced microbiologic testing.

Individuals Eligible to Become Principal Investigators: Any individual with the skills, knowledge, and resources necessary to carry out the proposed research is invited to work with their institution to develop an application for support. Individuals from underrepresented racial and ethnic groups as well as individuals with disabilities are always encouraged to apply for CDC programs.

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 Request Application Package

To apply for this funding opportunity, use application form PHS 398 (OMB number 0925–0001 rev. 5/2001). Forms and instructions are available in an interactive format on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

Forms and instructions are also available in an interactive format on the National Institutes of Health (NIH) Web site at the following Internet address: *http://grants.nih.gov/grants/funding/phs398/phs398.html.*

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 Application Submission

Letter of Intent (LOI): A Letter of Intent is required for this Program Announcement and must be written in the following format:

- Maximum number of pages: Two.
- Font size: 12-point unreduced.
- Single spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Written in plain language, avoid jargon.

Your LOI must contain the following information:

- Descriptive title of the proposed research.
- Name, address, E-mail address, and telephone number of the Principal Investigator.
- Names of other key personnel.
- Participating institutions.
- Number and title of this Program Announcement (PA).

Application: Follow the PHS 398 application instructions for content and formatting of your application. For further assistance with the PHS 398 application form, contact PGO–TIM staff at (770) 488–2700, or contact GrantsInfo, Telephone (301) 435–0714, e-mail: *GrantsInfo@nih.gov.*

Your research plan should be single spaced and address activities to be conducted over the entire project period.

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. Your DUNS number must be entered on line 11 of the face page of the PHS 398 application form. 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.*

Additional requirements that may require you to submit additional documentation with your application are listed in section "VI.2. Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

LOI Deadline Date: May 26, 2004.

Submission of an LOI is required if you intend to apply for this program. The LOI will not be evaluated or scored. It will be used to gauge the level of interest in this program and to allow CDC to plan the application review. If you do not submit an LOI, you will not be allowed to submit an application.

Application Deadline Date: June 25, 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 announcement is the definitive guide on application submission address and deadline. 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 your application 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

Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for State and local governmental review of proposed federal assistance applications. You should contact your state single point of contact (SPOC) as early as possible to alert the SPOC to prospective applications, and to receive instructions on your State's process. Click on the following link to get the current SPOC list: *http://www.whitehouse.gov/omb/grants/spoc.html.*

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Construction is not allowable.

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 should be less than 12 months of age.

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or e-mail to: Ken Fortune, Extramural Program Coordinator, Centers for Disease Control and Prevention, National Center for Infectious Diseases, 1600 Clifton Road, NE., Mailstop C–19, Atlanta, GA 30333, Telephone Number: (404) 639–0890, Fax: (404) 639–4195, E-mail: *kef2@cdc.gov*.

Application Submission Address: Submit the original and five hard copies of your application by mail or express delivery service to: Technical Information Management–PA#04103, 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.

The goals of CDC-supported research are to advance the understanding of biological systems, improve the control and prevention of disease and injury, and enhance health. In the written comments, reviewers will be asked to evaluate the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these goals.

Your application will be evaluated against the following criteria:

Operational Plan (40 Points)

Does the applicant propose clear operational plan(s) for the various study components addressed? Collectively, how well do the applicant's proposed activities address the stated objectives and suggested activities outlined in the Activities section? Does the applicant describe the essential collaboration between FoodNet site investigators and research site investigators? Does the plan for case-patient and control-patient enrollment, with whole stool specimen collection, indicate probable success in achieving the stated enrollment goals? Does the plan include adequate personnel to carry out the proposed enrollment, consent, patient interviews, chart reviews, specimen collection and microbiologic testing? Are letters of collaboration and support from collaborating investigators or institutions included?

Experimental Plan (40 Points)

Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics, specifically concerning case-patient and control-patient enrollment and specimen collection? Does the proposed testing include a broad array of bacterial, parasitic, and viral pathogens? Does the proposed testing include proposals to identify novel agents? Does the proposal include the identification and characterization of antibiotic resistance determinants in pathogens and select normal stool flora? Does the proposal include diagnostic test development and/or evaluation?

Facilities and Personnel (10 Points)

Do the proposed investigators and personnel have the background and experience to carry out the proposed activities? Do they have experience in related research? Are the facilities described and are they appropriate?

Understanding the Problem (10 Points)

Does the applicant demonstrate a clear understanding of the surveillance, epidemiologic and microbiologic issues in determining the burden of foodborne illness among enteric pathogens, particularly for pathogens for which routine surveillance does not exist and for pathogens yet to be discovered?

Protection of Human Subjects From Research Risks (No Score)

Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects? This will not be scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

Inclusion of Women and Minorities in Research (No Score)

Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the design of the study is adequate to measure differences when warranted; and (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

Budget (No Score)

The reasonableness of the proposed budget and the requested period of support in relation to the proposed research.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO), and for responsiveness by NCID. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the "V.1. Criteria" section above.

In addition, the following factors may affect the funding decision:

- Although new programs are encouraged, a funding preference will be given to current FoodNet participants or current or newly established collaborative university medical center partners of FoodNet sites (located in the States of Maryland, Connecticut, New York, Minnesota, California, Colorado, New Mexico, Georgia, Tennessee, and Oregon) over applications not already receiving support under the program. Current FoodNet sites have implemented networks that require continued support to become fully developed and to realize the benefits of the network activities.

V.3. Anticipated Announcement and Award Dates

Anticipated 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–1 Human Subjects Requirements.
- AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research.
- AR–7 Executive Order 12372.
- AR–9 Paperwork Reduction Act Requirements.
- AR–10 Smoke-Free Workplace Requirements.
- AR–11 Healthy People 2010.
- AR–12 Lobbying Restrictions.
- AR–15 Proof of Non-Profit Status.
- AR–22 Research Integrity.
- AR–23 States and Faith-Based Organizations.
- AR–25 Release and sharing of Data.

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

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, (use form PHS 2590, OMB Number 0925–0001, rev. 5/2001 as posted on the CDC Web site) 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. Budget.

e. Additional Requested Information.

f. Measures of Effectiveness.

2. Financial status report and annual progress 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 scientific/research issues, contact: Chris Braden, Program Official, Centers for Disease Control and Prevention, National Center for Infectious Diseases, 1600 Clifton Road, NE., Atlanta, GA 30333, Telephone: (404) 639–2206, E-mail: *crb5@cdc.gov.*

For financial, grants management, or budget assistance, contact: Theresa Routh-Murphy, Contract Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: (770) 488–2648, E-mail: *tnr3@cdc.gov.*

Dated: April 20, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–9374 Filed 4–23–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Annual Influenza Vaccine Effectiveness Estimates in Healthy and High-risk Populations

Announcement Type: New.

Funding Opportunity Number: 04109.

Catalog of Federal Domestic Assistance Number: 93.283.

Key Dates:

Letter of Intent Deadline: May 11, 2004.

Application Deadline: June 10, 2004.

Executive Summary: Annual estimates of influenza vaccine effectiveness are important to assess the protection against influenza provided by vaccination. These studies will help determine the degree of protective immunity provided by the vaccine in years when the vaccine contains a virus that is antigenically different from the predominantly circulating strain as well as in years where the vaccine and circulating viruses are well-matched. The results will provide information that is beneficial to future vaccine strain decisions and help guide policy development for influenza vaccination recommendations. This cooperative agreement seeks to support researchers with access to pediatric and adult populations to conduct vaccine efficacy studies each year beginning in the fall of 2004.

I. Funding Opportunity Description

Authority: This program is authorized under sections 301(a) and 317(k)(1) of the Public Health Service Act, [42 U.S.C. sections 241(a) and 247b(k)(1)], as amended.

Purpose: Each year, on average, influenza results in 36,000 deaths in the United States. Influenza vaccination is the best way to prevent influenza and its severe complications. Each year the Advisory Committee for Immunization Practices (ACIP) reviews the annual recommendations for influenza vaccination and uses new studies or other evidence gained over the previous years to decide if there should be new target groups for immunization. The current target groups for immunization include groups that are at increased risk for influenza related complications, such as the elderly (*i.e.*, persons 65 years of age and older) and persons with certain chronic medical conditions. Persons aged 50 to 64, because of the likelihood of chronic medical conditions, and caretakers (health-care workers and household contacts) who have frequent contact with people who have high-risk conditions are also recommended for vaccination to reduce the likelihood of transmitting influenza to high-risk groups.

Over the years, the results from studies on the effectiveness and efficacy of influenza vaccination in preventing influenza-like illness or laboratory-confirmed influenza infection have varied. In addition, vaccine effectiveness or efficacy is dependent on the age group and health care status of the group being studied. Vaccine effectiveness and efficacy estimates tend to be higher in healthy, immunocompentent people, whereas, studies have shown lower effectiveness in the elderly. In years when the vaccine match is suboptimal, estimates of

vaccine effectiveness tend to be even lower and in some cases the vaccine has had zero effectiveness against preventing influenza-like illness. Because of the simplicity of design and availability of existing data, many more studies of vaccine effectiveness using influenza-like illness as the outcome of interest have been conducted than have studies using laboratory-confirmed influenza as the outcome. Studies which measure effectiveness of the vaccine in preventing influenza-like illness can underestimate efficacy because other respiratory pathogens co-circulate during influenza season and often present as influenza-like illness, thus lowering the effectiveness estimates for influenza vaccine. In contrast studies that measure effectiveness among persons with laboratory-confirmed influenza infections among those who present with influenza-like illness give a better estimate of the vaccine's ability to prevent influenza infection.

This program announcement seeks to support epidemiologic studies, (*e.g.*, cohort or case control) designed to provide annual vaccine effectiveness, with laboratory confirmation of influenza illness, estimates at regular intervals throughout the influenza season, with a final estimate at the end of the season. These data will provide better estimates of the benefits of influenza vaccine and will be valuable in guiding vaccine policy development. In addition, these data are also critical in understanding the effectiveness of annual vaccination in seasons when the vaccine strain is less well-matched to the strains circulating. Over time, such data may provide data to help improve vaccine strain selection.

These studies should be designed to provide estimates of the effectiveness of influenza vaccine in reducing laboratory confirmed illness among vaccinated persons, both among pediatric and adult age groups, on an annual basis, during the influenza season and at the end of the influenza season. This program addresses the "Healthy People 2010" focus area of immunization and infectious diseases.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Infectious Diseases (NCID): Protect Americans from infectious diseases.

Research Objectives: Provide annual estimates of influenza vaccine effectiveness in reducing lab-confirmed cases of influenza illness among pediatric and adult populations both during the influenza season and at the end of the influenza season.

Activities: Awardee activities for this program are as follows:

- Identify populations in which prospective cohort or case control studies can be implemented to measure vaccine effectiveness in reducing laboratory-confirmed influenza illness among pediatric and/or adult groups.
- Develop protocols to address the research objective that include collection of appropriate risk factor data, vaccination information and other information regarding the study participants that will be needed for data analysis. Methods must be specified to reduce potential sources of bias (*e.g.*, confounding by indication) that may affect studies of vaccination effectiveness.
- Describe the epidemiologic and laboratory methodologies that will be used to determine influenza illness.
- Begin enrolling participants for the first year of the study prior to vaccination for the 2004 influenza season. Describe a timeframe for enrollment, conducting the study, collection of specimens and completion of the study.
- Develop a plan that will provide and report estimates of vaccine efficacy on an on-going basis to CDC during the study, depending on the circulation of influenza, with final results at the end of each influenza season. Describe the methodology that will be used to determine periodic estimates of vaccine effectiveness throughout the season and final results. Describe sample sizes you propose to use. Respondents should have experience with the conduct of clinical trials, as p-spending methods and other techniques to address multiple statistical tests using data from a single individual.

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:

- Participate in the review of study design, interpretation, analysis, dissemination and publication of results including co-authorship.
- Characterize select viral isolates obtained from the study for determining the antigenic and genetic characteristics of virus isolates from study participants.
- Provide surveillance data, such as virologic information and influenza-like illness information for the region of the country and or state in which the study is taking place during the influenza season.

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: $500,000.

Approximate Number of Awards: One to two.

Approximate Average Award: $250,000–$500,000 (This amount is for the first 12-month budget period, and includes both direct and indirect costs).

Floor of Award Range: None.

Ceiling of Award Range: None.

Anticipated Award Date: August 16, 2004.

Budget Period Length: 12 months.

Project Period Length: Three 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

III.1. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies, such as:

- Public nonprofit organizations.
- Private nonprofit organizations.
- Universities.
- Colleges.
- Research institutions.
- Hospitals.
- Community-based organizations.
- Faith-based organizations.
- Federally recognized Indian tribal governments.
- Indian tribes.
- Indian tribal organizations.
- State and local governments or their Bona Fide Agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau).
- Political subdivisions of States (in consultation with States).

A Bona Fide Agent is an agency/organization identified by the state as eligible to submit an application under the state eligibility in lieu of a state application. If you are applying as a bona fide agent of a state or local government, you must provide a letter from the state or local government as documentation of your status. Place this documentation behind the first page of your application form.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If your application is incomplete or non-responsive to the requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

Your application must:

- Provide evidence that you have access to the populations needed for conducting large-scale epidemiologic studies.
- Describe the methods that will be used to determine lab confirmation of influenza illness and provide background on experience of the entity in conducting the confirmation.
- Describe the time frame for enrollment, intermittent assessments and reporting of vaccine effectiveness and a final report.
- Provide evidence of support and ability for any collaborating partners.

Individuals Eligible to Become Principal Investigators: Any individual with the skills, knowledge, and resources necessary to carry out the proposed research is invited to work with their institution to develop an application for support. Individuals from underrepresented racial and ethnic groups as well as individuals with disabilities are always encouraged to apply for CDC programs.

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 Request Application Package

To apply for this funding opportunity, use application form PHS 398 (OMB number 0925–0001 rev. 5/2001). Forms and instructions are available in an interactive format on the CDC Web site, at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

Forms and instructions are also available in an interactive format on the National Institutes of Health (NIH) Web site at the following Internet address: *http://grants.nih.gov/grants/funding/phs398/phs398.html.*

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 Application Submission

Letter of Intent (LOI). Your LOI must be written in the following format:

- Maximum number of pages: 1.
- Font size: 12-point unreduced.
- Single spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Written in plain language, avoid jargon.

Your LOI must contain the following information:

- Descriptive title of the proposed research.
- Name, address, E-mail address, and telephone number of the Principal Investigator.
- Names of other key personnel.
- Participating institutions.
- Number and title of this Program Announcement (PA).

Application: Follow the PHS 398 application instructions for content and formatting of your application. For further assistance with the PHS 398 application form, contact PGO–TIM staff at 770–488–2700, or contact GrantsInfo, Telephone (301) 435–0714, E-mail: *GrantsInfo@nih.gov.*

Your research plan should be single spaced and address activities to be conducted over the entire project period.

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. Your DUNS number must be entered on line 11 of the face page of the PHS 398 application form. 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 *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.*

This PA uses just-in-time concepts. It also uses the modular budgeting as well as non-modular budgeting formats. See: *http://grants.nih.gov/grants/funding/modular/modular.htm* for additional guidance on modular budgets. Specifically, if you are submitting an application with direct costs in each year of $250,000 or less, use the modular budget format. Otherwise, follow the instructions for non-modular budget research grant applications.

Additional requirements that may require you to submit additional documentation with your application are listed in section "VI.2. Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

LOI Deadline Date: May 11, 2004.

CDC requests that you send a LOI if you intend to apply for this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application, the LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review.

Application Deadline Date: June 10, 2004.

Explanation of Deadlines: Applications must be received in The 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.

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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.

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Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for state and local governmental review of proposed federal assistance applications. You should contact your

state single point of contact (SPOC) as early as possible to alert the SPOC to prospective applications, and to receive instructions on your state's process. Click on the following link to get the current SPOC list: *http://www.whitehouse.gov/omb/grants/spoc.html.*

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- There is a restriction on the use of these funds for laboratory equipment and construction.

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 should be less than 12 months of age.

Awards will not allow reimbursement of pre-award costs.

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or e-mail to: Barbara Stewart, Centers for Disease Control and Prevention, National Center for Infectious Diseases, 1600 Clifton Road, NE., Mail Stop C–19, Atlanta, GA 30333, Phone: 404–639–0044, Fax: 404–639–2469, E-mail Address: *bsg2@cdc.gov.*

Application Submission Address: Submit the original and five hard copies of your application by mail or express delivery service to: Technical Information Management—PA# 04109, 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.

The goals of CDC-supported research are to advance the understanding of biological systems, improve the control and prevention of disease and injury, and enhance health. In the written comments, reviewers will be asked to evaluate the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these goals.

The scientific review group will address and consider each of the following criteria in assigning the application's overall score, weighting them as appropriate for each application. The application does not need to be strong in all categories to be judged likely to have major scientific impact and thus deserve a high priority score. For example, an investigator may propose to carry out important work that by its nature is not innovative, but is essential to move a field forward.

The criteria are as follows:

Significance: Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

Approach: Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics? Has the applicant outlined a reasonable plan for obtaining vaccine effectiveness results at reasonable intervals throughout the study and at the end?

Innovation: Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge existing paradigms or develop new methodologies or technologies?

Investigator: Is the investigator appropriately trained and well-suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other researchers (if any)?

Environment: Does the scientific environment in which the work will be done contribute to the probability of success? Do the proposed experiments take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support?

Additional Review Criteria: In addition to the above criteria, the following items will be considered in the determination of scientific merit and priority score:

Study Populations:

(1) Has the applicant described the populations to which they will have ready access to for conducting this study?

Laboratory Confirmation:

(1) Has the applicant described the methods that will be used to determine lab confirmation of influenza illness?

(2) Has the applicant provided background and experience for the entity conducting the laboratory testing?

Study Timeline and Protocol:

(1) Has the applicant described a timeframe for enrollment, conducting the study, assessment, reporting and completion of the study?

Protection of Human Subjects from Research Risks: Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects? This will not be scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

Inclusion of Women and Minorities in Research: Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) the proposed justification when representation is limited or absent; (3) a statement as to whether the design of the study is adequate to measure differences when warranted; and (4) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

Budget: The reasonableness of the proposed budget and the requested period of support in relation to the proposed research.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) and for responsiveness by NCID. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

Applications that are complete and responsive to the PA will be evaluated for scientific and technical merit by an appropriate peer review group or charter study section convened by NCID in accordance with the review criteria listed above. As part of the initial merit review, all applications may:

- Undergo a process in which only those applications deemed to have the highest scientific merit, generally the top half of the applications under review, will be discussed and assigned a priority score.
- Receive a written critique.

• Receive a second level review by CDC senior staff.

Award Criteria: Criteria that will be used to make award decisions include:

• Scientific merit (as determined by peer review).
• Availability of funds.
• Programmatic priorities.
• A multiple range of study designs, from database studies to prospective cohort studies, will be considered for funding, but priority will be given to projects that include analysis of test confirmed influenza cases.

V.3. Anticipated Announcement and Award Dates

Anticipated Award Date: August 16, 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–1 Human Subjects Requirements.
• AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research.
• AR–3 Animal Subject Requirements.
• AR–7 Executive Order 12372.
• AR–10 Smoke-Free Workplace Requirements.
• AR–11 Healthy People 2010.
• AR–12 Lobbying Restrictions.
• AR–15 Proof of Non-Profit Status.
• AR–22 Research Integrity.
• AR–23 States and Faith-Based Organizations.
• AR–25 Release and Sharing of Data.

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

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, (use form PHS 2590, OMB Number 0925–0001, rev. 5/2001 as posted on the CDC Web site) 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. Budget.
   e. Additional Requested Information.
   f. Measures of Effectiveness.
2. Financial status report and annual progress 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 scientific/research issues, contact: Dr. Mary Lerchen, Acting Director, Office of Extramural Research, CDC, National Center for Infectious Diseases, 1600 Clifton Road, NE., Mailstop: C–19, Atlanta, GA 30333, Telephone: 404–639–0043, E-mail: *mll0@cdc.gov.*

For questions about peer review, contact: Barbara Stewart, CDC, National Center for Infectious Diseases, 1600 Clifton Road, NE., Mailstop: C–19, Atlanta, GA 30333, Telephone: 404–639–0044, E-mail: *bsg2@cdc.gov.*

For financial, grants management, or budget assistance, contact: Lynn Walling, Contract Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2612, E-mail: *lqw5@cdc.gov.*

VIII. Other Information

None.

Dated: April 20, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–9371 Filed 4–23–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Diabetes Today Phase II

Announcement Type: New.
Funding Opportunity Number: 04136.

Catalog of Federal Domestic Assistance Number: 93.988.

Key Dates: Application Deadline: June 10, 2004.

I. Funding Opportunity Description

Authority: This program is authorized under section 301(a) and 317(k)(2) of the Public Health Service Act, (42 U.S.C. section 241(a) and 247b(k)(2), as amended). The Catalog of Federal Domestic Assistance number is 93.988.

Purpose: The purpose of the program is to build on the foundation developed through the initial Pacific Diabetes Today training, focusing on implementing multiple community-based interventions in several Pacific communities, and to evaluate the impact of diabetes prevention and control activities for the Pacific region. This includes assessment of community capacity and infrastructure development and the identification and cataloguing of effective interventions unique for the Pacific Region.

This program addresses the "Healthy People 2010" focus areas of Diabetes, Immunization, Heart Disease and Stroke, Nutrition and Overweight, Physical Activity and Fitness, Vision and Hearing, Chronic Kidney Disease and Public Health Infrastructure.

Activities: Awardee activities for this program are as follows:

• Provide materials, trainers and training sessions, follow-up and technical assistance for conducting education and training on the Pacific Diabetes Today Guidebook.
• Deliver at least one Pacific Diabetes Today training per year using local and/or regional Pacific Diabetes Today trainers.
• Provide resources on an as needed basis to support coalitions including resources necessary for implementing community activities and the community champion responsible for coordination and leading as well as community advisors/experts.
• Expand the focus and reach of community-based interventions with an emphasis on moving into intervention implementation.
• Identify and implement high priority public health intervention strategies that have been determined by a community coalition that such

activities will work in their communities to prevent and control diabetes.

• Work with communities to examine their diabetes and chronic disease burden, and current resources. Assist in developing a comprehensive diabetes control and prevention plan. (Communities may address nutrition, physical activity and health communication as well as interventions that include multifaceted strategies to change social and physical environments.)

• Identify and leverage opportunities and collaborate with at least two jurisdictional/state organizations and key partners, one of whom must be a Diabetes Prevention and Control Program, to build institutional supports that will ultimately provide a permanent Pacific Diabetes Today training home.

• Build an alliance of partnerships and coalitions committed to collectively planning, implementing and evaluating effective strategies for prevention and control of diabetes and associated risk factors in Pacific Islanders and Hawaiians. Partners may include, but are not limited to: Diabetes Prevention and Control Programs; local, jurisdiction/state education institutions, *e.g.*, community colleges and universities; key community organizations, *e.g.*, women's groups; health care and professional organizations, *e.g.*, Pacific Islands Health Officers Association (PIHOA), Pacific Basin Medical Association (PBMA); and community and faith-based leaders.

• Establish and maintain a local jurisdiction/state Pacific Diabetes Today Advisory Council. Assist in organizing and facilitating meetings, approaches to sharing experiences and lessons learned.

• Coordinate community Diabetes and chronic disease prevention and control plans and objectives with jurisdiction/state public health plans. Ensure that community objectives, activities and interventions are consistent with, and supportive of jurisdiction/state public health plans for the prevention and control of diabetes.

• Ensure timely communication and exchange of information by sharing of experiences, strategies and results with Pacific Basin and Hawaiian communities and CDC through the use of the Internet; workshops, site visits to and between communities and jurisdictions; and other activities.

• Establish and maintain Diabetes Today staff/program champion designated only to working with Diabetes Today programs to provide oversight to communities in planning, developing, implementing and evaluating interventions and monitoring progress. The staff/champion will provide resources to community programs and make available the expertise to assist and enhance the work of communities.

• Collaborate with the Diabetes Today National Training Center in identifying community interventions and best practices for consideration of their appropriateness in the Pacific region and Hawaii and develop a 2 and one-half day course that will facilitate understanding of key elements of selected interventions that hold promise for Pacific communities.

• Conduct on-going monitoring and evaluation of diabetes prevention and control activities and strategies.

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:

• Provide ongoing guidance, consultation and technical assistance in all aspects of diabetes prevention and control.

• Provide up-to-date information that describes proven interventions and current research in appropriate areas of diabetes prevention and control.

• Collaborate with the Awardees and other appropriate partners, including but not limited to, the Diabetes Today National Training Center in identifying community interventions and best practices to replicate in the Pacific region and Hawaii.

• Assist in and support the development and maintenance of partnerships and networks to help support the implementation of community-based interventions and best practices.

• Facilitate effective communication and integration between NDEP, jurisdiction/State Diabetes Prevention and Control Programs (DPCP's) and Pacific communities. This includes, but is not limited to, NDEP training, media and other program products and tools.

II. Award Information

Type of Award: Cooperative Agreement.

CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: FY 2004.

Approximate Total Funding: $425,000.

Approximate Number of Awards: 8–10 awards.

Approximately Average Award: $35,000.

Floor of Award Range: None.

Ceiling of Award Range: None.

Anticipated Award Date: August 30, 2004.

Budget Period Length: 12 months.

Project Period Length: 5 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

III.1. Eligible Applicants

Applications may be submitted by public or private nonprofit organizations and by governments and their agencies, such as:

• Public nonprofit organizations.
• Private nonprofit organizations.
• Universities.
• Colleges.
• Hospitals.
• Community-based organizations.
• Faith-based organizations.
• State and local governments or their Bona Fide Agents, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, Hawaii, and the Republic of Palau.

A Bona Fide Agent is an agency/organization identified by the jurisdiction/state as eligible to submit an application under the jurisdiction/state eligibility in lieu of a jurisdiction/state application. If you are applying as a bona fide agent of a State or local government, you must provide a letter from the State or local government as documentation of your status. Place this documentation behind the first page of your application form.

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 Request Application Package

To apply for this funding opportunity use application form PHS 5161. Forms are available on the CDC Web site, at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms online, 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

Application

You must submit a project narrative with your application forms. Your narrative must be submitted in the following format:

- Maximum number of pages: 30. If your narrative exceeds the page limit, only the first pages, which are within the page limit, will be reviewed.
- Double-spaced.
- Font size: 12 point unreduced.
- Paper size: 8.5 by 11 inches.
- Page margin size: one-inch margins.
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

1. Official Transmittal Letter—Letter of transmittal from the mayor, community-based or governmental official identifying the lead agency (Diabetes Prevention and Control Program, State Health Department or bona fide agent) and citing the amount requested. Include a description of the lead agency, including fiduciary and programmatic capabilities, as related to this announcement.

2. Table of Contents—Table of Contents with page numbers for each section.

3. Executive Summary—Executive Summary briefly describing the overall project, partnerships, intervention strategies and long and short-term outcomes.

4. Plan—Provide a clear work plan that includes specific, measurable, achievable, realistic and time-phased and realistic long and short term objectives based on the needs of the community and gaps in community-based diabetes prevention and control activities. Include a description of the target populations. The plan should identify likely approaches, strategies and interventions to be used over the five-year period. The plan should address first year objectives and activities in depth and their relationship to attaining short-term outcomes. The plan should also include efforts to ensure long-term sustainability of project efforts and outcomes.

5. Staff/Program Champion—Description of the proposed staff/champion, the qualifications and responsibilities of each and the percent of time committed to Diabetes Today Phase II.

6. Local Diabetes Today Advisory Council—Description of the community members and the specific role/contribution of each member. Include a list of key partners. Decisionmaking processes and methods of accountability of the members should be described.

7. Evaluation and Monitoring—Describe how progress and achievement of program objectives and program activities will be monitored and evaluated. Describe how data will be collected, analyzed and used to improve the program. Specify the person responsible for implementing monitoring and evaluation activities and reporting findings.

8. Budget and Budget Justification/Narrative—Provide a detailed line-item budget and narrative justification for all expenses related to the proposed objectives and planned activities for the first year. Clearly indicate the purpose of each budget item and estimated budget amounts to be sub-contracted to the local community-based organizations or other key partners. The budget and the narrative justification will not be counted in the stated page limit.

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information includes:

- Resumes or description of expertise in working with communities.
- Letters of Support—Provide letters of support and/or Memoranda of Understanding (as appropriate) from key partners that support their roles and responsibilities.
- Community Descriptions

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 *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.

Additional requirements that may require you to submit additional documentation with your application are listed in section "VI.2. Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

Application Deadline Date: June 10, 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 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

Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for State and local governmental review of proposed Federal assistance applications. You should contact your State single point of contact (SPOC) as early as possible to alert the SPOC to prospective applications, and to receive instructions on your State's process. Click on the following link to get the

current SPOC list: *http://www.whitehouse.gov/omb/grants/spoc.html.*

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Resources available under this program announcement are to be used for capacity building and intervention development. They may not be used to: (1) Support direct patient care services, screening services, individual health services, or the treatment of diabetes, or (2) supplant existing Jurisdictional/State or Federal funding including the Preventive Health and Health Service Block Grant or other sources.
- 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 should be less than 12 months of age.

IV.6. Other Submission Requirements

Application Submission Address: Submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management-PA# 04136, 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. Work Plan for Intervention Strategies (45 Points)

- Provide a detailed description describing activities and methods for achieving each of the proposed objectives that appear reasonable and likely to be successful.
- Provide a description of long-term objectives, process (one year) objectives, activities and specific methods to assist local communities in Diabetes Today Activities.
- Identify likely approaches, strategies and interventions to be used over the five-year period to address diabetes prevention and control.
- List Objectives that are specific, measurable, achievable, relevant and time-bound. Five-year objectives and the first year budget period process objectives and activities to be used, timelines, possible barriers, organizations/partners and responsible person should be addressed. Provides a detailed description of experience, expertise and capacity to assist local communities in implementing diabetes prevention and control activities.
- Describes plans to coordinate activities with jurisdiction/state programs to prevent and control diabetes.

2. Training, Resources, Follow-Up and Technical Assistance (20 Points)

- Provide a detailed description of education, training, trainers and provision of resources, follow-up and technical assistance activities and methods that appear reasonable and likely to be successful.

3. Program Leadership, Collaboration and Structure (15 Points)

- Identify a lead/fiduciary agency that will ensure accountability for achieving objectives and for expenditures in relationship to performance of all partners. May be a Diabetes Prevention and Control Program or Community-based Organization.
- Describe the proposed structure including decision making processes, monitoring, problem solving and providing support to community-based activities.
- Provide letters of support or memorandum of agreement that describe specific collaborative activities. Provides evidence that staff/champion have relevant qualifications and experience to facilitate community-based interventions.

4. Advisory Council (10 Points)

- Describe local Advisory council in terms of expertise, community representation, collaborative experiences, and agency representation.
- Describe how local jurisdiction/state Diabetes Today Advisory Council is used to plan, implement and evaluate community-based interventions.
- Describe how money, facilities, expertise and shared decision making will be conducted in collaboration with partners.

5. Plans for Monitoring and Evaluation (10 Points)

- Describe the evaluation progress and how evaluation will be used to achieve long-term and process objectives and the effectiveness of activities.
- Clearly describe the evaluation methodology and frequency of reporting.
- Provide a description of how data will be collected and analyzed.
- Specify the person(s) responsible for collecting and analyzing data and reporting findings.

6. Budget and Justification (Reviewed but Not Scored)

- Provide a budget and budget justification that is reasonable and consistent with the purpose and program goal of the cooperative agreement.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff, and for responsiveness by NCCDPHP staff. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

An Objective Review Panel appointed by CDC will evaluate the scientific and technical merit of Program applications and their responsiveness to the information requested in the Application "Content" section above.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in "V.1. Criteria" section above. In addition, the following factors may affect the funding decision:

- Geographic diversity.
- Preference to organizations in certain geographic areas.
- Due to resource limitations, funding preference will be given to jurisdictions/State Health Departments and Community-Based Organizations that were funded for Phase I of Diabetes Today.

V.3. Anticipated Announcement and Award Dates

August 30, 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: *www.access.gpo.gov/nara/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–7 Executive Order 12372.
- AR–10 Smoke-Free Workplace Requirements.
- AR–11 Healthy People 2010.
- AR–12 Lobbying Restrictions.

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 signed original and 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 for the subsequent year, and must contain the following elements:

a. Current Budget Period Activities Objectives—(1) A description of accomplishments and progress in achieving objectives within the planned budget during the first six months of the current budget period, (2) reasons for not achieving established objectives and what will be done to meet unmet objectives, (3) Current budget period financial progress, (4) new budget period proposed program activities and objectives, (5) Detailed line-item budget and justification, (6) If contracts are proposed, provide the name of the contractor(s), method of selection, period of performance, scope of work, and itemized budget and budget justification/narrative.

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.

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: Ron Stoddard, Project Officer, Program Development Branch, Division of Diabetes Translation, Centers for Disease Control and Prevention, 4770 Buford Highway, MS K–10, Atlanta, Georgia 30341–3717, Telephone: (770) 488–5013, E-mail: *rrs1@cdc.gov.*

For budget assistance in the states, contact: Tiffney Esslinger, Contract Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: (770) 488–2686, E-mail: *tde2@cdc.gov.*

For budget assistance in the territories, contact: Vincent Falzone, Contract Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: (770) 488–2763, E-mail: *vcf6@cdc.gov.*

Dated: April 20, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–9372 Filed 4–23–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0176]

Preparation for the International Conference on Harmonization Meetings in Washington, DC; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting entitled "Preparation for ICH meetings in Washington, DC" to provide information and receive comments on the International Conference on Harmonization (ICH) as well as the upcoming meetings in Washington, DC. The topics to be discussed are the topics for discussion at the forthcoming ICH Steering Committee Meeting. The purpose of the meeting is to solicit public input prior to the next Steering Committee and Experts Working Groups meetings in Washington, DC, June 7–10, 2004, at which discussion of the topics underway and the future of ICH will continue.

Date and Time: The meeting will be held on May 17, 2004, from 1:30 to 4:30 p.m.

Location: The meeting will be held at 5600 Fishers Lane, 3d floor, Potomac Conference Room, Rockville, MD 20857. For security reasons, all attendees are asked to arrive no later than 1:30 p.m., as you will be escorted from the front entrance of 5600 Fishers Lane to the Potomac Conference Room.

Contact Person: Sema Hashemi, Office of the Commissioner, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3050, FAX: 301–480–0716, e-mail: *Sema.Hashemi@fda.hhs.gov.*

Registration and Requests for Oral Presentations: Send registration information (including name, title, firm name, address, telephone, and fax number), and written material and requests to make oral presentations, to the contact person by May 7, 2004.

Transcripts: Transcripts of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page.

If you need special accommodations due to a disability, please contact Sema Hashemi at least 7 days in advance.

SUPPLEMENTARY INFORMATION: The ICH was established in 1990 as a joint regulatory/industry project to improve, through harmonization, the efficiency of the process for developing and registering new medicinal products in Europe, Japan, and the United States without compromising the regulatory obligations of safety and effectiveness.

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for medical product development among regulatory agencies. ICH was organized to provide an opportunity for harmonization initiatives to be developed with input from both regulatory and industry representatives. ICH is concerned with harmonization among the following three regions: The European Union,

Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health, Labor and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA). The ICH Steering Committee includes representatives from each of the ICH sponsors and Health Canada, the European Free Trade Area and the World Health Organization. The ICH process has achieved significant harmonization of the technical requirements for the approval of pharmaceuticals for human use in the three ICH regions.

The current ICH process and structure can be found at the following Web site: *http://www.ich.org*. Interested persons may present data, information, or views orally or in writing, on issues pending at the public meeting. Oral presentations from the public will be scheduled between approximately 3:45 p.m. and 4:30 p.m. Time allotted for oral presentations may be limited to 10 minutes. Those desiring to make oral presentations should notify the contact person by May 7, 2004, and submit a brief statement of the general nature of the evidence or arguments they which to present, the names and addresses, phone number, fax, and e-mail of proposed participants, and an indication of the approximate time requested to make their presentation.

The agenda for the public meeting will be made available on May 3, 2004, via the Internet at *http://www.fda.gov/cder/meeting/ICH_05172004.htm*.

Dated: April 19, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–9323 Filed 4–23–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 1999D–0529]

Guidance for Industry on Changes to an Approved New Drug Application or Abbreviated New Drug Application; Availability; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of April 8, 2004 (69 FR 18768). The document announced the availability of a revised guidance for industry entitled "Changes to an Approved NDA or ANDA." The document was published with inadvertent errors. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Joyce A. Strong, Office of Policy and Planning (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 04–7533, appearing on page 18768 in the **Federal Register** of Thursday, April 8, 2004, the following corrections are made:

1. On page 18768, in the first column, under the **FOR FURTHER INFORMATION CONTACT** section, the contact information is corrected to read "David J. Cummings, Center for Drug Evaluation and Research (HFD–357), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5187."

2. On page 18768, in the third column, the second full paragraph is removed.

Dated: April 19, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–9324 Filed 4–23–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301 496–7057; fax: (301) 402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Reactivity of Human Sera in a Sensitive, High Throughput Pseudovirus-Based Papillomavirus Neutralization Assay for HPV 16 and HPV 18

John Schiller (NCI), Douglas Lowy (NCI), Chris Buck (NCI),

Diana Pastrana (NCI), Richard Roden (EM), DHHS Reference No. E–137–2004/0—Research Material

Licensing Contact: Peter Soukas; (301) 435–4646; *soukasp@mail.nih.gov*.

This invention is a research tool for measuring protective antibody responses generated by prophylactic Human Papilloma Virus (HPV) vaccines. Sensitive high-throughput neutralization assays, based upon pseudoviruses carrying a secreted alkaline phosphatase (SEAP) reporter gene, were developed and validated by the inventors for HPV 16, HPV 18, and bovine papillomavirus 1 (BPV1). In a 96-well plate format, the assay was reproducible and appears to be as sensitive as, but more specific than, a standard papillomavirus-like particle (VLP)-based enzyme-linked immunosorbent assay (ELISA). The SEAP pseudovirus-based neutralization assay should be a practical method for quantifying potentially protective antibody responses in HPV natural history and prophylactic vaccine studies.

This assay is available nonexclusively through a biological materials license. The assay is further described in Pastrana *et al.*, "Reactivity of human sera in a sensitive, high-throughput pseudovirus-based papillomavirus neutralization assay for HPV16 and HPV18," *Virology*. 2004 Apr 10;321(2):205–16.

Enzymatically-Active RNA-Dependent RNA Polymerase From a Human Norovirus (Calicivirus)

Gael Belliot, Stanislav Sosnovtsev, Kyeong-Ok Chang, Kim Green (NIAID),
DHHS Reference No. E–283–2003/0—Research Material.
Licensing Contact: Peter Soukas; (301) 435–4646; *soukasp@mail.nih.gov.*

The noroviruses (formerly known as "Norwalk-like viruses") are associated with gastroenteritis outbreaks, affecting large numbers of individuals each year. Emerging data are supporting their increasing recognition as important agents of diarrhea-related morbidity and mortality. The frequency with which noroviruses are associated with gastroenteritis as "food and water-borne pathogens" has led to the inclusion of caliciviruses as Category B Bioterrorism Agents/Diseases. Because the noroviruses cannot be propagated by any means in the laboratory, an important strategy in their study is to development of molecular biology-based tools and replication systems. This invention reports the isolation of the first recombinant, enzymatically-active proteinase and RNA dependent RNA polymerase (RdRp) complex for a human norovirus. This enzyme should facilitate studies aimed at developing therapeutic drugs for norovirus disease.

The materials embodied in this invention are available nonexclusively through a biological materials license. The materials are further described in Wei L *et al.*, "Proteinase-polymerase precursor as the active form of feline calicivirus RNA-dependent RNA polymerase," *J. Virol.* 2001 Feb;75(3):1211–9.

Construction of an Infectious Full-Length cDNA Clone of the Porcine Enteric Calicivirus RNA Genome

Kyeong-Ok Chang (NIAID), Stanislav Sosnovtsev (NIAID), Gael Belliot (NIAID), Linda Saif (EM), Kim Green (NIAID) DHHS Reference No. E–214–2003/0—Research Material
Licensing Contact: Peter Soukas; 301/435–4646; *soukasp@mail.nih.gov.*

Porcine enteric calicivirus (PEC) is a member of the genus Sapovirus in the family Caliciviridae. This virus causes diarrheal illness in pigs, and is presently the only enteric calicivirus that can be grown in cell culture. In addition to its relevance to veterinary medicine as a diarrheal agent in pigs, PEC serves as an important model for the study of enteric caliciviruses that cause diarrhea and that cannot be grown in cell culture (including the noroviruses represented by Norwalk virus). The development of an infectious cDNA clone is important because it enables the use of "reverse genetics" to engineer mutations of interest into the genome of PEC and to study their effects. In addition, it allows the introduction of foreign coding sequences into the genome of PEC that could be useful for vaccine development in swine and possibly humans. This discovery has both basic research applications such as mapping mutations involved in tissue culture adaptation, tissue tropism, and virulence as well as practical applications such as providing a genetic backbone for the development of chimeric vaccine viruses.

The materials embodied in this invention are available nonexclusively through a biological materials license. The materials are further described in Chang K–O *et al.*, "Cell-culture propagation of porcine enteric calicivirus mediated by intestinal contents is dependent on the cyclic AMP signaling pathway," *Virology.* 2002 Dec 20;304(2):302–10.

Construction of Recombinant Baculoviruses Carrying the Gene Encoding the Major Capsid Protein, VP1, From Calicivirus Strains (Including Norovirus Strains Toronto, Hawaii, Desert Shield, Snow Mountain, and Md145–12)

Kim Green, Judy F. Lew, Adriene D. King, Stanislav Sosnovtsev, Gael Belliot (NIAID) DHHS Reference No. E–198–2003/0—Research Material
Licensing Contact: Peter Soukas; 301/435–4646; soukasp@mail.nih.gov.

The noroviruses (known as "Norwalk-like viruses") are associated with an estimated 23,000,000 cases of acute gastroenteritis in the United States each year. Norovirus illness often occurs in outbreaks, affecting large numbers of individuals, illustrated recently by well-publicized reports of gastroenteritis outbreaks on several recreational cruise ships and in settings such as hospitals and schools. Norovirus disease is clearly important in terms of medical costs and missed workdays, and accumulating data support its emerging recognition as important agents of diarrhea-related morbidity.

Because the noroviruses cannot be propagated by any means in the laboratory, an important strategy in their study is the development of molecular biology-based tools. This invention reports the development of recombinant baculoviruses carrying the capsid gene from several caliciviruses associated with human disease. Growth of these baculovirus recombinants in insect cells results in the expression of virus-like particles (VLPs) that are antigenically indistinguishable from the native calicivirus particle. These VLPs can be purified in large quantities for use as diagnostic reagents and potential vaccine candidates.

The materials embodied in this invention are available nonexclusively through a biological materials license. An example of the application of these materials is further described in Green KY *et al.*, "A predominant role for Norwalk-like viruses as agents of epidemic gastroenteritis in Maryland nursing homes for the elderly," *J. Infect. Dis.* 2002 Jan. 15;185(2):133–46.

MVA Expressing Modified HIV envelope, gag, and pol Genes

Bernard Moss (NIAID), Patricia Earl (NIAID), Linda Wyatt (NIAID), Leigh Anne Steinmeyer (EM), Thomas VanCott (EM), Matthew Harris (EM) U.S. Provisional Application No. 60/459,175 filed 28 Mar 2003 (DHHS Reference No. E–023–2003/0–US–01); PCT Application filed 28 Mar 2004 (DHHS Reference No. E–023–2003/0–PCT–02)
Licensing Contact: Peter Soukas; 301/435–4646; *soukasp@mail.nih.gov.*

This invention claims Modified Vaccinia Ankara (MVA), a replication-deficient strain of vaccinia virus, expressing Human Immunodeficiency Virus (HIV) env, gag, and pol genes, where the genes are isolated from Ugandan Clade D isolates, Kenyan Clade A isolates, and Tanzanian Clade C isolates. In a rhesus macaque SHIV model, DNA priming followed by a recombinant MVA (rMVA) booster controlled a highly pathogenic immunodeficiency challenge. Both the DNA and the rMVA components of the vaccine expressed multiple immunodeficiency virus proteins. Two DNA inoculations at zero (0) and eight (8) weeks and a single rMVA booster at twenty-four (24) weeks effectively controlled an intrarectal challenge administered seven (7) months after the booster. Additionally, the inventors have generated data showing that inoculations of rMVA induce good immune responses even without DNA priming.

The inventors are continuing preclinical work on the vaccine, and have generated further data on the vaccine. Furthermore, the inventors are continuing to optimize the vaccine by genetically modifying the genes. This vaccine will be the subject of an upcoming Phase I clinical trial. These findings provide hope that a relatively simple multiprotein DNA/MVA vaccine can help to control the Acquired Immune Deficiency Syndrome (AIDS) epidemic.

Reagents to Produce Purified Human 14–3–3 Zeta and 14–3–3 Epsilon as Glutathione-S-Transferase Fusion Protein

David Klein, Surajit Ganguly (NICHD), DHHS Reference No. E–142–2002—Research Material.

Licensing Contact: Peter Soukas; 301/435–4646; *soukasp@mail.nih.gov*.

14–3–3 proteins are thought to be involved in some way in prion-based diseases, including Bovine Spongiform Encephalopathy (BSE). The preparations described in this invention can be used to make large amounts of two human forms of 14–3–3 proteins, zeta and epsilon. These proteins can be used to raise antisera against human 14–3–3 proteins and in assays of proteins that bind 14–3–3 proteins to monitor prion-caused diseases. Additionally, the 14–3–3 proteins described in this invention may be used as vaccines to immunize against proteins involved in prion diseases.

The materials described in this invention are available nonexclusively through a biological materials license. The materials are further described in Ganguly S. *et al.*, "Role of a pineal cAMP-operated arylalkylamine N-acetyltransferase/14–3–3-binding switch in melatonin synthesis," *Proc. Natl. Acad. Sci.* U.S.A. 2001 Jul 3;98(14):8083–8 and Obsil T. *et al.*, "Crystal structure of the 14–3–3zeta:serotonin N-acetyltransferase complex. a role for scaffolding in enzyme regulation," *Cell.* 2001 Apr 20;105(2):257–67.

Dated: April 18, 2004.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 04–9465 Filed 4–23–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel, Loan Repayment Program.

Date: April 29, 2004.

Time: 12 PM to 1:30 PM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Houmam H Araj, PhD, Scientific Review Administrator, Division of Extramural Research, National Eye Institute, NIH, 5635 Fishers Lane, Suite 1300, Bethesda, MD 20892–9602, (301) 451–2020, *haraj@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: April 20, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–9458 Filed 4–23–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Health, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, RFA-Research Scientist Award for Minority Institutions—(Not–HL–03–015).

Date: May 20, 2004.

Time: 7 p.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person Chitra Krishnamurti, PhD., Review Branch, Room 7206, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0303.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, RFA–HL–04–002, Partnership Programs to Reduce Cardiovascular Disparities.

Date: May 21, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person Chitra Krishnamurti, PhD., Review Branch, Room 7206, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0303.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233., National Center for Sleep Disorders Research: 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 20, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–9454 Filed 4–23–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting.

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Subplate Neurons in Survivors of Prematurity.

Date: April 29, 2004.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Norman Chang, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 496–1485 *changn@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: April 20, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–9453 Filed 4–23–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, IGF and Sex.

Date: April 22, 2004.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20814 (Telephone Conference Call).

Contact Person: Alicja L. Markowska, PhD, DSC, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD, 20814, (301) 402–7703, *markowsa@nia.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, Loan Repayment.

Date: May 7, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mary Nekola, PhD, Chief, Scientific Review Office, National Institute on Aging, Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD, 20814-9692, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel, Energy Metabolism & Aging in Non-Human Primates.

Date: May 13, 2004.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20814 (Telephone Conference Call).

Contact Person: Alfonso R. Latoni, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Room 2C212, Bethesda, MD, 20892, (301) 496–9666, *latonia@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, Brain Dopamine II.

Date: May 14, 2004.

Time: 2:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20814 (Telephone Conference Call).

Contact Person: Bita Nakhai, PhD, Scientific Review Administrator, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20814, (301) 402–7701, *nakhaib@mail.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Imaging of Aging.

Date: May 27–28, 2004.

Time: 6 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: William Cruce, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301) 402–7704, *crucew@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 20, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–9455 Filed 4–23–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the National Advisory Council on Aging.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Aging.

Date: May 25, 2004.

Open: 8 a.m. to 12 p.m.

Agenda: To present the Director's Report and other scientific presentations.

Place: National Institutes of Health, Building 16, 16 Center Drive, Conference Room 6, Bethesda, MD 20892.

Closed: 12 p.m. to 2:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 16, 16 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Miriam F. Kelty, PhD, Director, Office of Extramural Affairs, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, MD 20892, (301) 496–9322.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when

applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *http://www.nih.gov/nia/naca/*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistant Program Nos. 93.866, Aging Research, National Institutes of Health, HHS).

Dated: 20, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–9456 Filed 4–23–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Ceftriaxoone Trial.

Date: May 2–3, 2004.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Katherine Woodbury, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529; (301) 496–5980, *kw47o@nih.gov*.

(Catalogue of Federal Domestic Assistance Programs Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS.)

Dated: April 20, 2004.

LaVerne Y. Stringfield

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–9457 Filed 4–23–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Advisory Council for Biomedical Imaging and Bioengineering.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering.

Date: May 26–27, 2004.

Open: May 27, 2004, 8 a.m. to 12:20 p.m.

Agenda: Report from the NIBIB Director and the Council's two subcommittees, and program presentations.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

Closed: May 27, 2004, 1:20 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Joan T. Harmon, Director, Office of Extramural Policies, National Institute of Biomedical Imaging and Bioengineering, NIH, 6707 Democracy Blvd Suite 200, Bethesda, MD 20892; 301 451–4776, *harmonj@nibib.nih.gov*.

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering, Training and Career Development Subcommittee.

Date: May 26, 2004.

Open: 1 p.m. to 3:30 p.m.

Agenda: Discussion of subcommittee business and a presentation at 3 p.m. by Dr. Elias A. Zerhouni, Director of the NIH.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Joan T. Harmon, Director, Office of Extramural Policies, National Institute of Biomedical Imaging and Bioengineering, NIH, 6707 Democracy Blvd Suite 200, Bethesda, MD 20892; 301 451–4776, *harmonj@nibib.nih.gov*.

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering, Strategic Plan Development Subcommittee.

Date: May 26, 2004.

Open: 3:45 p.m. to 5:15 p.m.

Agenda: Discussion of subcommittee business.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Joan T. Harmon, Director, Office of Extramural Policies, National Institute of Biomedical Imaging and Bioengineering, NIH, 6707 Democracy Blvd Suite 200, Bethesda, MD 20892; 301 451–4776, *harmonj@nibib.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by nongovernment employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Dated: April 20, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–9459 Filed 4–23–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Biodefense and SARS Product Development.

Date: May 17–19, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Gaithersburg Washingtonian, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Thomas J. Hiltke, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/ NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *thiltke@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS.)

Dated: April 20, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–9460 Filed 4–23–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice if hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Regulatory Management Center.

Date: May 20–21, 2004.

Time: May 20, 2004, 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Time: May 21, 2004, 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Stefani T. Rudnick, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/ NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *srudnick@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 20, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–9461 Filed 4–23–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Assessing Safety of Cell Substrates and Vaccine Components.

Date: May 13, 2004.

Time: 11:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Lucy A. Ward, DVM, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/ NIAID, 6700B Rockledge Drive, Bethesda, MD 20892–7616, 301–496–2550, *lw275a@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 16, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–9462 Filed 4–23–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The portions of the meeting devoted to the review and evaluation of journals for potential indexing by the National Library of Medicine will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended. Premature disclosure of the titles of the journals as potential titles to be indexed by the National Library of Medicine, the discussions, and the presence of individuals associated with these publications could significantly frustrate the review and evaluation of individual journals.

Name of Committee: Literature Selection Technical Review Committee.

Date: June 17–18, 2004.

Open: June 17, 2004, 9 a.m. to 11 a.m.

Agenda: Administrative reports and program discussions.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, Center Drive, Bethesda, MD 20894.

Closed: June 17, 2004 11 a.m. to 5 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, Center Drive, Bethesda, MD 20894.

Closed: June 18, 2004, 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, Center Drive, Bethesda, MD 20894.

Closed: June 18, 2003, a.m. to 2 p.m.

Agenda: To review and evaluate journals as potential titles to be ine\dexed by the National Library of Medicine.

Place: Natinal Library of Medicine, Building 38, Board Room, 2nd Floor, Center Drive, Bethesda, MD 20894.

Contact Person: Sheldon Kotzin, MLS, Chief, Bibliographic Services Division, Division of Library Operations, National Library of Medicine, 8600 Rockville Pike, Bldg 38A/Room 4N4319, Bethesda, MD 20894.

Any interested person may file written comments with the Committee by forwarding the statement to the Contact Person listed on this Notice. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: April 16, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH

[FR Doc. 04–9464 Filed 4–23–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, April 8, 2004, 1:30 p.m. to April 8, 2004, 2:30 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on March 17, 2004, 69 FR 12705–12707.

The meeting will be held April 30, 2004, from 2 p.m. to 3 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: April 16, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–9463 Filed 4–23–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–961–1410–HY–P; F–14875–A, CAA–7]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Kugkaktlik, Ltd., for lands in T. 3 S., R. 86 W., Seward Meridian, located in Kipnuk, Alaska, containing 8.95 acres. Notice of the decision will also be published four times in the *Tundra Times.*

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until May 26, 2004, to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Sherri Belenski, by phone at (907) 271–3333, or by e-mail at *Sherri_Belenski@ak.blm.gov.*

Sherri D. Belenski,

Land Law Examiner, Branch of Land Transfer Services.

[FR Doc. 04–9321 Filed 4–23–04; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–027–1020–PG–020H; G 4–0081]

Steens Mountain Advisory Council; Call for Nominations

AGENCY: Bureau of Land Management (BLM), Burns District, Interior.

ACTION: Call for nominations for the Steens Mountain Advisory Council (SMAC).

SUMMARY: BLM is publishing this notice under Section 9 (a)(2) of the Federal Advisory Committee Act. Pursuant to the Steens Mountain Cooperative Management and Protection Act of 2000 (Pub. L. 106–399), BLM gives notice that the Secretary of the Interior intends to call for nominations for terms expiring on the SMAC. This notice requests the public to submit nominations for membership on the SMAC.

Any individual or organization may nominate one or more persons to serve on the SMAC. Individuals may nominate themselves for SMAC membership. Nomination forms may be obtained from the Burns District Office, Bureau of Land Management (see address below). To make a nomination, submit a completed nomination form, letters of reference from the represented interests or organizations, and any other information that speaks to the nominee's qualifications, to the Burns District Office. Nominations may be made for the following categories of interest:

- A person who is a grazing permittee on Federal lands in the Steens Mountain Cooperative Management and Protection Area (CMPA) (appointed from nominees submitted by the county court of Harney County, Oregon);
- A member of the Burns Paiute Tribe (appointed from nominees submitted by the Burns Paiute Tribe);
- A person who participates in what is commonly called mechanized or consumptive recreation, such as hunting, fishing, off-road driving, hang gliding, or parasailing (appointed by the Oregon State Director of the BLM); and
- A person who has no financial interest in the CMPA to represent statewide interests (appointed by the Governor of Oregon).

The specific category the nominee will represent should be identified in the letter of nomination. The Burns District will collect the nomination forms and letters of reference and distribute them to the officials responsible for submitting nominations (County Court of Harney County, the Governor of Oregon, Burns Paiute Tribe

and BLM). BLM will then forward recommended nominations to the Secretary of the Interior, who has responsibility for making the appointments.

DATES: Nominations should be submitted to the address listed below no later than 30 days after publication of this notice.

FOR FURTHER INFORMATION CONTACT: Rhonda Karges, Management Support Specialist, Burns District Office, 28910 Hwy 20 West, Hines, Oregon 97738, (541) 573–4433, or *Rhonda_Karges@or.blm.gov* or from the following Web sites: *http://www.or.blm.gov/Burns or http://www.or.blm.gov/steens* (Pub. L. 106–399 in its entirety can be found on the Steens Web site as previously cited.).

SUPPLEMENTARY INFORMATION: The purpose of the SMAC is to advise BLM on the management of the CMPA as described in Title 1 of Pub. L. 106–399. Each member will be a person who, as a result of training and experience, has knowledge or special expertise which qualifies him or her to provide advice for one or more of the interest categories listed above.

Members of the SMAC are appointed for terms of three years. The Grazing Permittee, the member of the Burns Paiute Tribe, the Mechanized or Consumptive Recreation, and the No-Financial-Interest position terms will expire August 2004. These four positions will begin no earlier than August 2004.

Members will serve without monetary compensation, but will be reimbursed for travel and per diem expenses at current rates for Government employees. The SMAC shall meet only at the call of the Designated Federal Official, but not less than once per year.

Dated: February 9, 2004.

Karla Bird,

Andrews Resource Area Field Manager, Bureau of Land Management, Burns, Oregon.

[FR Doc. 04–9320 Filed 4–23–04; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZAR 08550]

Public Land Order No. 7598; Partial Revocation of Public Land Order No. 1229; AR; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: This action corrects the serial number and an error in the land description published as FR Doc. 04–5749 in the **Federal Register**, 69 FR 12177 (March 15, 2004).

On page 12177, column 1, line 3 of the notice, which reads "[AZAR 05427]" is hereby corrected to read "[AZAR 08550]"

On page 12177, column 1, bottom line, which reads "T. 16 N., R. 7 E.," is hereby corrected to read "T. 18 N., R. 7 E.,"

Dated: April 12, 2004.

Michael A. Taylor,

Deputy State Director, Resources Division.

[FR Doc. 04–9318 Filed 4–23–04; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–5853–ES; N–76649]

Notice of Realty Action: Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following described public land in Clark County, Nevada has been examined and found suitable for classification for lease or conveyance to the South Hills Church Community under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*).

DATES: On April 26, 2004, the land described below will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws. Interested parties may submit comments regarding the proposed lease/conveyance or classification of the lands until June 10, 2004.

ADDRESSES: Send written comments to the Field Manager, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada, 89130. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada, 89130–2301.

FOR FURTHER INFORMATION CONTACT: Sharon DiPinto, Bureau of Land Management, Las Vegas Field Office, at (702) 515–5062.

SUPPLEMENTARY INFORMATION: The South Hills Church Community proposes to use the following land for a church and related facilities:

Mount Diablo Meridian, Nevada

T. 22 S., R. 61 E.,
Sec. 24: N½N½SE¼NE¼.
Containing 10 acres, more or less.

The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe and will be subject to:

1. An easement in favor of Clark County for roads, public utilities and flood control purposes.

2. All valid existing rights documented on the official public land records at the time of lease/patent issuance.

On February 3, 2004 the South Hills Church Community filed a R&PP application for 10 acres of public land to be developed as a church with related facilities. These related facilities included a multipurpose building (a worship center, offices, classrooms, nursery, kitchen, restrooms, utility/storage rooms and a lobby) and recreation areas with sidewalks, landscaped areas, paved parking areas, and off site improvements. South Hills Church Community is a qualified nonprofit entity. Additional detailed information pertaining to this application, plan of development, and site plans is on file in case file N–76649 located at the address listed above.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a church campus. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding

the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a church.

Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the land described in this notice will become effective June 25, 2004. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Authority: 43 CFR part 2741.

Sharon DiPinto,

Acting Assistant Field Manager, Division of Lands, Las Vegas, NV.

[FR Doc. 04–9317 Filed 4–23–04; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA 669–04–1610–DO–083A]

Notice of Intent To Prepare an Amendment to the South Coast Resource Management Plan for the Santa Ana River Area of Critical Environmental Concern

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to 43 CFR 1610.2(c), notice is hereby given that the Bureau of Land Management (BLM) intends to amend the 1994 South Coast Resource Management Plan. The proposed amendment and environmental impact statement (EIS) will describe and analyze alternatives for a proposed land exchange with the San Bernardino Valley Water Conservation District. The proposed action would affect land designated as an Area of Critical Environmental Concern (ACEC) and Research Natural Area (RNA) for protection of two plants federally listed as endangered, Santa Ana River woollystar (*Eriastrum densiflorum* ssp. *sanctorum*) and slender-horned spineflower (*Dodecahema leptoceras*).

DATES: This notice initiates the public scoping process. Comments on issues and planning criteria may be submitted in writing to the address listed below. All public meetings will be announced through the local news media, newspapers, and the BLM Web site (*http://www.ca.blm.gov/palmsprings*) at least 15 days prior to the event. Public scoping meetings on the EIS will tentatively be held in April and/or May of 2004. In order to ensure local community participation and input, BLM will hold public meetings in the cities of Highland and Redlands, California. In addition to the ongoing public participation process, formal opportunities for public participation will be provided upon publication of the draft EIS. Written comments will be accepted and considered throughout the entire planning process.

ADDRESSES: Comments should be sent to Greg Hill, Santa Ana River Wash Project, Bureau of Land Management, P.O. Box 581260, North Palm Springs, CA 92258 or by fax at (760) 251–4899, or by e-mail at *gchill@ca.blm.gov*. Documents pertinent to this proposal, including comments with the names and addresses of respondents, will be available for public review at the BLM Palm Springs-South Coast Field Office located at 690 W. Garnet Avenue, North Palm Springs, California, during regular business hours of 7:45 a.m. to 4:30 p.m., Monday through Friday, except holidays, and may be published as part of the EIS. 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. BLM will not consider anonymous comments. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Greg Hill, Santa Ana River Wash Project, Bureau of Land Management, Palm Springs-South Coast Field Office, (760) 251–4840, or by e-mail at *gchill@ca.blm.gov*.

SUPPLEMENTARY INFORMATION: This proposed land exchange is part of a multi-jurisdictional Land Management and Habitat Conservation Plan proposed for approximately 4,365 acres located in the upper Santa Ana River Wash area in southwestern San Bernardino County. The proposed plan provides for the coordination between State and Federal agencies, local government, and private-property owners for accommodation of existing and anticipated future activities within the Santa Ana River Wash Planning Area. The planning area boundaries begin at the mouth of Santa Ana Canyon at Greenspot Road and extend westward for approximately six miles to Alabama Street. Greenspot Road generally forms the northern boundary of the project area and the south bluffs of the Santa Ana River generally form the southern boundary. The plan proposes the continuation of existing water conservation facilities; the creation of a habitat conservation area; the continuation of a flood management program; the continuation and, in some cases, the expansion of roadways and utilities; the continuation of existing trails and construction of new trails; expansion of two existing sand and gravel mining operations; and the proposed BLM land exchange. The proposed land exchange would exchange public land west and south of Greenspot Road and north of the Santa Ana River for offered lands of equal value owned by the San Bernardino Valley Water Conservation District. The alternatives are: (A) Proposed Action (exchange approximately 508 acres of public lands with restrictive covenants for Conservation District lands of equal value), (B) Modification of existing land use designations on specified BLM land to permit mining activities, and (C) No Action Alternative (the exchange proposal would be rejected). The plan amendment would amend the 1994 South Coast Resource Management Plan and Record of Decision to reflect the proposed land exchange. BLM personnel, other agencies, and individuals have identified preliminary issues and concerns. Predominant issues identified so far include threatened, endangered, and other special status species, mineral resources, water resources, recreation, visual resources, cultural resources, land management, and traffic management. Additional issues will be identified during the public scoping process.

Dated: March 11, 2004.

Greg Hill,

Acting Field Manager, Palm Springs-South Coast Field Office.

[FR Doc. 04–9319 Filed 4–23–04; 8:45 am]

BILLING CODE 4310–40–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 1010–0075).

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 Part 206, Subpart E—Indian Gas, § 206.178—How do I determine a transportation allowance? (Form MMS–4295, Gas Transportation Allowance Report) and § 206.180—How do I determine an actual processing allowance? (Form MMS–4109, Gas Processing Allowance Summary Report)." We changed the title of this ICR to clarify the regulatory language we are covering under 30 CFR part 206. The previous title was "Gas Processing and Transportation Allowances."

DATES: Submit written comments on or before June 25, 2004.

ADDRESSES: Submit written comments to Sharron L. Gebhardt, Lead Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, 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 e-mail 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 that we have received your e-mail, contact Ms. Gebhardt at (303) 231–3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3781, or e-mail *sharron.gebhardt@mms.gov*.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 206, Subpart E—Indian Gas, § 206.178—How do I determine a transportation allowance? (Form MMS–4295, Gas Transportation Allowance Report) and § 206.180—How do I determine an actual processing allowance? (Form MMS–4109, Gas Processing Allowance Summary Report).

OMB Control Number: 1010–0075.

Bureau Form Number: Forms MMS–4295 and MMS–4109.

Abstract: The Secretary of the U.S. Department of the Interior 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 resource production on Federal and Indian lands, collect the royalties due, and distribute the funds in accordance with those laws. The Secretary also has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. The MMS performs the royalty management functions and assists the Secretary in carrying out the Department's Indian trust responsibility. Applicable citations of the laws pertaining to mineral leases on Indian lands include 25 U.S.C. 369d (Chapter 12—Lease, Sale or Surrender of Allotted or Unallotted Lands); 25 U.S.C. 2103 (Indian Minerals Development Act); and Public Law 97–451—Jan. 12, 1983 (Federal Oil and Gas Royalty Management Act of 1982).

When a company or an indivídual enters into a lease to explore, develop, produce, and dispose of minerals from Federal or Indian lands, that company or individual agrees to pay the lessor a share (royalty) of the value received from production from the leased lands. The lease creates a business relationship between the lessor and the lessee. The lessee is required to report various kinds of information to the lessor relative to the disposition of the leased minerals. Such information is similar to data reported to private and public mineral interest owners and is generally available within the records of the lessee or others involved in developing, transporting, processing, purchasing, or selling of such minerals. The information collected includes data necessary to ensure that the royalties are paid appropriately.

Proprietary information submitted to MMS under this collection is protected, and no items of a sensitive nature are collected. A response is required to obtain the benefit of a transportation and (or) gas processing allowance on an Indian lease.

Transportation Allowances—Under certain circumstances, lessees are authorized to deduct from royalty payments the reasonable actual costs of transporting the royalty portion of produced minerals from the lease to a processing or sales point not in the immediate lease area. Transportation allowances are part of the product valuation process MMS uses to determine if the lessee is reporting and paying the proper royalty amount.

Processing Allowances—When gas is processed for the recovery of gas plant products, lessees may claim a processing allowance. The MMS normally will accept the cost as stated in the lessee's arm's-length processing contract as being representative of the cost of the processing allowance. In those instances where gas is being processed through a lessee-owned plant, the processing costs must be based on the actual plant operating and maintenance expenses, depreciation, and a reasonable return on investment. The allowance is expressed as a cost per unit of individual gas plant products. Processing allowances may be taken as a deduction from royalty payments.

The MMS and tribal personnel use the information collected on Forms MMS–4295 and MMS–4109 for transportation and processing costs to evaluate the reasonableness of allowances claimed by lessees. Only those lessees submitting arm's-length contracts or allowance forms, as appropriate, are allowed to take deductions from royalties due. The determination of the appropriate product value or allowance rate directly affects royalties due. Tribes given audit authority rely heavily upon the data submitted on the allowance forms for verification purposes.

Frequency of Response: On occasion.

Estimated Number and Description of Respondents: 12 Indian lessees/lessors.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 540 hours.

Since the previous renewal of this ICR, we have obtained more accurate estimates of the number of respondents and the time required to provide the information requested, and we have adjusted the burden hours accordingly. The following chart shows the estimated burden hours by CFR section and paragraph:

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS CHART

30 CFR section	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
206.178 (b)(1)(ii)	*Determining a transportation allowance under a non-arm's-length or no contract.* * * * You must submit the actual cost information to support the allowance to MMS on Form MMS–4295, Gas Transportation Allowance Report, within 3 months after the end of the 12-month period to which the allowance applies. * * *	45	7	315
206.180 (b)(1)(ii)	*Determining a processing allowance if you have a non-arm's-length contract or no contract.* * * * You must submit the actual cost information to support the allowance to MMS on Form MMS–4109, Gas Processing Allowance Summary Report, within 3 months after the end of the 12-month period for which the allowance applies. * * *	45	5	225
Total			12	540

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 that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. 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 affected 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 cost 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; or (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. The ICR also will 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 also will make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Upon request, we will withhold an individual respondent's home address from the public record, as 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 your request 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: April 19, 2004.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 04–9442 Filed 4–23–04; 8:45 am]

BILLING CODE 4310–MR–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 1010–0061).

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 Part 206, Subpart B—Indian Oil, § 206.55—Determination of Transportation Allowances [Form MMS–4110 (and Schedule 1), Oil Transportation Allowance Report]." We changed the title of this ICR to clarify the regulatory language we are covering under 30 CFR part 206. The previous title was "Oil Transportation Allowances."

DATES: Submit written comments on or before June 25, 2004.

ADDRESSES: Submit written comments to Sharron L. Gebhardt, Lead Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, 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 e-mail 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 that we have received your e-mail, contact Ms. Gebhardt at (303) 231–3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3781, or e-mail *sharron.gebhardt@mms.gov*.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 206, Subpart B—Indian Oil, § 206.55—Determination of Transportation Allowances [Form MMS–4110 (and Schedule 1), Oil Transportation Allowance Report].

OMB Control Number: 1010–0061.

Bureau Form Number: Form MMS–4110.

Abstract: The Secretary of the U.S. Department of the Interior 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 resource production on Federal and Indian lands, collect the royalties due, and distribute the funds in accordance with those laws. The Secretary also has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. The MMS performs the royalty management functions and assists the Secretary in carrying out the Department's Indian trust responsibility. Applicable citations of the laws pertaining to mineral leases on Indian lands include 25 U.S.C. 369d (Chapter 12—Lease, Sale or Surrender of Allotted or Unallotted Lands); 25 U.S.C. 2103 (Indian Minerals Development Act); and Public Law 97–451-Jan. 12, 1983 (Federal Oil and Gas Royalty Management Act of 1982).

When a company or an individual enters into a lease to explore, develop, produce, and dispose of minerals from Federal or Indian lands, that company or individual agrees to pay the lessor a share (royalty) of the value received from production from the leased lands. The lease creates a business relationship between the lessor and the lessee. The lessee is required to report various kinds of information to the lessor relative to the disposition of the leased minerals. Such information is similar to data reported to private and public mineral interest owners and is generally available within the records of the lessee or others involved in developing, transporting, processing, purchasing, or selling of such minerals. The information collected includes data necessary to ensure that the royalties are paid appropriately.

Proprietary information submitted to MMS under this collection is protected, and no items of a sensitive nature are collected. A response is required to obtain the benefit of a transportation allowance on an Indian lease.

Transportation Allowances.—Under certain circumstances, lessees are authorized to deduct from royalty payments the reasonable actual costs of transporting the royalty portion of produced minerals from the lease to a processing or sales point not in the immediate lease area. Transportation allowances are part of the product valuation process MMS uses to determine if the lessee is reporting and paying the proper royalty amount.

The MMS collects transportation allowance data on the Form MMS–4110 (and Schedule 1), Oil Transportation Allowance Report. The MMS and tribal personnel use the information collected on Form MMS–4110 to evaluate the reasonableness of allowances claimed by lessees. To take a transportation deduction, a lessee must submit Form MMS–4110 before or in the same month the transportation allowance is reported on the Form MMS–2014, Report of Sales and Royalty Remittance (OMB Control Number 1010–0140).

Frequency of Response: On occasion.

Estimated Number and Description of Respondents: 10 Indian lessees.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 230 hours.

We are revising this ICR to include reporting requirements that were overlooked in the previous renewal, and we have increased the burden hours accordingly. The following chart shows the estimated burden hours by CFR section and paragraph:

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS CHART

30 CFR section	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
206.55 Determination of Transportation Allowances				
206.55(a)(1)(i)	*Arm's-length transportation contracts.* * * * Before any deduction may be taken, the lessee must submit a completed page one of Form MMS–4110 (and Schedule 1), Oil Transportation Allowance Report * * *.	See § 206.55(c)(1)(i) and (iii) below.		
206.55(b)(1)	*Non-arm's-length or no contract.* * * * Before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS–4110 in its entirety * * *.	See § 206.55(c)(2)(i), (iii), and (iv) below.		
206.55(c)(1)(i)	*Reporting requirements. Arm's-length contracts.* With the exception of those transportation allowances specified in paragraphs (c)(1)(v) and (c)(1)(vi) of this section, the lessee shall submit page one of the initial Form MMS–4110 (and Schedule 1), Oil Transportation Allowance Report, prior to, or at the same time as, the transportation allowance determined under an arm's-length contract, is reported on Form MMS–2014, Report of Sales and Royalty Remittance. * * *.	4	10	40

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS CHART—Continued

30 CFR section	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
206.55(c)(1)(iii)	*Arm's-length contracts.* After the initial reporting period and for succeeding reporting periods, lessees must submit page one of Form MMS–4110 (and Schedule 1) within 3 months after the end of the calendar year, or after the applicable contract or rate terminates or is modified or amended, whichever is earlier, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).	3	10	30
206.55(c)(1)(iv)	*Arm's-length contracts.* MMS may require that a lessee submit arm's-length transportation contracts, production agreements, operating agreements, and related documents. Documents shall be submitted within a reasonable time, as determined by MMS.	2	10	20
206.55(c)(2)(i)	*Non-arm's-length or no contract.* With the exception of those transportation allowances specified in paragraphs (c)(2)(v), (c)(2)(vii) and (c)(2)(viii) of this section, the lessee shall submit an initial Form MMS–4110 prior to, or at the same time as, the transportation allowance determined under a non-arm's-length contract or no-contract situation is reported on Form MMS–2014. * * * The initial report may be based upon estimated costs.	6	10	60
206.55(c)(2)(iii)	*Non-arm's-length or no contract.* For calendar-year reporting periods succeeding the initial reporting period, the lessee shall submit a completed Form MMS–4110 containing the actual costs for the previous reporting period. If oil transportation is continuing, the lessee shall include on Form MMS–4110 its estimated costs for the next calendar year. * * * MMS must receive the Form MMS–4110 within 3 months after the end of the previous reporting period, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).	6	10	60
206.55(c)(2)(iv)	*Non-arm's-length or no contract.* For new transportation facilities or arrangements, the lessee's initial Form MMS–4110 shall include estimates of the allowable oil transportation costs for the applicable period * * *.	See § 206.55(c)(2)(i) above.		
206.55(c)(2)(vi)	*Non-arm's-length or no contract.* Upon request by MMS, the lessee shall submit all data used to prepare its Form MMS–4110. The data shall be provided within a reasonable period of time, as determined by MMS.	2	10	20
Total	.....	.....	60	230

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 that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. 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 affected 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 cost 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; or (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. The ICR also will 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 also will make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Upon request, we will withhold an individual respondent's home address from the public record, as 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 your request 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: April 19, 2004.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 04–9443 Filed 4–23–04; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

60-day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

AGENCY: National Park Service, Interior.

ACTION: Notice of request for comments.

SUMMARY: Under the Paperwork Reduction Act of 1995 and 5 CFR part 1320, Reporting and Recordkeeping Requirements, the National Park Service (NPS) invites public comments on an extension of a currently approved information collection (OMB #1024–0037). The NPS specifically requests comments on (1) The need for the information including whether the information has practical utility; (2) the accuracy of the reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

The NPS requests comments on an application form that Federal agencies use to issue permits to qualified individuals and institutions desiring to excavate or remove archeological resources from public or Indian lands. The NPS will use the comments submitted to determine whether or not to make modifications to the application form. Once the NPS makes any modifications that it may decide to adopt, the NPS plans to submit a proposed collection of information package to OMB with a request that OMB approve the package and extend the approved clearance. Copies of the request and related forms and explanatory material may be obtained by contacting the individual named below.

DATES: Public comments will be accepted on or before June 25, 2004.

Send Comments To: Dr. Francis P. McManamon, Manager, Archeology and Ethnography Program, National Park Service, 1849 C Street, NW. (2275), Washington, DC 20240. Street address: 1201 I Street, NW. (2275), Washington, DC 20005, Phone (202) 354–2123. Fax: (202) 371–5102.

If you wish to comment, you may submit your comments using several methods. You may mail comments to the postal address given here. You may fax your comments to the fax number given. You may also hand-deliver comments to the street address given here. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. 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.

To Request Printed Copies of the Documents Contact: Dr. Francis P. McManamon, Manager, Archeology and Ethnography Program, National Park Service. Mailing address: 1849 C Street, NW. (2275), Washington, DC 20240. Street address: 1201 I Street NW. (2275), Washington, DC 20005 Phone (202) 354–2123. Fax: (202) 371–5102.

SUPPLEMENTARY INFORMATION:

Title: Application for and Issuance of Federal Permits Under the Archeological Resources Protection Act and the Antiquities Act.

Departmental Form Numbers: DI–1926 (permit application), DI–1991 (permit form).

OMB Number: 1024–0037.

Expiration date: November 30, 2004.

Type of request: Extension of a previously approved collection.

Description of need: Information collected responds to statutory requirements that Federal agencies; (1) Issue permits to qualified individuals and institutions desiring to excavate or remove archeological resources from public or Indian lands, and (2) specify terms and conditions, including reporting requirements, in permits. The information collected is reported annually to Congress and is used for land management purposes.

Description of respondents: Individuals, businesses, academic institutions, tribes or tribal members, Federal agencies and other parties wishing to excavate or remove archeological resources from public or Indian lands.

Estimated average number of respondents: 700.

Estimated average number of responses: 2100.

Estimated average burden hours per response: 2.5 hours.

Estimated annual reporting burden: 1750.

Dated: March 18, 2004.

Leonard E. Stowe,

NPS Information Collection Clearance Officer, Washington Administrative Program Center.

[FR Doc. 04–9346 Filed 4–23–04; 8:45 am]

BILLING CODE 4312–50–M

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan, Draft Environmental Impact Statement, Colorado National Monument, Colorado

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availability of the draft environmental impact statement for the general management plan, Colorado National Monument.

SUMMARY: Under the provisions of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(c), the National Park Service announces the availability of the draft environmental impact statement for the general management plan for Colorado National Monument, Colorado.

DATES: The National Park Service will accept comments from the public on the Draft Environmental Impact Statement for 60 days after the publication of this notice. Public meetings will be scheduled in the vicinity of the monument and announced in the local media.

ADDRESSES: Copies of the document will be available at the following locations:

Colorado National Monument Visitor Center/Headquarters, 7 miles east of Fruita on Rim Rock Drive, Fruita, CO 81521–0001, Tel: (970) 858–3617.

Fruita Branch Mesa County Public Library District, 325 East Aspen Avenue, Fruita, CO 81521, Tel. (970) 858–7703.

Mesa County Central Library, 530 Grand Avenue, Grand Junction, CO 81502–5019, Tel. (970) 243–4442.

On the Web at: *http://planning.nps.gov/plans.cfm.*

FOR FURTHER INFORMATION CONTACT: Superintendent Palma Wilson, Colorado National Monument, Fruita, CO 81521–0001; Tel: (970) 858–3617; fax: (970) 858–0372; e-mail: *palma_wilson@nps.gov.*

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit your comments by several methods: (1) Mail to Suzanne Stutzman, National Park Service, IMDE–PE, 12795 W. Alameda Parkway, P.O. Box 25287, Denver, CO 80225–0287; (2) e-mail to *suzy_stutzman@nps.gov;* (3) utilize the "input" section of the Colorado National Monument planning Web site at *http://planning.nps.gov/plans.cfm;* (4) hand-deliver comments to Colorado National Monument visitor center/headquarters 7 miles east of Fruita, Colorado, on Rim Rock Drive. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: February 20, 2004.

Michael D. Snyder,

Deputy Director, Intermountain Region.

[FR Doc. 04–9349 Filed 4–23–04; 8:45 am]

BILLING CODE 4312–CP–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability (NOA) for a Draft Environmental Impact Statement

AGENCY: National Park Service, Interior.

SUMMARY: This notice is being published in accordance with 40 CFR 1506.6. Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the U.S. Department of the Interior, National Park Service (NPS) has prepared a Draft Environmental Impact Statement (DEIS) for the Feasibility Study (Special Resource Study) on the Preservation of Civil War Battlefields and Related Historic Sites along the Vicksburg Campaign Trail (VCT) in Arkansas, Louisiana, Mississippi, and Tennessee. More than 500 sites were examined with a view to how they might best be preserved and linked together into the Vicksburg Campaign Trail Initiative. The study process evaluated the national significance, suitability, feasibility, and management options for each identified site according to NPS standards and criteria established by the Civil War Sites Advisory Commission Report on the Nation's Civil War Battlefields (1993).

Experts and professional historians evaluated each site to determine whether it qualifies as Tier One (Decisive-Major), Tier Two (Formative), or Tier Three (Limited) as well as Associated Sites (non-battlefield) and submerged resources. Decisive battles (Tier One sites) had a direct, observable impact on the direction, duration, conduct, or outcome of the Civil War. Major battles (also Tier One) had a direct, observable impact on the direction, duration, conduct, or outcome of the Vicksburg Campaign. Formative battles (Tier Two sites) had an observable influence on the direct, duration, or conduct of the Vicksburg Campaign. Tier Three (Limited) sites typically involved detachments of the field armies, in which a commander achieved a limited tactical objective of reconnaissance, defense, or occupation, without observable influence on the direction of the campaign. The study identified 19 Tier One, 26 Tier Two, 131 Tier Three, and numerous associated sites, for a total of over 500 sites included in the Vicksburg Campaign Trail.

Based on this evaluation, some Tier One sites have been recommended for addition to the National Park System. Protection and interpretation of sites not recommended for addition to the National Park System will be sought via other arrangements that may include management by other Federal agencies, State or local governments, non-profit organizations or private owners. These different management options form the basis for three alternatives, the environmental impacts of which are analyzed in the DEIS:

Alternative A: No Action. The Federal Government/NPS would take no action to enhance the preservation of battlefields and other historic sites and resources associated with the Vicksburg Campaign Trail. No new sites among the over 500 identified Tier One, Two, Three, and associated properties would be added to the National Park System and no Federal efforts would be undertaken to link individual sites into a campaign trail initiative.

Alternative B: Limited Preservation—Tier One Actions. The NPS would engage in the protection/preservation of all sites associated with the Vicksburg Campaign Trail that have been recognized as being nationally significant, *i.e.* the Tier One Sites. Actions would range from direct acquisition by the NPS of some sites (such as Fort Heiman, now in private ownership) to assisting other managing authorities in the protection and preservation of other sites (*e.g.* Fort Pillow). While the Tier One sites would be acknowledged and linked, no formal VCT Initiative would be established.

Alternative C: Comprehensive Preservation—The Vicksburg Campaign Trail Initiative. This is the preferred alternative and constitutes the recommendation of the Feasibility

Study. All sites associated with the Vicksburg Campaign Trail would be linked in a formally designated VCT Initiative. As with Alternative B, Alternative C would seek to protect some nationally significant (Tier One) sites by addition to the National Park System.

Environmentally Preferred Alternative. Alternative A would generally not meet NEPA's goals. It allows for significant, irreplaceable historic resources to be degraded or lost. While both Alternatives B and C would contribute substantially to meeting the NEPA goals, Alternative C is the environmentally preferred alternative. Alternative C would achieve the most at preserving important historic and cultural aspects of our national heritage along the Vicksburg Campaign Trail, as well as providing for greater enhancement of the visitor experience than Alternative B.

DATES: As part of its efforts to comply with NEPA, gather input from the public, determine which issues to address in the EIS, and inform the public, agencies, and stakeholders of its ideas and options for the Vicksburg Campaign Trail, the NPS conducted a series of public scoping meetings in 2002. Meetings were conducted at the following locations and dates: Helena, Arkansas—March 4, 2002, Grenada, Mississippi—March 5, 2002, Jackson, Mississippi—March 6, 2002, Tallulah, Louisiana—March 7, 2002, Baton Rouge, Louisiana—March 8, 2002, Dover, Tennessee—May 29, 2002, Murray, Kentucky—May 29, 2002, and Pickwick Landing State Park, Tennessee—May 30, 2002. Copies of the Draft Environmental Impact Statement will be available at the following locations: Vicksburg National Military Park, 3201 Clay Street, Vicksburg, Mississippi 39183; Shiloh National Military Park, 1055 Pittsburg Landing Road, Shiloh, Tennessee 38376; Arkansas Post National Memorial, 1741 Old Post Road, Gillet, Arkansas 72005; and, Fort Donelson National Battlefield, P.O. Box 434, 174 National Cemetery Drive, Dover, Tennessee 37058.

This Feasibility Study will be published on the Web at *http://planning.nps.gov/plans1.cfm.*

ADDRESSES: Comments on the Vicksburg Campaign Trail Feasibility Study Draft Environmental Impact Statement should be directed to Bill Koning, National Park Service, Denver Service Center, P.O. Box 25287, 12795 W. Alameda Parkway, Denver, Colorado 80225–0287.

FOR FURTHER INFORMATION CONTACT: Requests for information concerning the feasibility study and DEIS should be directed to Superintendent, Vicksburg National Military Park, 3201 Clay Street, Vicksburg, Mississippi 39183, (601) 636–0583, or Bill Koning, National Park Service, Denver Service Center, P.O. Box 25287, 12795 W. Alameda Parkway, Denver, Colorado 80225–0287, (303) 969–2390.

SUPPLEMENTARY INFORMATION: On July 4, 1863, after an eight-month campaign and siege, heavily-fortified Vicksburg, Mississippi capitulated to Federal forces commanded by General Ulysses S. Grant. This surrender gave the Union control of the Lower Mississippi River and effectively cut the Confederate States of America in half. It was regarded by many at the time, including President Abraham Lincoln, as one of the pivotal events of that great conflict; contemporary Civil War historians continue to regard it in that light. Grant's monumental campaign to capture the "Gibraltar of the Confederacy" is seen by military historians as a brilliant logistical exhibition, encompassing long and difficult flanking maneuvers, cavalry raids, pitched battles, naval engagements, and siege warfare. Grant's triumph at Vicksburg paved the way for his subsequent battles at Chattanooga in November 1863, and then—as commander of all Union armies—at the Wilderness and Petersburg. Ultimately, it made possible his eventual election as President of the United States.

In November 2000, Pub. L. 106–487 authorized a feasibility study of the preservation of Civil War battlefields along the Vicksburg Campaign Trail. The task is to examine and evaluate a variety of sites in states associated with the Civil War events of the Vicksburg Campaign. The feasibility study was to be completed within three years and was to examine a large number and wide variety of sites in Arkansas, Louisiana, Mississippi, and Tennessee. A technical correction is pending before Congress to add the Commonwealth of Kentucky to the study. Each site would be evaluated for national significance, as well as the suitability and feasibility of adding it to the National Park System. The DEIS now available for public review and comment analyzes the potential environmental effects of different management options for the sites found to be eligible for inclusion in the National Park System.

The legislation also directed (a) a review of current NPS programs, policies, and criteria to determine the most appropriate means of preservation; (b) evaluations for the establishment of a site and management entity consisting of a unit of government or private non-profit organization; and (c) recommendations to the states regarding the management, preservation, and interpretation of natural, cultural and historical resources associated with the various sites. Furthermore, the legislation directed that partnerships among Federal, state, and local governments, regional entities, and the private sector be identified to provide an effective means of preserving specific battlefield sites. Finally, the legislation required that methods of ensuring continued local involvement in the management of battlefield sites be explored.

Anonymous comments will not be considered. 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. However, individual respondents may request that we withhold their names and addresses from the public record, and we will honor such requests to the extent allowed by law. If you wish to withhold your name and/or address, you must state that request prominently at the beginning of your comment. Please note that due to public disclosure requirements, the NPS, if requested, may have to make the names and addresses of those who submit written comments public.

The responsible official for this DEIS is the Regional Director, National Park Service, Southeast Region, 100 Alabama Street, SW., Atlanta, Georgia 30303.

Dated: March 11, 2004.

Patricia A. Hooks,

Regional Director, NPS, Southeast Region.

[FR Doc. 04–9348 Filed 4–23–04; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Cape Cod National Seashore, South Wellfleet, MA; Cape Cod National Seashore Advisory Commission, Two Hundred Forty-Seventh Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, section 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on May 3, 2004.

The Commission was reestablished pursuant to Public Law 87–126 as amended by Public Law 105–280. The purpose of the Commission is to consult with the Secretary of the Interior, or his

designee, with respect to matters relating to the development of Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The Commission members will meet at 1 p.m. at Headquarters, Marconi Station, Wellfleet, Massachusetts for the regular business meeting to discuss the following:

1. Adoption of Agenda
2. Approval of Minutes of Previous Meeting (March 15, 2004)
3. Reports of Officers
4. Reports of Subcommittees
5. Superintendent's Report
   Salt Pond Visitor Center Update
   Public Transportation Planning
   Seacoast Communities Conference
   Mary Chase Dike Salinity Update
   News from Washington
6. Old Business
7. New Business
   Discussion of Field Trip
   Election of New Vice Chair
8. Date and agenda for next meeting
9. Public comment and
10. Adjournment

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to Commission members.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting. Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

Dated: March 18, 2004.

Maria Burks,

Superintendent.

[FR Doc. 04–9347 Filed 4–23–04; 8:45 am]

BILLING CODE 4310–WV–P

DEPARTMENT OF THE INTERIOR

National Park Service

Flight 93 National Memorial Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of May 14, 2004, meeting.

SUMMARY: This notice sets forth the date of the May 14, 2004, meeting of the Flight 93 Advisory Commission.

DATES: The public meeting will be held on May 14, 2004, from 10 a.m. to 4 p.m.

Location: The meeting will be held at the Flight 93 National Memorial office, 109 West Main Street, Newberry Building, Somerset, Pennsylvania, 15501.

Agenda

The May 14, 2004 meeting will consist of:

(1) Opening of Meeting and Pledge of Allegiance.

(2) Review and Approval of Minutes from February 20, 2004.

(3) Reports from the Flight 93 Memorial Task Force Committees and the National Park Service Administration Committee.

Lands/Resource Assessment Committee;

Memorial Ideas Planning Committee;

Design Solicitation Committee;

Fundraising Committee;

Government Relations Committee;

Public Relations Committee;

Archives Committee;

Temporary Memorial Management Committee;

Family Memorial Committee;

Families of Flight 93, Inc.;

National Park Service;

Comments from the public will be received after each committee briefing.

(4) Old Business.

(5) New Business.

(6) Closing Remarks.

FOR FURTHER INFORMATION CONTACT: Joanne M. Hanley, Superintendent, Flight 93 National Memorial, 109 West Main Street, Somerset, PA 15501.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Flight 93 Advisory Commission, 109 West Main Street, Somerset, PA 15501.

Dated: March 29, 2004.

Joanne M. Hanley,

Superintendent, Flight 93 National Memorial.

[FR Doc. 04–9345 Filed 4–23–04; 8:45 am]

BILLING CODE 4310–WH–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Change in Discount Rate for Water Resources Planning

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of change.

SUMMARY: The Water Resources Planning Act of 1965 and the Water Resources Development Act of 1974 require an annual determination of a discount rate for Federal water resources planning. The discount rate for Federal water resources planning for fiscal year 2004 is 5.625 percent. Discounting is to be used to convert future monetary values to present values.

DATES: This discount rate is to be used for the period October 1, 2003, through and including September 30, 2004.

FOR FURTHER INFORMATION CONTACT: James R. Handlon, Economist, Office of Program and Policy Services, Washington DC 20240; telephone: (202) 513–0603.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the interest rate to be used by Federal agencies in the formulation and evaluation of plans for water and related land resources is 5.625 percent for fiscal year 2004.

This rate has been computed in accordance with Section 80(a), Pub. L. 93–251 (88.Stat. 34) and 18 CFR 704.39, which: (1) Specify that the rate shall be based upon the average yield during the preceding fiscal year on interest-bearing marketable securities of the United States which, at the time the computation is made, have terms of 15 years or more remaining to maturity (average yield is rounded to nearest one-eighth percent); and (2) provide that the rate shall not be raised or lowered more than one-quarter of 1 percent for any year. The Treasury Department calculated the specified average to be 4.893 percent. Rounding this average yield to the nearest one-eight percent is 4.875 percent, which exceeds the permissible one-quarter of 1 percent change from fiscal year 2003 to 2004. Therefore, the change is limited to one-quarter of 1 percent.

The rate of 5.625 percent shall be used by all Federal agencies in the formulation and evaluation of water and related land resources plans for the purpose of discounting future benefits and computing costs or otherwise converting benefits and costs to a common time basis.

Editorial Note: This document was received in the Office of the Federal Register on April 21, 2004.

Dated: November 3, 2003.

Roseann Gonzales,

Acting Deputy Director, Office of Program and Policy Services.

[FR Doc. 04–9375 Filed 4–23–04; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–2104–14]

U.S.-Morocco Free Trade Agreement: Potential Economywide and Selected Sectoral Effects

AGENCY: United States International Trade Commission.

ACTION: Cancellation of public hearing.

EFFECTIVE DATE: April 20, 2004.

SUMMARY: On April 16, 2003, the Commission received notice that the only scheduled witnesses for the hearing for investigation No. TA–2104–14, *U.S.-Morocco Free Trade Agreement: Potential Economywide and Selected Sectoral Effects*, scheduled for April 29, 2004, have elected to have their written submission serve as a substitute for their oral statement. Therefore, the public hearing in connection with this investigation, scheduled to be held beginning at 9:30 a.m. on April 29, 2004, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC, is canceled. Notice of institution of this investigation and the scheduling of the hearing was published in the **Federal Register** of March 23, 2004 (69 FR 13583). To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received not later than COB May 6, 2004. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's Rules (19 CFR 201.8) (see Handbook for Electronic Filing Procedures, *ftp://ftp.usitc.gov/pub/reports/electronic_filing_handbook.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000 or edis@usitc.gov).

FOR FURTHER INFORMATION CONTACT: James Stamps, Project Leader, Office of Economics (202–205–3227 or *james.stamps@usitc.gov*). For information on the legal aspects of this investigation, contact William Gearhart of the Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). For media information, contact Peg O'Laughlin (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810).

List of Subjects

Morocco, tariffs, trade, imports and exports.

By order of the Commission.

Issued: April 20, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–9366 Filed 4–23–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[AAG/A ORDER NO. 004–2004]

Privacy Act of 1974; System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Department of Justice proposes to establish a new system of records entitled "Leave Sharing Systems," Justice/DOJ–010. The purpose of publishing this Department-wide notice is to record voluntary requests made by employees to either donate or receive annual leave, due to a medical emergency that requires an absence from work which will result in substantial loss of income to the employee. This Privacy Act notice covers both the Voluntary Leave Transfer Program and the Voluntary Leave Bank Program.

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30–day period in which to comment, and the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40–day period in which to conclude its review of the system. Therefore, please submit any comments by May 26, 2004. The public, OMB, and the Congress are invited to submit any comments to Mary E. Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC, 20530 (Room 1400, National Place Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress.

Dated: April 16, 2004.

Paul R. Corts,

Assistant Attorney General for Administration.

DEPARTMENT OF JUSTICE

SYSTEM NAME:

Leave Sharing Systems, JUSTICE/DOJ–010.

SECURITY CLASSIFICATION:

Not classified.

SYSTEM LOCATIONS:

Systems are maintained by designated Leave Transfer Coordinators throughout the Department of Justice (DOJ), Human Resources Offices, with the exception of the Leave Bank Coordinator, whose system is located at the following address: U.S. Department of Justice, Justice Management Division, 1331 Pennsylvania Ave., NW., Suite 1110, Washington, DC 20530. The Leave Transfer Coordinators' system location is shown in this notice under the Systems Managers and Addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the Voluntary Leave Transfer Program (VLTP) are current employees (recipients and donors) of the DOJ, and employees in other Federal agencies who make voluntary leave donations to or receive voluntary leave donations from DOJ employees, excluding employees of the Federal Bureau of Investigations (FBI), Central Intelligence Agency, Defense Intelligence Agency, National Security Agency or any other Executive Agency or unit thereof, as determined by the President, whose principal function is the conduct of foreign intelligence or counterintelligence activities.

Individuals covered by the Voluntary Leave Bank Program (VLBP) are current employees of the DOJ, excluding the FBI and Executive Office for U.S. Trustees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in the Voluntary Leave Transfer (VLT) system include two categories of records: Recipient records—VLT Recipient application, medical records, time and attendance report, and related comments; and Donor records—Authorization to Transfer Leave application, time and attendance report, and related comments.

Records maintained in the Voluntary Leave Bank (VLB) system include two categories of records: Recipient records—VLB Recipient application, medical records, time and attendance report, and related comments; and Donor records—Request for Leave or Approved Absence (SF–71), time and attendance report, and related comments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5, United States Code, Chapter 63, Subchapter III; 5 United States Code, Part 630, Subpart I and J; Public Law 103–103, the Federal Employees Leave Sharing Amendments Act of 1993.

PURPOSE OF THE SYSTEM:

The Voluntary Leave Transfer and Leave Bank systems record and track

donor and recipient leave or medical records to assist employees without available paid leave with medical or family emergencies that require an absence from duty. The VLTP covers employees who experience medical emergencies, as well as employees who are caring for family members who are experiencing medical emergencies. The VLBP works in conjunction with the existing VLTP in the Department. The Leave Bank accepts membership contributions of annual leave, and makes that leave available to qualified members who experience medical emergencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Pursuant to subsection (b) (3) of the Privacy Act, information may be disclosed from this system as follows:

A. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf and at the request of an individual who is the subject of the record.

B. To the National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

C. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when the DOJ determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator holds the records to be relevant to the proceeding.

D. To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion on such matters as settlements, plea bargaining, or in informal discovery proceedings.

E. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

F. To designated timekeepers to adjust employees' leave balances.

G. To designated Leave Bank Board members to administer donated leave, review recipients' applications, and make decisions on appeals.

H. To the Office of Personnel Management to evaluate the effectiveness of the program.

I. Where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate federal, state, local, foreign, or tribal, law enforcement authority or other appropriate agency charged with the responsibility of investigating or prosecuting such a violation or enforcing or implementing such law.

J. To appropriate officials and employees of a federal agency or entity which requires information relevant to a decision concerning the hiring, appointment, or retention of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract; or the issuance of a grant or benefit.

K. The Department of Justice may disclose relevant and necessary information to a former employee of the Department for purposes of: Responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not Applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Applications and medical records are stored in paper files. Time and attendance records are stored in an automated system. Paper files are stored in secured areas.

RETRIEVABILITY:

Information is retrieved by employee name, Social Security number, or report generated by an automated system.

SAFEGUARDS:

Safeguard measures include the use of secured areas, user identification and passwords with restricted access to data, and envelopes which appropriately identify the sensitive nature of the enclosed information.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the General Records Schedule 1, Civilian Personnel Records. They are destroyed one year after the end of the year in which the file is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Leave Bank System Manager: Director, Personnel Staff, Justice Management Division, 1331 Pennsylvania Ave., NW, Suite 1110, Washington, DC 20530.

Leave Transfer System Managers: Leave Transfer Coordinator:

Antitrust Division, Executive Officer, 601 D Street, NW, Rm. 10150, Washington, DC 20004

Civil Division, Director, Office of Administration, 1100 L Street, NW, Rm. 9018, Washington, DC 20530

Civil Rights Division, Executive Officer, 1425 New York Ave., NW, Rm. 5058, Washington, DC 20530

Criminal Division, Executive Officer, Office of Administration, 1400 New York Ave., NW, Rm. 5000, Washington, DC 20530

Environmental and Natural Resources Division, Executive Officer, 601 D Street, NW, Rm. 2038, Washington, DC 20004

Tax Division, Executive Officer, 601 D Street, NW, Rm. 7802, Washington, DC 20004

Drug Enforcement Administration, Deputy Assistant Administrator for Personnel, 700 Army Navy Drive, Rm. W3166, Arlington, VA 22202

Executive Office for Immigration Review, Office of the General Counsel, Employee and Labor Relations Unit, 5107 Leesburg Pike, Suite 2400, Falls Church, VA 22041

Executive Office for United States Attorneys, Personnel Staff, 600 E Street, NW, Room 8017, Washington, DC 20530

Executive Office for United States Trustees, Human Resource Division, 20 Massachusetts Ave., NW, Rm. 8209, Washington, DC 20530

Federal Bureau of Prisons, Human Resource Management Division, Labor Management Relations and Security Branch, 320 1st Street, NW, Bldg. 400, Washington, DC 20534

Office of Justice Programs, Office of Administration, Director, Office of Personnel, 810 7th Street, NW, Rm. 3330, Washington, DC 20531

United States Marshals Service Headquarters, Washington, DC 20530–1000

Office of the Inspector General, Personnel Officer, 1425 New York Ave., NW, Suite 7000, Washington, DC 20530

Bureau of Alcohol, Tobacco, Firearms and Explosives, Personnel Division, Employee and Labor Relations Team, 650 Massachusetts Ave., NW, Rm. 4300, Washington, DC 20010

Other Offices, Boards, and Divisions: Director, Human Resources, Justice Management Division, 1331 Pennsylvania Ave., NW, Suite 1110, Washington, DC 20530

NOTIFICATION PROCEDURE:

Address inquiries to System Managers named above.

RECORD ACCESS PROCEDURES:

Requests for access to records from the system must be in writing to the

System Manager, and be clearly marked "Privacy Act Access Request." The request should include the component where the records reside, if known (generally, the employing component), and must include the requestor's name, title, organization, address, phone number and a general description and purpose of records sought, and must include the requestor's full name, current address, and date and place of birth. The request must be signed and dated and either notarized or submitted under penalty of perjury. Records will be released in accordance with the Freedom of Information Act, as well as the Privacy Act.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. Please include the information requested in "Record Access Procedures" above.

RECORD SOURCE CATEGORIES:

Sources of information include employees who make written requests for application to the leave sharing programs, including supporting documentation, such as time and attendance records and medical records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 04–9292 Filed 4–23–04; 8:45 am]
BILLING CODE 4410–CG–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 03–20]

William E. "Bill" Smith d/b/a B & B Wholesale; Denial of Application

On March 31, 2003, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to B & B Wholesale (Respondent), proposing to deny its application executed on May 21, 2002, for DEA Certificate of Registration as a distributor of list I chemicals. The Order to Show Cause alleged that granting the application of the Respondent would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(h) and 824(a).

The Order to Show Cause was delivered to the Respondent by certified mail, and the Respondent timely requested a hearing under the business name "William "B" Smith d/b/a B & B Wholesale." On April 25, 2003, the presiding Administrative Law Judge Mary Ellen Bittner (Judge Bittner) issued an Order for Prehearing Statements, directing the Respondent to file a prehearing statement no later than June 9, 2003. However, the Respondent did not file a prehearing statement as directed. In her June 26, 2002, Order Terminating Proceedings, Judge Bittner deemed the Respondent as having waived its right to a hearing in the matter. Following the termination of proceedings, Judge Bittner transmitted the matter to the Deputy Administrator for issuance of a final order.

In light of the above, the Acting Deputy Administrator similarly finds that the Respondent has waived its hearing right. *Aqui Enterprises,* 67 FR 12576 (2002). After considering relevant material from the investigative file in this matter, the Acting Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1309.53(c) and (d) and 1316.67 (2003).

List I chemicals are those that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine and ephedrine are list I chemicals commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. Phenylpropanolamine, also a list I chemical, is presently a legitimately manufactured and distributed product used to provide relief of the symptoms resulting from irritation of the sinus, nasal and upper respiratory tract tissues, and is also used for weight control. Phenylpropanolamine is also a precursor chemical used in the illicit manufacture of methamphetamine and amphetamine. Methamphetamine is an extremely potent central nervous system stimulant, and its abuse is an ongoing public health concern in the United States.

The Acting Deputy Administrator's review of the investigative file reveals that DEA received an application dated May 21, 2002, from the Respondent located in Huntingdon, Tennessee. The application was submitted on behalf of the Respondent by its owner, Bill Smith (Mr. Smith). The Respondent seeks DEA registration as a distributor of the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine. There is no evidence in the investigative file that the Respondent has sought to modify its pending registration application in any respect.

On August 1, 2002, a DEA Diversion Investigator conducted a pre-registration inspection of the Respondent's premises, where he met with Mr. Smith. During the inspection, the Diversion Investigator advised Mr. Smith of regulatory requirements and problems surrounding the diversion of list I chemicals. The Diversion Investigator also reviewed security, recordkeeping and distribution procedures with Mr. Smith and provided him with appropriate materials regarding DEA requirements for handlers of listed chemicals.

Mr. Smith stated that he is sole owner and the only employee of his company. DEA's investigation revealed that the Respondent is a distributor of general merchandise, and distributes a variety of items including gloves, lighters, novelty items, sundry items and a variety of other merchandise. The company is located in a predominantly residential area at Mr. Smith's residence, and sells various items that would be carried in a convenience store.

Mr. Smith further disclosed that he previously owned Bill's Bait and Tackle in Huntingdon, Tennessee, a business he owned and operated for approximately twenty-five years. According to Mr. Smith, Bill's Bait and Tackle sold a variety of fishing and tackle items and also sold list I chemical products. Following the dissolution of that business, Mr. Smith started B&B Wholesale in May 2002. The DEA investigative file reveals that an application for an unspecified DEA registration was filed on behalf of Bill's Bait and Tackle by Bill Smith, however, that application was withdrawn in January 1999.

Mr. Smith further stated that approximately five to ten percent of his business would be devoted to the sale of list I chemical products. Among the list I products that Mr. Smith planned for distribution were brand names such as Mini Thins, Max Brand, Tylenol Cold and Sinus, Tylenol Allergy and Sinus, Vicks NyQuil Liquitabs, Alka Seltzer Plus, Cold, Actifed, Sudafed and Advil Cold and Sinus. Mr. Smith added that he would limit the amount of Mini Thin and Max Alert products specifically in stock to 288 bottles.

When asked about potential suppliers of listed chemicals to his company, Mr. Smith informed DEA personnel that he planned to purchase these products from a company located in East, Lexington, Tennessee. In an unrelated investigation of that company, DEA found that the company supplied its listed chemical products primarily to convenience stores and gas stations. That investigation further revealed that

the company's own suppliers have been identified as companies whose products have been seized from clandestine methamphetamine labs, and the company was unable to account for quantities of listed chemicals it bought and sold.

With respect to potential customers, Mr. Smith stated that he has approximately forty to fifty customers, which are primarily convenience stores and gas stations. Of that number, approximately thirty-five customers planned on purchasing list I chemical products from the Respondent. Mr. Smith also stated that he verifies and identifies a customer by physically going to the site. Mr. Smith further explained that his customer base range is within 100 miles of Huntingdon, Tennessee and his customers have told him that when he received his DEA Registration Certificate, they would only buy list I chemical products from the Respondent.

DEA's investigation further revealed that the Respondent's proposed storage area for listed chemicals is the front cab of a Ford Ranger truck. Mr. Smith told the DEA that list I chemical products would be stored in the front of the cab only and would be stored only from the time that he picked them up on Wednesday morning to the time they were delivered on the same day. Mr. Smith further stated that the doors to the truck remained locked when the vehicle was not occupied, and the truck contains an electronic burglar alarm that emits an audible sound when activated. When not in use, the truck is parked outdoors in a driveway.

Pursuant to 21 U.S.C. 823(h), the Acting Deputy Administrator may deny an application for Certificate of Registration if she determines that granting the registration would be inconsistent with the public interest as determined under that section. Section 823(h) requires the following factors be considered in determining the public interest:

(1) Maintenance of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance with applicable Federal, State, and local law;

(3) Any prior conviction record under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

As with the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Acting Deputy Administrator may rely on any one or combination of factors, and may give each factor the weight she deems appropriate in determining whether a registration should be revoked or an application for registration denied. *See, e.g., Energy Outlet*, 64 FR 14269 (1999). *See also Henry J. Schwartz, Jr., M.D.*, 54 FR 16422 (1989).

The Acting Deputy Administrator finds factors one, four and five relevant to the Respondent's pending registration application.

With regard to factor one, maintenance of effective controls against diversion of listed chemicals into other than legitimate channels, the DEA pre-registration inspection documented inadequate security at the proposed registered location of the Respondent. Mr. Smith has proposed the storage of listed chemical products inside of a pickup truck which is routinely parked in an outside driveway. Despite Mr. Smith assurances that he can safely secure these products, the Acting Deputy Administrator finds the prospect of listed chemicals being stored in an unattended vehicle as fraught with the dangers of diversion. Therefore, this factor weighs against the granting of the respondent's pending registration application.

With respect to factor four, the applicant's past experience in the distribution of chemicals, the Acting Deputy Administrator finds this factor relevant to Mr. Smith's apparent lack of experience in the handling of list I chemical products. The DEA investigative file shows that the Respondent is a retailer of general merchandise and before that, Mr. Smith operated a bait and tackle concern. Mr. Smith's past history as an entrepreneur suggests that he has not had any experience in handling listed chemical products. In prior DEA decisions, such a lack of experience in the handling list I chemicals was a factor in a determination to deny a pending application for DEA registration. *See, Matthew D. Graham*, 67 FR 10229 (2002); *Xtreme Enterprises, Inc.*, 67 FR 76195 (2002). Therefore, this factor similarly weights against the granting of the Respondent's pending application.

With respect to factor five, other factors relevant to and consistent with the public safety, the Acting Deputy Administrator finds this factor relevant to the Respondent's proposal to distribute listed chemical products primarily to convenience stores and gas stations. While there are no specific prohibitions under the Controlled Substance Act regarding the sale of listed chemical products to these entities, DEA has nevertheless found that business establishments such as gas stations and convenience stores constitute sources for the diversion of listed chemical products. *See, e.g., Sinbad Distributing*, 67 FR 10232, 10233 (2002); *K.V.M. Enterprises*, 67 FR 70968 (2002) (denial of application based in part upon information developed by DEA that the applicant proposed to sell listed chemicals to gas stations, and the fact that these establishments in turn have sold listed chemical products to individuals engaged in the illicit manufacture of methamphetamine); *Xtreme Enterprises, Inc., supra.*

On a related note, factor five is relevant to the distribution practices of the Respondent's proposed supplier of listed chemicals which have resulted in the diversion of these products. The Acting Deputy Administrator also finds this factor relevant to the stated intentions of some of the Respondent's customers who have expressed the desire to purchase only listed chemicals products from the Respondent, despite the latter's sale of various other products.

As noted above, there is no evidence in the investigative file that the Respondent has sought to modify its pending application with regard to listed chemical products it seeks to distribute. Among the listed chemical products the Respondent intends to distribute is phenylpropanolamine. In light of this development, the Acting Deputy Administrator also finds factor five relevant to the Respondent's request to distribute phenylpropanolamine, and the apparent lack of safety associated with the use of that product. DEA has previously determined that an applicant's request to distribute phenylpropanolamine constitutes a ground under factor five for denial of an application for registration. *Shani Distributors, supra.* Based on the foregoing, the Acting Deputy Administrator concludes that granting the pending application of the Respondent would be inconsistent with the public interest.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the pending application for DEA Certificate of Registration, previously submitted by William E. "Bill" d/b/a B&B Wholesale be, and it hereby is, denied. This order is effective May 26, 2004.

Dated: March 29, 2004.

Michele M. Leonhart,

Acting Deputy Administrator.

[FR Doc. 04–9336 Filed 4–23–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Gazaly Trading; Denial of Application

On March 14, 2003, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Gazaly Trading (Gazaly) proposing to deny its application executed on November 9, 2000, for DEA Certificate of Registration as a distributor of list I chemicals. The Order to Show Cause alleged that granting the application of Gazaly would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(h) and 824(a). The Order to Show Cause also notified Gazaly that should no request for a hearing be filed within 30 days, its hearing right would be deemed waived.

According to the DEA investigative file, the Order to Show Cause was sent by certified mail to Gazaly at its proposed registered location and was received on March 24, 2003. DEA has not received a request for hearing or any other reply from Gazaly or anyone purporting to represent the company in this matter.

Therefore, the Acting Deputy Administrator of DEA, finding that (1) thirty days having passed since the delivery of the Order to Show Cause to the applicant's last known address, and (2) no request for hearing having been received, concludes that Gazaly has waived its hearing right. *See Aqui Enterprises*, 67 FR 12576 (2002). After considering relevant material from the investigative file in this matter, the Acting Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1309.53 (c) and (d) and 1316.67 (2003). The Acting Deputy Administrator finds as follows:

List I chemicals are those that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine and ephedrine are list I chemicals commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. Phenylpropanolamine, also a list I chemical, is presently a legitimately manufactured and distributed product used to provide relief of the symptoms resulting from irritation of the sinus, nasal and upper respiratory tract tissues, and is also used for weight control. Phenylpropanolamine is also a precursor chemical used in the illicit manufacture of methamphetamine and amphetamine. Methamphetamine is an extremely potent central nervous system stimulant, and its abuse is an ongoing public health concern in the United States.

The Acting Deputy Administrator's review of the investigative file reveals that DEA received an application dated November 9, 2000, from Gazaly Trading located in Orlando, Florida. The application was submitted on behalf of Gazaly by its owner, Redwan Gazaly (Mr. Gazaly). Gazaly seeks DEA registration as a distributor of the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine. There is no evidence in the investigative file that Gazaly has sought to modify its pending registration application in any respect.

Following receipt of the above application, on December 28, 2000, DEA Diversion Investigators conducted an on-site pre-registration inspection at Gazaly's proposed registered location. During the inspection, Diversion Investigators advised Mr. Gazaly of regulatory requirements and problems surrounding the diversion of list I chemicals. The Diversion Investigators also reviewed security, recordkeeping and distribution procedures with Mr. Gazaly and provided him with appropriate materials regarding DEA requirements for handlers of listed chemicals.

During the pre-registration investigation, Mr. Gazaly informed DEA Diversion Investigators that he had no previous experience handling list I chemical products. Nevertheless, he anticipated that Gazaly's sale of those products would constitute approximately 10% of his business activity. Mr. Gazaly also further disclosed that his customers are convenience stores, gas stations, and general stores, and the purpose of obtaining a registration to distribute list I chemical was to ensure distribution of other products to his customers.

Mr. Gazaly also provided DEA a list of customers to whom listed chemical products would be sold. Upon review of the list it was learned that approximately fifteen potential customers of Gazaly were associated with criminal targets in previous DEA investigations. Several of Gazaly's potential customers were also targets of ongoing criminal cases, apparently related to unlawful handling of listed chemical products. In addition, Mr. Gazaly advised DEA Diversion Investigators that he would only distribute list I chemicals to customers located in the State of Florida; however, further review of the customer list revealed a business establishment located outside of Florida that was also the target of a DEA criminal investigation.

Pursuant to 21 U.S.C. 823(h), the Acting Deputy Administrator may deny an application for Certificate of Registration if she determines that granting the registration would be inconsistent with the public interest as determined under that section. Section 823(h) requires the following factors be considered in determining the public interest:

(1) Maintenance of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance with applicable Federal, State, and local law;

(3) Any prior conviction record under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

As with the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Acting Deputy Administrator may rely on any one or combination of factors, and may give each factor the weight she deems appropriate in determining whether a registration should be revoked or an application for registration denied. *See, e.g., Energy Outlet*, 64 FR 14269 (1999). *See also Henry J. Schwartz, Jr., M.D.*, 54 FR 16422 (1989).

The Acting Deputy Administrator finds factors four and five relevant to Gazaly's pending registration application.

With respect to factor four, the applicant's past experience in the distribution of chemicals, the Acting Deputy Administrator finds this factor relevant to Mr. Gazaly's lack of experience in the handling of list I chemical products. In prior DEA decisions, the lack of experience in the handling list I chemicals was a factor in a determination to deny a pending application for DEA registration. *See, Matthew D. Graham*, 67 FR 10229 (2002); *Xtreme Enterprises, Inc.*, 67 FR 76195 (2002). Therefore, this factor similarly weighs against the granting of Gazaly's pending application.

With respect to factor five, other factors relevant to and consistent with

the public safety, the Acting Deputy Administrator finds this factor relevant to Gazaly's proposal to distribute listed chemical products primarily to convenience stores and gas stations. While there are no specific prohibitions under the Controlled Substance Act regarding the sale of listed chemical products to these entities, DEA has nevertheless found that business establishments such as gas stations and convenience stores constitute sources for the diversion of listed chemical products. *See, e.g., Sinbad Distributing,* 67 FR 10232, 10233 (2002); *K.V.M. Enterprises,* 67 FR 70968 (2002) (denial of application based in part upon information developed by DEA that the applicant proposed to sell listed chemicals to gas stations, and the fact that these establishments in turn have sold listed chemical products to individuals engaged in the illicit manufacture of methamphetamine); *Xtreme Enterprises, Inc., supra.*

Factor five is also relevant to Gazaly's proposal to distribute to potential customers under criminal investigation, or to customers associated with firms that were the subject of criminal investigations. The conduct of a potential customer has been deemed a relevant consideration under factor five. *Shani Distributors,* 68 FR 62324, 62326 (2003).

As noted above, there is no evidence in the investigative file that Gazaly ever sought to modify its pending application with regard to listed chemical products its seeks to distribute. Among the listed chemical products that the firm seeks to distribute is phenylpropanolamine. In light of this development, the Acting Deputy Administrator also finds factor five relevant to Gazaly's request to distribute phenylpropanolamine, and the apparent lack of safety associated with the use that product. DEA has previously determined that an applicant's request to distribute phenylpropanolamine constitutes a ground under factor five for denial of an application for registration. *Shani Distributors, supra.* Based on the foregoing, the Acting Deputy Administrator concludes that granting the pending application of Gazaly would be inconsistent with the public interest.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the pending application for DEA Certificate of Registration, previously submitted by Gazaly Trading be, and it hereby is, denied. This order is effective May 26, 2004.

Dated: March 29, 2004.

Michele M. Leonhart,

Acting Deputy Administrator.

[FR Doc. 04–9334 Filed 4–23–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 03–41]

Alton E. Ingram, Jr., M.D.; Revocation of Registration

On June 25, 2003, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Alton E. Ingram, Jr., M.D. (Respondent) of Pensacola, Florida, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, BI3210642, as a practitioner, pursuant to 21 U.S.C. 824(a)(3) and deny any pending applications for renewal of that registration pursuant to 21 U.S.C. 832(f). As a basis for revocation, the Order to Show Cause alleged that Respondent's license to practice medicine in Florida had been indefinitely suspended and accordingly, he was not authorized to handle controlled substances in Florida, the State in which he is registered.

On August 6, 2003, Respondent, acting *pro se,* timely requested a hearing in this matter. On August 22, 2003, Administrative Law Judge Gail A. Randall (Judge Randall) issued the Government, as well as Respondent, an Order for Prehearing Statements.

In lieu of filing a prehearing statement, the Government filed Government's Request for Stay of Proceedings and Motion for Summary Disposition. The Government argued Respondent was without authorization to handle controlled substances in the State of Florida and, as a result, further proceedings in the matter were not required. Attached to the Government's motion was a copy of the State of Florida, Department of Health's Order of Emergency Suspension of License, indefinitely suspending Respondent's license to practice medicine in Florida, effective as of September 11, 2002.

On September 3, 2003, Judge Randall issued an Order and Notice providing Respondent an opportunity to respond to the Government's motion. Respondent filed a timely response, which included a concession that his authority to prescribe controlled substances in the State of Florida was then currently, albeit temporarily, suspended. Based on other issues raised in that response, Judge Randall ordered the Government to file an amendment to its Motion for Summary Disposition, which it did on October 10, 2003. Subsequently, the Government filed its October 14, 2003, Motion to Rescind Amended Motion for Summary Disposition (first amended motion), requesting that its accompanying Second Amended Motion for Summary Disposition be considered in lieu of the first amended motion. Judge Randall denied the motion to rescind the first amended motion as it was then a part of the administrative record. However, she accepted the Second Amended Motion for Summary Disposition for consideration on the merits.

On November 7, 2003, Judge Randall issued her Opinion and Recommended Decision of the Administrative Law Judge (Opinion and Recommended Decision). As part of her recommended ruling, Judge Randall granted the Government's Motion for Summary Disposition, finding Respondent lacked authorization to handle controlled substances in Florida, the jurisdiction in which he is registered. Judge Randall recommended that Respondent's DEA registration be revoked and any pending applications for renewal or modification of that registration be denied. No exceptions were filed by either party to Judge Randall's Opinion and Recommended Decision and on December 15, 2003, the record of these proceedings was transmitted to the Office of the DEA Deputy Administrator.

The Deputy Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues her final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Deputy Administrator finds that Respondent holds DEA Certificate of Registration, BI3210642, which expired on November 30, 2003, after initiation of these proceedings. The Deputy Administrator further finds that, effective as of September 11, 2002, the State of Florida, Department of Health issued its Order of Emergency Suspension of License, suspending respondent's authority to practice as a physician in the State of Florida. There is no evidence in the record indicating that this suspension has been stayed or that Respondent's license has been reinstated. As a result, he is not currently authorized to prescribe, dispense, administer, or otherwise handle controlled substances in the

State of Florida, his place of DEA registration.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without State authority to handle controlled substances in the State in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See Karen Joe Smiley, M.D.*, 68 FR 48944 (2003); *Dominick A. Ricci, M.D.*, 58 FR 51104 (1993); *Bobby Watts, M.D.*, 53 FR 11919 (1988). Revocation is also appropriate when a State license has been suspended, but with a possibility of future reactivation. *See Anne Lazar Thorn, M.D.*, 62 FR 12,847 (1997).

Here, it is clear Respondent currently lacks authority to handle controlled substances in Florida, the State in which he is registered with DEA as a practitioner. Therefore, DEA does not have authority to maintain Respondent's DEA Certificate of Registration for his Florida practice or to grant any pending applications for renewal or modification of that registration.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BI3210642, issued to Alton E. Ingram, Jr., M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective May 26, 2004.

Dated: April 7, 2004.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 04–9331 Filed 4–23–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated November 14, 2003, and published in the **Federal Register** on December 2, 2003 (68 FR 67475), Lifepoint, Inc., 10400 Trademark Street, Rancho Cucamonga, California 91730, made application by renewal to the Drug Enforcement Administration for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phencyclidine (7471)	II
Benzoylecogonine (9180)	II
Morphine (9300)	II

The firm plans to produce small quantities of controlled substances for use in drug test kits.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Lifepoint, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Lifepoint, Inc. to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with State and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed is granted.

Dated: April 1, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–9329 Filed 4–23–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Daniel A. Maynard, D.O.; Revocation of Registration

On June 23, 2003, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Daniel A. Maynard, D.O. (Dr. Maynard) of Dallas, Texas, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AM5672591 under 21 U.S.C. 824(a) and deny any pending applications for renewal or modification of that registration. As a basis for revocation, the Order to Show Cause alleged that Dr. Maynard is not currently authorized to practice medicine or handle controlled substances in Texas, his State of registration and practice. The order also notified Dr. Maynard that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Dr. Maynard at his address of record at 2929 Martin Luther King Jr. Blvd., Dallas, Texas 75215. According to the return receipt, on or around June 30, 2003, the Order was accepted on Dr. Maynard's behalf. DEA has not received a request for hearing or any other reply from Dr. Maynard or anyone purporting to represent him in this matter.

Therefore, the Acting Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Maynard is deemed to have waived his hearing right. *See Samuel S. Jackson, D.D.S.*, 67 FR 65145 (2002); *David W. Linder*, 67 FR 12579 (2002). After considering material from the investigative file, the Acting Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Acting Deputy Administrator finds that Dr. Maynard currently possesses DEA Certificate of Registration AM5672591. The Acting Deputy Administrator further finds that, effective June 20,2003, the Disciplinary Panel of the Texas State Board of Medical Examiners temporarily suspended Dr. Maynard's medical license. The suspension was based upon findings of fact that, *inter alia*, Dr. Maynard "exhibited a pattern of conduct involving improper non-therapeutic and medically unnecessary prescribing of narcotics, controlled substances and dangerous drugs to patients" and that such conduct "appears to have resulted in patient harm and is related to their deaths from apparent drug overdoses." Additionally, on June 20, 2003, the Texas Department of Public Safety, based upon the Board of Medical Examiner's license suspension, revoked Dr. Maynard's State of Texas, Department of Safety, Controlled Substance Registration.

The investigative file contains no evidence that the Board of Medical Examiner's Temporary Suspension Order has been stayed or that Dr. Maynard's medical license has been reinstated. Therefore, the Acting Deputy

Administrator finds that Dr. Maynard is not currently authorized to practice medicine in the State of Texas. As a result, it is reasonable to infer he is also without authorization to handle controlled substances in that State.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without State authority to handle controlled substances in the State in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See Muttaiya Darmarajeh, M.D.*, 66 FR 52936 (2001); *Dominick A. Ricci, M.D.*, 58 FR 51104 (1993); *Bobby Watts, M.D.*, 53 FR 11919 (1988).

Here, it is clear Dr. Maynard's medical license has been suspended and he is not currently licensed to handle controlled substances in Texas, where he is registered with DEA. Therefore, he is not entitled to a DEA registration in that State.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AM5672591, issued to Daniel A. Maynard, D.O., be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective May 26, 2004.

Dated: March 29, 2004.

Michele M. Leonhart,

Acting Deputy Administrator.

[FR Doc. 04–9332 Filed 4–23–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Timothy Norray; Denial of Application

On June 4, 2003, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Timothy Scott Norray (Mr. Norray), proposing to deny his application for DEA Certificate of Registration as a researcher. The Order to Show Cause alleged that granting Mr. Norray's application would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f). The show cause order also notified Mr. Norray that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Mr. Norray at his address of record and DEA received a signed receipt indicating that it was received by him on June 11, 2003. DEA has not received a request for hearing or any other reply from Mr. Norray or anyone purporting to represent him in this matter.

Therefore, the Acting Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Mr. Norray is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Acting Deputy Administrator now enters her final order without a hearing pursuant to 21 C.F.R. 1301.43(d) and (e) and 1301.46

The Acting Deputy Administrator finds that Mr. Norray submitted a DEA registration application dated December 30, 2001, seeking authorization to handle controlled substances in Schedules I through V as a researcher. Mr. Norray proposed as his registered location an address in Berne, New York. He requested registration for the following Schedules I and II controlled substances: heroin, marijuana, mescaline, peyote, cocaine, methadone and methamphetamine. Mr. Norray attached to his application, a protocol which stated in part, that he "will train and handle Labrador Retrievers to detect narcotics in schools and businesses throughout the New York area. . . with the goal of providing a pro-active program to reduce or eliminate drugs from our school or workplace."

On October 16, 2002, a DEA Diversion Investigator spoke with Mr. Norray by telephone regarding his intended use of a registration with DEA. Mr. Norray outlined his desire to establish a bomb and drug detection business using trained dogs. Mr. Norray stated that he already possessed a dog trained to detect explosives which he had purchased from a North Carolina dog trainer. He further stated that he had completed a course in North Carolina related to handling a bomb detection dog.

Mr. Norray also informed DEA that he had been investigated by the New York State Department of Health, Bureau of Controlled Substances (NYBCS) and had received a controlled substance license from that state agency under the researcher category. Mr. Norray further stated that he had obtained the required safe to store drugs, which was bolted to the floor as advised by a local state investigator.

On October 16, 2002, DEA personnel interviewed a researcher registered with the agency who stated that he trained and sold explosive and drug detection canines. The researcher further explained that he had was responsible for certifying Mr. Norray on a course involving work with dogs trained to detect explosives. The researcher added however, that Mr. Norray was not a dog trainer but had only learned to handle a trained dog.

A review of the investigative file reveals further that on October 17, 2002, DEA personnel spoke with an investigator for the NYBCS. That individual stated that his investigation of Mr. Norray consisted primarily of a criminal background check and a visit to the latter's residence. The NYBCS investigator further stated that in the absence of a criminal record for an applicant or indications of ongoing criminal activity at the proposed licensed location, it was automatic that a controlled substance license would be issued. The NYBCS investigator opined that the state criteria for the licensure of researchers were not stringent. DEA later confirmed that Mr. Norray had obtained state researcher licenses which authorized him to handle controlled substances in Schedules I through V.

On November 5, 2002, DEA personnel spoke with a sergeant from the office of the New York State Police in Albany. The officer informed DEA that he has trained over 250 dogs over the preceding nineteen years, and was at the time of DEA's investigation the officer in charge of the New York State Police K–9 Program (the K–9 Program) located in Cooperstown, New York. The DEA investigative report references a state of the art training facility operated by the K–9 Program, and how that unit is responsible for training explosive and drug detection canines.

The sergeant also informed DEA that the New York State Police have a certification course for police departments who purchase detection dogs from private kennels. The certification is restricted to law enforcement agencies. The sergeant also stated that he was aware of Mr. Norray based on the latter's request to attend the New York State Police certification course. The sergeant further stated that Mr. Norray's request for certification in the area of canine detection was denied because Mr. Norray was not affiliated with law enforcement.

On November 5, 2002, a DEA Diversion Investigator along with an officer from the New York State Police met with Mr. Norray at the latter's home in furtherance of DEA's pre-registration investigation. Mr. Norray showed the

officers his proposed storage area for controlled substances which was Mr. Norray's garage. The garage, a detached wooden structure, was not alarmed, nor was Mr. Norray's residence. DEA also found inside the garage, a metal cabinet and a safe, both bolted to the floor of the garage with concrete anchors and bolts. There was no alarm system for the safe.

Mr. Norray informed the officers that he has no law enforcement experience, and at the time of DEA's inspection he worked at a local plant of the General Electric Corporation in an unspecified capacity in the shipping and receiving department. Mr. Norray further divulged that while he has never been employed as a dog trainer and has no actual experience training dogs, he nevertheless planned to acquire a puppy and train the dog himself for the purpose of detecting illegal drugs.

Mr. Norray also discussed his planned approach for training dogs with controlled substances. Mr. Norray stated that he beleived that dogs trained with actual (*i.e.*, controlled) drugs were more effective than dogs trained exclusively with pseudo (simulated) drugs. Mr. Norray was then informed by the state officer that the state police trained detection canines with pseudo drugs because there was no danger of the animal ingesting the actual drug, especially during the initial stages of training. The officer added that dogs trained with pseudo drugs were able to find real drugs after the introduction of genuine drugs later in the training. When asked why he still wanted the DEA Registration if a dog could be effectively trained with pseudo drugs, Mr. Norray replied that it would be better if a detection business could claim to be licensed by the DEA." Mr. Norray further informed law enforcement personnel that he had no prospective customers for his drug detection service, and as of the date of DEA's interview, Mr. Norray had not had a paying customer for the explosive detection business.

Pursuant to 21 U.S.C. 823(f), the Acting Deputy Administrator may deny an application for a DEA Certificate of Registration if she determines that granting the registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate state licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable state, federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to considered in the disjunctive; the Acting Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight she deems appropriate in determining whether a registration should be revoked or an application for registration denied. *See Henry J. Schwartz, Jr., M.D.*, 54 FR 16,422 (1989).

It is clear that granting Mr. Norray's application for DEA Certificate of Registration would be inconsistent with the public interest. Mr. Norray has requested authorization to handle controlled substances in Schedules I through V although his registration application only reference drugs in Schedules I and II. The Acting Deputy Administrator finds that Mr. Norray's request to handle additional controlled substances beyond those set forth in his registration application are arguably in excess of what is required to conduct research involving canines.

The Acting Deputy Administrator also finds that Mr. Norray seeks to engage in an activity that is not needed in the area where he seeks registration. The investigative file reveals that Mr. Norray's place of business is located in the vicinity of both the New York State Police headquarters in Albany, as well as the canine kennels in Cooperstown, New York. The investigative file reveals further that the New York State Police provide canine detection services and have narcotics detection canines of sufficient numbers to service the needs of the law enforcement community, businesses and private citizens. DEA has previously found that anticipated duplication or unnecessarily performed services are relevant factors in determining whether or not an application for registration as a researcher should be denied. See, *e.g.*, *K–Nine Detectives*, 67 FR 76193 (2002); *Albanoski, Broughton & Associates International*, 57 FR 4646 (1992); *K–9 Drug Detection Services of Florida, Inc.*, 56 FR 5238 (1991).

DEA's investigation also revealed that Mr. Norray intends to train his drug detection dog entirely by himself. He is not recognized as a dog trainer in new York, and there is no information that he has ever worked or apprenticed at any organization that trains dogs such as the military, law enforcement or even pet obedience school. DEA has found that grounds exist to deny an application for registration as a researcher where, as in this matter, the applicant lacks relevant experience in training canines for drug detection purposes. *Angelos Michalatos d/b/a Contraband Searches and Investigations*, 54 FR 48161 (1989).

The Acting Deputy Administrator is also concerned with the apparent lack of security at the location where Mr. Norray proposes to store controlled substances. DEA's investigation revealed that Mr. Norray plans to store controlled substances in a wooden structured garage which is detached from the main residence, and without alarms to secure the doors, windows, or the bolted safe.

Finally, DEA's investigation revealed that the New York State Police has effectively trained drug detection dogs through the use of non-controlled substances, and Mr. Norray has no potential customers for the services he offers. Mr. Norray's statement to law enforcement personnel that a DEA registration would help further his business goals further supports the denial of his pending application.

In reviewing the instant request for DEA registration, and in light of Mr. Norray's failure to request a hearing, the Acting Deputy Administrator has only the benefit of the DEA investigative file in making a determination. No evidence has been submitted on behalf of the applicant. Therefore, the Acting Deputy Administrator concludes that Mr. Norray has failed to demonstrate a need for, or the ability to perform, the activity for which he seeks a registration to handle controlled substances. Based on the above, the Acting Deputy Administrator concludes that Mr. Norray's registration would be inconsistent with the public interest and therefore, his application for registration must be denied.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 28 CFR 0.100(b), hereby orders that the application for DEA Certificate of Registration as a researcher submitted by Timothy Norray be, and it hereby is, denied. This order is effective May 26, 2004.

Dated: March 29, 2004.

Michele M. Leonhart,

Acting Deputy Administrator.

[FR Doc. 04–9335 Filed 4–23–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Withdrawal of Application

By notice dated December 24, 2003, and published in the **Federal Register** on January 27, 2004 (68 FR 39437), Novartis Pharmaceuticals Corporation, Attn: Security Department, Building 103, Room 335, 59 Route 10, East Hanover, New Jersey 07936, made application by renewal to the Drug Enforcement Administration to be registered as a bulk manufacturer of Methylphenidate (1724), a basic class of controlled substance in Schedule II.

The firm planned to produce bulk product and finished dosage units for distribution to its customers.

By letter dated March 11, 2004, the firm stated that it is no longer engaged in the bulk manufacture of this controlled substance. The renewal application for Novartis Pharmaceuticals Corporation is hereby withdrawn.

Dated: April 1, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–9328 Filed 4–23–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of title 21 of the code of Federal Regulations (CFR), this is notice that on February 18, 2004, Penick, Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Ecgonine (9180)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II

The firm plans to manufacture bulk controlled substances and non-controlled substance flavor extracts.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD), and must be filed no later than June 25, 2004.

Dated: April 9, 2004

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–9326 Filed 4–23–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(1)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1301.34 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on February 18, 2004, Penick Corporation, 158 Mount Olivet Avenue, Neward, New Jersey 07114, made application by renewal to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed in Schedule II.

Drug	Schedule
Coca Leaves (9040)	II
Raw Opium (9600)	II
Poppy Straw (9650)	II
Concentrate Of Poppy Straw (9670).	II

The firm plans to import controlled substances to manufacture bulk pharmaceutical controlled substances and non-controlled substance flavor extract.

An manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed not later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: April 9, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–9327 Filed 4–23–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Merlin E. Shuck, D.V.M.; Revocation of Registration

On January 15, 2003, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Merlin E. Shuck, D.V.M. (Respondent), proposing to revoke his DEA Certificate of Registration, AS9668596, pursuant to 21 U.S.C. 824(a)(1) and 824(a)(4) and deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that the Respondent's continued

registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 824(a).

By letter dated February 3, 2003, the Respondent requested a hearing on the matters raised in the Order to Show Cause. On March 14, 2003, Administrative Law Judge Gail A. Randall (Judge Randall) issued an order requiring the Government to file its Pre-hearing Statement on or before March 21, 2003, and the Respondent was to file his Pre-hearing Statement by April 4, 2003.

On March 20, 2003, the Government timely filed its Pre-hearing Statement. However, the Respondent failed to file a Pre-hearing Statement by the date specified by Judge Randall's order. On April 16, 2003, Judge Randall issued a Notice and Order, requiring the Respondent to file his Pre-hearing Statement by May 2, 2003, or in the alternative, the Respondent was to file a status report with Judge Randall indicating his intentions with respect to his request for hearing. Judge Randall further informed the Respondent that failure to respond to the April 16 order would be construed as a waiver of his right to a hearing, resulting in termination of proceedings.

Despite the above notifications, the Respondent failed to file either a Pre-hearing Statement or Status Report. Accordingly, on May 9, 2003, Judge Randall issued an Order Terminating Proceedings, noting that the Respondent's lack of response was considered a waiver of the right to hearing and an implied withdrawal of a request for hearing.

DEA has not received a request for hearing or any other reply from the Respondent or anyone purporting to represent him in this matter. Therefore, the Acting Deputy Administrator finds as follow: (1) Respondent has requested a hearing, (2) the Respondent has been provided an opportunity to participate in such hearing by filing a Pre-hearing Statement and a Status Report, and (3) Respondent has failed to provide any written submissions indicating his intentions with respect to his request for hearing despite several opportunities to submit the same.

The Acting Deputy Administrator concludes that the Respondent is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Acting Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

On October 6, 1997, an opinion of the Supreme Court of Tennessee at Knoxville was issued in conjunction with a criminal proceeding involving the Respondent. In the opinion, it was found that the Respondent had worked as a practicing veterinarian in Morristown, Tennessee for over thirty years and had been "very active in civic and community affairs." The opinion further recounted that sometime in 1992, the Respondent developed an unusually close and protective relationship with a woman whom he had previously hired to work in his veterinarian clinic as an assistant. It appears from the aforementioned opinion that the Respondent's complicated arrangement with his female employee was reflected in conduct that ranged from the benevolent (*i.e.*, seeking to assist the employee to curb her dependence on alcohol) to the bizarre (repeatedly barging into the employee's apartment unannounced when the latter failed to show for work).

The Respondent's obsessive conduct eventually resulted in his seeking out a "hit man" to murder the female employee, her husband, as well as a male acquaintance of the employee. To that end, on December 16, 1993, the Respondent made a partial payment of five hundred dollars to an individual to help carry out the murders. It was agreed between the two that the individual would bring the employee and her husband to the Respondent, and the Respondent would then kill them by insertion of an unknown drug. However, unbeknown to the Respondent, the "hit man" turned out to be an undercover law enforcement agent for the Tennessee Bureau of Investigation (TBI). The meeting between the Respondent and the undercover agent was videotaped by the TBI. However, before the Respondent could pull off this criminal caper, he was arrested as he left the hotel room where the meeting took place.

On May 21, 1998, the Respondent entered guilty pleas to the offenses of solicitation to commit aggravated kidnapping (two counts) and solicitation to commit first degree murder (one count). The Respondent was subsequently sentenced to a period of incarceration totaling eight years; however, seven years of the sentence were suspended, and the Respondent was placed on supervised probation for seven years.

As a result of the Respondent's criminal convictions, the State of Tennessee, Department of Health, Board of Veterinary Medical Examiners (Veterinary Board) entered an Order dated March 1, 1999, where it placed the Respondent's state veterinary license on five years probation, and ordered the Respondent to pay fine of $5,000 as well as perform community service. There is no information in the investigative file regarding any compliance by the Respondent with the probationary conditions placed on his professional license.

On January 7, 2000, the Respondent submitted a renewal application for DEA registration as a hospital (animal shelter). The application was signed and dated by the Respondent. In response to the question 3(d) of the application which asks whether the applicant "ever had a state professional license or controlled substance registration revoked, suspended, denied, restricted, or placed on probation * * *, the Respondent provided a "no" response."

The investigative file also contains a second application for registration apparently submitted to DEA in or around March 2001 on behalf of the Respondent. It is unclear whether the second application sought to modify the renewal application, or sought registration at a new location. Nevertheless, the second application listed a proposed registered address different than that for the prior renewal application.

With respect to the March 2001 application, while it appears that a similar "no" response was provided to a question regarding adverse action against a state professional license, the Acting Deputy Administrator finds that this registration application does not appear to be a fully executed document, as it does not contain the required signature of the applicant or the date in which it was completed. The Acting Deputy Administrator is familiar with at least one DEA authority which suggests that a registration application is executed when accompanied by the signature of the applicant. *Hilltop Pharmacy*, 53 FR 35636 (1988). Therefore, having found that the March 2001 application was not properly executed, the Acting Deputy Administrator will not give consideration to the responses provided on the application.

Further review of the investigative file reveals that on November 2, 2000, an unidentified caller inquired with the Nashville DEA office about regulations concerning the administering and storing of controlled substances at a veterinary clinic in Morristown, Tennessee. The caller informed DEA personnel that bottles of sodium pentobarbital, a Schedule II controlled substance, were being stored at the clinic in a safe and a cabinet, and that opened bottles of the substance were being stored in an unlocked wooden cabinet. The caller voiced concerns that the opened bottles of sodium

pentobarbital were easily accessible to employees at the facility and subject to possible abuse. DEA also learned that the clinic in question was not registered with DEA to handle controlled substances and that the sodium pentobarbital was supplied to the facility by the Respondent.

On that same date, a DEA Diversion Investigator telephoned the Respondent regarding the information provided by the unidentified caller. The Respondent admitted that he was familiar with the clinic, that he supervised employees at that facility in their administering of sodium pentobarbital, and that he supplied that facility with the drug. The Respondent further admitted that he was aware that sodium pentobarbital was being stored at the clinic and that the facility was not registered with DEA.

On January 10, 2001, the DEA Nashville office issued a Letter of admonition to the Respondent, informing the Respondent that his distribution of sodium pentobarbital to the unregistered veterinary facility was in violation of 21 U.S.C. 828(a). In a response letter dated May 14, 2001, the Respondent stated in relevant part, that sodium pentobarbital was stored at the unregistered veterinary facility "as a matter of expediency," but that the drug had been kept locked in a safe, under his control.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Acting Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending applications for renewal of such registration, if she determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate state licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable state, federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Acting Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight she deems appropriate in determining whether a registration should be revoked or an application for registration denied. See *Henry J. Schwartz, Jr., M.D.*, 54FR 16,422 (1989).

First, pursuant to 21 U.S.C. 824(a)(1), a registration may be revoked if the registrant has materially falsified an application for registration. DEA has previously held that in finding that there has been a material falsification of application, it must be determined that the applicant knew or should have known that the response given tot he liability question was false. See, *James C. LaJavid, D.M.D.*, 64 FR 55962, 55964 (1999); *Martha Hernandez, M.D.*, 62 FR 61,145 (1997); *Herbert J. Robinson, M.D.*, 59 FR 6304 (1994).

As noted above, on March 1, 1999, the Veterinary Board entered an order placing the Respondent's state veterinary license on five years probation, and imposed additional conditions on that license including a fine of $5,000. Yet a review of the Respondent's DEA renewal application of January 7, 2000, reveals a "no" response to the liability question which asked whether the applicant has ever had a state professional license placed on probation. In light of this evidence, as well as the lack of evidence to the contrary, the Acting Deputy administrator is left to conclude that the Respondent knew or should have known that his "no" response to a liability question on a DEA registration application was false, and therefore, the Respondent materially falsified his application of registration. Accordingly, grounds exist to revoke the Respondent's registration pursuant to 21 U.S.C. 824(a)(1).

Next, the Acting Deputy administrator must consider whether Respondent's continued registration would be inconsistent with the public interest. As to factor one, the recommendation of the appropriate state licensing board or professional disciplinary authority, as noted above, the Veterinary Board imposed probationary conditions on the Respondent's state veterinary license as a result of his felony criminal convictions. The Acting Deputy administrator finds, that while the Respondent's licensure to practice veterinary medicine and handle controlled substances are not determinative in this proceeding, the imposition of probationary conditions on his professional license nevertheless weigh in favor of a finding that the Respondent's continued registration would be inconsistent with the public interest.

Factors two and four, Respondent's experience in handling controlled substances and his compliance with applicable controlled substance laws, are also relevant in determining the public interest in this matter. The record in this proceeding reveals that the Respondent stored and dispensed sodium pentobarbital at a non-registered location in Morristown, Tennessee, *i.e.*, the facility was not authorized to order and distribute controlled substances. In addition, the Respondent did not submit DEA 222 order forms when he distributed sodium pentobarbital to a veterinary facility, in violation of 21 U.S.C. 828(a) and 21 C.F.R. 1305.03. Therefore, the Acting Deputy Administrator finds the Respondent's failure to adhere to controlled substance laws and regulations with respect to the distribution and storage of sodium pentobarbital relevant under factors two and four, and also weigh in favor of a finding that his registration would be inconsistent with the public interest.

Factor three, the applicant's conviction record under federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances, is not relevant for consideration here, since there is no evidence that the Respondent has ever been convicted of any crime related to controlled substances.

With respect to factor five, other conduct that may threaten the public health and safety, the Acting Deputy Administrator finds this factor relevant to the Respondent's material falsification of a DEA renewal application, as well as his storage and distribution of controlled substances at an unregistered location. The record in this case further demonstrates that the Respondent executed guilty pleas to the offenses of solicitation to commit aggravated kidnapping and of solicitation to commit first degree murder.

While the above criminal convictions relate to conduct that took place more than ten years ago, the egregious nature of the Respondent's criminal conduct negatively reflects upon his fitness to possess a DEA registration. Criminal conduct unrelated to controlled substances, in particular, matters surrounding a registrant's arrest and conviction, have been relevant in determining the public interest under factor five. *Alexander Drug Company, Inc.*, FR 18299, 18304 (2001). The Acting Administrator also finds factor five relevant to the absence of evidence regarding any compliance by the Respondent with his criminal probation or with the probation imposed by the Veterinary Board.

The Acting Deputy Administrator finds that the Respondent has demonstrated conduct which reflects poor judgment and questionable character. His solicitation for the crime

of murder and kidnapping, and his plan to use drugs to facilitate these crimes is abominable. The Respondent also demonstrated his unfamiliarity with, or refusal to abide by, controlled substance laws and regulations by distributing and storing controlled substances at an unregistered location. Finally, the Respondent falsified an application for DEA registration by his failure to disclose the imposition of probation on his Tennessee state veterinary license. These factors, along with the absence of evidence to the contrary, lead to the conclusion that the Respondent's continued registration would be inconsistent with the public interest.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, AS9668596, previously issued to Merlin E. Shuck, D.V.M., be, and it hereby is, revoked. This order is effective May 26, 2004.

Dated: March 29, 2004.

Michele M. Leonhart,

Acting Deputy Administrator.

[FR Doc. 04–9333 Filed 4–23–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Mark G. Stallman, M.D., Denial of Application for Change of Registered Address

On July 18, 2003, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Mark G. Stallman, M.D. (Dr. Stallman) of Tucker, Georgia, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BS4792102, under 21 U.S.C. 824(a)(2) and (3) and deny his pending application for change of business address, control number C07848305K, pursuant to 21 U.S.C. 823(f). As a basis for revocation, the Order to Show Cause alleged that Dr. Stallman is not currently authorized to practice medicine or handle controlled substances in Georgia, his State of registration and practice. The Order further alleged that his continued registration was inconsistent with the public interest, based on (1) Dr. Stallman prescribing controlled substances that were not in the course of his professional practice, and (2) his April 2, 2003, conviction of eight felony counts of Illegally Dispensing (Prescribing) a Controlled Substance, in violation of the Georgia Controlled Substances Act, section 16–13–30(b). The Order also notified Dr. Stallman that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Dr. Stallman at his address of record at 5745 Lawrenceville Highway, Suite 204, Tucker, Georgia 30084. The Order was also sent by certified mail to Dr. Stallman's attorney, Mr. Barry Zimmerman, 8100–B Roswell Road, Suite 420, Atlanta, Georgia 30350. According to the return receipt, on July 28, 2003, the Order was received by Dr. Stallman's counsel. DEA has not received a request for hearing or any other reply from Dr. Stallman or anyone purporting to represent him in this matter.

Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Stallman is deemed to have waived his hearing right. *See Samuel S. Jackson, D.D.S.*, 67 FR 65145 (2002); *David W. Linder*, 67 FR 12579 (2002). After considering material from the investigative file, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Dr. Stallman currently possesses DEA Certificate of Registration BS4792102, expiring February 28, 2005, to handle Schedule II through V controlled substances. On January 2, 2002, he filed an application, assigned DEA control number C07848305K, requesting registration at a different address than his current registered location.

The Deputy Administrator further finds that, effective June 2, 2003, the Composite Board of Medical Examiners for the State of Georgia (Board) issued its Final Decision, approving the Initial Decision of an Administrative Law Judge recommending the indefinite suspension of Dr. Stallman's Georgia medical license. That suspension was based upon the finding of fact, *inter alia*, that on August 12, 1999, Dr. Stallman's license to practice medicine in the State of Illinois was suspended indefinitely by the Illinois Department of Professional Regulation as a result of his participation in a scheme to process fraudulent personal injury claims.

The investigative file contains no evidence that the Georgia Board's Final Decision has been modified or stayed or that Dr. Stallman's medical license in that State has been reinstated. Therefore, the Deputy Administrator finds that Dr. Stallman is not currently authorized to practice medicine in the State of Georgia. As a result, it is reasonable to infer he is also without authorization to handle controlled substances in that State.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without State authority to handle controlled substances in the State in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See Muttaiya Darmarajeh, M.D.*, 66 FR 52936 (2001); *Dominick A. Ricci, M.D.*, 58 FR 51104 (1993); *Bobby Watts, M.D.*, 53 FR 11919 (1988).

Here, it is clear Dr. Stallman's medical license has been suspended and he is not currently licensed to handle controlled substances in Georgia, where he is registered with DEA. Therefore, he is not entitled to a DEA registration in that State. Because Dr. Stallman is not entitled to a DEA registration in Georgia due to his lack of State authorization to handle controlled substances, the Deputy Administrator concludes it is unnecessary to address whether his registration should be revoked based upon the other grounds asserted in the Order to Show Cause. *See Fereida Walker-Graham, M.D.*, 68 FR 24761 (2003); *Nathaniel Aikins-Afful, M.D.*, 62 FR 16871 (1997); *Sam Moore, D.V.M.*, 58 FR 14428 (1993).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BS4792102, issued to Mark G. Stallman, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that the pending application for a change of registered location and any other pending applications for renewal or modification of Dr. Stallman's registration be, and they hereby are, denied. This order is effective May 26, 2004.

Dated: April 7, 2004.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 04–9330 Filed 4–23–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the CJIS Advisory Policy Board

AGENCY: Federal Bureau of Investigation (FBI), Justice.

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce the meeting of the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB). The CJIS APB is responsible for reviewing policy issues, uniform crime reports, and appropriate technical and operational issues related to the programs administered by the FBI's CJIS Division, and thereafter, make appropriate recommendations to the FBI Director. The programs administered by the FBI CJIS Division are: the Integrated Automated Fingerprint Identification System, the Interstate Identification Index, Law Enforcement Online, National Crime Information Center, the National Instant Criminal Background Check System, the National Incident-Based Reporting System, and Uniform Crime Reporting.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public wishing to file a written statement concerning the FBI's CJIS Division programs or wishing to address this session should notify the Designated Federal Employee, Mr. Roy G. Weise at (304) 625–2730, at least 24 hours prior to the start of the session.

The notification should contain the requestor's name, corporate designation, and consumer affiliation or government designation along with a short statement describing the topic to be addressed and the time needed for the presentation. A requestor will ordinarily be allowed no more than 15 minutes to present a topic.

Dates and Times: The APB will meet in open session from 8:30 a.m. until 5 p.m., on June 2–3, 2004.

ADDRESSES: The meeting will take place at Hyatt Regency Baltimore on the Inner Harbor, 300 Light Street, Baltimore, Maryland, telephone (410) 528–1234.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Ms. Lori A. Kemp, Management Analyst, Advisory Groups Management Unit, Programs Development Section, FBI CJIS Division, Module C3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306–0149, telephone (304) 625–2619, facsimile (304) 625–5090.

Dated: April 9, 2004.

Roy G. Weise,

Designated Federal Employee, Criminal Justice Information Services Division, Federal Bureau of Investigation.

[FR Doc. 04–9416 Filed 4–23–04; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: Survey of Infectious Disease in Correctional Facilities.

The Department of Justice (DOJ), Office of Justice Programs (OJP) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 69, Number 6, page 1605 on January 9, 2004, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until May 26, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- 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 agencies 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 submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Survey of Infectious Disease in Correctional Facilities.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: none. National Institute of Justice (NIJ), Office of Justice Programs (OJP), Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit, Not-for-profit institutions, and the Federal Government. The Survey of Infectious Diseases in Correctional Facilities addresses the need for information about disease prevention, education, diagnosis, and treatment in prisons and jails. Sponsored by the NIJ and the Centers for Disease Control and Prevention (CDC), the survey is designed to identify and analyze practices for addressing infectious diseases in adult facilities nationwide, as well as to gather aggregate data on sexually transmitted diseases (STDs) and tuberculosis (TB) test results. The survey includes a section on Hepatitis A, B and C. Data and information collected from this section will serve as baseline documentation for levels of adherence to forthcoming CDC guidelines on the prevention and treatment of hepatitis in correctional facilities. Survey respondents are the 50 State correctional systems, the Federal Bureau of Prisons, the 50 largest city and country jail systems, the five largest tribal facilities, five city and county jails in smaller cities, and ten regional or rural county jails. This survey will be conducted by mail, with extensive telephone follow-up. A validation survey using subset instruments will be conducted with 50 prison facilities from 10 States and the Federal system. NIJ, CDC, and Abt Associates Inc. have worked together closely to develop the survey instrument to address emerging

issues and practices, including new therapies and a section that focuses on the technological capabilities with Departments of Correction and the largest city and county jails. The data will be presented in a series of short disease and activity-specific reports (*e.g.*, "HIV", "Discharge Planning Policies").

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 171 respondents which include 121 correctional institutions (prisons or jails) for the full survey, and 50 correctional institutions for the validation survey. The estimated time to complete the full survey is 4 hours and approximately 1 hour to complete the validation survey.

(6) An estimate of the total public burden (in hours) associated with the collection: There are approximately 534 annual burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: April 20, 2004.

Brenda E. Dyer,

Department Deputy Clearance Officer, PRA, Department of Justice.

[FR Doc. 04–9350 Filed 4–23–04; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a 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 Standards Administration is soliciting comments concerning the proposed collection: Operator Controversion (CM–970), Operator Response (CM–970A), Operator Response to Schedule for Submission of Additional Evidence (CM–2970) and Operator Response to Notice of Claim (CM–2970A). A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before June 25, 2004.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, *E-mail bell.hazel@dol.gov*. Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

I. Background: The Division of Coal Mine Workers' Compensation administers the Black Lung Benefits Act (30 U.S.C. 901 *et. seq.*) which provides benefits to coal miners totally disabled due to pneumoniosis, and their surviving dependents. When the Division of Coal Mine Workers' Compensation (DCMWC) makes an initial finding that an applicant is eligible for benefits, and, if a coal mine operator has been identified as potentially liable for payment of those benefits, the responsible operator is notified of the initial finding. The CM–970 gives the operator an opportunity to controvert the liability. The CM–970 is used for all claims filed before January 19, 2001. Regulations require that a coal mine operator be identified and notified of potential liability as early in the adjudication process as possible. The CM–970A is sent to the operator with the Notice of Claim notifying the operator of potential liability of payment for benefits. The CM–970A gives the operator an opportunity to agree or disagree with the identification. The CM–970A is used for all claims filed before January 19, 2001. The CM–2970 and CM–2970A serve the same purposes as the CM–970 and CM–970A these forms will be used for all claims filed after January 19, 2001. Regulatory authority is found in 20 CFR 725.412 for the CM–970, 20 CFR 725.413 for the CM–970A, 20 CFR 725.410 for the CM–2970 and 20 CFR 725.408 for the CM–2970A. This information collection is currently approved for use through September 30, 2004.

II. Review Focus: The Department of Labor is particularly interested in 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; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions: The Department of Labor seeks the extension of approval to collect this information in order to carry out its responsibility to administer the Black Lung Benefits Act.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Operator Controversion (CM–970), Operator Response (CM–970A), Operator Response to Schedule for Submission of Additional Evidence (CM–2970), Operator Response to Notice of Claim (CM–2970A).

OMB Number: 1215–0058.

Agency Number: CM–970, CM–970A, CM–2970, CM–2970A.

Affected Public: Business or other for-profit; State, Local or Tribal Government.

Total Respondents: 8,200.

Total Annual responses: 8,200.

Frequency: On occasion.

Form	Number of respondents	Average time per response (minutes)	Burden hours
CM–970	100	15	25

Form	Number of respondents	Average time per response (minutes)	Burden hours
CM–970A	100	10	17
CM–2970	4,000	10	667
CM–2970A	4,000	15	1,000
Total	8,200		1,709

Estimated Total Burden Hours: 1,709.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $3,280.00.

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: April 20, 2004.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 04–9340 Filed 4–23–04; 8:45 am]

BILLING CODE 4510–CK–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Notice of Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of a meeting of the Advisory Committee on Construction Safety and Health (ACCSH).

SUMMARY: ACCSH will meet May 18–19, 2004, in Washington, DC. This meeting is open to the public.

TIME AND DATE: ACCSH will meet from 8:30 a.m. to 4:30 p.m., Tuesday, May 18, 2004, and 8:30 a.m. to noon, Wednesday, May 19, 2004.

PLACE: ACCSH will meet at the U.S. Department of Labor, Frances Perkins Building, Room N3437 A–C, 200 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: *For general information about ACCSH and ACCSH meetings:* Michael Buchet, OSHA, Directorate of Construction, Room N–3468, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone 202–693–2020. *For information about submission of comments, requests to speak, and the need for special accommodations for the meeting:* Veneta Chatmon, OSHA, Office of Public Affairs, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone 292–693–1999. Individuals needing special accommodations should contact Ms. Chatmon no later than May 4, 2004. Electronic copies of this **Federal Register** notice, as well as information about ACCSH workgroups and other relevant documents, are available at OSHA's Web page on the Internet at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION: ACCSH will meet May 18–19, 2004, in Washington, DC. This meeting is open to the public. The agenda for this meeting includes:

- Remarks—Assistant Secretary—OSHA.
- Hexavalent Chromium proposed rulemaking.
- Subpart V proposed rulemaking.
- Hispanic Taskforce and Summit.
- Standards Update.
- Partnership and Alliance Update.
- Public Comment (During this period, any member of the public is welcome to address ACCSH about construction-related safety and health issues. See information below to request time to speak at the meeting.)

All ACCSH meetings are open to the public. An official record of the meeting will be available for public inspection at the OSHA Docket Office, Room N–2625, at the address above, telephone (202) 693–2350.

Interested parties may submit written data, views or comments, preferably with 20 copies, to Ms. Chatmon, at the address above. OSHA will provide submissions received prior to the meeting to ACCSH members and will include each submission in the record of the meeting. Attendees may also request to make an oral presentation by notifying Veneta Chatmon before the meeting at the address above. The request must state the amount of time desired, the interest represented by the presenter (*e.g.*, the names of the business, trade association, government Agency), if any, and a brief outline of the presentation. The Chair of ACCSH may grant the request at his discretion and as time permits.

ACCSH Work Groups

The ACCSH Tower Erection work group will meet from 1–5 p.m., Wednesday, May 19, 2004, in Room N 3437 A–C of the Frances Perkins Building at the address above. Work group meetings are open to the public. For further information on ACCSH work group meetings or on participating on ACCSH work groups, please contact Michael Buchet at the address above or look on the ACCSH page on OSHA's Web page at *http://www.osha.gov.*

Authority: John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by section 7 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656), section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, this 16th day of April, 2004.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 04–9339 Filed 4–23–04; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (04–056)]

President's Commission on Implementation of United States Space Exploration Policy; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the President's Commission on Implementation of United States Space Exploration Policy.

DATES: Monday, May 3, 2004, 1 p.m. to 5 p.m. and Tuesday, May 4, 2004, 9 a.m. to 5 p.m.

ADDRESSES: Asia Society, 725 Park Avenue, New York City, NY 10021.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Schmidt, Office of the

Administrator, National Aeronautics and Space Administration, Washington, DC, (202) 358–1808.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Welcoming remarks by Chairman Pete Aldridge
—Introduction of Commission Members
—Overview of Commission Charter and Goal
—Testimony from public
—Comments and discussion
—Commissioners' Deliberations
—Closing Remarks

It is not possible to accommodate the full notice period because of the short time frame in which the Commission is expected to finish its work and write its report. Visitors will be requested to sign a visitor's register.

R. Andrew Falcon,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 04–9441 Filed 4–23–04; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities Arts and Artifacts Indemnity Panel Advisory Committee; Notice of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended) notice is hereby given that a meeting of the Arts and Artifacts Indemnity Panel of the Federal Council on the Arts and the Humanities will be held at 1100 Pennsylvania Avenue, NW., Washington, DC 20506, in Room 716, from 9 a.m. to 5 p.m., on Monday, May 17, 2004.

The purpose of the meeting is to review applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities for exhibitions beginning after July 1, 2004.

Because the proposed meeting will consider financial and commercial data and because it is important to keep values of objects, methods of transportation and security measures confidential, pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated July 19, 1993, I have determined that the meeting would fall within exemption (4) of 5 U.S.C. 552(b) and that it is essential to close the meeting to protect the free exchange of views and to avoid interference with the operations of the Committee.

It is suggested that those desiring more specific information contact Advisory Committee Management Officer, Daniel C. Schneider, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, or call 202/606–8322.

Daniel C. Schneider,

Advisory Committee Management Officer.

[FR Doc. 04–9444 Filed 4–23–04; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Council on the Humanities; Meeting

April 21, 2004.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended) notice is hereby given the National Council on the Humanities will meet in Washington, DC on May 6–7, 2004.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support from and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC. A portion of the morning and afternoon sessions on May 6–7, 2004, will not be open to the public pursuant to subsections (c)(4), (c)(6) and (c)(9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and information the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated July 19, 1993.

The agenda for the sessions on May 6, 2004 will be as follows:

Committee Meetings

(Open to the Public)

Policy Discussion

9–10:30 a.m.

Challenge Grants—Room 415
Federal/State Partnership—Room 507
Preservation and Access—Room 730
Public Programs—Room 420
Research Programs—Room 315

(Closed to the Public)

Discussion of specific grant applications and programs before the Council

10:30 a.m. until Adjourned

Challenge Grants—Room 415
Federal/State Partnership—Room 507
Preservation and Access—Room 730
Public Programs—Room 420
Research Programs—Room 315

2:15 p.m.

Jefferson Lecture Committee—Room 527

The morning session on May 7, 2004 will convene at 9 a.m., in the 1st Floor Council Room M–09, and will be open to the public, as set out below. The agenda for the morning session will be as follows:

A. Minutes of the Previous Meeting

B. Reports

1. Introductory Remarks
2. Staff Report
3. Congressional Report
4. Reports on Policy and General Matters

a. Challenge Grants
b. Federal/State Partnership
c. Preservation and Access
d. Public Programs
e. Research Programs
f. Jefferson Lecture

The remainder of the proposed meeting will be given to the consideration of specific applications and closed to the public for the reasons stated above.

Further information about this meeting can be obtained from Mr. Daniel C. Schneider, Advisory Committee Management Officer, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, or by calling (202) 606–8322, TDD (202) 606–8282. Advance notice of any special needs or accommodations is appreciated.

Daniel C. Schneider,

Advisory Committee Management Officer.

[FR Doc. 04–9445 Filed 4–23–04; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* State Agreements Program, as authorized by section 274(b) of the Atomic Energy Act.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* One time or as needed.

5. *Who will be required or asked to report:* Thirty-three Agreement States whose governors have signed section 274(b) Agreements with NRC.

6. *An estimate of the number of annual responses:* 138 responses.

7. *The estimated number of annual respondents:* 33.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 1,035 (7.5 hours per response).

9. *An indication of whether section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* Agreement States are asked on a one-time only or on an as-needed basis to respond to requests for information, *e.g.*, to respond to a specific incident or to gather information on licensing and inspection practices and other technical statistical information. The results of such information requests, which are authorized under section 274(b) of the Atomic Energy Act, are utilized in part by NRC in preparing responses to Congressional inquiries. Agreement State comments are also solicited in the areas of proposed procedure and policy development.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, Maryland 20852. OMB clearance requests are available at the NRC World Wide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by May 26, 2004. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. OMB Desk Officer, Office of Information and Regulatory Affairs (3150–0029), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo Shelton, (301) 415–7233.

Dated in Rockville, Maryland, this 19th day of April, 2004.

For the Nuclear Regulatory Commission.

Brenda Jo Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 04–9355 Filed 4–23–04; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions granting authority to make Appointments under Schedules A, B and C in the excepted service as required by 5 CFR 6.6 and 213.103.

FOR FURTHER INFORMATION CONTACT: Ms. Delores Everett, Center for Leadership and Executive Resources Policy, Division for Strategic Human Resources Policy, 202–606–1050.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are the individual authorities established under Schedule C between March 1, 2004, and March 31, 2004. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 is published each year.

Schedule A

The following Schedule A appointments were approved for March 2004:

Section 213.3102(i)(3) Department of Agriculture

Schedule A exception for temporary positions dealing with Bovine Spongiform Encephalopathy or "Mad Cow" disease.

- Consumer Safety Officer, GS–696–11 through 13;
- Compliance Officer, GS–1801–09 through 13;
- Public Affairs Officer, GS–1035–09 through 13;
- Technical Information Specialist, GS–1412–09 through 13;
- Food Inspector, GS–1863–05 and 7;
- Math Statistician, GS–1529–09 through 14;
- Program Analyst, GS–0343–09 through 14 (regulation writers only);
- Food Technologist, GS–1382–09 through 14; and
- Physical Scientist, GS–1301–09 through 14.

Employment under this authority may not exceed 1 year. Temporary appointments are subject to the service limits in title 5, Code of Federal Regulations, section 213.104. In making appointments to these positions, please cite Schedule A, section 213.3102(i)(3) as the appointing authority. Effective March 15, 2004.

Section 213.3111 Department of Homeland Security

(a) Up to 50 positions at the GS–5 through 15 grade levels at the Department of Homeland Security. No new appointments may be made under this authority after September 30, 2004. Effective March 31, 2004.

Schedule B

No Schedule B appointments for March 2004.

Schedule C

The following Schedule C appointments were approved for March 2004:

Section 213.3303 Executive Office of the President

Office of Management and Budget

BOGS60030 Confidential Assistant to the Associate Director for E-Government and Information Technology. Effective March 04, 2004.

BOGS00085 Special Assistant to the Administrator, E-Government and Information Technology. Effective March 15, 2004.

Office of Science and Technology Policy

TSGS60032 Assistant to the Director for Legislative Affairs to the Chief of Staff and General Counsel. Effective March 01, 2004.

Section 213.3304 Department of State

DSGS60750 Special Assistant to the Under Secretary for Public Diplomacy and Public Affairs. Effective March 16, 2004.

DSGS60756 Special Assistant to the Under Secretary for Global Affairs. Effective March 23, 2004.

DSGS60758 Special Assistant to the Under Secretary for Arms Control and Security Affairs. Effective March 31, 2004.

Section 213.3305 Department of the Treasury

DYGS60405 Special Assistant to the Assistant Secretary (Deputy Under Secretary) Legislative Affairs. Effective March 12, 2004.

DYGS00441 Director of Outreach to the Deputy Assistant Secretary. Effective March 30, 2004.

Section 213.3306 Department of Defense

DDGS16796 Staff Assistant to the Deputy Assistant Secretary of Defense (Forces Policy). Effective March 30, 2004.

DDGS16797 Staff Assistant to the Deputy Under Secretary of Defense (Special Plans and Near East/South Asian Affairs). Effective March 31, 2004.

DDGS16799 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison. Effective March 31, 2004.

DDGS16802 Special Assistant to the Deputy Under Secretary of Defense (International Technology Security). Effective March 31, 2004.

Section 213.3307 Department of the Army

DWGS00077 Confidential Assistant to the Assistant Secretary of the Army (Civil Works). Effective March 19, 2004.

Section 213.3310 Department of Justice

DJGS00189 Counsel to the Assistant Attorney General Civil Division. Effective March 22, 2004.

DJGS00187 Counsel to the Assistant Attorney General Civil Division. Effective March 31, 2004.

DJEX00290 Director, Alcohol, Tobacco, Firearms and Explosives to the Attorney General. Effective March 31, 2003.

Section 213.3311 Department of Homeland Security

DMGS00199 Staff Assistant to the Chief of Staff for Immigration and Customs Enforcement. Effective March 01, 2004.

DMGS00202 Director of Policy to the Chief of Staff. Effective March 01, 2004.

DMGS00210 Press Secretary to the Deputy Director of Communications for Emergency Preparedness and Response. Effective March 09, 2004.

DMGS00196 Executive Assistant to the Under Secretary for Science and Technology. Effective March 10, 2004.

DMGS00197 Policy Assistant to the Director for Domestic Preparedness. Effective March 10, 2004.

DMGS00203 Public Liaison Officer to the Director of Public Liaison. Effective March 10, 2004.

DMGS00206 Press Assistant to the Director of Communications. Effective March 12, 2004.

DMGS00204 Deputy Press Secretary to the Press Secretary. Effective March 15, 2004.

DMGS00207 Assistant Press Secretary to the Press Secretary. Effective March 15, 2004.

DMGS00205 Executive Assistant to the Assistant Secretary for Plans, Programs and Budgets. Effective March 17, 2004.

DMGS00209 Public Liaison Officer to the Director of Public Liaison. Effective March 22, 2004.

DMGS00214 Communications Director for Immigration and Customs Enforcement to the Chief of Staff for Immigration and Customs Enforcement. Effective March 30, 2004.

DMGS00217 Legislative Assistant to the Assistant Secretary for Legislative Affairs. Effective March 31, 2004.

Section 213.3312 Department of the Interior

DIGS60133 Chief, Office of Congressional and Legislative Affairs to the Director, External and Intergovernmental Affairs. Effective March 05, 2004.

DIGS60467 Special Assistant to the Director, United States Fish and Wildlife Service. Effective March 05, 2004.

DIGS61012 Special Assistant—Advance to the Director of Scheduling and Advance. Effective March 23, 2004.

Section 213.3313 Department of Agriculture

DAGS00700 Special Assistant to the Assistant Secretary for Congressional Relations. Effective March 15, 2004.

DAGS00702 Presidential Management Agenda Coordinator to the Assistant Secretary for Administration. Effective March 30, 2004.

Section 213.3314 Department of Commerce

DCGS60302 Director of External Affairs to the Director, Office of Public and Constituent Affairs. Effective March 01, 2004.

DCGS00200 Special Assistant to the Deputy Assistant Secretary for Legislative and Intergovernmental Affairs. Effective March 05, 2004.

DCGS00620 Director, Office of Legislative Affairs to the Under Secretary for International Trade. Effective March 05, 2004.

DCGS60596 Confidential Assistant to the Director of Public Affairs. Effective March 05, 2004.

DCGS00467 Confidential Assistant to the Deputy Chief of Staff for Policy. Effective March 17, 2004.

DCGS00531 Confidential Assistant to the Deputy Assistant Secretary for Export Promotion Services. Effective March 26, 2004.

Section 213.3315 Department of Labor

DLGS06119 Special Assistant to the Director of Scheduling and Advance. Effective March 03, 2004.

DLGS60003 Special Assistant to the Chief of Staff. Effective March 23, 2004.

DLGS60225 Staff Assistant to the Assistant Secretary for Public Affairs. Effective March 25, 2004.

Section 213.3316 Department of Health and Human Services

DHGS60383 Special Assistant to the Assistant Secretary for Public Affairs. Effective March 03, 2004.

DHGS00492 Deputy White House Liaison for Boards and Committees to the Chief of Staff. Effective March 15, 2004.

DHGS60665 Deputy Director for Policy, Intergovernmental Affairs to the Director of Intergovernmental Affairs. Effective March 15, 2004.

DHGS00378 Special Assistant to the Assistant Secretary for Public Affairs. Effective March 16, 2004.

Section 213.3317 Department of Education

DBGS00309 Special Assistant to the Chief of Staff. Effective March 05, 2004.

DBGS00314 Confidential Assistant to the Associate Deputy Under Secretary for Improvement and Reform. Effective March 05, 2004.

DBGS00316 Special Assistant to the Assistant Secretary for Legislation and

Congressional Affairs. Effective March 05, 2004.

DBGS00313 Deputy Secretary's Regional Representative to the Assistant Secretary for Intergovernmental and Interagency Affairs. Effective March 08, 2004.

DBGS00315 Special Assistant to the Deputy Secretary of Education. Effective March 08, 2004.

DBGS00318 Special Assistant to the Deputy Assistant Secretary for Intergovernmental, Constituent Relations and Corporate Liaison. Effective March 09, 2004.

DBGS00319 Deputy Secretary's Regional Representative to the Deputy Assistant Secretary for Regional Services. Effective March 09, 2004.

DBGS00320 Confidential Assistant to the Deputy Assistant Secretary for Special Education and Rehabilitative Services. Effective March 12, 2004.

DBGS00321 Special Assistant to the Assistant Secretary for Elementary and Secondary Education. Effective March 26, 2004.

Section 213.3318 Environmental Protection Agency

EPGS04002 Director of Press Advance and Special Assistant for Communications to the Deputy Associate Administrator for the Office of Public Affairs. Effective March 26, 2004.

Section 213.3325 United States Tax Court

JCGS60080 Secretary (Confidential Assistant) to the Chief Judge. Effective March 03, 2004.

Section 213.3330 Securities and Exchange Commission

SEOT60032 Director of Public Affairs to the Chairman. Effective March 12, 2004.

Section 213.3331 Department of Energy

DEGS00405 Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective March 08, 2004.

DEGS00406 Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective March 12, 2004.

DEGS00409 Special Assistant to the Director, Public Affairs. Effective March 17, 2004.

DEGS00407 Daily Scheduler to the Director, Office of Scheduling and Advance. Effective March 25, 2004.

DEGS00411 Policy Advisor to the Director, Office of Science. Effective March 31, 2004.

Section 213.3332 Small Business Administration

SBGS60010 Senior Advisor to the Chief Operating Officer and Chief Information Officer. Effective March 04, 2004.

SBGS60153 Deputy Associate Administrator for Intergovernmental Affairs to the Associate Administrator for Field Operations. Effective March 04, 2004.

SBGS60208 Special Assistant to the Associate Deputy Administrator for Entrepreneurial Development. Effective March 04, 2004.

SBGS60154 Deputy Director, External Affairs to the Director of External Affairs. Effective March 15, 2004.

SBGS60043 Special Assistant to the Associate Administrator for Congressional and Legislative Affairs. Effective March 16, 2004.

SBGS60535 Senior Advisor to the Associate Deputy Administrator for Entrepreneurial Development. Effective March 19, 2004.

SBGS60356 Special Assistant to the Associate Administrator for Strategic Alliances. Effective March 26, 2004.

Section 213.3337 General Services Administration

GSGS00150 Congressional Relations Officer to the Associate Administrator for Congressional and Intergovernmental Affairs. Effective March 05, 2004.

GSGS00132 Special Assistant to the Regional Administrator, Region 10, Auburn, Washington. Effective March 22, 2004.

GSGS00130 Special Assistant to the Regional Administrator, Region 7, Fort Worth, Texas. Effective March 23, 2004.

GSGS00133 Congressional Relations Analyst to the Associate Administrator for Congressional and Intergovernmental Affairs. Effective March 25, 2004.

Section 213.3339 United States International Trade Commission

TCGS60018 Staff Assistant (Legal) to the Commissioner. Effective March 08, 2004.

Section 213.3344 Occupational Safety and Health Review Commission

SHGS00003 Confidential Assistant to the Commissioner Member. Effective March 19, 2004.

Section 213.3348 National Aeronautics and Space Administration

NNGS00024 Writer—Editor to the Assistant Administrator for Public Affairs. Effective March 25, 2004.

Section 213.3384 Department of Housing and Urban Development

DUGS60438 Director, Office of Insured Health Care Facilities to the Assistant Secretary for Housing, Federal Housing Commissioner. Effective March 03, 2004.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 04–9421 Filed 4–23–04; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49577; File No. SR–CBOE–2004–17]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Establishing a Process for Approving and Appointing Remote Electronic Designated Primary Market-Makers

April 19, 2004.

I. Introduction

On March 11, 2004, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") 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 adopt new rules establishing a process for approving and appointing remote electronic Designated Primary Market-Makers ("e-DPMs"). On March 11, 2004, the CBOE filed Amendment No. 1 to the proposed rule change.[3] On March 18, 2004, the CBOE's rule proposal, as amended, was published for comment in the **Federal Register**.[4] No comment letters were received on the proposal. This order approves the proposal and Amendment No.1 thereto.

II. Description of Proposal

The CBOE is currently in the process of proposing significant enhancements to its Hybrid Trading System ("CBOE Hybrid 2.0 initiatives") including, among other things, the addition of a proposed new category of CBOE market-

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superceded the CBOE's original 19b–4 filing in its entirety.

[4] *See* Securities Exchange Act Release No. 49411 (March 12, 2004), 69 FR 12878.

making participants called e-DPMs. e-DPMs would be member organizations appointed to operate on CBOE as competing Designated Primary Market-Makers ("DPMs") in a broad number of option classes. The purpose of this filing is to establish rules and criteria to allow the CBOE to begin approving and appointing e-DPMs. In its filing, the CBOE acknowledges that any such e-DPM appointments would be contingent on Commission approval of e-DPMs and CBOE rules governing e-DPM trading procedures and obligations, which the CBOE has not yet submitted to the Commission, but plans to do so soon as a separate rule filing.

The CBOE expects to approve and appoint a limited number of e-DPMs. The Exchange's Board of Directors has established a special appointments committee, consisting of the Lessor Director, two Public Directors, the Vice Chairman, and the President, to select the firms that would be designated as e-DPMs, and to make initial e-DPM option class allocations. Candidates seeking appointment as an e-DPM would be evaluated on the basis of how well they meet the following criteria:

- Significant market-making and/or specialist experience in a broad array of securities;
- Superior resources, including capital, technology and personnel;
- Demonstrated history of stability, superior electronic capacity, and superior operational capacity;
- Proven ability to interact with order flow in all types of markets;
- Existence of order flow commitments;
- Willingness to accept allocations as an e-DPM in options overlying 400 or more securities; and
- Willingness and ability to make competitive markets on CBOE and otherwise to promote CBOE in a manner that is likely to enhance the ability of CBOE to compete successfully for order flow in the options it trades.

The CBOE represents that it intends to use the final factor listed to take into consideration in the selection process which of the applicants would best be able to enhance the competitiveness of the Exchange. "Willingness to promote CBOE" includes assisting in meeting and educating market participants, maintaining communications with member firms in order to be responsive to suggestions and complaints, responding to suggestions and complaints, and other like activities. Further, the CBOE would not apply this factor to in any way restrict, either directly or indirectly, e-DPMs' activities as market makers or specialists elsewhere, or to restrict how e-DPMs handle orders held by them in a fiduciary capacity to which they owe a duty of best execution.

The CBOE represents that it would use the factor relating to the existence of order flow commitments to evaluate existing order flow commitments between the applicant and order flow providers. A future change to, or termination of, any such commitments considered by the Exchange during the review process would not be used by the Exchange at any point in the future to terminate or take remedial action against an e-DPM. Furthermore, the Exchange would not take remedial action solely because orders subject to any such commitments were not subsequently routed to the Exchange. Whether actual commitments result in orders being routed to the Exchange would be considered by the Exchange as a separate matter from the criteria for which an e-DPM's performance would be evaluated.

As part of the approval of an e-DPM, the Exchange may place conditions on the approval based on the operations of the applicant and the number of option classes that may be allocated to the applicant. Moreover, each e-DPM shall retain its approval to operate as an e-DPM unless such approval is removed by the Exchange pursuant to appropriate rules. Finally, an e-DPM may not transfer its approval to act as an e-DPM unless allowed by the Exchange.

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[5] and, in particular, the requirements of Section 6 of the Act.[6] Specifically, the Commission finds that the proposal to approve and appoint e-DPMs and to make initial e-DPM option class allocations is consistent with Section 6(b)(5) of the Act,[7] in that the proposal has been designed to promote just and equitable principles of trade, and to protect investors and the public interest.

The Commission notes that the CBOE's proposed criteria for making e-DPMs selections is similar to the appointment and allocation criteria that is used by other exchanges that have competing specialists[8] and similar to CBOE Rule 8.83, which governs selection criteria for DPMs. The Commission believes that the proposed criteria should be used by the CBOE solely for the purpose of evaluating applicants for e-DPM appointments and for making any option class allocations to them. The Commission emphasizes that the CBOE should not use the proposed criteria—especially the "willingness and ability to make competitive markets on CBOE and otherwise to promote CBOE" criterion—to in any way directly or indirectly attempt to restrict a market participant that is appointed as an e-DPM from performing market-making or specialist activities on other markets. In addition, with regard to the "order flow commitment" criterion, the Commission believes that the CBOE should consider only any existing order flow commitments that the applicant has with order flow providers, and that the CBOE should not use those existing order flow commitments as an indicator of potential future order flow that an applicant may be able to bring to the CBOE.

The Commission notes that all approvals and appointments of e-DPMs and allocations of options classes to such e-DPMs under this proposal are contingent on Commission approval of e-DPMs and CBOE rules governing e-DPM trading procedures and obligations. Moreover, in approving the e-DPM appointment criteria, the Commission is not prejudging the CBOE's prospective proposals relating to e-DPMs and other CBOE Hybrid 2.0 initiatives. If the Commission were not to approve e-DPMs, any e-DPM appointments made pursuant to this proposal would be meaningless. Approving the e-DPM appointment criteria does, however, afford the CBOE an opportunity to prepare for the possibility that the Commission will approve e-DPMs and CBOE rules governing e-DPM trading procedures and obligations, and reduces the time between any such approval and the commencement of trading by e-DPMs pursuant to the Exchange's proposed CBOE Hybrid 2.0 initiatives.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (File No. SR–CBOE–2004–17) and Amendment No. 1 are hereby approved.

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[5] The Commission has considered the proposed rule change's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] *See, e.g.*, Boston Stock Exchange Rule 18 and Philadelphia Stock Exchange Rule 511.

[9] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–9351 Filed 4–23–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49581; File No. SR–NASD–2003–159]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. To Permit Nasdaq To Append a New Modifier to Trade Reports of Pre-Open and After-Hours Trades Not Submitted to Nasdaq's Automated Confirmation Transaction Service, and Other Changes Regarding Trade Reporting

April 19, 2004.

On October 16, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission"), 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 permit Nasdaq to append a new modifier to trade reports of pre-open and after-hours trades not submitted to Nasdaq's Automated Confirmation Transaction Service ("ACT") within 90 seconds after execution, and to require members to: (1) Include the time of execution on all reports submitted to ACT; (2) append the .W modifier to reports of "stop stock transactions;" (3) append the .W modifier, as appropriate, to reports submitted to ACT after 5:15 p.m.;[3] and (4) append the .PRP modifier to reports of transactions in listed securities that are executed at a price that is based on a prior point in time. On February 5, 2004, Nasdaq amended the proposed rule change.[4] The proposed rule change, as amended, was published for notice and comment in the **Federal Register** on March 17, 2004.[5] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association,[6] the requirements of section 15A of the Act,[7] in general, and section 15A(b)(6) of the Act,[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to protect investors and the public interest. The Commission believes the proposed rule change will improve the quality of information disseminated by Nasdaq about the prices at which stocks are trading in its market.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change (SR–NASD–2003–159), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–9423 Filed 4–23–04; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3571]

State of Tennessee

Davidson County and the contiguous counties of Cheatham, Robertson, Rutherford, Sumner, Williamson and Wilson in the State of Tennessee constitute a disaster area due to damages caused by a five alarm fire to the Old Hickory Village Shopping Center on March 28, 2004. Applications for loans for physical damage may be filed until the close of business on June 14, 2004, and for economic injury until the close of business on January 18, 2005, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

For Physical Damage:

Homeowners with credit available elsewhere: 6.125%.

Homeowners without credit available elsewhere: 3.125%.

Businesses with credit available elsewhere: 5.800%.

Businesses and non-profit organizations without credit available elsewhere: 2.900%.

Others (including non-profit organizations) with credit available elsewhere: 4.875%.

For Economic Injury:

Businesses and small agricultural cooperatives without credit available elsewhere: 2.900%.

The number assigned to this disaster for physical damage is 357105 and for economic damage is 9Z9900.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: April 15, 2004.

Hector V. Barreto,

Administrator.

[FR Doc. E4–920 Filed 4–23–04; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Social Security Acquiescence Ruling 04–1(9)]

Howard on behalf of Wolff v. Barnhart; Applicability of the Statutory Requirement for Pediatrician Review in Childhood Disability Cases to the Hearings and Appeals Levels of the Administrative Review Process—Title XVI of the Social Security Act

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 402.35(b)(2), the Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 04–1(9).

EFFECTIVE DATE: April 26, 2004.

FOR FURTHER INFORMATION CONTACT: Wanda D. Mason, Office of Acquiescence and Litigation Coordination, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 966–5044, or TTY (800) 966–5609.

SUPPLEMENTARY INFORMATION: We are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 402.35(b)(2).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Nasdaq also is proposing to clarify that members must append the .W modifier to a trade report if a trade can be properly reported with both a .T modifier and a .W modifier. This clarification is necessary because ACT can accept only one modifier per trade report. *See infra* note 14.

[4] *See* February 4, 2004 letter from Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission and attachments ("Amendment No. 1"). Amendment No. 1 completely replaced and superseded the original proposed rule change.

[5] *See* Securities Exchange Act Release No. 49404 (March 11, 2004), 69 FR 12727.

[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78o–3.

[8] 15 U.S.C. 78o–3(b)(6).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (the Act) or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals' decision as explained in this Social Security Acquiescence Ruling to decisions made at the Administrative Law Judge and Appeals Council levels of our administrative review process concerning the disability or continuing disability of individuals under age 18 under title XVI of the Act. If we made a decision about your disability between August 29, 2003, the date of the Court of Appeals' decision, and (*Insert Federal Register publication date*), the effective date of this Social Security Acquiescence Ruling, you may request application of the Social Security Acquiescence Ruling to the prior decision. You must demonstrate, pursuant to 20 CFR 416.1485(b)(2), that application of the Ruling could change our prior decision in your case.

Additionally, when we received this precedential Court of Appeals' decision and determined that a Social Security Acquiescence Ruling might be required, we began to identify those claims that were pending before us within the circuit that might be subject to readjudication if an Acquiescence Ruling were subsequently issued. Because we have determined that an Acquiescence Ruling is required and are publishing this Social Security Acquiescence Ruling, we will send a notice to those individuals whose claims we have identified. The notice will provide information about the Acquiescence Ruling and how to request readjudication under the Ruling. It is not necessary for an individual to receive a notice in order to request application of this Social Security Acquiescence Ruling to the prior decision on his or her claim as provided in 20 CFR 416.1485(b)(2), discussed above.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the Federal Register to that effect as provided in 20 CFR 416.1485(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided by 20 CFR 416.1485(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance, Program No. 96.006— Supplemental Security Income.)

Dated: March 22, 2004.

Jo Anne B. Barnhart,

Commissioner of Social Security.

Acquiescence Ruling 04–1(9)

Howard on behalf of Wolff v. *Barnhart*, 341 F.3d 1006 (9th Cir. 2003)—Applicability of the Statutory Requirement for Pediatrician Review in Childhood Disability Cases to the Hearings and Appeals Levels of the Administrative Review Process—Title XVI of the Social Security Act.

Issue: Whether the provisions of section 1614(a)(3)(I) of the Social Security Act apply to Administrative Law Judge(ALJ) and Administrative Appeals Judge(AAJ) decisions.

Statute/Regulation/Ruling Citation: Sections 1614(a)(3)(C), 1614(a)(3)(I) and 1633(a) of the Social Security Act (42 U.S.C. 1382c(a)(3)(C), 1382c(a)(3)(I), and 1383b(a)); 20 CFR 416.903, 416.1400, 416.1401, 416.1402, 416.1407, 416.1015, 416.1016 and 416.1429.

Circuit: Ninth (Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Northern Mariana Islands, Oregon, Washington).

Howard on behalf of Wolff v. *Barnhart*, 341 F.3d 1006 (9th Cir. 2003).

Applicability of Ruling: This Ruling applies only to the Administrative Law Judge (ALJ) and Appeals Council levels of the administrative review process in 20 CFR 416.1400.

Description of Case: Sherry Howard, the maternal aunt and legal guardian of Sarah Wolff, applied for Supplemental Security Income (SSI) payments based on disability on behalf of her niece, in 1996, when Sarah was 3 years old. Sarah was found disabled due to secondary borderline IQ and developmental delays under the version of the law in effect at that time.

Effective August 22, 1996, section 211 of Public Law 104-193, *The Personal Responsibility and Work Opportunity Act of 1996*, amended section 1614(a)(3)(C) of the Act, 42 U.S.C. 1382c(a)(3)(C) and established a new standard for determining SSI benefits for children under the age of 18.[1] Under the new law, certain children previously granted SSI benefits were required to have their eligibility for SSI payments redetermined in accordance with the provisions of the new law. Sarah's eligibility was redetermined under the new law and she was found ineligible for benefits effective in November 1997.

In 1999, an ALJ conducted a hearing. Prior to and again during the ALJ hearing, Ms. Howard requested that a medical expert specializing in pediatrics be called to testify regarding Sarah's impairments. The ALJ denied the requests, explaining that the record was sufficiently well-developed and that a medical expert was not needed. At the hearing, both Ms. Howard and Sarah testified. The ALJ found, after independently reviewing the medical records and listening to the testimony, that Sarah's impairments did not meet or equal any of the criteria contained in the Listing of Impairments and that, she was no longer disabled. The Appeals Council denied the request for review of the ALJ's decision.

Ms. Howard appealed to the United States District Court for the District of Arizona, where she argued that the ALJ engaged in a selective evaluation of the evidence and failed to consider the combined effects of Sarah's impairments. Additionally, Ms. Howard asserted that the ALJ committed a legal error by not making a reasonable effort to ensure a qualified pediatrician or other individual who specializes in a field of medicine appropriate to Sarah's disability evaluated Sarah's case, under section 1614(a)(3)(I) of the Act, 42 U.S.C. 1382c(a)(3)(I). The district court found that the ALJ did not selectively analyze the evidence and that the ALJ did not err in refusing to call an expert witness in order to evaluate the case. On appeal to the United States Court of Appeals for the Ninth Circuit, Ms. Howard argued that the ALJ considered Sarah's impairments in isolation and failed to consider the combined effects of her impairments. Ms. Howard also argued that the ALJ denied her request and made no effort to have a qualified pediatrician or other individual who specialized in a field of medicine appropriate to Sarah's disability evaluate her case before deciding that Sarah was no longer disabled.

Holding: The Ninth Circuit held that, although the ALJ's decision was supported by substantial evidence, the ALJ committed a legal error by not complying with the mandate of section 1614(a)(3)(I) of the Act, 42 U.S.C. 1382c(a)(3)(I). Section 1614(a)(3)(I) states, in part, that in making "any determination" under title XVI of the Act "with respect to the disability of an individual who has not attained the age

[1] This law changed the standard governing childhood claims under title XVI of the Social Security Act. An individual under the age of 18 will be found disabled under title XVI of the Act if he or she has a "medically determinable physical or mental impairment, which results in marked and severe functional limitations, and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." Section 1614(a)(3)(c)(i) of the Act, 42 U.S.C. 1382c(a)(3)(c)(I).

of 18," the Commissioner "shall make reasonable efforts to ensure that a qualified pediatrician or other individual who specializes in a field of medicine appropriate to the disability of the individual***evaluates the case" of the individual. The Court of Appeals interpreted this to mean that an ALJ is required to make reasonable efforts to obtain a case evaluation, based on the record in its entirety, from a pediatrician or other appropriate specialist, rather than simply evaluating the evidence in the case record on his or her own. The Court of Appeals noted that, despite the various reports from doctors and specialists offering their medical opinions in Sarah's case, the ALJ did not have her case evaluated as a whole. The court also stated that "[i]t may be that the ALJ achieved substantial compliance with the statute, in that the state agency doctors ***who did evaluate Sarah's case may be appropriate qualified specialists; however, we cannot make that determination on the record. In addition, the ALJ did not consider these evaluations in making his decision."

Statement As To How Howard Differs From SSA's Interpretation of the Social Security Act

Our regulations make clear that section 1614(a)(3)(I) of the Act, 42 U.S.C. 1382c(a)(3)(I), applies only to determinations made by a State agency and not to decisions made by ALJs or AAJs (when the Appeals Council makes a decision). The words "determination" and "decision" are terms of art in our program, defined in our regulations at 20 C.F.R. 416.1401. This regulation explains that the word "determination" means the initial determination or reconsidered determination, while the term "decision" means the decision made by the ALJ or the Appeals Council. Our regulations that implement section 1614(a)(3)(I) of the Act maintain this distinction, providing that the requirement for review by a pediatrician or other appropriate specialist in childhood SSI cases applies only to cases decided by State agencies at the initial and reconsideration levels of the administrative review process. See 20 C.F.R. 416.903(f) and 416.1015(e).[2]

The Ninth Circuit interpreted the statutory provision more broadly than we do, by applying it to cases decided by an ALJ or AAJ (when the Appeals Council makes a decision).

Explanation of How SSA Will Apply the Howard Decision Within the Circuit

This Ruling applies only to title XVI childhood disability cases in which the claimant resided in Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Northern Mariana Islands, Oregon or Washington at the time of the ALJ or Appeals Council decision. This Ruling applies only to the Administrative Law Judge and Appeal Council levels of the administrative review process.

For cases that are subject to this Ruling, ALJs and AAJs (when the Appeals Council makes a decision) must make reasonable efforts to ensure that a qualified pediatrician or other individual who specializes in a field of medicine appropriate to the disability of the individual (as identified by the ALJ or AAJ) evaluates the case of the individual. To satisfy this requirement, the ALJ or AAJ may rely on case evaluation made by a State agency medical or psychological consultant that is already in the record, or the ALJ or AAJ may rely on the testimony of a medical expert. When the ALJ relies on the case evaluation made by a State agency medical or psychological consultant, the record must include the evidence of the qualifications of the State agency medical or psychological consultant. In any case, the ALJ or AAJ must ensure that the decision explains how the State agency medical or psychological consultant's evaluation was considered. (See also 20 C.F.R. 416.927(f) and Social Security Ruling 96-6p, "Titles II and XVI: Consideration of Administrative Findings of Fact by State Agency Medical and Psychological Consultants and Other Program Physicians and Psychologists at the Administrative Law Judge and Appeals Council Levels of Administrative Review; Medical Equivalence." 61 FR 34466 (1996)).

[FR Doc. 04–9337 Filed 4–23–04; 8:45 am]

BILLING CODE 4191–02–S

[2] This interpretation is supported by the statute. Section 221 of the Act, 42 U.S.C. 421, entitled "Disability Determinations" specifies in section 221(a), 42 U.S.C. 421(a) that "the determination of whether or not [an individual] is under a disability * * * shall be made by a State agency * * *." Section 221(h) of the Act, 42 U.S.C. 421(h) requires the Commissioner to "make every reasonable effort" to ensure that a qualified psychiatrist or psychologist has completed the medical portion of the case review before a State agency makes "[a]n initial determination * * * that an individual is not under a disability, in any case where there is evidence which indicates the existence of a mental impairment * * *." Section 221 is incorporated by reference in section 1633(a) of the Act, 42 U.S.C. 1383b(a). Section 1614(a)(3)(I) also refers to section 221(h).

DEPARTMENT OF STATE

[Public Notice 4696]

Bureau of Educational and Cultural Affairs; Request for Grant Proposals for the Partnerships for Learning (P4L) Thematic Youth Projects Initiative

SUMMARY: The Office of Citizen Exchanges, Youth Programs Division of the Bureau of Educational and Cultural Affairs announces an open competition for projects under the P4L Thematic Youth Projects Initiative. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to recruit and select youth participants in countries with significant Muslim populations and provide the participants with (1) a reciprocal exchange project focused on cultural and civic enhancement, (2) a reciprocal internship project for undergraduate students with academic backgrounds in business management, information systems, economics, and education, or (3) a university-based project promoting free enterprise principles through entrepreneurship projects and exchange visits from U.S. universities. The three programs are described below.

Program Information

Overview: The P4L Thematic Youth Projects Initiative encompasses the three program areas of cultural and civic exchanges, business internships, and free enterprise initiatives as vehicles through which the successor generation can re-engage in a dialogue for greater understanding.

The Linking Individuals, Knowledge, and Culture (LINC) program is designed to foster mutual understanding between participants (ages 15–17) and Americans as well as a respect for democratic practices and the rule of law through a three to six week reciprocal exchange program that will enhance the participants' knowledge of their host country's history, culture, and system of government.

The Business Internship Initiative (BII) creates reciprocal internship placements where undergraduate university students (ages 17–22) can gain international business and management experience in their area of interest.

Through the Free Enterprise Initiative (FEI), undergraduate students (ages 17–22) in foreign countries develop and implement ideas of free enterprise, business leadership and civil society within their universities and local communities. Through international student exchanges, participants learn

about best practices within the entrepreneurship arena and build upon the foundation of mutual understanding and respect.

The goals of the P4L Thematic Youth Projects Initiative are:

(1) To develop a sense of civic responsibility and commitment to enhancing cultural bridges among youth.

(2) To promote mutual understanding between the United States and the people of other countries.

(3) To foster personal and institutional ties between participants and partner countries.

Please refer to the Project Objectives Goals and Implementation (POGI) guidelines for specific project goals.

Applicants should identify their own specific objectives and measurable outcomes based on these program goals and the project specifications provided in this solicitation.

Should organizations wish to apply for more than one project, they must submit a separate proposal for each. Each of the three projects will be judged independently and proposals for a particular country or region will be compared only to proposals for the same country or region.

Project A: Linking Individuals, Knowledge, and Culture (LINC)

Total funding: $780,000. ECA will award three to four grants, each totaling no more than $250,000. The Bureau reserves the right to adjust the number of awards and grant amounts.

Project B: Business Internship Initiative (BII)

Total funding: $250,000. 50–55 participants total. Applicants should propose a project implementation timeline beginning no earlier than September 2004. One grant will be awarded.

Project C: Free Enterprise Initiative (FEI)

Total funding: $200,000. 25–30 participants total. Applicants should propose a project implementation timeline beginning no earlier than September 2004. One grant will be awarded.

To qualify for these grants, a partner country must have a significant Muslim population, though the beneficiaries of the grant are in no way limited to the Muslim population, and must be in the following regions: the Middle East/North Africa, Sub-Saharan Africa, South Asia, and Southeast Asia; the only country in Europe/Eurasia that is eligible is Turkey. Afghanistan is not eligible. Programs with Pakistan are restricted to one-way exchange visits to the U.S. Organizations should consider U.S. Department of State travel advisories when selecting countries with which they would like to work.

For the three projects, applicants must demonstrate their capacity for conducting projects of this nature, focusing on three areas of competency: (1) Provision of programs aimed at achieving the goals and themes outlined in this document; (2) age-appropriate programming for the target audience; and (3) work in the countries outlined above. Applicants need to have the necessary capacity in the geographic areas from which participants will be recruited or a partnered institution with the requisite capacity to recruit and select participants for the program and to provide follow-on activities.

The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Pending successful implementation of this program and the availability of funds in subsequent fiscal years, the Bureau reserves the right to renew this grant for two additional fiscal years before competing it again.

Guidelines: Grants should begin on or about September 1, 2004, subject to the availability of funds. The grant period may be between 12 and 18 months in duration.

In pursuit of the goals outlined above, the programs will include the following:

- Recruitment and selection of participants appropriate to the project.
- A pre-departure orientation program.
- Activities that promote program goals. Activities may be school-or community-based, as appropriate to the project.
- Logistical arrangements, home stay arrangements (as appropriate) and/or other accommodation, provisions for religious observance, disbursement of stipends/per diem, local travel, and travel between sites (per program design).
- Follow-on activities in the participants' home geographic regions designed to reinforce the ideas, values and skills imparted during the program.

Recruitment and Selection: The grant recipients will manage the recruitment and merit-based selection of participants in cooperation with the Public Affairs offices at the U.S. Embassies or other USG representative offices overseas. Organizers must strive for the broadest geographic, ethnic, and socio-economic diversity as it is the purpose of P4L to engage disadvantaged youth. The Department of State and/or its overseas representatives reserve final approval of all selected delegations.

Participants: The participants will be students aged 15 to 17 for the LINC program. Candidates must have demonstrated leadership aptitude and an interest in community service and development. For the BII and FEI programs, participants will be undergraduates aged 17 to 22. Qualified candidates must have a declared major in a branch of management or business, be interested in the ideas of free enterprise or entrepreneurship and have demonstrated leadership aptitude.

Criteria for selection of participants will be leadership skills, an interest in service to the community, strong academic and social skills, overall composure, openness and flexibility and language proficiency (based on country placements).

Follow-on Activities and In-Country Programming: Follow-on programming for program alumni is essential, and additional in-country programming is strongly recommended. Applicants may present creative and effective ways to address the project themes, for both program participants and their peers, as a means to amplify the program impact.

Applicants are invited to submit proposals for one or more of the three projects announced here (a separate proposal for each project). Programs must comply with J–1 visa regulations. Please refer to Solicitation Package for further information.

Budget Guidelines

The Bureau anticipates awarding three or more grants exceeding $60,000 each under this competition. Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. Therefore, organizations with less than four years of experience in conducting international exchange programs are not eligible to apply under this competition.

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the following title and number: ECA/PE/C/PY–04–70.

FOR FURTHER INFORMATION CONTACT: The Office of Youth Programs, ECA/PE/C/

PY, Room 664, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, tel. (202) 260–6520, and fax (202) 203–7529, e-mail *OrourkeMM@state.gov* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Matt O'Rourke on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/RFGPs*. Please read all information before downloading.

New OMB Requirement

An OMB policy directive published in the **Federal Register** on Friday, June 27, 2003, requires that all organizations applying for Federal grants or cooperative agreements must provide a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number when applying for all Federal grants or cooperative agreements on or after October 1, 2003. The complete OMB policy directive can be referenced at *http://www.whitehouse.gov/omb/fedreg/062703_grant_identifier.pdf*. Please also visit the ECA Web site at *http://exchanges.state.gov/education/rfgps/menu.htm* for additional information on how to comply with this new directive.

Shipment and Deadline for Proposals

Important Note: The deadline for this competition is Tuesday June 1, 2004. In light of recent events and heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles.

Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Applicants must follow all instructions in the Solicitation Package. The complete proposal package (the original proposal, one fully-tabbed copy, 8 copies with Tabs A–E, and one extra application cover sheet) should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/PY–04–70, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal in text (.txt) format on a PC-formatted disk. The Bureau will provide these files electronically to the Public Affairs Section at the U.S. embassy for its review.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Pub. L. 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106—113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Adherence to All Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. ECA or the Grantee (program office: please specify which) will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov or from:* United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, FAX: (202) 401–9809.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission. Proposals should display an understanding of the goals of the program, as reflected in the priorities of this RFGP. Exchange activities should ensure efficient use of program resources. Proposals should demonstrate a commitment to excellence and creativity in the implementation and management of the program.

2. *Program planning:* A detailed agenda and relevant work plan should explain how objectives will be achieved and should include a timetable for completion of major tasks. Responsibilities of partnering organizations should be clearly described.

3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's goals and plan. The substance of workshops and exchange activities should be described in detail and included as an attachment.

4. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of schools and participants, program venue and program evaluation) and program content. Applicants should refer to the Bureau's Diversity, Freedom and Democracy Guidelines in the Proposal Submission Instructions (PSI).

5. *Institutional Capacity/Record/Ability:* Applicants should demonstrate knowledge of each country's educational environment and the capacity to recruit U.S. and foreign students. Proposals should present significant experience in developing exchange or intern programs and exhibit an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements as determined by the Bureau's Grants Division. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program goals and objectives.

6. *Multiplier Effect/Impact:* The program should strengthen long-term mutual understanding and facilitate leadership development. Applicants should detail how participants will share newly-acquired knowledge and skills with others.

7. *Program Monitoring and Evaluation:* Proposals must include a plan and methodology to evaluate the program's successes and challenges, both as the activities unfold and at the end of the program. The evaluation plan should show a clear link between program objectives and expected outcomes, and should include a description of performance indicators and measurement tools. Applicants should provide draft questionnaires or other techniques for use in surveying participants to facilitate the demonstration of results. The grantee organization will indicate its willingness to submit periodic progress reports in accordance with the program office's expectations.

8. *Follow-on and Sustainability:* Proposals should provide a strategy for the use of alumni to work together to further the impact of the program without the Bureau's financial support.

9. *Cost-effectiveness/Cost sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. While lower "per participant" figures will be more competitive, the Bureau expects all figures to be realistic. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * * ; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through the FY04 Exchanges budget.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: April 20, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 04–9440 Filed 4–23–04; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 4663]

Advisory Committee on Labor Diplomacy; Notice of Cancellation of Meeting

The Advisory Committee on Labor Diplomacy (ACLD) has cancelled its meeting scheduled for Monday, April 26, 2004 at 9 a.m. in room 1107, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520. The meeting has been postponed until further notice.

Dated: April 21, 2004.

Robert Hogan,

Director, Bureau of Democracy, Human Rights and Labor, Department of State.

[FR Doc. 04–9528 Filed 4–23–04; 8:45 am]

BILLING CODE 4710–18–P

DEPARTMENT OF STATE

[Public Notice 4659]

U.S. Advisory Commission on Public Diplomacy; Notice of Meeting

A meeting of the U.S. Advisory Commission on Public Diplomacy will be held at the U.S. Consulate in Shanghai, China, on May 17, 2004 at 10 a.m. The Commissioners will discuss public diplomacy in Asia.

The Commission was reauthorized pursuant to Pub. L. 106–113 (H.R. 3194, Consolidated Appropriations Act, 2000). The U.S. Advisory Commission on Public Diplomacy is a bipartisan presidentially appointed panel created

by Congress in 1948 to provide oversight of U.S. Government activities intended to understand, inform and influence foreign publics. The Commission reports its findings and recommendations to the President, the Congress, the Secretary of State and the American people. Current Commission members include Barbara M. Barrett of Arizona, who is the Chairman; Harold C. Pachios of Maine; Ambassador Penne Percy Korth of Washington, DC; Ambassador Elizabeth F. Bagley of Washington, DC; Charles "Tre" Evers III of Florida; Jay T. Snyder of New York; and Maria Sophia Aguirre of Washington, DC.

For more information, please contact Matt J. Lauer at (202) 203–7880.

Dated: April 15, 2004.

Matthew J. Lauer,

Executive Director, U.S. Advisory Commission on Public Diplomacy, Department of State.

[FR Doc. 04–9439 Filed 4–23–04; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Finding of No Significant Impact

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Environmental Finding Document: Finding No Significant Impact; Notice.

SUMMARY: The Federal Aviation Administration (FAA) prepared an Environmental Assessment (EA) to evaluate the East Kern Airport District (EKAD) proposal to operate a commercial launch facility at the Mojave Airport in Mojave, California. The EA also evaluated the potential environmental impacts of launching two types of horizontally launched suborbital vehicles (Concept A and Concept B) proposed to be launched from the Mojave Airport. XCOR Aerospace is requesting a launch specific license and proposes to conduct up to 10 licensed launches in 2005 and up to 25 licensed launches in 2006 of the Sphinx launch vehicle. This launch vehicle is similar to the Concept B vehicle described and analyzed in the EA. After reviewing and analyzing currently available data and information on existing conditions, project impacts, and measures to mitigate those impacts, the FAA, Office of the Associate Administrator for Commercial Space Transportation (AST) has determined that licensing up to 35 launches of the Sphinx vehicle is not a Federal action that would significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act (NEPA). Therefore the preparation of an Environmental Impact Statement (EIS) is not required and AST is issuing a Finding of No Significant Impact (FONSI). The FAA made this determination in accordance with all applicable environmental laws.

For a Copy of the Environmental Assessment or the FONSI Contact: Ms. Michon Washington, FAA Environmental Specialist, Mojave Airport EA, c/o ICF Consulting, 9300 Lee Highway, Fairfax, VA 22031, or refer to the following Internet address: *http://ast.faa.gov.*

DATES: The Draft EA was released for public comment on October 31, 2003. In addition, the FAA held a public hearing on December 10, 2003 in Mojave, California to collect comments from the public. All comments received before December 12, 2003 were considered in the preparation of the Final EA.

Proposed Action: Launches of launch vehicles, such as XCOR's proposed launches of the Sphinx vehicle from the Mojave Airport, must be licensed by the FAA pursuant to 49 U.S.C. 70101–70121, formerly the Commercial Space Launch Act. Licensing the launch of a launch vehicle is a Federal action requiring environmental analysis by the FAA in accordance with NEPA of 1969, 42 U.S.C. 4321 *et seq.* Upon receipt of a complete license application, AST must decide whether to issue a launch license to XCOR for up to 35 launches of the Sphinx launch vehicle from the Mojave Airport. An environmental determination is required for the evaluation of a license application.

The FAA is using the analyses in the Final EA as the basis for the environmental determination of the impacts of these launches to support the licensing decision for the launch of the Sphinx vehicle from the Mojave Airport.

Concept B launch vehicles considered in the EA would use rocket power to take off from a standard aviation runway. This is the same type of operation proposed for operating the Sphinx launch vehicle. The EA considers the overall impacts to the environment of the proposed operations including the launch and landing of Concept B launch vehicles at the Mojave Airport. The EA considered both a small Concept B launch vehicle, which would use approximately 476 kilograms (1,050 pounds) of propellant and a large Concept B launch vehicle, which would use approximately 4,763 kilograms (10,500 pounds) of propellant. The Sphinx vehicle is similar to the small Concept B vehicle described and analyzed in the EA.

The Sphinx vehicle would consist of a single stage rocket power vehicle, powered by an engine fueled by liquid oxygen (LOX) and kerosene. The vehicle would launch horizontally from a runway at Mojave Airport and would likely fly east along a steep ascent trajectory until the propellants are expended. The vehicle would coast unpowered along a parabolic trajectory until reaching apogee. It would then coast down until pullout and glide to an emergency-management area between 10 and 160 kilometers (six and 100 miles) downrange of the Mojave Airport where it may be necessary to conduct a series of maneuvers to expend excess energy before making a descent to the Mojave Airport. Upon reaching the Mojave Airport it may be necessary to conduct additional maneuvers to expend excess energy before performing an unpowered horizontal landing.

In the unlikely event of an emergency landing, the Pilot in Command (PIC) would attempt to reach the primary abort site at the main runway at Edwards Air Force Base. However, any airport within gliding range with a runway at least 1,219 meters (4,000 feet) long would be a candidate for an emergency landing location.

Environmental Impacts

Safety and Health

A hazard analysis is a necessary part of the Mission and Safety Review for the FAA licensing determination to assess the possible hazards associated with proposed ground, flight, and landing operations. Launches of the Sphinx launch vehicle from the Mojave Airport would require launch specific licenses from the FAA and the launch applicant would be required to conduct risk analyses based on the proposed mission profiles. The Mission and Safety Review will consider these analyses and, therefore, they were not discussed in detail in the EA. However, analysis of the safety and health implications of launch related operations and activities that have the potential for environmental impact were considered in the EA.

There would be some vapors of various propellants released from propellant storage/transfer operations through evaporative losses. However, such vapors would be vented outside and at a height that would provide adequate protection for personnel, buildings, and the environment. Also, the total quantity of emissions would

not occur as a large acute (short-term) exposure, but would occur as a slow vapor release over a long period of time. There is also the concern of spills of propellants during handling and loading operations and subsequent fire or explosion. However, the Mojave Airport has established practices and procedures to handle the spills and releases of propellants.

Increased road traffic that would result from conducting the proposed launch operations at the Mojave Airport would only add a few cars/trucks above existing traffic loads. However, the increase in the number of shipments of hazardous materials should not significantly increase the number of traffic accidents on the roadways around the Mojave Airport.

On-site work associated with launch operations would be similar to that associated with industrial chemical operations. Exposure to mechanical accidents should not differ significantly from current levels for the Mojave Airport because the number of operations associated with the conduct of launch operations would be relatively small given the number of operations airport wide.

In a catastrophic accident, it would be likely that the crew would be seriously injured or killed. At the Airport, the on-site fire department could respond, secure the site, but would stay clear of the immediate area until the danger of explosion diminishes. It is expected that any fires resulting from a failure could be handled by the fire department. Additional off-site emergency response capability could also be used if necessary.

Air Quality

Air quality impacts associated with Concept B launch operations were examined in terms of air emissions from launch/landing operations and from routine launch preparation operations. The air quality at the Mojave Airport in Eastern Kern County is in Federal non-attainment (serious) and State non-attainment (moderate) for ozone, and non-attainment for PM_{10} (California standards only). A Federal agency cannot support an action (*e.g.*, fund, license) unless the activity will conform to the Environmental Protection Agency-approved State Implementation Plan for the region. This is called a conformity determination or analysis. A conformity analysis may involve performing air quality modeling and implementing measures to mitigate the air quality impacts. The Federal government is exempt from the requirement to perform a conformity analysis if two conditions are met.

- The ongoing activities do not produce emissions above the *de minimis* levels specified in the rule.
- The Federal action must not be considered a regionally significant action. A Federal action is considered regionally significant when the total emissions from the action equal or exceed 10 percent of the air quality control area's emissions inventory for any criteria pollutant.

Air analyses indicated that nitrogen oxides (NO_X) and volatile organic compound (VOC) emissions are less than 0.01 metric tons (0.01 tons) per year and less than 2.2 metric tons (2.4 tons) per year, respectively. These would not be above the *de minimis* level of 45.4 metric tons (50 tons) per year. In addition, the total emissions from the proposed action represent less than 0.0001 percent of the area's emissions inventory for NO_X and 0.05 percent of the area's emissions inventory for VOC, and therefore, are not regionally significant. Based on these data, there is no need for a Federal conformity analysis, there would be no exceedances of the NAAQS, and therefore no significant impacts to air quality are anticipated.

The air emissions from the Sphinx launch operations would be primarily from the rocket motor. The propellants are LOX and kerosene. Possible emissions would include carbon monoxide (CO), carbon dioxide (CO_2), hydrogen (H_2), and water (H_2O). The only criteria pollutant among these is CO, and Kern County is in attainment for CO.

The analysis considered emissions in two categories, above 914 meters (3,000 feet) and below 914 meters (3,000 feet). The 914 meter (3,000 feet) altitude is an appropriate cutoff because the Federal government uses 914 meters (3,000 feet) and below for contributions of emissions to the ambient air quality and for *de minimis* calculations.

For 35 flights of the Sphinx vehicle, a total of 3,266 kilograms (7,200 pounds) of CO would be emitted at altitudes below 914 meters (3,000 feet). This would occur over two years and would not exceed the *de minimis* level of 45.4 metric tons (50 tons) per year; therefore, no Federal conformity analysis would need to be conducted.

Emissions above 914 meters (3,000 feet) were also considered to determine other environmental impacts such as global warming and ozone depletion. Approximately 52,676 kilograms (116,130 pounds) of CO_2 would be released from 35 launches of the Sphinx vehicle over the two-year period. In comparison, CO_2 emissions in the PEIS for Licensing Launches (DOT, 2001) from commercial launches were estimated to be much greater than for this proposed action (approximately 4,536 metric tons per year (5,000 tons per year)). No significant impact due to global warming or ozone depletion was found in the PEIS for Licensing Launches and, therefore, no significant impact would be expected from launches of the Sphinx launch vehicle.

Emissions would also occur from support equipment used during ground operations. This could include relatively few trucks and equipment; therefore, few emissions would be expected from their use. Air emissions may be generated during fueling the launch vehicle and storage of additional fuels. For flight of the Sphinx vehicle, 345 kilograms (760 pounds) of LOX and 136 kilograms (300 pounds) of kerosene would be needed per flight. This would equal 12,075 kilograms (26,600 pounds) of LOX and 4,760 kilograms (10,500 pounds) of kerosene for 35 flights. This amount represents a relatively small increase in annual propellant usage at the airport and, therefore, the emissions from storage and dispensing as a result of activities related to the proposed launch operations would not be significant.

Airspace

Conducting a maximum of 35 launches of the Sphinx vehicle over a 24-month period would have no significant impacts on airspace. Conducting 10 launches in 2005 would result in a 0.05 percent increase and conducting 25 launches in 2006 would result in a 0.14 percent increase in activity at the Mojave Airport. Established protocols including Letters of Authorization (LOA) would be used with the R–2508 Complex. The Mojave Airport and several of its tenants have LOAs with the R–2508 Complex Control Board and the managers of individual restricted areas within the R–2508 Complex to operate within the various individual restricted areas (including R–2515). Any flights into the R–2508 Complex that are part of the proposed action that would create a significant impact to military activities would be prohibited by the scheduling and controlling agencies. Thus, the proposed action would not result in long-term changes to military operations or training within restricted airspace. There would be a minimal impact on surrounding airspace given the small number of launches.

Biological Resources

The Sphinx launch vehicle would land at a designated runway at the Mojave Airport. The runways are

routinely used for take-offs and landings by other aircraft, and no construction activities would be required to support launch operations. Because no development activities are planned, no adverse effects to vegetation, including Joshua trees and creosote scrub, are anticipated.

Launches of the Sphinx would not result in the loss of habitat, conflict with the provisions of any adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plans. The desert tortoise, which is a U.S. Fish and Wildlife Service federally-listed, threatened wildlife species, has historically occurred throughout the region and has limited potential to occur almost anywhere within the Mojave Specific Plan area. Critical habitat for the desert tortoise has been designated in the region of influence for this proposed action. The FAA initiated informal consultation with the U.S. Fish and Wildlife Service under Section 7 of the Endangered Species Act. After review of potential impacts, the FAA determined and the U.S. Fish and Wildlife Service concurred, that the proposed action is not likely to affect listed species or critical habitat. Launches of Sphinx vehicles would not have a potential for adverse effect on any federally-listed threatened or endangered species.

The breakup of the launch vehicles during a crash and subsequent recovery activities could directly impact biological resources in the region of influence through ground disturbance. Also, if falling debris hit specific species on the ground, those resources would likely be destroyed. However, because it is unlikely that a crash would occur, impacts to biological resources as a result of vehicle crash would not be anticipated.

The launch vehicles may cause sonic booms in the region, which could impact wildlife. Noise levels generated during sonic booms would be short-term and overall predicted noise levels would not exceed ambient noise levels in residential areas. However, there is potential for C-weighted sound exposure levels above the acceptable threshold for ambient conditions, which is 61 dB. The brief sonic boom noise could elicit a short-term startle response in wildlife but no long-term adverse impacts are expected. In general, these noise levels would be significantly less than those produced by existing aircraft in the region and launches would occur infrequently over the course of a year. Therefore, these short-term noise impacts would be less than significant.

Cultural Resources

Because there are no sites listed or eligible for listing on the National Register of Historic Places within the community of Mojave and no construction activities would occur as part of the proposed action, no adverse effects on National Register of Historic Places sites would be anticipated.

The breakup of launch vehicles during a crash and subsequent recovery activities could directly impact cultural resources on the ground. These resources may be located above-or below-ground and may be known or unknown. If falling debris hit specific assets on the ground, those resources would likely be destroyed. Crash cleanup activities could also disturb nearby resources. However, because it is unlikely that a crash would occur, and cultural resources are widely dispersed throughout the region, impacts to a cultural site as a result of a vehicle crash would not be anticipated.

Pursuant to 36 CFR part 800, the FAA requested the views of the California State Historic Preservation Officer (SHPO) on any further actions to identify historic properties or properties that may be listed in the National Register of Historic Places. Per the SHPO's recommendations, the FAA identified information on historic properties that are listed or are eligible for listing on the National Register of Historic Places. Based on the FAA's review of the proposed action under Section 106 of the National Historic Preservation Act, the FAA determined that the project would have no adverse effect on historic properties. The SHPO concurred with the FAA's determination and consultation concluded.

Geology and Soils

Launches of the Sphinx vehicle would have less than significant or no impact on soils. In terms of ground clouds from the combustion of propellants, Sphinx would create a ground cloud that would disperse as the vehicle moves along the runway. Additionally, the Sphinx vehicle would use liquid propellants, which create a ground cloud with fewer impacts to soils than solid propellant motors. Therefore, no significant impacts would be expected to soils.

There would be no loss of known mineral resources or availability of a locally important mineral resource recovery site identified in a land use plan. There would be no impact on existing seismic risk, including rupture of a ground fault, ground shaking and ground failure, including liquefaction. There would be no impact on existing landslide and erosion risk.

Hazardous Materials and Hazardous Waste Management

For the Sphinx vehicle, the primary hazardous materials used would be propellants. The propellants used are relatively inert and would be stored at the Mojave Airport. In addition to propellants; it is anticipated that minor amounts of other hazardous materials, such as paint, oils and lubricants, and solvents, would be used. All propellants and other hazardous materials would be stored and used in compliance with the regulations applicable to their storage and use, and already in place at Mojave Airport. No adverse impacts would be anticipated from these additional hazardous materials.

The Sphinx vehicle would use LOX and kerosene as propellants. Kerosene is interchangeable with Jet Fuel, which is already used without adverse impact at the Mojave Airport. LOX would be stored in dewars (large cooled pressurized containers, with insulation to ensure that oxygen remains in liquid form).

If additional storage capacity is required to support Sphinx operations, tank trucks with the capacity to hold 28,123 kilograms (62,000 pounds) or 34,826 liters (9,200 gallons) could be used as short-term temporary storage. The proposed tanks trucks would be parked between existing buildings on the Mojave Airport within a fenced area and would meet all established explosive quantity distance safety requirements. Overall, there would be no significant Hazardous Materials and Hazardous Waste Management impacts anticipated from the launch of Sphinx launch vehicles from the Mojave Airport.

Land Use

No significant impacts to land uses would occur either at the Mojave Airport or within the region of influence as a result of the proposed action. No farmlands or agricultural use lands are located on the Mojave Airport. No prime farmland, unique farmland, farmland of state importance, or general farmland either at the Mojave Airport or within the region of influence would be converted to a non-agricultural use as a result of the proposed action. No conflicts with existing agricultural uses or Williamson contracts would occur as a result of the proposed action. No parks or recreational facilities are located on the Mojave Airport. The launch of the Sphinx vehicle from the Mojave Airport would not change the existing land use and would not impact the preservation

of the natural beauty of the countryside, public parks, recreation lands, wildlife and waterfowl refuges, or historic sites as specified in Section 4(f) of the U.S. Department of Transportation Act of 1966.

Noise

Sphinx vehicle flight procedures would occupy the Mojave Airport for four minutes during launch and four minutes during landing. Because landings of these vehicles would be unpowered, noise levels for the landing of the launch vehicle would be insignificant and were not considered in the noise analysis. The amount of noise produced by an engine is related to several factors including the thrust produced by the engine. The F–4 jet aircraft with afterburners used at the Mojave Airport has a thrust of 79,623 Newtons (17,900 pounds); this corresponds to a maximum A-weighted sound level of 109.7 at a distance of 305 meters (1,000 feet). Concept B launch vehicles were assumed to have a maximum thrust of 8,010 Newtons (1,800 pounds), which is significantly lower than the thrust of the F–4 jets currently flown at the airport. It is therefore anticipated that the noise levels produced by the launch of the Sphinx launch vehicle would be lower than the noise levels produced by aircraft already in use at the Mojave Airport. Because the Mojave Airport currently experiences high intensity noise levels due to military jet flights and stationary rocket testing, and because the additional high intensity noise level would be insignificant, impacts to noise levels during launches at the Mojave Airport would be insignificant.

A DoD study has shown the noise effects of ten daytime sonic booms at an overpressure of 47.88 Newtons per square meter (1 pound per square foot) everyday for a year would yield an outdoor accumulated noise level equal to an L_{dn} of 65 dBA. This study result can be used to define the maximum allowance for the number of daytime sonic boom events per day (10 events per day) to reach the L_{dn} 65 dBA noise standard limit. This assumes the estimated sonic boom overpressure is within the same order of magnitude, 47.88 Newtons per square meter (1 pound per square foot), as those to be generated by the vehicle.

Socioeconomic Impacts and Environmental Justice

The proposed action would not be expected to displace people or decrease the population in the community of Mojave and, therefore, no impacts to population are expected from the proposed action. The proposed action would not result in any jobs being eliminated at the Mojave Airport and, therefore, no impacts to employment are expected from the proposed action. The proposed action would not result in the elimination of any jobs and, therefore, would not have any negative impacts on the community of Mojave. Any increase in the number of people accessing Mojave as a result of the proposed action would be limited to launch participants and launch spectators. The proposed action would not displace people from their existing housing or bring an influx of people to the region to seek housing thereby necessitating the construction of housing elsewhere. There would not be a large influx of workers to the Mojave Airport; under normal launch and landing procedures, additional on- or off-site public or emergency services, including firefighters, security, or medical services would not be required.

Noise levels from the Sphinx vehicle would be significantly less than those experienced from existing vehicles in the region and would occur infrequently over the course of a year. Therefore, no impacts to environmental justice communities are expected from the proposed action.

Transportation

Launches of the Sphinx vehicle would be expected to add 30 surface passenger vehicles in 2005 and 75 surface passenger vehicles in 2006 (assuming 3 cars per each launch). Existing access roads could easily handle this level of passenger vehicle traffic.

Under the proposed action, additional propellants would be delivered to the Mojave Airport to support flights of the Sphinx vehicle. For flight of the Sphinx vehicle, approximately 340 kilograms (750 pounds) of LOX and 136 kilograms (300 pounds) of kerosene would be needed per flight. Each kerosene truck would carry 28,123 kilograms (62,000 pounds) and each LOX truck would carry 17,418 kilograms (38,400 pounds). One kerosene truck and one LOX truck would be needed to deliver the required propellants for 35 launches of the Sphinx launch vehicle. The Mojave Airport estimates that there are currently 264 propellant truck deliveries annually. Therefore, there would be no additional congestion or decline in level of service from the addition of delivery trucks for Sphinx launches.

Visual and Aesthetic Resources

The proposed action would have no significant visual impacts. The Sphinx launch vehicle would resemble traditional airplanes while in flight, and the visual landscape already includes airplanes in flight. The launch vehicles would leave visible contrails, but they would be similar in visual impact to contrails from existing operations. Because this area is already used for takeoffs and landings of airplanes, the visual sensitivity is low. The proposed action would not substantially degrade the existing visual character or quality of the site and its surroundings and would have no adverse effect on a scenic vista or scenic resources, as there are none in the area.

Water Resources

No significant impacts to on- or off-site water resources would occur as a result of the proposed action. Because no construction or expansion to existing on- or off-site facilities would occur, the proposed action would not cause impacts to existing drainage patterns that would result in increased erosion, siltation, or off-site flooding.

No significant increases in the need for utilities and service systems in the Community of Mojave would occur due to the proposed action. Utilities and service systems in the region of influence outside of the Mojave community would not be impacted by the proposed action. In the case of a catastrophic event, debris and wreckage from the launch vehicles could impact utilities or their infrastructure. However, because of the small size of the launch vehicle, the low probability of a catastrophic accident, and the extensive emergency response and clean-up procedures in place at the airport, the impacts would be insignificant.

Cumulative Impacts

The proposed action would not exceed *de minimis* levels for criteria pollutants and the percent of the air quality control areas emissions inventory for any criteria pollutant. There would be no emissions that directly affect ozone depletion. No significant cumulative impacts to air quality are expected.

Because of the volume of air traffic that utilizes this area already and the structured scheduling procedures in place for joint-use of the R–2508 Complex, the proposed action would have no significant cumulative effects on airspace.

In the EA for the Orbital Reentry Corridor for Generic Unmanned Lifting Entry Vehicle Landing at Edwards AFB, the USAF considered up to 12 flights per year. Currently an average of two military jet aircraft take off and/or land

at the Mojave Airport per day. These military aircraft can produce sonic booms. Even in the worst case scenario, *i.e.*, one launch from the Mojave Airport, one launch of the proposed Unmanned Lifting Entry Vehicle from Edwards AFB, and two jet aircraft take offs or landings from the Mojave Airport, there would not be more than 10 sonic booms generated per day in the region of influence. Therefore, there would be no significant cumulative impacts to noise from the proposed action.

No significant cumulative impacts to biological, cultural, land use, socioeconomics, environmental justice, transportation, geologic, mineral, visual and aesthetic, or water resources would occur as a result of the proposed action. No significant cumulative impacts would result from hazardous materials or hazardous waste used or produced as a result of the proposed action.

Detailed analyses of safety and related issues will be addressed in the FAA's Mission and Safety Review prior to issuing a launch license. However, safety and health analyses of operations that have the potential for environmental impact were considered in the EA and were determined to have no significant cumulative impacts on the environment.

Although the proposed action would support and facilitate limited growth, it would not induce growth. Additionally, there would be no specific future development activities currently known that would be dependent on the proposed action. Therefore no secondary impacts are expected to result from the proposed action.

No Action Alternative

Under the no action alternative, the FAA would not issue a launch license to XCOR for up to 35 launches of the Sphinx launch vehicle from the Mojave Airport. XCOR could continue to conduct aviation-related activities that do not require a launch license. The predicted environmental effects of the proposed action would not occur. The existing on- and off-site conditions at the Mojave Airport would remain unchanged.

Determination

An analysis of the proposed action has concluded that there are no significant short-term or long-term effects to the environment or surrounding populations. After careful and thorough consideration of the facts contained herein, the undersigned finds that the proposed Federal action is consistent with existing national environmental policies and objectives as set forth in Section 101 of NEPA and other applicable environmental requirements and will not significantly affect the quality of the human environment or otherwise include any condition requiring consultation pursuant to Section 102(2)(C)of NEPA.

Dated: April 19, 2004.

Patricia Grace Smith,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 04–9393 Filed 4–23–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2004–27]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before May 17, 2004.

ADDRESSES: You may submit comments (identified by DOT DMS Docket Number FAA–2004–17478) by any of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590-001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John Linsenmeyer (202) 267–5174, Tim Adams (202) 267–8033, or Sandy Buchanan-Sumter (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on April 20, 2004.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petition for Exemption

Docket No.: FAA–2004–17478.

Petitioner: Delta Air Lines, Inc.

Section of 14 CFR Affected: 14 CFR 145.107(a)(1).

Description of Relief Sought: To permit Delta Air Lines, Inc. to operate a satellite repair station at Dallas/Fort Worth Texas, which holds a Limited Rating for Emergency Equipment, when Delta's repair station with managerial control of the Dallas/Fort Worth facility does not have an identical rating.

[FR Doc. 04–9391 Filed 4–23–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2004–28]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of

this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before May 17, 2004.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FAA–2004–17317–1 by any of the following methods:

- *Web site: http://dms.dot.gov.*

Follow the instructions for submitting comments on the DOT electronic docket site.

- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Wes Ryan (816–329–4127), Small Airplane Directorate (ACE–111), Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; or John Linsenmeyer (202–267–5174), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on April 20, 2004.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2004–17317–1.

Petitioner: Cessna Aircraft Company.

Sections of 14 CFR Affected: 14 CFR 23.181(b).

Description of Relief Sought: To allow the Cessna Model 525B to be certificated with relief from the requirements of § 23.181(b), as outlined in Exemption 5759, which was issued for the original 525. However, the exemption for the 525B would contain the additional restriction to require the 525B to operate below 30,000 feet in the event of a yaw damper failure.

[FR Doc. 04–9392 Filed 4–23–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss transport airplane and engine (TAE) issues.

DATES: The meeting is scheduled for May 14, 2004, from 11 a.m. to 1:30 p.m.

ADDRESSES: Federal Aviation Administration, 800 Independence Ave, SW., Room 810, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Alicia K. Douglas, Office of Rulemaking, ARM–204, FAA, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9681; facsimile (202) 267–5075; or e-mail at *alicia.k.douglas@faa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. III), notice is given of an ad hoc ARAC meeting to be held May 14, 2004, at the Federal Aviation Administration, 800 Independence Ave., Room 810, Washington, DC. The meeting/teleconference is being held to approve the Avionics Systems Harmonization Working Group (AVSHWG) report and draft associated advisory circular that addresses section 25.1322 pertaining to flight deck alerting systems. The TAE expected to vote on the AVSHWG report and associated draft advisory circular, but did not because of concerns associated with the lack of display color guidance contained in the draft advisory circular, at the February 2004 TAE meeting. At that time, however, TAE members agreed to accept the report and draft advisory circular but to hold the vote at a future date, after the AVSHWG addressed the concerns. This ad hoc TAE meeting is necessary because the AVSHWG report is directly linked to a safety enhancement recommended by the Commercial Aviation Safety Team (CAST).

The agenda will include:

- Opening remarks.
- Avionics HWG Report and Draft Advisory Circular, AC 25.1322, and Approval.

Attendance is open to the public, but will be limited to the availability of meeting room space and telephone lines. The public may participate by teleconference by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT** after May 4. The public must make arrangements by May 7 to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 25 copies to the Assistant Executive Director for Transport Airplane and Engine issues or by providing copies at the meeting. Copies of the documents to be voted upon may be made available by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

If you are in need of assistance or require a reasonable accommodation for the meeting or meeting documents, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT.** Sign and oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC, on April 20, 2004.

Ida M. Klepper,

Acting Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 04–9390 Filed 4–23–04; 8:45 am]

BILLING CODE 4910–13–P

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 Honolulu International, Kahului, Kona International, and Lihue Airports, HI

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 Honolulu International (HNL), Kahului (OGG), Kona International (KOA), and Lihue (LIH) Airports under the provisions of the 49 United States Code (U.S.C.) section 40117 and part 158 of the

Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before May 26, 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., Room 3012, Lawndale, CA 90261, or Honolulu Airports District Office, Box 50244, 300 Ala Moana Blvd., Room 7–128, Honolulu, HI 96850. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Brian H. Sekiguchi, Deputy Director, State of Hawaii, Department of Transportation (DOT), at the following address: 400 Rodgers Blvd., Suite 700, Honolulu, HI 96819–1880. Air carriers and foreign air carriers may submit copies of written comments previously provided to the State of Hawaii DOT, under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Steven Y. Wong, Civil Engineer, Honolulu Airports District Office, 300 Ala Moana Blvd., Room 7–128, Honolulu, HI 96850, Telephone: (808) 541–1225. 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 Honolulu International, Kahului, Kona International, and Lihue Airports under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On March 19, 2004, the FAA determined that the application to impose and use the revenue from a PFC submitted by the State of Hawaii DOT was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 19, 2004.

The following is a brief overview of the impose and use application Nos. 04–01–C–00–HNL, 04–01–C–00–KOA, and 04–01–C–00–LIH:

Level of proposed PFC: $3.00.

Proposed charge effective date: October 1, 2004.

Proposed charge expiration date: February 1, 2007.

Total estimated PFC revenue: $42,632,466.

Brief description of the proposed projects: Perimeter Road Improvements, Fencing, and General Aviation Apron Lighting at KOA; Perimeter Road and Fencing at LIH; Runway Safety Area Improvements at OGG; Perimeter Road Improvements and Fencing at OGG; Flight Information Display System and Public Address System Improvements at HNL; Air Conditioning System Improvements at HNL; Environmental Compliance Measure for South Ramp at HNL.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None (all interisland flight segments between two or more points in Hawaii are categorically excluded from PFC collections.)

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, Room 3012, 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 State of Hawaii DOT, Airports Division.

Issued in Lawndale, California, on March 31, 2004.

Mark A. McClardy,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 04–9405 Filed 4–23–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Supplemental Draft Environmental Impact Statement (SDEIS): Pulaski County, AR

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent to prepare a SDEIS.

SUMMARY: The FHWA is issuing this notice to advise the public that a Supplemental Draft Environmental Impact Statement (SDEIS) will be prepared for a proposed highway project in Pulaski County, Arkansas.

FOR FURTHER INFORMATION CONTACT: Randal J. Looney, Environmental Specialist, Federal Highway Administration, Arkansas Division, 700 West Capitol Avenue, Room 3130, Little Rock, Arkansas, 72201–3298, Telephone: (501) 324–6430.

SUPPLEMENTARY INFORMATION:

Background

The FHWA, in cooperation with the Arkansas Highway and Transportation Department, will prepare a Supplemental Draft Environmental Impact Statement (SDEIS) on a proposal to construct the North Belt Freeway, a four-lane, divided fully controlled access facility located on new alignment in northern Pulaski County, Arkansas. In 1994, a Final Environmental Impact Statement (FEIS) and a Record of Decision (ROD) identified a selected alignment. However, a portion of this alignment was not compatible with the City of Sherwood's Master Street Plan, and the project was not included in the Transportation Improvement Program (TIP) developed by Metroplan, the responsible Metropolitan Planning Organization (MPO).

A preliminary reevaluation of the project alignments completed in 2003 attempted to establish if the local community and MPO could support the originally selected project alternative (1A). The public involvement process associated with this reevaluation indicated public opposition for the originally selected alignment alternative.

The proposed project will primarily serve central Arkansas including Little Rock, North Little Rock, Sherwood, Jacksonville, and northern Pulaski County. Due to the length of time since the project's original Draft (EIS) (13 years) and the changes that have occurred within the study corridor, the entire length of the proposed project will be included in the SDEIS. The SDEIS will function as a reassessment for the proposed freeway project in order to satisfy Federal Highway Administration requirements.

In addition to documenting the engineering and environmental aspects of the new alignment alternative, updating the three previously studied alignment alternatives, and considering other feasible alternatives, the SDEIS will provide a comparative analysis of all feasible alternatives with the primary goal of the identification of a preferred alternative for the entire freeway project from Highway 67 to the I–40/I–430 interchange. This SDEIS evaluation will give consideration to Metroplan's Regional Plans and the City of Sherwood's Land Use Plans and Master Street Plans.

To ensure that the full range of issues related to this proposed action and all significant issues are identified, comments and suggestions are invited from all interested parties regarding the proposed North Belt Freeway. Comments or questions concerning this proposed action should be directed to the FHWA Arkansas Division at the address provided above. **FOR FURTHER INFORMATION CONTACT.**

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Issued on: April 20, 2004

Sandra L. Otto,

Division Administrator, FHWA Little Rock, Arkansas.

[FR Doc. 04–9383 Filed 4–23–04; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Union Pacific Railroad Company (Waiver Petition Docket Number FRA–2004–17308)

The Union Pacific Railroad Company (UPRR) seek a waiver of compliance with the *Locomotive Safety Standards*, 49 CFR 229.23, 229.27, and 229.29, as they pertain to the requirement to maintain the locomotive repair record form FRA 6180.49A, commonly referred to as the Blue Card, in the cab of their locomotives. If granted, UPRR would maintain locomotive inspection information in a secure data base. The data base would be maintained as the required office copy of form FRA 6180.49A. A computer generated form, which contains all information currently contained on the required FRA 6180.49A, would be maintained on board the locomotive. In place of required signatures of persons performing inspections and tests, UPRR employees would be provided a unique login identification number and a secure password to access the system and verify performance of inspections. In place of signatures, computer generated reports would block print the name of the employee performing a required inspection and block print the employee's supervisor who is certifying that all inspections have been made and all repairs were completed. Required filing of the previous inspection record will be maintained through the data base.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (FRA–2004–17308) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov*.

Issued in Washington, DC, on April 21, 2004.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 04–9435 Filed 4–23–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket No. FRA–2004–17445

Applicant: Canadian National-Illinois Central Railroad, Mr. Leon Winn, Manager, Signals & Communications, 2921 Hornlake Road, Memphis, Tennessee 38109.

The Canadian National-Illinois Central Railroad seeks approval of the proposed modification of the manual interlocking at Southport Junction, milepost 908.6, on the McComb Subdivision, Gulf Division, near Southport, Louisiana. The proposed changes consist of the conversion of the No. 5 power-operated switch at Shell Lube to hand operation, removal of the 4LB absolute signal for northward movement from the Shell Lube track, and relocation of the 4LA absolute signal approximately 400 feet north of its present location on the switching track.

The reason given for the proposed changes is that the frequency of switching operation at this location does not justify the need for a power-operated switch.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our

dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on April 21, 2004.

Grady C. Cothen, Jr.,

Acting Associate Administrator for Safety Standards.

[FR Doc. 04–9436 Filed 4–23–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief from the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket No. FRA–2004–17444

Applicant: Canadian National-Illinois Central Railroad, Mr. Leon Winn, Manager, Signals & Communications, 2921 Hornlake Road, Memphis, Tennessee 38109.

The Canadian National-Illinois Central Railroad seeks approval of the proposed discontinuance and removal of the automatic block signal system, on the single main track, between milepost 394.7 and milepost 397.5 on the Memphis Subdivision and between milepost 397.5 and milepost 398.2 on the Grenada Subdivision, Gulf Division, near Memphis, Tennessee, and operation of train movements under the direction of the Memphis Yardmaster.

The reason given for the proposed changes is that the signal arrangement is no longer necessary; the signal arrangement is now located wholly within the Memphis Terminal Yard Limits, where all movements must be coordinated with the person in charge of the yard at Memphis.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on April 21, 2004.

Grady C. Cothen, Jr.,

Acting Associate Administrator for Safety Standards.

[FR Doc. 04–9434 Filed 4–23–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Preparation of an Environmental Impact Statement on the Proposed Peninsula Rail Transit Project in the Cities of Hampton and Newport News, VA

AGENCY: Federal Transit Administration (FTA), U.S. Department of Transportation (DOT).

ACTION: Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: The Federal Transit Administration (FTA) and Hampton Roads Transit (HRT) intend to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) of 1969 for the proposed Peninsula Rail Transit Project to provide rail service to the Peninsula region of Hampton Roads. In addition to meeting the requirements of NEPA, the NEPA process will be used to comply with the requirements of the 1990 Clean Air Act Amendments; the National Historic Preservation Act of 1966, as amended; section 4(f) of the 1966 U.S. Department of Transportation Act; the Executive Order 12898 on Environmental Justice; and all other applicable laws, regulations, and executive orders.

A Major Investment Study (MIS) for the Peninsula Corridor was completed in 1997, adopting Light Rail Transit as the Preferred Alternative. In 2001, Hampton Roads Transit (HRT) initiated an Alternatives Analysis study (AA) to update the MIS by evaluating a range of transit alignments and potential transit system extensions. HRT, with extensive coordination from the Hampton Roads Planning District Commission (HRPDC) serving as the Metropolitan Planning Organization (MPO), municipalities, local and State agencies, community and business stakeholders, and the public, identified ten potential alignments and two rail technologies (Light Rail Vehicles [LRV] and Diesel Multiple Units [DMU]) for further evaluation. The evaluation recommended a Locally Preferred Alternative (LPA) that was formally adopted in Spring 2003 by the HRPDC serving as the MPO, York County, James City County, and the Cities of Williamsburg, Newport News, and Hampton. The LPA consisted of a rail transit corridor between Williamsburg and downtown Newport News (including the Southeast Community of Newport News) generally along the CSX railroad right-of-way, including and connecting with a rail transit corridor

generally along Hampton Roads Center Parkway to downtown Hampton. The LPA Report available for public review from HRT as described below in **SUPPLEMENTARY INFORMATION** documents the initial results of the Alternatives Analysis study.

Because of the large regional scale of the LPA (a 32-mile corridor), HRT proposed phased implementation for the LPA beginning with an initial phase that is commonly referred to as a Minimum Operable Segment (MOS). Five alternative initial phases or MOSs were discussed with the municipalities beginning in summer 2003. Based upon agreed upon evaluation criteria and other factors such as special trip generator locations, two MOSs have been selected to be carried forward for study in the EIS. The technologies under consideration for these two MOSs include LRV and DMU. FTA will require that the initial phase have logical termini and independent utility so that it does not prejudice the consideration of alternatives in subsequent phases or a decision to forego subsequent phases completely.

Six alternatives are proposed to be addressed in the EIS: a No-Build Alternative, a Transportation Systems Management Alternative, Light Rail Transit (LRT) operating on two alternative MOSs, and DMU operating on the same two MOSs. Any other reasonable alternative emerging from the scoping process will also be given consideration unless the earlier studies mentioned above have already provided justification for its elimination. Scoping activities will include public meetings and an agency scoping meeting during the months of April and May 2004.

DATES: *Comment Due Date:* Written comments on the scope of alternatives and impacts to be considered in the EIS must be received no later than May 17, 2003 and must be sent to HRT at the address indicated below. Scoping Meetings: HRT will conduct two identical public scoping meetings and an agency scoping meeting. The public scoping meetings will be held on April 27, 2004, from 4 to 7 p.m., at the City of Hampton Main Library, 4207 Victoria Boulevard, and on April 29th, 2004, from 4 to 7 p.m., at the City of Newport News City Center Conference Facilities, James Room, 700 Town Center Drive. The agency scoping meeting will be scheduled in consultation with representatives of the agencies most likely to have an interest or jurisdiction over some aspect of the project.

ADDRESSES: Written comments should be sent to Marie Arnt, Hampton Roads Transit, Community Relations Manager at 3400 Victoria Blvd., Hampton, Virginia 23669 or by e-mail to *marnt@hrtransit.org*. To be added to the mailing list contact Marie Arnt at 757–222–6000. Persons with special needs such as sign language interpreters should contact Marie Arnt at 757–222–6000 at least 48 hours prior to the scheduled meeting times. The dates and addresses of the scoping meetings are given in the DATES section above. All locations are accessible to people with disabilities and are open to all members of the community.

FOR FURTHER INFORMATION CONTACT: To request a scoping information booklet or copies of previous project reports including the LPA Report please contact Marie Arnt at 757–222–6000 or visit the HRT web page at *http://www.hrtransit.org*. The Federal Transit Administration contact is Ms. Patricia Kampf at (215) 656–7100.

SUPPLEMENTARY INFORMATION:

I. Scoping

The Federal Transit Administration (FTA) and Hampton Roads Transit (HRT) invite all interested individuals, organizations, and federal, state, and local agencies to provide comments on the scope of the study. During the scoping process, comments should focus on defining the alternatives to be studied in the EIS, identifying specific social, economic, or environmental issues to be evaluated. Comments should also focus on study area transportation/transit needs and potential alternatives, which would satisfy these needs. Individual preference for an alternative should be communicated later, during the comment period for the draft EIS. A Scoping Information Booklet will be circulated to all federal, state, and local agencies having jurisdiction over any aspect of the project and to all interested parties currently on the Peninsula Corridor mailing list. The Scoping Information Booklet and the LPA Report will be available at the scoping meetings or in advance of the meetings by contacting Marie Arnt at HRT, as indicated above in **ADDRESSES.** Scoping comments may be made at the public scoping meetings listed above in the **DATES** section of this notice or in writing within 30-days of this notice as listed in the **ADDRESSES** section of this notice.

The comments received during the public scoping meeting will be summarized and provided to the Project Steering Committee who will recommend alternatives to be carried forward in the EIS and the scope of the study. FTA and the cities of Newport News and Hampton will make the final decision on what alternatives are studied.

II. Purpose and Need

The project is needed to address the projected increase in population and employment growth in the Peninsula Corridor. This population and employment growth, and current congested conditions on existing roadways will result in continued increased demand for transportation alternatives. Roadways in the corridor are projected to operate with moderate to severe congestion by 2025 and are currently limited in both capacity and right-of-way. Existing transit service operates on the streets with traffic congestion and does not provide improved travel time over other vehicular traffic.

III. Description of the Study Area

The study area for the initial segment is a 22-mile corridor. This portion of the corridor generally parallels the existing CSX mainline on the Virginia Peninsula for 15.2 miles within the City of Newport News, Virginia and also includes a 6.8 mile corridor along the Hampton Roads Center Parkway from the Airport/Oyster Point area of Newport News to the Hampton Coliseum in the City of Hampton, Virginia.

IV. Alternatives

The alternatives proposed for consideration include a No-Build Alternative, a Transportation Systems Management (TSM) Alternative, two Light Rail Transit (LRT) Alternatives and two Diesel Multiple Unit (DMU) Alternatives. A brief description of the alternatives is below:

No-Build Alternative. This Alternative consists of highway and transit systems existing as of the year 2000, plus projects included in the Hampton Roads 2026 Regional Transportation Plan, adopted December 17, 2003. This alternative serves as the baseline for the NEPA process and enables the comparison of the transportation, social, economic, and environmental impacts.

Transportation Systems Management (TSM) Alternative. This Alternative consists of low cost transit improvements beyond those that are included in the 2026 Long Range Transportation Plan. The TSM Alternative attempts to address the project purpose and need without a major investment in a fixed guideway system.

Light Rail Transit Alternative. This Alternative provides light rail transit service to the Peninsula region of Hampton Roads. Two alternatives for

light rail are to be carried forward for detailed evaluation in the draft EIS as described below.

MOS 3—Newport News City Hall to Ft. Eustis Boulevard. MOS 3 would be located totally within the City of Newport News, Virginia. The southern end of the MOS would be located at the City Hall Station at Washington Avenue and 25th Street in downtown Newport News and would extend to the Ft. Eustis Station at Ft. Eustis Boulevard and the CSX Railroad on the north. The total alignment length would be 15.2 miles.

MOS 4B—Newport News City Hall to Hampton Coliseum. MOS 4B would be located within the Cities of Newport News and Hampton, Virginia. The southern end of the MOS would be located at the City Hall Station at Washington Avenue and 25th Street in downtown Newport News and would extend to the Middle Ground Road Station at Middle Ground Road and the CSX Railroad on the north. The MOS would then turn towards the Hampton Coliseum and would end at the Coliseum parking lot at Coliseum Station. The total alignment length would be 17.1 miles.

Diesel Multiple Unit Alternatives. These alternatives would provide DMU service on the same MOS alignments described above for the Light Rail Alternative.

V. Probable Effects

FTA and HRT will evaluate all social, economic, and environmental impacts of the No-Build, TSM, and MOS 3 and MOS 4B for light rail and diesel multiple unit rail technologies. Potential impacts could include land use, zoning, and economic development; secondary development; cumulative impacts; land acquisition, displacements and relocation of existing uses; historic, archaeological and cultural resources; parklands and recreation areas; visual and aesthetic qualities; neighborhoods and environmental justice; air quality; noise and vibration; contaminated materials; ecosystems; water resources; Coastal Zone Management; energy; construction impacts; safety and security; finance; and transportation impacts. The impacts will be evaluated both for the construction period and for the long-term period of operation of each alternative. Measures to avoid, minimize or mitigate any significant adverse impacts will be identified. The cumulative impacts of the proposed action and other reasonably foreseeable actions affecting the same resources as the proposed action will be considered.

FTA and HRT invite comments on the scope of the EIS to ensure that the full range of issues and concerns of the public, interested parties, and federal, state, and local agencies are addressed. Comments should be directed to the parties listed in the **ADDRESSES** section above within the time frame set forth in the **DATES** section above.

VI. FTA Procedures

In accordance with the FTA regulation on environmental impact regulations and related procedures (23 CFR part 771), the draft EIS will evaluate the social, economic, and environmental impacts of the proposed action and alternatives. Upon completion, the draft EIS will be available for public and agency review and comment. Public hearing(s) will be held within the study area. On the basis of the draft EIS and the public and agency comments received on it, a preferred alternative will be selected for further detailed analysis in the final EIS.

Issued on: April 20, 2004.

Herman C. Shipman,

FTA Acting Regional Administrator.

[FR Doc. 04–9389 Filed 4–23–04; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34494]

The Burlington Northern and Santa Fe Railway Company—Temporary Trackage Rights Exemption—Union Pacific Railroad Company

Union Pacific Railroad Company (UP) has agreed to grant temporary overhead trackage rights to The Burlington Northern and Santa Fe Railway Company (BNSF) over UP's Falls City Subdivision between Kansas City, MO, and Falls City, NE., a distance of approximately 98 miles.

The transaction was scheduled to be consummated on April 14, 2004, and the authorization is expected to expire on or about May 14, 2004. The purpose of the temporary trackage rights is to allow BNSF to bridge its train service while its main lines are out-of-service due to certain programmed maintenance.

As a condition to this exemption, any employee affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980), and, in accordance with the decision of the United States Court of Appeals for the District of Columbia Circuit in *United Transportation Union—General Committee of Adjustment (GO–386)* v. *Surface Transportation Board,* No. 03–1212, 2004 U.S. App. LEXIS 6496 (D.C. Cir. Apr. 6, 2004), any employee affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

This notice is filed under 49 CFR 1180.2(d)(8). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34494, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Michael E. Roper, P.O. Box 961039, Fort Worth, TX 76161–0039.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: April 19, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–9253 Filed 4–23–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub–No. 410X)]

The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—in Thurston County, WA

The Burlington Northern and Santa Fe Railway (BNSF) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon and discontinue service over a 5.80-mile line of railroad between milepost 3.27 in Quadlock and milepost 9.07 in Olympia, in Thurston County, WA. The line traverses United States Postal Service Zip Codes 98501, 98503, 98513 and 98516.

BNSF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service

over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment and discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 26, 2004, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by May 6, 2004.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 17, 2004, with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.[4]

A copy of any petition filed with the Board should be sent to BNSF's representative: Michael Smith, Freeborn & Peters, 311 S. Wacker Dr., Suite 3000, Chicago, IL 60606–6677.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

BNSF has filed an environmental report which addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. SEA will issue an environmental assessment (EA) by April 30, 2004. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned its line. If consummation has not been effected by BNSF's filing of a notice of consummation by April 26, 2005, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: April 19, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–9251 Filed 4–23–04; 8:45 am]

BILLING CODE 4915–01–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

[3] The City of Lacey and the City of Olympia (Cities) filed a request for imposition of a public use condition and for issuance of a notice of interim trail use for a portion of the line from milepost 3.27 at Quadlock near Union Mills Road, to milepost 6.73 near Fones Road in Olympia, a distance of 3.46 miles, pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d). The Board will address the Cities' public use and trail use requests, and any others that may be filed, in a subsequent decision.

[4] Each trail use request and public use request must be accompanied by the filing fee, which is set at $150.00. *See* 49 CFR 1002.2(f)(27). These fees are scheduled to increase to $200.00, effective April 28, 2004.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB 6 (Sub–No. 411X)]

The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—in Lawrence County, AR

The Burlington Northern and Santa Fe Railway Company (BNSF) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon and discontinue service over a 4.50-mile line of railroad between milepost 397.78 in Hoxie, and milepost 402.28, in Walport, and the 2.20-mile Walnut Ridge Industrial Spur, a total distance of 6.70 miles, in Lawrence County, AR. The line traverses United States Postal Service Zip Codes 72433 and 72476.

BNSF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication) and 49 CFR 1105.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 26, 2004, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by May 6, 2004. Petitions to reopen or requests for public use conditions under 49 CFR 1152. 28 must be filed by May 17, 2004, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.[3]

A copy of any petition filed with the Board should be sent to the applicant's representative: Michael Smith, Freeborn

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1102.2(f)(25).

[3] Each trail use request and public use request must be accompanied by the filing fee, which is set at $150.00. *See* 49 CFR 1002.2(f)(27). These fees are scheduled to increase to $200.00, effective April 28, 2004.

& Peters, 311 S. Wacker Dr., Suite 3000, Chicago, IL 60606–6677.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

BNSF has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by April 30, 2004. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1552 (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.). Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BNSF's filing of a notice of consummation by April 26, 2005, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: April 19, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams, Secretary.

[FR Doc. 04–9252 Filed 4–23–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 19, 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 May 26, 2004, to be assured of consideration.

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0016.

Form Number: TTB F 5120.24 (1582–A).

Type of Review: Reinstatement.

Title: Drawback on Wines Exported.

Description: When proprietors export wines that have been produced, packaged, manufactured, or bottled in the U.S., they file a claim for drawback or refund for the taxes that have already been paid on the wine. This form notifies TTB that the wine was in fact exported and helps to protect the revenue and prevent fraudulent claims.

Respondents: Individuals or households, business of other for-profit.

Estimated Number of Respondents: 900.

Estimated Burden Hours Per Respondent: 1 hour, 7 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 2,025 hours.

Clearance Officer: William H. Foster, (202) 927–8210, Alcohol and Tobacco Tax and Trade Bureau, Room 200 East, 1310 G. Street, NW., Washington, DC 20005.

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. 04–9353 Filed 4–23–04; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 15, 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 May 26, 2004, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0041.

Form Number: IRS Form 966.

Type of Review: Revision.

Title: Corporate Dissolution or Liquidation.

Description: Form 966 is filed by a corporation whose shareholders have agreed to liquidate the corporation. As a result of the liquidation, the shareholders receive the property of the corporation in exchange for their stock. The IRS uses Form 966 to determine if the liquidation election was properly made and if any taxes are due on the transfer of property.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 26,000.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping	5 hr., 1 min.
Learning about the law or the form.	30 min.
Preparing and sending the form to the IRS.	36 min.

Frequency of response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 159,120 hours.

OMB Number: 1545–0134.

Form Number: IRS Form 1128.

Type of Review: Extension.

Title: Application to Adopt, Change, or Retain a Tax Year.

Description: Form 1128 is needed in order to process taxpayers' requests to change their tax year. All information requested is used to determine whether the application should be approved. Respondents are taxable and nontaxable entities including individuals, partnerships, corporations, estates, tax-exempt organizations and cooperatives.

Respondents: Business or other for-profit, individuals or households, not-for-profit institutions, farms.

Estimated Number of Respondents/ Recordkeepers: 11,800.

Estimated Burden Hours Respondent/ Recordkeeper:

	Recordkeeping	Learning about the law or the form	Preparing and sending the form to the IRS
Parts I and II (Form 1128)	8 hr., 36 min.	5 hr., 51 min.	6 hr., 15 min.
Parts I and III (Form 1128)	22 hr., 14 min.	5 hr., 37 min.	7 hr., 26 min.

Frequency of response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 350,544 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 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. 04–9354 Filed 4–23–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number. The OCC is soliciting comment concerning its renewal, without change, of an information collection titled, "(MA)–Real Estate Lending and Appraisals—12 CFR 34." The OCC also gives notice that it has sent the information collection to OMB for review and approval.

DATES: You should submit your comments to the OCC and the OMB Desk Officer by May 26, 2004.

ADDRESSES: You should direct your comments to:

OCC: Communications Division, Office of the Comptroller of the Currency, Public Reference Room, Mailstop 1–5, Attention: 1557–0190, 250 E Street, SW., Washington, DC 20219. You are encouraged to submit your comments by facsimile transmission or electronic mail. Comments may be sent by facsimile transmission to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Reference Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043. Additionally, you may request copies of comments via electronic mail or CD–ROM by contacting the OCC's Public Reference Room at *http://www.foia.pa@occ.treas.gov*.

OMB: Mark Menchik, OMB Desk Officer, Control Number 1557–0190, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503. Alternatively, you may send a comment by facsimile transmission to (202) 395–6974 or by electronic mail to *mmenchik@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the information collection from John Ference or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number.

The OCC is proposing to extend, without change, OMB approval of the following information collection:

Title: (MA)–Real Estate Lending and Appraisals—12 CFR 34.

OMB Number: 1557–0190.

Form Number: None.

Abstract: The collections of information in 12 CFR part 34 are as follows:

Subpart C establishes real estate appraisal requirements that a national bank must follow for all federally-related real estate transactions. These requirements provide protections for the bank, further public policy interests, and were issued pursuant to title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 *et seq.*).

Subpart D requires that a national bank adopt and maintain written policies for real estate related lending transactions. These requirements ensure bank safety and soundness and were issued pursuant to section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 1828(o)).

Subpart E requires that a national bank file an application to extend the five-year holding period for Other Real Estate Owned (OREO) and file notice when it makes certain expenditures for OREO development or improvement projects. The requirements further bank safety and soundness and were issued pursuant to 12 U.S.C. 29.

OMB Number: 1557–0190.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit; individuals.

Estimated Number of Respondents: 2,100.

Estimated Total Annual Responses: 2,100.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 115,550 burden hours.

Comments: All comments received will become a matter of public record.

The OCC has a continuing interest in the public's opinion regarding collections of information. All comments will become a matter of public record. The OCC received no comments in response to its initial **Federal Register** notice (69 FR 4358; January 29, 2004) regarding renewal of this information collection. Nevertheless, members of the public still are invited to submit comments regarding any aspect of this collection of information. Comments are invited specifically on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection

techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 19, 2004.

Mark Tenhundfeld,

Assistant Director, Legislative & Regulatory Activities Division.

[FR Doc. 04–9325 Filed 4–23–04; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, May 25, 2004.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 (toll-free), or 718–488–3557 (non toll-free).

SUPPLEMENTARY INFORMATION: An open meeting of the Area 1 Taxpayer Advocacy Panel will be held Tuesday, May 25, 2004 from 11 a.m. e.d.t. to 12 p.m. e.d.t. via a telephone conference call. Individual comments are welcome and will be limited to 5 minutes per person. If you would like to have the TAP consider a written statement, write Marisa Knispel, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or, you may post comments to the Web site: *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Marisa Knispel. Ms. Knispel can be reached at 1–888–912–1227 or 718–488–3557.

The agenda will include: Various IRS issues.

Dated: April 20, 2004.

Bernard E. Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–9449 Filed 4–23–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel (TAP) Multilingual Initiative Issue (MLI) Committee Will Be Conducted (Via Teleconference)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel (TAP) Multilingual Initiative Issue (MLI) Committee will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Friday, May 21, 2004 from 1 p.m. e.d.t. to 2 p.m. e.d.t.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Multilingual Initiative Issue Committee will be held Friday, May 21, 2004 from 1 p.m. e.d.t. to 2 p.m. e.d.t. via a telephone conference call. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include the following: Various IRS issues.

Dated: April 20, 2004.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–9450 Filed 4–23–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Joint Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Joint Committee of the Taxpayer Advocacy Panel will be conducted via teleconference. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, May 17, 2004, at 1:30 p.m., eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Barbara Toy at 1–888–912–1227, or 414–297–1611.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Joint Committee of the Taxpayer Advocacy Panel (TAP) will be held Tuesday, May 17, 2004, from 1:30 to 3 p.m. eastern daylight time via a telephone conference call. If you would like to have the Joint Committee of TAP consider a written statement, please call 1–888–912–1227 or 414–297–1611, or write Barbara Toy, TAP Office, MS–1006–MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or FAX to 414–297–1623, or you can contact us at *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Barbara Toy. Ms. Toy can be reached at 1–888–912–1227 or 414–297–1611, or FAX 414–297–1623.

The agenda will include the following: Monthly committee summary report, discussion of issues brought to the joint committee, office report, and discussion of next meeting.

Dated: April 20, 2004.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–9451 Filed 4–23–04; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 69, No. 80
Monday, April 26, 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.

COMMODITY FUTURES TRADING COMMISSION

Futures Market Self-Regulation

Correction

In notice document 04–8235 beginning on page 19166 in the issue of Monday, April 12, 2004 make the following correction:

On page 19167, in the second column, remove the first two paragraphs and insert-them into footnote 9 of the first column, so that footnote 9 appears as follows:

[9] Originally, Regulation 1.3(ff) defined a DSRO to be an SRO:

> of which [an FCM] is a member or, if the [FCM] is a member of more than one [SRO] and such [FCM] is the subject of an approved plan under § 1.52, then [an SRO] delegated the responsibility by such a plan for monitoring and auditing such [FCM] for compliance with the minimum financial and related reporting requirements of the [SROs] of which the [FCM] is a member, and for receiving the financial reports necessitated by such minimum financial and related reporting requirements from such [FCM].

43 FR at 39967. Regulation 1.3(ff) subsequently has been amended to include introducing brokers ("IBs") and leverage transaction merchants.

[FR Doc. C4–8235 Filed 4–23–04; 8:45 am]
BILLING CODE 1505–01–D

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Benefits Payable in Terminated Single–Employer Plans; Allocation of Assets in Single–Employer Plans; Interest Assumptions for Valuing and Paying Benefits

Correction

In rule document 04–5762 beginning on page 12072 in the issue of Monday, March 15, 2004, make the following correction:

PART 4044—ALLOCATION OF ASSETS IN SINGLE–EMPLOYER PLANS

Appendix B to Part 4044 [Corrected]

On page 12073, in Appendix B, in the table, under the second heading "for t=", "20" should read, ">20".

[FR Doc. C4–5762 Filed 4–23–04; 8:45 am]
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–16985; Airspace Docket No. 04–ACE–3]

Establishment of Class E2 Airspace; and Modification of Class E5 Airspace; Muscatine, IA

Correction

In rule document 04–8815 beginning on page 20822 in the issue of Monday, April 19, 2004, make the following corrections:

§71.1 [Corrected]

1. On page 20823, in the first column, in §71.1, in the third line, the "long. 91°08'58" W." should read, "long. 91°08'57" W.".

2. On the same page, in the same column, in the same section, in the eighth line, after "VOR/DME", add "extending from the 6.6–mile radius of the airport to 7 miles northeast of the VOR/DME".

[FR Doc. C4–8815 Filed 4–23–04; 8:45 am]
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Federal Register

Monday,
April 26, 2004

Part II

Environmental Protection Agency

40 CFR Parts 63, 264 and 265
National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63, 264 and 265

[OAR–2002–0093; FRL–7630–9]

RIN 2060–AG99

National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for automobile and light-duty truck surface coating operations located at major sources of hazardous air pollutants (HAP). The final rule implements section 112(d) of the Clean Air Act (CAA) by requiring these operations to meet HAP emission standards reflecting the application of the maximum achievable control technology (MACT). The final rule will protect air quality and promote the public health by reducing emissions of HAP from facilities in the automobile and light-duty truck surface coating source category. The primary HAP emitted by these operations are toluene, xylene, glycol ethers, methyl ethyl ketone (MEK), methyl isobutyl ketone (MIBK), ethylbenzene, and methanol. The final standards are expected to reduce nationwide organic HAP emissions from major sources in this source category by approximately 60 percent.

This action also amends the Surface Coating of Miscellaneous Metal Parts and Products NESHAP (40 CFR part 63, subpart MMMM) and the Surface Coating of Plastic Parts and Products NESHAP (40 CFR part 63, subpart PPPP) to clarify the interaction between these rules and the Surface Coating of Automobiles and Light-Duty Trucks NESHAP (40 CFR part 63, subpart IIII).

Additionally, this action amends the Resource Conservation and Recovery Act (RCRA) Air Emission Standards for Equipment Leaks at 40 CFR parts 264 and 265, subparts BB, for owners and operators of hazardous waste treatment, storage, and disposal facilities to exempt air emissions from certain activities covered by the final NESHAP from these RCRA standards.

DATES: The final rule is effective June 25, 2004. The incorporation by reference of certain publications listed in the final rule is approved by the Director of the Federal Register as of June 25, 2004.

ADDRESSES: *Docket.* Docket ID No. OAR–2002–0093 and Docket ID No. A–2001–22 are located at the EPA Docket Center, EPA West (6102T), 1301 Constitution Avenue, NW., Room B–102, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. David Salman, Coatings and Consumer Products Group, Emission Standards Division (C539–03), U.S. EPA, Research Triangle Park, NC 27711; telephone number (919) 541–0859; facsimile number (919) 541–5689; electronic mail address: *salman.dave@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by this action are listed by North American Industrial Classification System (NAICS) codes listed in Table 1.

TABLE 1.—CATEGORIES AND ENTITIES POTENTIALLY REGULATED BY THE FINAL STANDARDS

Category	NAICS	Examples of potentially regulated entities
Industry	336111, 336112, 336211	Automobile and light-duty truck assembly plants, producers of automobile and light-duty truck bodies.

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 coating operation is regulated by this action, you should examine the applicability criteria in § 63.3081 of the final rule.

Docket. The EPA has established an official public docket for this action under Docket ID No. OAR–2002–0093 and Docket ID No. A–2001–22. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. All items may not be listed under both docket numbers, so interested parties should inspect both docket numbers to ensure that they have received all materials relevant to the final rule. Although a part of the official docket, the public docket does not include Confidential Business Information or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, EPA West, Room B–102, 1301 Constitution Avenue, NW., Washington, DC 20460. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Docket is (202) 566–1742. A reasonable fee may be charged for copying docket materials.

Electronic Docket Access. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr.*

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

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

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of the final rule is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by June 25, 2004. Under section 307(d)(7)(B) of the CAA, only an objection to the rule that was

raised with reasonable specificity during the period for public comment can be raised during judicial review. Under section 307(b)(2) of the CAA, the requirements established by the final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Outline: The following outline is provided to aid in reading the preamble to the final rule:

I. Background

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

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. The surface coating of automobiles and light-duty trucks category of major sources was listed on July 16, 1992 (57 FR 31576). Major sources of HAP are those that emit or have the potential to emit equal to or greater than 9.1 megagrams per year (Mg/yr) (10 tons per year (tpy)) of any one HAP or 22.7 Mg/yr (25 tpy) of any combination of HAP.

B. What Criteria Are Used in the Development of NESHAP?

Section 112(c)(2) of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources, based upon the criteria set out in section 112(d). The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable, taking into consideration the cost of achieving the emission reduction, any non-air quality health and environmental impacts, and energy requirements. This level of control is commonly referred to as MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standard is set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources).

In developing the final NESHAP, we considered control options that are more stringent than the MACT floor, taking into account consideration of the cost of achieving the emission reduction, any non-air quality health and environmental impacts, and energy requirements. In the final rule, EPA is promulgating standards for both existing and new sources consistent with these statutory requirements.

C. What Are the Primary Sources of Emissions and What Are the Emissions?

HAP emission sources. Emissions from coating application, drying, and curing account for most of the HAP emissions from automobile and light-duty truck surface coating operations. The remaining emissions are primarily from cleaning of booths and application equipment and purging of spray equipment. Mixing and storage are other sources of emissions. Organic HAP emissions can occur from displacement of organic vapor-laden air in containers used to store organic HAP solvents or to mix coatings containing organic HAP solvents. The displacement of vapor-laden air can occur during the filling of containers and can be caused by changes in temperature or barometric pressure, or by agitation during mixing. In most cases, HAP emissions from surface preparation and waste/wastewater operations are relatively small.

Organic HAP. The final NESHAP regulate emissions of organic HAP. Available emission data collected during the development of the NESHAP show that the primary organic HAP emitted from automobile and light-duty truck surface coating operations are toluene, xylene, glycol ethers, MEK, MIBK, ethylbenzene, and methanol. These compounds account for over 95 percent of the nationwide HAP emissions from this source category.

Inorganic HAP. Based on information reported during the development of the NESHAP, lead, manganese, and chromium may be contained in some of the coatings used by this source category but are not likely to be emitted due to the coating application techniques used. No inorganic HAP were reported in thinners or cleaning materials. The only use of lead in coatings in this source category is in electrodeposition primers. None of this lead is emitted because these primers are applied by dip coating. Lead is being

phased out of electrodeposition primers. For spray applied coatings, most of the inorganic HAP components remain as solids in the dry coating film on the parts being coated, are collected by the circulating water under the spray booth floor grates, or are deposited on the walls, floor, and grates of the spray booths and other equipment in which they are applied. Therefore, inorganic HAP emission levels are expected to be very low and have not been quantified.

D. What Are the Health Effects Associated With Organic HAP Emissions From the Surface Coating of Automobiles and Light-Duty Trucks?

The HAP to be controlled with the final rule are associated with a variety of adverse health effects. Some of the potential toxic effects include effects to the central nervous system, such as fatigue, nausea, tremors, and lack of coordination; adverse effects on the liver, kidneys, and blood; respiratory effects; and developmental effects.

The degree of adverse effects to human health from exposure to HAP can range from mild to severe. The extent and degree to which the human health effects may be experienced are dependent upon (1) The ambient concentration observed in the area (as influenced by emission rates, meteorological conditions, and terrain); (2) the frequency and duration of exposures; (3) characteristics of exposed individuals (genetics, age, preexisting health conditions, and lifestyle), which vary significantly with the population; and (4) pollutant-specific characteristics (toxicity, half-life in the environment, bioaccumulation, and persistence).

We do not have the type of current detailed data on each of the facilities covered by these emission standards for this source category, and the people living around the facilities, that would be necessary to conduct a detailed analysis to determine the actual population exposures to the organic HAP emitted from these facilities and potential for resultant health effects. We did conduct a rough risk assessment which indicated that both the baseline level of adverse health effects and the effect of the final rule on human health are small. This rough risk assessment is discussed further later in this preamble and is available in the docket.

II. Summary of the Final Rule

A. What Source Categories Are Affected by the Final Rule?

The final rule applies to you if you own or operate a new, reconstructed, or existing affected source, as defined in § 63.3082, that is located at a facility which applies topcoat to new automobile or new light-duty truck bodies or body parts for new automobiles or new light-duty trucks, and that is a major source, is located at a major source, or is part of a major source of emissions of HAP. Body part is defined in the final rule to mean exterior parts such as hoods, fenders, doors, roof, quarter panels, decklids, tail gates, and cargo beds. Body parts were traditionally made of sheet metal, but now are also made of plastic. Bumpers, fascia, and cladding are not body parts. Coating operations included in this source category include, but are not limited to, the application of electrodeposition primer, primer-surfacer, topcoat (including basecoat and clear coat), final repair, glass bonding primer, glass bonding adhesive, sealer, adhesive, and deadener. The application of blackout and anti-chip materials is included in these coating operations, as is the cleaning and purging of equipment associated with the coating operations. If you are subject to the final rule and also coat parts intended for use in new automobiles or new light-duty trucks or as aftermarket repair or replacement parts for automobiles or light-duty trucks which would otherwise be subject to the Surface Coating of Miscellaneous Metal Parts and Products NESHAP (40 CFR part 63, subpart MMMM) or the Surface Coating of Plastic Parts and Products NESHAP (40 CFR part 63, subpart PPPP), you have the option to include these operations under the final rule. Alternately, you may choose to have such collocated coating operations remain subject to either the Surface Coating of Miscellaneous Metal Parts and Products NESHAP (40 CFR part 63, subpart MMMM) or the Surface Coating of Plastic Parts and Products NESHAP (40 CFR part 63, subpart PPPP). You may not include collocated operations that apply surface coatings to parts that are not intended for use in automobiles and light-duty trucks in your affected source under the final rule. We are also amending the Surface Coating of Miscellaneous Metal Parts and Products NESHAP (40 CFR part 63, subpart MMMM) and the Surface Coating of Plastic Parts and Products NESHAP (40 CFR part 63, subpart PPPP) to clarify the interaction between these rules and the Surface Coating of Automobiles and Light-Duty Trucks NESHAP (40 CFR part 63, subpart IIII). Automobile customizers, body shops, and refinishers are excluded from this source category.

You are not subject to the final rule if your coating operation is located at an area source. An area source is any stationary source of HAP that is not a major source.

You may establish area source status prior to the compliance date of the final rule by limiting the source's potential to emit HAP through appropriate mechanisms available through the permitting authority.

This source category does not include research or laboratory operations or janitorial, building, and facility maintenance operations.

We are also amending the RCRA Air Emissions Standards for Equipment Leaks at 40 CFR parts 264 and 265, subparts BB. The amendments exempt air emissions from the collection and transmission of captured purge material which would otherwise be subject to requirements of subparts BB of 40 CFR parts 264 and 265 if they are subject to the requirements of the final NESHAP. Generally, subparts BB of 40 CFR parts 264 and 265 apply to equipment that contains or contacts RCRA hazardous wastes with organic concentrations of at least 10 percent by weight. Subparts BB apply to large quantity generators as well as to RCRA treatment, storage, and disposal facilities. Subparts BB were designed to minimize air emissions from leaks from equipment such as pumps, valves, flanges, and connections.

The work practice standards in § 63.3094 of the final NESHAP address emissions from purging of coating applicators, the collection and transmission of purged paint and solvent in a purge capture system, and the storage of captured purge material. The collection and transmission systems would potentially be subject to the requirements of subparts BB. The potential for air releases once purged materials are captured is relatively small. The HAP emissions from captured purge materials are very small in comparison with the coating application, drying, and curing. Measurements made by industry indicate that emissions of volatile organic compounds (VOC) would be at least one to two orders of magnitude less than concentrations that would meet the definition of a leak under subparts BB of 40 CFR parts 264 and 265. Additionally, the collected mixture is usually shipped off-site to a solvent recycler and the automobile and light-duty truck facility typically receives a credit from the off-site solvent recycler for the solvent recovered from the mixture. This provides an additional incentive for the industry to retain as much of the captured purge material as possible, and therefore to repair any leaks as quickly as possible. For these

reasons and to avoid duplication, if such a collection and transmission system is subject to the final NESHAP then it is exempt from the requirements of subparts BB of 40 CFR parts 264 and 265.

If a facility chooses to include under the NESHAP operations which coat parts intended for use in new automobiles or new light-duty trucks or as aftermarket repair or replacement parts for automobiles or light-duty trucks which would otherwise be subject to the NESHAP for surface coating of miscellaneous metal parts and products (40 CFR part 63, subpart MMMM) or surface coating of plastic parts and products (40 CFR part 63, subpart PPPP), then the captured purge material from these operations are also exempt from the requirements of subparts BB of 40 CFR parts 264 and 265. Many of the coatings applied at facilities subject to the final NESHAP to separate, non-body plastic parts and separate, non-body metal parts for automobiles and light-duty trucks are similar in composition to those applied to automobile and light-duty truck bodies and body parts. The captured purge materials are conveyed to waste tanks in the same fashion as the purged materials from automobile and light-duty truck body coating operations.

B. What Is the Relationship to Other Rules?

Affected sources subject to the final rule may also be subject to other rules. Automobile and light-duty truck surface coating operations that began construction, reconstruction, or modification after October 5, 1979 are subject to new source performance standards (NSPS) under 40 CFR part 60, subpart MM. That rule limits emissions of VOC. The EPA has also published control techniques guidelines which establish reasonably available control technologies for limiting VOC emissions from automobile and light-duty truck surface coating operations. Additional VOC emission limitations may also apply to these facilities through conditions incorporated in State operating permits and permits issued under authority of title V of the CAA. Facilities in this subcategory may also be subject to various emission limitations pursuant to State air toxics rules.

An automobile and light-duty truck surface coating facility may be subject to other NESHAP. Subparts MMMM (for surface coating of miscellaneous metal parts and products) and PPPP (for surface coating of plastic parts and products) of 40 CFR part 63, limit emissions from coating operations conducted on separate, non-body parts. To decrease the burden of complying with multiple surface coating emission limits, the final rule provides that collocated operations that apply surface coating to any automobile and light-duty truck part may be optionally included under the final rule. Surface coating of metal and plastic parts not intended for attachment to automobiles and light-duty trucks remain covered under the relevant subpart, 40 CFR part 63, subpart MMMM for metal parts and 40 CFR part 63, subpart PPPP for plastic parts. We are also amending 40 CFR part 63, subparts MMMM and PPPP to clarify the interaction between these rules and the final rule. Facilities may also be subject to other rules relating to collocated equipment such as foundries and boilers.

The transmission and storage of captured purge materials from coating equipment may also be subject to the RCRA tank system requirements under subparts J of 40 CFR parts 264 and 265, and the Air Emission Standards for Equipment Leaks under subparts BB of of 40 CFR parts 264 and 265. The tank system rules under subparts J apply to hazardous waste storage tanks, all ancillary equipment used to convey hazardous waste to such tanks, and secondary containment systems. The requirements of subparts J are designed to prevent releases from hazardous waste tank systems and to detect and respond to releases from hazardous waste tank systems, thereby ensuring minimal risk of hazardous waste reaching ground water, surface waters, or soils.

The air emission standards for equipment leaks under subparts BB of 40 CFR parts 264 and 265 apply to equipment that contains or contacts RCRA hazardous waste with organic concentrations of at least 10 percent by weight. Subparts BB were designed to minimize air emissions from leaks from equipment such as pumps, valves, flanges, and connections. To avoid duplication between subparts BB and the final NESHAP, we are exempting equipment from subparts BB if it is subject to the Surface Coating of Automobiles and Light-Duty Trucks NESHAP.

C. What Is the Affected Source?

We define an affected source as a stationary source, group of stationary sources, or part of a stationary source to which a specific emission standard applies. The final rule defines the affected source as all of the equipment used to apply coating to new automobile or new light-duty truck bodies or body parts for new automobiles or new light-duty trucks and to dry or cure the coating after application; all storage containers and mixing vessels in which vehicle body coatings, thinners, and cleaning materials are stored or mixed; all manual and automated equipment and containers used for conveying vehicle body coatings, thinners, and cleaning materials; and all storage containers and all manual and automated equipment and containers used for conveying waste materials generated by an automobile and light-duty truck surface coating operation. Operations that apply surface coating to other automobile and light-duty truck parts may be optionally included in the affected source.

The affected source does not include research or laboratory operations or janitorial, building, and facility maintenance operations.

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

Emission limits. The final rule limits organic HAP emissions from each new or reconstructed automobile and light-duty truck surface coating facility using the emission limits in Table 2 of this preamble.

TABLE 2.—EMISSION LIMITS FOR NEW OR RECONSTRUCTED AFFECTED SOURCES (MONTHLY AVERAGE)

Operation	Limit
Combined electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operation plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c).	0.036 kilogram (kg) (0.30 pound (lb)) organic HAP/liter (HAP/gallon (gal)) of coating solids deposited).

TABLE 2.—EMISSION LIMITS FOR NEW OR RECONSTRUCTED AFFECTED SOURCES (MONTHLY AVERAGE)—Continued

Operation	Limit
Combined primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operation plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) (for sources meeting the operating limits of § 63.3092(a) or (b)).	0.060 kg (0.50 lb organic HAP/1iter (HAP/gal) of coating solids deposited).
Adhesives and sealers, other than glass bonding adhesive	0.010 kg/kg (lb/lb) of material used.
Deadener	0.010 kg/kg (lb/lb) of material used.

We are limiting organic HAP emissions from each existing automobile and light-duty truck surface coating facility using the emission limits in Table 3 of this preamble.

TABLE 3.—EMISSION LIMITS FOR EXISTING AFFECTED SOURCES (MONTHLY AVERAGE)

Operation	Limit
Combined electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operation plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c).	0.072 kg (0.60 lb) organic HAP/liter (HAP/gal) of coating solids deposited.
Combined primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operation plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) (for sources meeting the operating limits of § 63.3092(a) or (b)).	0.132 kg (1.10 lb) organic HAP/liter (HAP/gal) of coating solids deposited.
Adhesives and sealers other than glass bonding adhesive	0.010 kg/kg (lb/lb) of material used.
Deadener	0.010 lb/lb (kg/kg) of material used.

You must calculate emissions from: (1) The combined electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c); or (2) the combined primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations (electrodeposition primer considered separately per §§ 63.3091(b) and 63.3092(b)) plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) using the procedures in the final rule, which account for the organic HAP contents of the materials applied in each month, as well as transfer efficiency and overall efficiencies of any capture systems and control devices in use. The monthly average emission rate for the combined group of operations (either grouping type (1) or grouping type (2) above) is calculated and compared to the applicable emission limit. Some facilities have multiple paint lines (*e.g.*, a facility with two or more totally distinct paint lines, each serving a distinct assembly line, or a facility with two or more paint lines sharing the same paint kitchen or mix room). The owner or operator may choose to group all of the operations from two or more paint lines together, or to make a separate grouping of the operations from individual paint lines. These options would, for example, allow a facility with two paint lines to use a grouping with electrodeposition primer (grouping type (1) above) for one paint line and a grouping with electrodeposition primer considered separately (grouping type (2) above) for the other paint line. They would also, for example, allow a facility with three paint lines to use one grouping for two of the paint lines and a separate grouping of the same type or of the other type for the third paint line. You must average organic HAP contents of other materials used on a monthly basis to determine separately those emissions from sealers and adhesives (other than glass bonding adhesive), and deadeners.

Operating limits. If you use an emission capture and control system to reduce emissions, the operating limits may apply to you. These operating limits are site-specific parameter limits you determine during the initial performance test of the system. For capture systems that are not capturing emissions from a downdraft spray booth or from a flash-off area or bake oven associated with a downdraft spray booth, you must identify the parameter(s) to monitor and establish the limits and monitoring procedures. For thermal and catalytic oxidizers, you must establish temperature limits. For solvent recovery systems, you must monitor the outlet concentration or carbon bed temperature and the amount of steam or nitrogen used to desorb the bed. All operating limits must reflect operation of the capture and control system during a performance test that demonstrates achievement of the emission limit during representative operating conditions.

Work practice standards. You must develop and implement a work practice plan to minimize organic HAP emissions from the storage, mixing, and conveying of coatings, thinners, and cleaning materials used in and waste

materials generated by all coating operations for which emission limits are established. The plan must specify practices and procedures to ensure that, at a minimum, the following elements are implemented:

- All organic-HAP-containing coatings, thinners, cleaning materials, and waste materials must be stored in closed containers. The risk of spills of organic-HAP-containing coatings, thinners, cleaning materials, and waste materials must be minimized.
- Organic-HAP-containing coatings, thinners, cleaning materials, and waste materials must be conveyed from one location to another in closed containers or pipes.
- Mixing vessels, other than day tanks equipped with continuous agitation systems, which contain organic-HAP-containing coatings and other materials must be closed except when adding to, removing, or mixing the contents.
- Emissions of organic HAP must be minimized during cleaning of storage, mixing, and conveying equipment.

You must also develop and implement a work practice plan to minimize organic HAP emissions from cleaning and from purging of equipment associated with all coating operations for which emission limits are established. The plan must specify practices and procedures to ensure that emissions of HAP from the following operations are minimized:

- Vehicle body wiping;
- Coating line purging;
- Flushing of coating systems;
- Cleaning of spray booth grates;
- Cleaning of spray booth walls;
- Cleaning of spray booth equipment;
- Cleaning external spray booth areas; and
- Other housekeeping measures (*e.g.*, keeping solvent-laden rags in closed containers.)

General Provisions. The General Provisions (40 CFR part 63, subpart A) also apply to you as outlined in Table 2 of the final rule. The General Provisions codify certain procedures and criteria for all 40 CFR part 63 NESHAP. The General Provisions contain administrative procedures, preconstruction review procedures for new sources, and procedures for conducting compliance-related activities such as notifications, recordkeeping and reporting, performance testing, and monitoring. The final rule refers to individual sections of the General Provisions to emphasize key sections that you should be aware of. However, unless specifically overridden in Table 2 of the final rule, all of the applicable General Provisions requirements would apply to you.

E. What Are the Testing and Initial Compliance Requirements?

Existing affected sources must be in compliance with the final rule no later than April 26, 2007. New and reconstructed sources must be in compliance upon initial startup of the affected source or by June 25, 2004, whichever is later. However, affected sources are not required to demonstrate compliance until the end of the initial compliance period when they will have accumulated the necessary records to document the monthly organic HAP emission rate.

Compliance with the emission limits is based on a monthly organic HAP emission rate. The initial compliance period, therefore, is the 1-month period beginning on the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period begins on the compliance date and extends through the end of that month plus the following month. We have defined "month" as a calendar month or a pre-specified period of 28 to 35 days to allow for flexibility at sources where data are based on a business accounting period.

Being "in compliance" means that the owner or operator of the affected source meets all the requirements of the final rule to achieve the emission limit(s) and operating limits by the end of the initial compliance period, and that the facility is operated in accordance with the approved work practice plans. At the end of the initial compliance period, the owner or operator must use the data and records generated to determine whether or not the affected source is in compliance for that period. If it does not meet the applicable limit(s), then it is out of compliance for the entire initial compliance period.

Emission limits. Compliance with the emission limit for combined electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c), or the emission limit for combined primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) is based on mass organic HAP emissions per volume of applied coating solids as calculated monthly using the procedures in the final rule. Compliance with the emission limits for adhesives and sealers (other than glass bonding adhesive) and deadener is based on mass average organic HAP content of materials used each month.

Electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c). Compliance with this emission limit, or if eligible, with the emission limit for combined primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c), is based on calculations detailed in the final rule. You may also use the guidelines presented in the "Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations" (EPA–450/3–88–018) (Auto Protocol).

To determine the organic HAP content, the volume solids, and the density of the coatings and thinners, you may rely on manufacturer's data, results from the test methods listed below, or alternative test methods for which you get EPA approval on a case-by-case basis according to the NESHAP General Provisions in 40 CFR 63.7(f). However, if there is any inconsistency between the test results and manufacturer's data, the test results will prevail for compliance and enforcement purposes unless after consultation, you demonstrate to the satisfaction of the enforcement authority that the manufacturer's data are correct.

- For organic HAP content, use Method 311 of 40 CFR part 63, appendix A.
- You may use nonaqueous volatile matter as a surrogate for organic HAP. If you choose this option, then use Method 24 of 40 CFR part 60, appendix A.
- For volume fraction of coating solids, use either ASTM Method D2697–86 (1998) or ASTM Method D6093–97.
- For density, use ASTM Method D1475–98 or information from the

supplier or manufacturer of the material.

For each emission capture and control system that you use, you must:

• Conduct an initial performance test to determine the overall control efficiency of the equipment (described below) and to establish operating limits to be achieved on a continuous basis (also described below). The performance test must be completed no later than the compliance date. You also must schedule it in time to obtain the results for use in completing your initial compliance determination for the initial compliance period.

You are not required to conduct an initial performance test to determine capture efficiency or destruction efficiency of a capture system or control device if you receive approval to use the results of a performance test that has been previously conducted on that capture system (either a previous stack test or a previous panel test) or control device. You are not required to conduct an initial test to determine transfer efficiency if you receive approval to use the results of a test that has been previously conducted.

The overall control efficiency for a capture and control system must be demonstrated based on emission capture and reduction efficiency. To determine the capture efficiency, you must either verify the presence of a permanent total enclosure using EPA Method 204 of 40 CFR part 51; measure the capture efficiency using either EPA Method 204A through F of 40 CFR part 51 or appendix A of 40 CFR part 63, subpart KK; or use the panel test procedures in ASTM Method D5087–91 (1994), ASTM Method D6266–00a, or the guidelines presented in the Auto Protocol as described in § 63.3165(e) and (g), and appendix A of the final rule. If you have a permanent total enclosure and you route all exhaust gases from the enclosure to a control device, then you may assume 100 percent capture. For panel testing, the coatings used may be grouped based on similar appearance characteristics (*e.g.*, solid color or metallic), processing sequences, and dry film thicknesses. One coating from each group can be tested to represent all of the coatings in that group.

To determine the emission reduction efficiency of the control device, you must conduct measurements of the inlet and outlet gas streams. The test consists of three runs, each run lasting 1 hour, using the following EPA Methods in 40 CFR part 60, appendix A:

• Method 1 or 1A for selection of the sampling sites.

• Method 2, 2A, 2C, 2D, 2F, or 2G to determine the gas volumetric flow rate.

• Method 3, 3A, or 3B for gas analysis to determine dry molecular weight.

• Method 4 to determine stack moisture.

• Method 25 or 25A to determine organic volatile matter concentration. Alternatively, any other test method or data that have been validated according to the applicable procedures in Method 301 of 40 CFR part 63, appendix A, and approved by the Administrator, may be used.

You are required to determine the transfer efficiency for primer-surfacer and topcoat materials and for all coatings, except for deadener and for adhesive and sealer that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) using ASTM Method D5066–91 (2001) or the guidelines presented in the Auto Protocol. Transfer efficiency testing may be performed for representative coatings and representative spray booths as described in the Auto Protocol, rather than for every coating and every spray booth. For example, one basecoat may be tested from a group of basecoats that are applied or processed in the same manner and the test result may be used for all of the coatings in the group and one spray booth may be tested from a group of identical parallel spray booths. Typical basecoat groupings are metallic colors and non-metallic colors. You may assume 100 percent transfer efficiency for electrodeposition primer coatings, glass bonding primers, and glass bonding adhesives. For final repair coatings, you may assume 40 percent transfer efficiency for air atomized spray and 55 percent transfer efficiency for electrostatic spray and high volume, low pressure spray.

The monthly emission rate, in terms of mass of organic HAP emitted per volume of coating solids deposited, is determined in accordance with the procedures in the final rule. These procedures incorporate the volume, organic HAP content, and volume solids content of each coating applied, as well as the transfer efficiency for the coatings and spray equipment used, and the overall control efficiency for controlled booths or bake ovens and other controlled emission points.

Adhesives and sealers, and deadener. Compliance with emissions limits for adhesives and sealers (other than windshield materials) is based on the monthly mass average organic HAP content of all materials of this type used during the compliance period. Compliance with emission limits for deadener is based on the monthly mass average organic HAP content of all materials of this type used during the compliance period.

Operating limits. As mentioned above, you must establish the required operating limits during the initial performance test of an emission capture and control system. The operating limit is defined as the minimum or maximum (as applicable) value achieved for a control device or process parameter during the most recent performance test that demonstrated compliance with the emission limit.

The final rule specifies the parameters to monitor for the types of control systems commonly used in the industry. You are required to install, calibrate, maintain, and continuously operate all monitoring equipment according to manufacturer's specifications and ensure that the continuous parameter monitoring systems (CPMS) meet the requirements in § 63.3168 of the final rule. If you use control devices other than those identified in the final rule, you must submit the operating parameters to be monitored to the Administrator for approval. The authority to approve the parameters to be monitored is retained by EPA and is not delegated to States.

If you use a thermal or catalytic oxidizer, you must continuously monitor temperature and record it at evenly spaced intervals at least every 15 minutes. For thermal oxidizers, the temperature monitor is placed in the firebox or in the duct immediately downstream of the firebox before any substantial heat exchange occurs. The operating limit for thermal oxidizers is the average temperature, based on all valid data, measured during the performance test. For each 3-hour period thereafter, the average temperature must be at or above this limit. As an alternative, if the latest operating permit issued before April 26, 2007 for the thermal oxidizer at your facility contains recordkeeping and reporting requirements for the combustion temperature that are consistent with the requirements for thermal oxidizers in 40 CFR 60.395(c), then you may set the minimum operating limit for the combustion temperature for each such thermal oxidizer at your affected source at 28 degrees Celsius (50 degrees Fahrenheit) below the average combustion temperature during the performance test of that thermal oxidizer. If you do not have an operating permit for the thermal oxidizer at your facility and the latest construction permit issued before April 26, 2007 for the thermal oxidizer at your facility contains recordkeeping and reporting requirements for the

combustion temperature that are consistent with the requirements for thermal oxidizers in 40 CFR 60.395(c), then you may set the minimum operating limit for the combustion temperature for each such thermal oxidizer at your affected source at 28 degrees Celsius (50 degrees Fahrenheit) below the average combustion temperature during the performance test of that thermal oxidizer. If you use this as the minimum operating limit for a thermal oxidizer, then you must keep the combustion temperature set point on that thermal oxidizer no lower than 14 degrees Celsius (25 degrees Fahrenheit) below the lower of that set point during the performance test for that thermal oxidizer and the average combustion temperature maintained during the performance test for that thermal oxidizer.

For catalytic oxidizers, temperature monitors are placed immediately before and after the catalyst bed. The operating limits for catalytic oxidizers are the average temperature just before the catalyst bed maintained during the performance test and 80 percent of the average temperature difference across the catalyst bed maintained during the performance test, except during periods of low production the latter minimum operating limit is to maintain a positive temperature gradient across the catalyst bed. A low production period is when production is less than 80 percent of production rate during the performance test. As an alternative, if the latest operating permit issued before April 26, 2007 for the catalytic oxidizer at your facility contains recordkeeping and reporting requirements for the temperature before the catalyst bed that are consistent with the requirements for catalytic oxidizers in 40 CFR 60.395(c), then you may set the minimum operating limit for the temperature just before the catalyst bed for each such catalytic oxidizer at your affected source at 28 degrees Celsius (50 degrees Fahrenheit) below the average temperature just before the catalyst bed during the performance test of that catalytic oxidizer. If you do not have an operating permit for the catalytic oxidizer at your facility and the latest construction permit issued before April 26, 2007 for the catalytic oxidizer at your facility contains recordkeeping and reporting requirements for the temperature before the catalyst bed that are consistent with the requirements for catalytic oxidizers in 40 CFR 60.395(c), then you may set the minimum operating limit for the temperature just before the catalyst bed for each such catalytic oxidizer at your affected source at 28 degrees Celsius (50 degrees Fahrenheit) below the average temperature just before the catalyst bed during the performance test of that catalytic oxidizer. If you use this as the minimum operating limit for the temperature just before the catalyst bed for a catalytic oxidizer, then you must keep the set point for the temperature just before the catalyst bed for that catalytic oxidizer no lower than 14 degrees Celsius (25 degrees Fahrenheit) below the lower of that set point during the performance test for that catalytic oxidizer and the average temperature just before the catalyst bed maintained during the performance test for that catalytic oxidizer. Also, as an alternative for catalytic oxidizers, you may monitor the temperature immediately before the catalyst bed and develop and implement an inspection and maintenance plan.

If you use a solvent recovery system, then you must either: (1) Continuously monitor the outlet concentration of organic compounds, and the operating limit is the average organic compound outlet concentration during the performance test (for each 3-hour period, the average concentration would have to be below this limit); or (2) monitor the carbon bed temperature after each regeneration and the total amount of steam or nitrogen used to desorb the bed for each regeneration, in which case the operating limits would be the carbon bed temperature (not to be exceeded) and the amount of steam or nitrogen used for desorption (to be met as a minimum).

If you use a capture system that is not part of a PTE that meets the criteria of 40 CFR 63.3165(a) and is not capturing emissions from a downdraft spray booth or from a flash-off area or bake oven associated with a downdraft spray booth to meet the final standards, you must meet operating limits for each capture device in that capture system. If the emission capture system is a permanent total enclosure, you are required to establish that the direction of flow is into the enclosure at all times. In addition, you must meet an operating limit of either an average facial velocity of at least 3,600 meters per hour (200 feet per minute) through all natural draft openings in the enclosure, or a minimum pressure drop across the enclosure of at least 0.18 millimeter water (0.007 inch water), as established by Method 204 of appendix M to 40 CFR part 51.

If the emission capture system is not a permanent total enclosure, you must establish either the average volumetric flow rate or the duct static pressure in each duct between the capture device and the add-on control device inlet during the performance test. Either the average volumetric flow rate must be maintained above the operating limit for each 3-hour period or the average duct static pressure must be maintained above the operating limit for each 3-hour period.

Work practice standards. You must develop and implement two site-specific work practice plans. One plan must address practices to minimize organic HAP emissions from storage, mixing, and conveying of coatings, thinners, and cleaning materials used in operations for which emission limits are established, as well as the waste materials generated from these operations. A second site-specific work practice plan must address practices to minimize emissions from cleaning operations and purging of coating equipment.

The plans must address specific types of potential organic HAP emission points and are subject to approval of the Administrator. Deviations from approved work practice plans must be reported semiannually.

F. What Are the Continuous Compliance Provisions?

Emission limits. Continuous compliance with the emission limit for combined electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) of the final rule, or if eligible, the emission limit for combined primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c), is based on monthly calculations following the procedures detailed in the final rule. These procedures take into account the amount of each coating used, the organic HAP and volume solids content of each coating used, the transfer efficiency of each coating application system, and the organic HAP abatement from each capture and control system, and provide for calculating monthly mass organic HAP emissions per volume of coating solids deposited.

Continuous compliance with the emission limits for adhesives and sealers (other than components of the windshield adhesive system), and

deadener is based on the monthly average mass organic HAP concentration of all materials applied in each category.

Operating limits. If you use an emission capture and control system, the final rule requires you to achieve on a continuous basis the operating limits you establish during the performance test. If the continuous monitoring shows that the system is operating outside the range of values established during the performance test, then you have deviated from the established operating limits.

If you operate a capture and control system that allows emissions to bypass the control device, you must demonstrate that HAP emissions from each emission point within the affected source are being routed to the control device by monitoring for potential bypass of the control device. You may choose from the following four monitoring procedures:

(1) Flow control position indicator to provide a record of whether the exhaust stream is directed to the control device;

(2) Car-seal or lock-and-key valve closures to secure the bypass line valve in the closed position when the control device is operating;

(3) Valve closure continuous monitoring to ensure any bypass line valve or damper is closed when the control device is operating; or

(4) Automatic shutdown system to stop the coating operation when flow is diverted from the control device.

If the continuous control device bypass monitoring shows that the control device is bypassed, then you have deviated from the established operating limits.

Operations during startup, shutdown, and malfunction. When using an emission capture and control system for compliance, you are required to develop and operate according to a startup, shutdown, and malfunction plan (SSMP) during periods of startup, shutdown, and malfunction of the capture and control system.

Work practice standards. You are required to operate your facility in accordance with your approved site-specific work practice plans at all times.

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

You are required to comply with the applicable requirements in the NESHAP General Provisions, subpart A of 40 CFR part 63, as described in the final rule. The General Provisions notification requirements include: initial notifications, notification of performance test if you are complying using a capture system and control device, notification of compliance status, and additional notifications required for affected sources with continuous monitoring systems. The General Provisions also require certain records and periodic reports.

Initial Notifications. If you own or operate an existing affected source, you must send a notification to the EPA Regional Office in the region where your facility is located and to your State agency no later than April 26, 2005. For new and reconstructed sources, you must send the notification within 120 days after the date of initial startup or October 25, 2004, whichever is later. That report notifies us and your State agency that you have an existing affected source that is subject to the final standards or that you have constructed a new affected source. Thus, it allows you and the permitting authority to plan for compliance activities. You also need to send a notification of planned construction or reconstruction of a source that would be subject to the final rule and apply for approval to construct or reconstruct. If you have already submitted a notification in accordance with section 112(j) of the CAA, you are not required to submit another initial notification except to identify and describe all additions to the affected source made pursuant to § 63.3082(c) of the final rule.

Notification of Performance Test. If you demonstrate compliance by using a capture system and control device for which you do not conduct a liquid-liquid material balance, you must conduct a performance test. The performance test is required no later than the compliance date for an existing affected source. For a new or reconstructed affected source, the performance test is required no later than 180 days after startup or 180 days after the effective date of the final rule, whichever is later. You must notify EPA (or the delegated State or local agency) at least 60 calendar days before the performance test is scheduled to begin and submit a report of the performance test results no later than 60 days after the test.

Notification of Compliance Status. You must submit a Notification of Compliance Status within 60 days after the end of the initial compliance period. In the notification, you must certify whether the affected source has complied with the final standards; summarize the data and calculations supporting the compliance demonstration; describe how you will determine continuous compliance; and for capture and control systems for which you conduct performance tests, provide the results of the tests. Your notification must also include the measured range of each monitored parameter and the operating limits established during the performance test, and information showing whether you have achieved your operating limits during the initial compliance period.

Recordkeeping Requirements. The final rule requires you to collect and keep records according to certain minimum data requirements for the CPMS. Failure to collect and keep the specified minimum data is a deviation that is separate from any emission limit, operating limit, or work practice requirement. You are required to keep records of reported information and all other information necessary to document compliance with the final rule for 5 years. As required under the General Provisions, records for the 2 most recent years must be kept on-site; the other 3 years' records may be kept off-site. Records pertaining to the design and operation of the control and monitoring equipment must be kept for the life of the equipment.

You are required to keep the following records:

- A current copy of information provided by materials suppliers such as manufacturer's formulation data or test data used to determine organic HAP or VOC content, solids content, and quantity of the coatings and thinners applied.
- All documentation supporting initial notifications and notifications of compliance status. This includes a record of all raw data, protocol input data, algorithms, and intermediate calculations. If calculations are computerized, data, calculations, and intermediate and final results must also be maintained in electronic form.
- The occurrence and duration of each startup, shutdown, or malfunction of the emission capture and control system.
- All maintenance performed on the emission capture and control system.
- Actions taken during startup, shutdown, and malfunction that are different from the procedures specified in your SSMP.
- All information necessary to demonstrate conformance with your SSMP when the plan procedures are followed.
- Each period during which a CPMS is malfunctioning or inoperative (including out-of-control periods).
- All required measurements needed to demonstrate compliance with the standards.
- All results of performance tests.

• Data and documentation used to determine and capture system efficiency or to support a determination that the system is a permanent total enclosure.

• Required work practice plans and documentation to support compliance with the provisions of these plans.

Deviations, as determined from these records, must be recorded and also reported. A deviation is any instance when any requirement or obligation established by the final rule including, but not limited to, the emission limits, operating limits, and work practice standards, is not met.

If you use a capture system and control device to reduce organic HAP emissions, you must make your SSMP available for inspection if the Administrator requests to see it. The plan must stay in your records for the life of your affected source or until the source is no longer subject to the final standards. If you revise the plan, you must keep the previous superseded versions on record for 5 years following the revision.

Periodic Reports. Each reporting year is divided into two semiannual reporting periods. If no deviations occur during a semiannual reporting period, you must submit a semiannual report stating that the affected source has been in continuous compliance. If deviations occur, you must include them in the report as follows:

• Report each deviation from the emission limit.

• Report each deviation from the work practice plan.

• If you are complying by using a thermal oxidizer, report all times when a 3-hour average temperature is below the operating limit.

• If you are complying by using a catalytic oxidizer, report all times when a 3-hour average temperature increase across the catalyst bed is below the operating limit.

• If you are complying by using oxidizers or solvent recovery systems, report all times when the value of the site-specific operating parameter used to monitor the capture system performance was greater than or less than (as appropriate) the operating limit established for the capture system.

• Report other specific information on the periods of time the deviations occurred.

You must also send us explanations in each semiannual report if a change occurs that might affect your compliance status.

Other Reports. You are required to submit reports for periods of startup, shutdown, or malfunction of the capture system and control device. If the procedures you follow during any startup, shutdown, or malfunction are inconsistent with your SSMP, you report those procedures with your semiannual reports in addition to immediate reports required by 40 CFR 63.10(d)(5)(ii).

III. What Are the Significant Changes Since Proposal?

A. Applicability

We have provided an option permitting facilities subject to the final rule to include collocated operations involved in surface coating of parts for automobiles and light-duty trucks that would not otherwise be subject to the rule. Surface coating of these non-body parts, such as bumpers, fascias, and brackets at a time when they are not attached to (or otherwise simultaneously coated with) a new automobile or light-duty truck body or body parts would otherwise be subject to the Surface Coating of Miscellaneous Metal Parts and Products NESHAP, 40 CFR part 63, subpart MMMM, and/or the Surface Coating of Plastic Parts and Products NESHAP, 40 CFR part 63, subpart PPPP. Facilities opting to include operations of this type are responsible for obtaining all of the information necessary to determine compliance with the provisions of the final rule. Cleaning and purging operations associated with optionally included collocated surface coating operations would also be covered by the final rule. Collocated operations involved in surface coating of parts that are not related to automobiles and light-duty trucks may not be included, and continue to be regulated under the Surface Coating of Miscellaneous Metal Parts and Products NESHAP, 40 CFR part 63, subpart MMMM, and/or the Surface Coating of Plastic Parts and Products NESHAP, 40 CFR part 63, subpart PPPP. We are also amending subparts MMMM and PPPP to clarify the interaction between these rules and the surface coating automobiles and light-duty trucks rule. We were unable to include these changes in subparts MMMM and PPPP until the final rule was published since the changes to subparts MMMM and PPPP reference the final rule.

The final rule excludes "travel waxes" and other temporary coatings designed to be removed before vehicles are sold, as well as materials applied from touchup bottles.

B. Compliance Demonstration and Monitoring

As an alternative to the temperature monitoring provisions for thermal and catalytic oxidizers in the proposed rule, the final rule allows certain facilities which have been following the temperature monitoring provisions in 40 CFR 60.395(c) to continue to follow those provisions and to set the minimum operating limit for each such oxidizer at the same level as in 40 CFR 60.395(c).

The proposed rule used the average temperature rise across the catalyst during the performance test as one of the minimum operating limits for catalytic oxidizers. The final rule uses 80 percent of the average temperature rise across the catalyst during the performance test as one of the minimum operating limits for catalytic oxidizers, except during periods of low production this minimum operating limit is to maintain a positive temperature gradient across the catalyst bed.

The proposed rule contained operating parameter requirements for all capture systems. The final rule states that such monitoring is not required for downdraft spray booths or for flash-off areas or bake ovens associated with downdraft spray booths.

The proposed rule stated that if your add-on control system deviates from the operating limit specified in Table 1 to subpart IV of 40 CFR part 63, then you must assume that the emission capture system and add-on control device were achieving zero efficiency during the time period of the deviation. We have written the final rule to allow the use of other data to indicate the actual efficiency of the emission capture system and add-on control device, as long as the use of these data is approved by the Administrator.

The proposed rule provided the option of using panel testing to determine bake oven capture efficiency. The final rule maintains this option and provides more detail on the calculations necessary to convert the results of such panel tests into the format needed for the final rule. The final rule also provides an option of using panel tests to determine spray booth capture efficiency.

C. Analytical Methods

The specification of analytical procedures to be employed in compliance demonstration is unchanged. A provision has been added to the final rule providing, in the event of a disagreement between the specified methods and the facility's data, an opportunity for the facility to consult with the enforcement authority and demonstrate to the satisfaction of the enforcement authority that formulation data or data obtained by other means are correct.

D. Notifications and Recordkeeping

In the final rule, we have provided that facilities that have previously submitted initial notifications under section 112(j) of the CAA are not required to submit the initial notifications otherwise required by this subpart except to identify and describe all additions to the affected source made pursuant to § 63.3082(c) of the final rule. In addition, we have extended the deadline for submission of compliance status from 30 days to 60 days following the end of the initial compliance period to allow additional time for data reduction and calculations.

The final rule provides that you must maintain a record of the calculations used to demonstrate compliance with the "Combined Electrodeposition Primer, Primer-Surfacer, Topcoat, Inline and Final Repair, Glass Bonding Primer, and Glass Bonding Adhesive Emission Rates" or "Combined Primer-Surfacer, Topcoat, Inline and Final Repair, Glass Bonding Primer, and Glass Bonding Adhesive Emission Rates." This record must include all raw data, algorithms, and intermediate calculations. If the guidelines presented in the Auto Protocol are used, you must keep records of all data input to this Auto Protocol. If these data are maintained as electronic files, the electronic files, as well as any paper copies must be maintained. These data must be provided to the permitting authority on request on paper, and in (if calculations are done electronically) electronic form.

E. Definitions

We have added definitions of bake oven air seal, body part, containers, paint line, sealers, spray booth air seal, and touchup bottles to the final rule. We have revised the definitions of deviation, final repair, in-line repair, and paint shop in the final rule.

IV. What Are the Responses to Significant Comments?

For the full set of comment summaries and responses, refer to the Response to Comment document which contains EPA's responses to each public comment and is available in Docket ID No. OAR–2002–0093 and Docket ID No. A–2001–22.

A. Applicability

Comment: A commenter was concerned that complying with the final rule by means of add-on control and equipment changes would trigger other regulatory requirements (new source review (NSR), prevention of significant deterioration (PSD), or NSPS) and requested a "safe harbor" be included in the final rule.

Response: We are not including in the final rule an exemption from NSR, PSD, and NSPS for those coating operations that are modified or upgraded in order to comply with the final rule. It would be inappropriate to include language in a NESHAP that could affect the applicability of these other programs since these are better handled on a case-by-case basis by the States and Regions implementing these other rules.

We do not expect compliance with the final rule to require changes to existing coating operations that would trigger major NSR or PSD permitting requirements. The steps taken to reduce organic HAP emissions to comply with the final rule are not expected to result in increased VOC emissions. Facilities that install oxidizers to reduce organic HAP may have a concurrent increase in nitrogen oxide emissions. We expect such facilities will be eligible for the pollution control project exclusion in the NSR regulations (67 FR 80186) since regenerative thermal oxidzers, thermal oxidizers, and catalytic oxidizers are presumed to be environmentally beneficial under the pollution control project exclusion. In addition, in order for the pollution control project exclusion to apply, the emissions increases from the project must not cause or contribute to a violation of any national ambient air quality standard or PSD increment, or adversely impact an air quality related value (such as visibility) that has been identified for a Federal Class I area by a Federal Land Manager and for which information is available to the general public.

Most, if not all, of the current automobile and light-duty truck surface coating facilities are already subject to the NSPS for automobile and light-duty truck surface coating. If there are any current facilities not already subject to the NSPS, we do not expect that the NSPS would be triggered by the changes necessary to comply with the final rule. The steps taken to reduce organic HAP emissions to comply with the final rule are not expected to result in increased VOC emissions. Increases in nitrogen oxide emissions resulting from the installation of oxidizers would not trigger the NSPS because nitrogen oxides are not a regulated pollutant under the NSPS.

Comment: A commenter recommended a broadening of the applicability of the proposed rule to allow those coating operations for metal and plastic parts conducted at facilities subject to the final rule to be considered part of the automobile and light-duty truck surface coating rule. This approach would provide affected sources with the greatest degree of flexibility for future changes in vehicle coating processes, *e.g.*, coating doors separately on another line rather than coating automobiles and light-duty trucks with the doors attached to the frame. This approach would also significantly reduce reporting, recordkeeping, and monitoring requirements, while assuring significant emissions reductions.

Response: We agree that providing this flexibility to operators of automobile assembly plants may reduce the burden associated with complying with multiple rules without increasing HAP emissions. Allowing the specified collocated coatings operations to be included under the final rule may simplify the tracking of coatings inventory and reduce the reporting and recordkeeping requirements associated with complying with multiple rules. The final rule provides operators of automobile assembly plants the option to include all collocated plastic and metal parts coating operations related to automobiles and light-duty trucks under the rule. This includes coating of replacement parts for attachment outside the facility, and coating of non-body parts (such as fascia cladding, brackets, fuel tanks, and radiators) for automobiles or light-duty trucks. Off-line coating of body parts, such as doors, for attachment to automobiles and light-duty trucks coated at the facility remain (as proposed) in the affected source under the final rule. Operators choosing to include such operations are required to obtain the necessary information (including transfer efficiency and capture efficiency) to demonstrate compliance. Coating of non-automotive parts, vehicles other than automobiles and light-duty trucks (such as motorcycles, all-terrain vehicles, or watercraft), or parts for such vehicles, may not be included. We are also amending 40 CFR part 63, subparts MMMM and PPPP, to clarify the interaction between those rules and the surface coating for automobiles and light-duty trucks final rule.

Comment: A commenter noted that the definition of the term "coating" excludes certain decorative, protective, or functional coatings that consist only of protective oils. The commenter stated that automobile and light-duty truck assembly plants also apply several different types of temporary coatings, *e.g.*, travel wax and blackout coatings. These coatings serve a cosmetic purpose and are not designed to remain on the vehicle for a long time. The commenter stated that these "cosmetic coatings" should not be included in the definition of coating for the purposes of the MACT

standards given their temporary nature and the fact that emissions from these coatings are minimal.

Response: We agree that temporary coatings are applied differently and serve a different function than the coatings intended to be regulated. In addition, the data collected and used in the determination of MACT, did not include temporary coatings. The definition of coating operation has been written to exclude the application of temporary materials such as protective oils and "travel waxes" that are designed to be removed from the vehicle before the vehicle is delivered to the retail purchaser.

Comment: A commenter recommended a minimum threshold cutoff for purposes of applicability of the final rule and suggested that EPA provide an exemption of 250 gal per year, similar to the usage cutoffs in other MACT standards.

Response: The commenter did not provide any data to support the inclusion of this type of exemption in the final rule. The MACT determination took into account emissions and solids from "special colors." These materials are not exempt from the NSPS, and reporting systems to account for them are presently in place at most, if not all, assembly plants. The definition of coating operation in the final rule has been revised to exclude "touchup bottles," which will exempt some materials used in very small quantities.

Comment: Approximately ten automobile and light-duty truck facilities have received permits with case-by-case MACT determinations under 40 CFR 63.40 and section 112(g) of the CAA. One commenter questioned whether the final NESHAP would apply to such facilities or if these facilities will continue to be subject to limits established in their permits under section 112(g). Another commenter stated that the section 112(g) permit requirements are more stringent than the proposed MACT limits for existing sources. This commenter suggested that EPA state in the final rule that the section 112(g) permits are equivalent to the MACT limits for existing sources and provide these facilities with the choice of keeping their section 112(g) permits or having 8 years to comply with the MACT limits for existing sources.

Response: Based upon the process used for making section 112(g) determinations and a brief review of some of the section 112(g) determinations made for facilities in this industry, we expect that the result of a thorough review would be that most or all of the section 112(g) determinations made for facilities in this industry are equivalent to MACT. These reviews and equivalency determinations are best done on a case-by-case basis by the permitting authority.

In accordance with 40 CFR 63.44(c), if the level of control required by the emission standard issued under section 112(d) is less stringent than the level of control required by a prior case-by-case section 112(g) MACT determination pursuant to 40 CFR 63.43, the permitting authority is not required to incorporate any less stringent terms of the promulgated standard in the title V operating permit applicable to the facility. In such a case, the permitting authority may choose to have the section 112(g) MACT determination remain in effect. Alternatively, the permitting authority may choose to have the NESHAP come into effect for the facility in place of the section 112(g) MACT determination. In this case, the facility may be given up to 8 years from the promulgation date of the NESHAP to comply with the NESHAP. The changes in equipment, materials, monitoring, recordkeeping, and reporting necessary to demonstrate compliance with the NESHAP rather than with the section 112(g) determination and the fact that the NESHAP are less stringent than the section 112(g) determination should be taken into account in determining how much time the facility is given to comply with the NESHAP.

In the less likely event that the level of control required by the emission standard issued under section 112(d) is not found to be less stringent than the level of control required by a prior case-by-case section 112(g) MACT determination, then the facility must comply with the NESHAP. In this case, the facility may be given up to 8 years from the promulgation date of the NESHAP to comply with the NESHAP. The changes in equipment, materials, monitoring, recordkeeping, and reporting necessary to demonstrate compliance with the NESHAP rather than with the section 112(g) determination and the fact that the NESHAP are not less stringent than the section 112(g) determination should be taken into account in determining how much time the facility is given to comply with the NESHAP.

As an alternative, if the level of control required by the emission standard issued under section 112(d) is not found to be less stringent than the level of control required by a prior case-by-case section 112(g) MACT determination and the difference in stringency is small, then the permitting authority could amend the facility's operating permit to make it equivalent to the NESHAP and have the section 112(g) MACT determination remain in effect. This approach may be less burdensome on both the facility and the permitting authority than having the NESHAP come into effect for the facility while achieving the same environmental results.

B. Compliance Demonstration, Monitoring, and Emission Limits

Comment: The commenter stated that the CAA, EPA rules, and EPA policy all authorize adoption of a Compliance Assurance Monitoring (CAM) protocol as MACT monitoring for coating sources at automobile and light-duty truck surface coating facilities. The commenter noted that the proposed rule allows the use of the CAM protocol as an option for compliance with certain aspects of the rule, but not for others, such as control equipment effectiveness and monitoring. The commenter stated that it is critical that the compliance provisions for the separate coating MACT standards that are applicable be harmonized, not only with each other, but also with the other coating standards that apply under State Implementation Plan requirements (including reasonably available control technology and best available control technology/lowest achievable emission rate).

Response: The proposed rule referred to the Auto Protocol as an option for compliance demonstration. This Auto Protocol does not include CAM provisions and does not include any guidance for control device efficiency monitoring. A CAM guidance document for automobile and light-duty truck coating is under development, but has not been completed. As described earlier in this preamble, we have provided an option for certain facilities to continue using the thermal and catalytic oxidizer temperature monitoring operating limits in 40 CFR 60.395(c). We have also removed the operating parameter requirements for capture systems which capture emissions from downdraft spray booths or from flash-off areas or bake ovens associated with downdraft spray booths.

Comment: The commenter stated that, for the performance tests required in proposed § 63.3160(a) and (b), EPA should allow prior performance tests, *e.g.*, transfer efficiency, removal efficiency, capture efficiency, destruction efficiency, oven solvent loading, to satisfy the performance tests required by the standards. Since EPA has agreed that HAP emitted from these operations behave in the same way as VOC, there is no reason for redundant

testing. The commenter recommended that the scope and frequency of testing for transfer efficiency, oven solvent loading, and spraybooth capture efficiency be determined by the Auto Protocol.

According to the Auto Protocol, retesting of transfer efficiency is required if there are significant product, processing, material, or application equipment changes. Where parallel spraybooths are used, testing is required for only one booth. Oven solvent loading is determined with an initial compliance test followed by annual review of system operating conditions. The most recent test result remains valid as long as no significant changes have occurred in the coating technology or processing. The commenter feels that annual variations in color pallette or routine solvent blend adjustments are not significant changes, and that a similar trigger should apply for spraybooth capture efficiency testing. The affected source would maintain records documenting the annual reevaluation and the basis for the decision on whether retesting was required.

Response: We agree that the most recent test data can be used to demonstrate compliance and to establish the operating limits required by the final rule, provided that (1) the test was conducted using the same methods and conditions specified in this subpart, (2) no equipment changes have been made since the previous test (or you can demonstrate the results are reliable despite the changes), and (3) the required operating parameters were determined or sufficient data were collected to establish them. The Auto Protocol includes guidance for scope and frequency of testing for transfer efficiency and oven solvent loading panel testing.

Comment: The commenter noted that proposed § 63.3161(j), covering the calculation of HAP emissions reduction for controlled coating operations not using a liquid-liquid material balance, assumes zero efficiency for the emission capture system and add-on control device for periods of operating parameter or bypass line deviations, including startup, shutdown, or malfunction. The commenter claims that this approach is unrealistic and unduly penalizes facilities that may have a minor parameter reporting problem, *e.g.*, an automatic temperature readout malfunction. The commenter requested that § 63.3161 be written so that there is a generic way to calculate a facility's destruction credit when a deviation has occurred. The commenter suggested that facilities have the option to calculate an appropriate destruction credit for the hours of the excursion based on other available information.

Response: If a source has manually collected parameter data indicating that an emission capture system or control device was operating normally during a parameter monitoring system malfunction, these data could be used to support and document that the source was achieving the same overall control efficiency and the source would not have to assume zero-percent efficiency. If a source has data indicating the actual performance of an add-on emission capture system and control device (*e.g.*, percent capture measured at a reduced flow rate or percent destruction efficiency measured at reduced thermal oxidizer temperatures) during a deviation from operating limits or during a malfunction of the monitoring system, then the source may use the actual performance in determining compliance, provided the use of these data are approved by the Administrator. The final rule has been written to clarify that such data may be used rather than assuming that the efficiency is zero.

Comment: A commenter asserted that establishing a MACT floor (and monthly emission limits) based on the highest monthly average emission rates at the best (as determined on an annual basis) performing facilities would result in higher annual HAP emissions than the annual average emissions of the best performing plants. The commenter cited as an example the proposed MACT floor (and monthly emission limit) for the combined electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive application operations of 0.60 lbs/gal of applied coating solids, which the commenter asserted is substantially higher (reflective of a less stringent limit) than the annual average of the eight lowest emitting plants (0.48 lbs/gal of applied coating solids).

The commenter asserted that the same deficiencies affect EPA's proposed MACT floor for new and reconstructed sources, and noted that EPA used the peak monthly emissions of the lowest annual emitting source to establish a monthly average that is well above the actual annual emission level of the lowest emitting source. The commenter urged EPA to establish a MACT floor for new and existing sources that has both monthly and annual emission limits.

Response: The automobiles and light-duty trucks coated at each facility are coated in a variety of colors. This color variety is present not only among the topcoats, but also among the primer-surfacers. The make-up and content of each color varies. Each color, for example, has its own unique organic HAP content, VOC content, and volume solids content. The coating application system, and therefore transfer efficiency, may also vary among the families of coatings (*e.g.*, solid color basecoats and metallic color basecoats) used at a facility. The specific color mix produced varies from month-to-month. As a result of this variation in color mix, the organic HAP emission rate at a facility also varies from month-to-month.

We had monthly emission data upon which to base the standards. A monthly emission limit is appropriate and has been promulgated. Establishing a monthly emission limit based on annual emission rates would result in the best performing plants being out of compliance approximately 6 months per year. Such an emission limit would not appropriately account for monthly variation in color mix. The final standards reflect what is consistently achievable considering the typical variation in demand for particular colors of vehicles. Having both a monthly and an annual emission limit would be redundant and burdensome (on both facilities and enforcement agencies), and would not lead to additional emissions reductions. Actual annual emission rates associated with consistent achievement of the final monthly standards will be substantially lower than the monthly emission limits. Establishing a standard of 0.48 lb/gal of applied coating solids and requiring it to be met on an annual basis would not result in lower emissions than a standard of 0.60 lb/gal of applied coating solids which must be met each and every month.

Comment: A commenter noted the proposed NESHAP set limits of 0.01 lb of HAP per lb of material used for adhesive and sealer application and 0.01 lb of HAP per lb of material used for deadener. Based on the review of three permits, the commenter has determined the CAA section 112(g) value for adhesives and sealer application and the deadener operations is that none of the materials used shall contain any volatile HAP as defined by the suppliers' material safety data sheets (MSDS). It does not appear to the commenter that these facilities were included in the floor analysis.

The commenter encouraged EPA to ensure that these facilities were included in the database if they were operating 18 months prior to the proposal and they were operating during the base year for the floor database.

Response: The base year of the database used to determine the MACT

floors for new and existing sources was 1997. These limits are based, in part, on the detection limits (and the precision and accuracy achievable at low concentrations) of available approved chemical analytical methods. The MSDS typically report concentrations of less than 0.01 lb noncarcinogenic HAP per lb material (less than 0.001 lb carcinogenic HAP per lb material) as zero, indicating that the limits suggested by the commenter are equivalent to those of the final rule. The final rule provides that Method 311 is presumed (subject to rebuttal) to take precedence over MSDS or other formulation data. Facilities may be unable to reliably demonstrate that coatings contain "no volatile HAP" by this method.

Comment: A commenter stated that regulations under section 112 of the CAA must include emission standards for each HAP that a category emits and that the proposed regulations failed to comply with that mandate. The commenter stated that even though the EPA states that automobile coating sources emit many different HAP, including metals such as lead, manganese, and chromium compounds, the Agency has proposed standards for only organic HAP.

Response: Most of the coatings used in this subcategory do not contain inorganic HAP. The only use of lead in coatings in this source category is in electrodeposition primers. None of this lead is emitted because these primers are applied by dip coating. Lead is being phased out of electrodeposition primers. For spray applied coatings, most of the inorganic HAP components of these coatings remain as solids in the dry coating film on the parts being coated, are collected by the circulating water under the spray booth floor grates, or are deposited on the walls, floor, and grates of the spray booths and other equipment in which they are applied. The waterwash systems which are present in all primer-surfacer and topcoat spraybooths reduce the amount of coating droplets, and thus inorganic HAP, emitted to the air. These controls have been in place for many years. Facilities cannot operate without these controls. Therefore, inorganic HAP emission levels are expected to be very low and have not been quantified. The EPA has no basis upon which to establish MACT for inorganic HAP, and the commenter has supplied no data in support of an emission limit. Including control requirements for waterwash systems in the final rule would not be expected to result in additional emission reductions and would only add to the regulatory burden on the industry.

Comment: A commenter claimed that the requirement to document that a source is in continuous compliance with work practices is confusing and should be modified and streamlined. Continuous documentation of compliance with the work practice plan could be difficult, at best, and appears to be unnecessary. Under the commenter's recommended language, continuous compliance with the work practices would be confirmed by the presence of the work practice plan and the documents used to verify performance of the work practice activities, (*i.e.*, operational or maintenance records, documented inspections or internal audits, third party certifications or similar practices).

Response: Continuous documentation is not required, rather the recordkeeping requirements of § 63.3130(n) call for documentation that you are implementing the plan on a continuous basis. The records cited by the commenter (*i.e.*, operational or maintenance records, documented inspections or internal audits) have been added to § 63.3130(n) of the final rule as examples of documentation that demonstrate you are implementing the plan on a continuous basis.

Comment: A commenter noted that the proposed NESHAP covered fewer operations within the source category than the CAA section 112(g) determinations completed to date. Additional operations covered by section 112(g) determinations include purge and cleanup operations for three facilities, foam and maintenance painting for two facilities, and sound dampening application. The commenter encouraged EPA to include these facilities in the database if they were operating 18 months prior to proposal and were operating during the base year for the floor database. The commenter feels that purge and cleanup operations, foam, and maintenance painting operations should be identified individually in the final rule or identified as part of a grouping of operations with an overall emission limit.

Response: While facilities provided extensive data on purge material usage to EPA in response to information collection requests (ICR), estimates of recovery of these materials were extremely variable, with facilities of similar operation estimating very different recoveries. These data were not reliable enough to establish MACT on a numerical basis. The EPA chose to limit emissions from these operations through work practices. Cleaning material usage data were also provided, however since (a) emissions from these materials are rarely controlled, (b) EPA has no reliable data on the controllability of cleaning operations, and (c) cleaning material usage is not well correlated with vehicle production, EPA chose to limit emissions from these operations through work practices. Foam is injected into body panel cavities primarily for sound deadening and is subject to the emission limit for deadeners. Industry representatives have indicated in recent discussions that, as far as they know there are no HAP emissions associated with foam. Deadener application (for sound control) is subject to a standard based on the reliably demonstratable composition of very low-HAP material. One facility reported the use of cavity wax (no HAP content data were available and the facility assumed that it resulted in essentially zero HAP emissions). We have excluded maintenance coating from the final rule. No data were available upon which to base a MACT floor for this operation.

Comment: A commenter stated that waterwash controls for paint spray booths that are designed for particulate control are being evaluated for VOC control. The commenter also stated that HAP are typically found in large quantities in water-based coatings. With the increased use of water-based coatings, and the requirement for site-specific parameter limits, facilities may want to use the waterwash control as the primary control for HAP. The commenter stated that no EPA test protocol has been designed to address field testing of a waterwash control system and requested that EPA provide industry and the regulatory agencies with either an approved testing protocol or a technical guidance document.

The commenter also stated that if this will be addressed as an "alternate test method," it should be explicitly stated in the final rule and asked what parameter limits EPA envisions for a facility to monitor HAP removed by waterwash systems if capture credit is claimed.

Response: No facilities are presently using the spray booth waterwash as a VOC or organic HAP control device and no specific method for testing has been developed. If a facility wanted to use a device of this type to control HAP, the same methods in 40 CFR part 60, appendix A, presently used for oxidizers and adsorbers might be adapted for this purpose. Alternately, the test methods and operating parameter monitoring applicable to wet scrubbers or wastewater treatment might be adapted for this purpose. A source would be required to obtain approval of an alternate test procedure and

monitoring approach of their choice under the General Provisions, if these data were to be used to demonstrate compliance.

Comment: A commenter stated that in the "Rationale for Selecting the Proposed Standards" portion of the preamble, EPA stated that five formats were considered for the allowable organic HAP emission limits from the affected sources. A limit of organic HAP emissions per unit of surface area was rejected based on the inconsistent basis of the surface area coated estimates by the different manufacturers. The commenter noted that EPA further stated that "The data that we received were incomplete, and the methods of estimating vehicle surface areas varied widely." The commenter noted that all United States automobile manufacturers currently demonstrate compliance with their lbs of VOC per gal of applied coating solids limits by using the Auto Protocol. One of the essential components of the Auto Protocol is the surface area coated. The commenter submitted that, if EPA feels that the data are inconsistent and incomplete, then the Auto Protocol should be revised to correct this deficiency or disregarded altogether. Otherwise, the commenter recommends that the limits be re-evaluated using the most current, statistically acceptable data for surface area where appropriate.

Response: The Auto Protocol requires that surface areas of different vehicle types be determined in a manner that is consistent within the facility (so that material usage may be allocated to specific days and specific spray booths). A consistent approach has not been required from facility to facility, and it was not possible to reliably compare reported surface area data between different facilities.

C. Analytical Methods

Comment: A commenter noted that §§ 63.3151 and 63.3171(e) rely on Method 311 as one of the ways to determine the mass fraction of HAP for demonstrating initial compliance. The proposed rule also stipulated that if there is a "disagreement" between supplier or manufacturer information and the results from test methods, then the test method results take precedence. The commenter disagrees with the presumption that the test results are correct, and pointed out that there is considerable variability in the analytical test results even when Method 311 is run carefully. The commenter cited technical causes of variability including thermal stability, sample handling, reactivity of some coatings, gas chromatograph (GC) column selection, and the oven/column temperature profile. The commenter recommended that EPA establish a "confidence limit" of ±50 percent for analyses conducted in accordance with Method 311.

The commenter noted that in past MACT standards, such as the MACT for wood furniture, EPA has permitted sources to rebut test results. The commenter also recommended that EPA allow the use of formulation data for methanol, because in a coating with melamine resins, methanol may be generated by the temperature in the injection column of the GC. This methanol by-product would be recorded even though it is not present in the coating.

Response: We agree that a variety of analytical techniques (different columns, detectors, temperature programming, etc.) allowable within the broad framework of Method 311 may lead to inconsistent results if not optimized for the specific target analyte and background interferences specific to a particular coating. The final rule provides that in the event of any inconsistency between the Method 311 data obtained by the permitting agency and the formulation data used by the facility, or, between the Method 311 data obtained by the permitting agency and analytical data obtained by the facility, the Method 311 data obtained by the permitting agency shall govern (excluding HAP produced by chemical reaction in the analytical process), unless, after consultation, the facility demonstrates to the satisfaction of the enforcement authority that the facility's data are correct. Analyses of known formulations by Method 311 have been demonstrated to be far less variable than a ±50 percent confidence interval would imply. We have not set a specific tolerance level for this analysis. Facilities that experience problems with specific applications of Method 311 may choose to obtain statistical variance data to support an explanation of a discrepancy between Method 311 data and compositions obtained from formulation data or other sources.

Comment: The commenter recommended additional procedures to assure consistency when using Method 311 for purposes of complying with the final rule. The commenter suggested the following procedures to help assure that the testing performed by the enforcement agency is consistent with those tests run by the source (or coatings manufacturer): (1) The facility would provide to the applicable agency the determination of the proper test parameters to be used and the temperature at which the analysis should be performed, (2) the facility should have the option to divide any sample collected by the agency that implements and enforces the MACT standards, and (3) both the applicable control agency and the facility should be authorized to be present while sampling and/or testing under Method 311 is being conducted.

Response: The facility has the opportunity to provide any guidance to the permitting agency to assist in the chemical analysis of the coating, however, the final rule does not require the permitting agency to follow the guidance of the facility in cases where it disagrees. The facility has the opportunity to conduct parallel sampling of any coating material that the permitting agency samples; no change to the rule is necessary to permit this. It is not feasible to guarantee that a representative of the facility may witness the chemical analysis. Permitting agencies may use testing laboratories where scheduling is uncertain and samples may be split for different analyses which may take place in different labs (perhaps simultaneously).

D. Notifications, Reports, and Recordkeeping

Comment: A commenter noted that according to proposed § 63.3110(c), notification of compliance status is due within 30 days following the end of the initial compliance period. The commenter requested the 60-day time period specified in the General Provisions, § 63.9(h) for submittal of the compliance notification.

Response: The final rule has been written to allow 60 days from the end of the initial compliance period for submission of the notification of compliance status. We recognize that additional time may be necessary to confirm the accuracy of the methodology for calculating the emission rate in the initial compliance period.

Comment: A commenter noted that EPA has historically differentiated exceedences or excursions (now called deviations) from startup, shutdown, and malfunction events and has used this terminology in other MACT standards. Also, the recognition that they are different events is further evidenced by requiring two separate reports in previous standards: The periodic compliance report and the periodic startup, shutdown, malfunction report. The commenter acknowledged that filing a combined report saves time and resources and agrees with this as long as the deviation reporting section is distinct from the startup, shutdown, malfunction reporting section. The

commenter recommended that EPA write the final rule to reflect that operations in accordance with SSMP are not deviations and are not reported as such.

Response: Proposed § 63.3163(h) provided that consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the SSMP. The Administrator will determine whether deviations that occur during a period you identify as a startup, shutdown, or malfunction are violations according to the provisions in § 63.6(e). According to § 63.6(e), any affected source must at all times meet the emission standard or comply with the SSMP.

E. Definitions

Comment: Commenter submits that the definition of "initial startup" does not accurately describe what constitutes the startup of a new source and recommended that the phrase "the first time equipment is brought online in a facility" in the proposed definition be written to "the first time a salable product is produced." Otherwise the term would include periods that are not representative of normal operation.

Response: We agree with the commenter that periods of equipment testing and calibration prior to the time that production is commenced may not be representative of the emissions reductions and control device performance achievable in normal operation. The definition of "initial startup" in the final rule has been written to refer to the first time a salable product is coated.

Comment: The commenter stated that the term "container" is used repeatedly throughout the proposed rule and that the rule covers "all storage containers and mixing vessels in which coatings, thinners, and cleaning materials are stored and mixed." It is not clear whether the term container would include tanks used to store certain solvents and coatings.

Response: A definition of container has been added to the final rule, covering coatings, solvents, and cleaning materials.

F. Amendment of RCRA Rule

Comment: A commenter noted that EPA states that currently air emissions from the collection, transmission, and storage of purged paint and solvent at these sources are regulated under RCRA. However, in its proposed rule, EPA exempts these wastes from RCRA and transfers the regulation under the CAA. The EPA further explains that "this exemption is considered to be less stringent than existing RCRA regulations." The EPA also proposes to establish work practice standards to control these emissions rather than numeric emission standards.

The commenter submits that the CAA mandates floors that reflect "the average emission limitation achieved by the best performing 12 percent of the existing sources (for which the Administrator has emissions information). "Also, EPA may only propose a work practice standard MACT if the Agency demonstrates that it is "not feasible to prescribe or enforce an emission standard." The commenter asserts that EPA does not demonstrate it is infeasible to prescribe or enforce an emissions standard for the collection, transmission, and storage of purged paint and solvent and thus, the proposed rule is unlawful. Also, EPA fails to explain whether existing sources subject to RCRA are reducing their HAP emissions and, if so, whether the existing RCRA requirements could serve as the basis for establishing a MACT floor. Finally, the commenter claims the Agency's proposal is arbitrary and capricious because it fails to explain the consequences of transferring regulatory authority from RCRA to CAA, how the shift in regulatory authority results in less stringency, or identify the Agency's legal authority to exempt HAP emissions from RCRA.

The commenter urges EPA to establish a MACT floor that considers the emissions reductions at those sources currently subject to RCRA and properly determine whether an emission standard, instead of work practice standard, is appropriate for these sources.

Response: The NESHAP address both the capture of purged materials and the transport and storage of purged materials after they have been captured. This is more comprehensive than the existing RCRA rule being amended which only addresses the transport and storage of purged materials after they have been captured. The requirements of the final NESHAP are, therefore, at least as effective as the requirements of the existing RCRA rule. The language in the preamble to the proposed rule cited by the commenter was not an assessment of the effect of the proposed NESHAP on activities covered by the existing RCRA rule, nor was it a comparison of the proposed NESHAP and the existing RCRA rule.

The language cited by the commenter was characterizing the proposed revision to the RCRA rule as less stringent than the existing RCRA rule. This comparison was made in the context of discussing whether States would be required to adopt the revised RCRA rule. We consider an exemption from RCRA rules to be less stringent than the retention of those rules. Since it would be less stringent, States would not be required to adopt the revised rule in their RCRA programs (RCRA section 3009). If we had considered the revision to be more stringent, States then would be required to adopt and seek authorization for those provisions (section 3006 of RCRA).

G. Risk Based Approaches

The preamble to the proposed rule requested comment on whether there might be further ways to structure the final rule to focus on the facilities which pose significant risks and avoid the imposition of high costs on facilities that pose little risk to public health and the environment. Specifically, we requested comment on the technical and legal viability of two risk-based approaches: (1) an applicability cutoff for threshold pollutants under the authority of CAA section 112(d)(4); and (2) subcategorization and delisting under the authority of CAA sections 112(c)(1) and 112(c)(9). We indicated that we would evaluate all comments before determining whether either approach would be included in the final rule. Numerous commenters submitted detailed comments on these risk-based approaches. These comments are summarized in the Response-to-Comments document.

Based on our consideration of the comments received and other factors, we have decided not to include the risk-based approaches in today's final rule. The risk-based approaches described in the proposed rule and addressed in the comments we received raise a number of complex issues. In addition, we are under time pressure to complete the final rule, because the statutory deadline for promulgation has passed and a deadline suit has been filed against EPA. (See Sierra Club v. Whitman, Civil Action No. 1:01CV01537 (D.D.C.).) Given the range of issues raised by the risk-based approaches and the need to promulgate a final rule expeditiously, we feel that it is appropriate not to include any risk-based approaches in today's final rule. Nonetheless, we expect to continue to consider risk-based approaches in connection with other NESHAP where we have described and solicited comment on such approaches. This

determination does not preclude future consideration of similar or other risk-based approaches for this source category in the future.

V. Summary of Environmental, Energy, and Economic Impacts

A. What Are the Air Impacts?

The final rule will decrease HAP emissions from automobile and light-duty truck surface coating facilities from an estimated 10,000 tpy to 4,000 tpy. This represents a decrease of 6,000 tpy or 60 percent. The final rule will also decrease VOC by approximately 12,000 tpy to 18,000 tpy. These values were calculated in comparison to baseline emissions reported to EPA by individual facilities for 1996 or 1997.

B. What Are the Cost Impacts?

The estimated total capital costs of compliance, including the costs of monitors, is $670 million. This will result in an additional annualized capital cost of $75 million.

The projected total annual costs, including capital recovery, operating costs, monitoring, recordkeeping, and reporting is $154 million per year.

The cost analysis assumed that each existing facility will use, in the order presented, as many of the following four steps as necessary to meet the emission limit. First, if needed, facilities that do not already control their electrodeposition primer bake oven exhaust will install and operate such control at an average cost of $8,200 per ton of HAP controlled. Next, if needed, facilities will reduce the HAP-to-VOC ratio of their primer-surfacer and topcoat materials to 0.3 from 1.0 at an average cost of $540 per ton of HAP controlled. Finally, if needed, facilities will control the necessary volume of primer-surfacer and topcoat spray booth exhaust gas at an average cost of $40,000 per ton of HAP controlled. For all four steps combined, the average cost is about $25,000 per ton of HAP controlled.

New facilities and new paint shops will incur little additional cost to meet the emission limit. These facilities will already include bake oven controls and partial spray booth exhaust controls for VOC control purposes. New facilities may need to make some downward adjustment in the HAP content of their materials to meet the emission limit.

We received no detailed information on these cost elements in the public comments. Therefore, we have not changed the cost estimates since proposal.

C. What Are the Economic Impacts?

We prepared an economic impact analysis (EIA) to evaluate the primary and secondary impacts the proposed rule would have on the producers and consumers of automobiles and light-duty trucks, and society as a whole. The analysis was conducted to determine the economic impacts associated with the proposed rule at both the market and industry levels. Overall, the analysis indicated a minimal change in vehicle prices and production quantities. None of the changes made since proposal have resulted in changes in costs, so the EIA prepared for the proposed rule has not been updated for the final rule.

Based on the estimated compliance costs associated with the final rule and the predicted changes in prices and production in the affected industry, the estimated annual social cost of the rule is projected to be $161 million (1999 dollars). The social costs take into account changes in behavior by producers and consumers due to the imposition of compliance costs. For this reason the estimated annual social costs differ from the estimated annual engineering costs of $154 million. Producers, in aggregate, are expected to bear $152 million annually in costs while the consumers are expected to incur the remaining $10 million in social costs associated with the final rule.

The economic model projects an aggregate price increase for the modeled vehicle classes of automobiles and light-duty trucks to be less than 1/100th of 1 percent as a result of the final standards. This represents at most an increase in price of $3.00 per vehicle. The model also projects that directly affected producers will reduce total production by approximately 1,400 vehicles per year. This represents approximately 0.01 percent of the 12.7 million vehicles produced by the potentially affected plants in 1999, the baseline year of analysis.

In terms of industry impacts, the automobile and light-duty truck manufacturers are projected to experience a decrease in pre-tax earnings of about 1 percent or $152 million. In comparison, total pre-tax earnings for the affected plants included in the analysis exceeded $14 billion in 1999. The reduction in pre-tax earnings of 1 percent reflects an increase in production costs and a decline in revenues earned from a reduction in the quantity of vehicles sold. Through the market and industry impacts described above, the final rule will lead to a redistribution of profits within the industry. Some facilities (28 percent) are projected to experience a profit increase under the final rule; however, the majority (72 percent) that continue operating are projected to lose profits. No facilities are projected to close due to the final rule.

D. What Are the Non-Air Health, Environmental, and Energy Impacts?

Solid waste and water impacts of the final rule are expected to be negligible. Capture of additional organic HAP-laden streams and control of these streams with regenerative thermal oxidizers is expected to require an additional 180 million kilowatt hours per year and an additional 4.9 billion standard cubic feet per year of natural gas.

VI. How Will the Amendments to 40 CFR Parts 264 and 265, Subparts BB, of the Hazardous Waste Regulations Be Implemented in the States?

A. Applicability of Federal Rules in Authorized States

Under section 3006 of the RCRA, EPA may authorize a qualified State to administer and enforce a hazardous waste program within the State in lieu of the Federal program and to issue and enforce permits in the State. A State may receive authorization by following the approval process described under 40 CFR 271.21. See 40 CFR part 271 for the overall standards and requirements for authorization. The EPA continues to have independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. An authorized State also continues to have independent authority to bring enforcement actions under State law.

After a State receives initial authorization, new Federal requirements promulgated under RCRA authority existing prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that State until the State adopts and receives authorization for equivalent State requirements. In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new Federal requirements and prohibitions promulgated pursuant to HSWA provisions take effect in authorized States at the same time that they take effect in unauthorized States. As such, EPA carries out HSWA requirements and prohibitions in authorized States, including the issuance of new permits implementing those requirements, until EPA authorizes the State to do so.

Authorized States are required to modify their programs when EPA promulgates Federal requirements that

are more stringent or broader in scope than existing Federal requirements. The RCRA section 3009 allows the States to impose standards more stringent than those in the Federal program. (See also 40 CFR 271.1(i)). Therefore, authorized States are not required to adopt Federal regulations, both HSWA and non-HSWA, that are considered less stringent than existing Federal requirements.

B. Authorization of States for Today's Amendments

Currently, the air emissions from the collection, transmission, and storage of captured purged paint and solvent at automobile and light-duty truck assembly plants are regulated under the authority of RCRA (see 40 CFR parts 264 and 265, subparts BB). Today's amendments will exempt these wastes from regulation under RCRA and defer regulation to the final NESHAP. This exemption is considered to be less stringent than the existing RCRA regulations and, therefore, States are not required to adopt and seek authorization for today's exemption. However, EPA strongly encourages States to adopt today's amended RCRA provisions and seek authorization for them to prevent duplication with the NESHAP.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action 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 governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that the final rule is a "significant regulatory action," because it could have an annual impact on the economy of over $100 million. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

The information collection requirements in the final rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* The information collection requirements are not enforceable until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the 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 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 standards do 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 for this collection (averaged over the first 3 years after the effective date of the final rule) is estimated to be 33,436 labor hours per year at a total annual cost of $982,742. This estimate includes a one-time performance test and report (with repeat tests where needed) for those affected sources that choose to comply through the installation of new capture systems and control devices; one-time purchase and installation of CPMS for those affected sources that choose to comply through the installation of new capture systems and control devices; preparation and submission of work practice plans; one-time submission of a SSMP with semiannual reports for any event when the procedures in the plan were not followed; semiannual excess emission reports; maintenance inspections; notifications; and recordkeeping. There are no additional capital/startup costs associated with the monitoring requirements over the 3-year period of the ICR. The monitoring related operation and maintenance costs over this same period are estimated at $7,000.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in the final rule.

C. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the final rule. For purposes of assessing the impacts of today's rule on small entities for the automobile and light-duty truck surface coating industry, a small entity is defined as: (1) A small business according to Small Business Administration size standards for companies identified by NAICS codes 33611 (automobile manufacturing) and 33621 (light-duty truck and utility vehicle manufacturing) with 1,000 or fewer employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Based on the above definition, there are no small entities presently engaged in automobile and light-duty truck surface coating.

After considering the economic impacts of the 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. This is based

on the observation that the final rule affects no small entities since none are engaged in the surface coating of automobiles and light-duty trucks.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the final rule contains a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Specifically, the final rule may result in such expenditures by the private sector. Accordingly, EPA has prepared under section 202 of the UMRA a written statement (titled Unfunded Mandates Reform Act Analysis for the Automobiles and Light-Duty Trucks Coating NESHAP) which is summarized below.

Statutory Authority

The statutory authority for the final rule is section 112 of the CAA, enacted to reduce nationwide air toxics emissions. In compliance with UMRA section 205(a), we identified and considered a reasonable number of regulatory alternatives. Additional information on the costs and environmental impacts of these regulatory alternatives is presented in the docket. The regulatory alternative upon which the final rule is based represents the MACT floor for automobile and light-duty truck coating operations and, as a result, is the least costly and least burdensome alternative.

Social Costs and Benefits

The regulatory impact analysis prepared for the final rule, including EPA's assessment of costs and benefits, is detailed in the "Regulatory Impact Analysis for the Automobiles and Light-Duty Trucks Coating NESHAP" in the docket. Based on the estimated compliance costs associated with the rule and the predicted changes in prices and production in the affected industry, the estimated annual social costs of the final rule is projected to be $161 million (1999 dollars).

It is estimated that 5 years after implementation of the final rule, HAP will be reduced from 10,000 tpy to 4,000 tpy. This represents a 60 percent reduction (6,000 tpy) of toluene, xylene, glycol ethers, MEK, MIBK, ethylbenzene, and methanol. Exposure to HAP can result in the incidence of respiratory irritation, chest constriction, gastric irritation, eye, nose, and throat irritation, as well as neurological and blood effects, including fatigue, nausea, tremor, and anemia. Based on scientific studies conducted over the past 20 years, EPA has classified EGBE as a "possible human carcinogen," while ethylbenzene, MEK, toluene, and xylenes are considered by the Agency as "not classifiable as to human carcinogenicity." The studies upon which these classifications are based have worked toward the determination of a relationship between exposure to these HAP and the onset of cancer.

Monetization of the benefits of reductions in cancer incidences requires several important inputs, including central estimates of cancer risks, estimates of exposure to carcinogenic HAP, and estimates of the value of an avoided case of cancer (fatal and non-fatal). Currently, EPA relies on unit risk factors (URF) developed through risk assessment procedures. The unit risk factor is a quantitative estimate of the carcinogenic potency of a pollutant, often expressed as the probability of contracting cancer from a 70-year lifetime continuous exposure to a concentration of one $\mu g/m^3$ of a pollutant. These URF are designed to be conservative, and as such, are more likely to represent the high end of the distribution of risk rather than a best or most likely estimate of risk.

In a typical analysis of the expected health benefits of a regulation (*e.g.*, "Regulatory Impact Analysis: Heavy-Duty Engine and Highway Diesel Fuel Sulfur Control Requirements", December 2000, EPA420–R–00–026), health effects are estimated by applying changes in pollutant concentrations to best estimates of risk obtained from epidemiological studies. As the purpose of a benefit analysis is to describe the benefits most likely to occur from a reduction in pollution, use of high-end, conservative risk estimates will lead to a biased estimate of the expected benefits of the final rule. While we used high-end risk estimates in past analyses, recent advice from the EPA Science Advisory Board (SAB) and internal methods reviews have suggested that we avoid using high-end estimates in current analyses. For these reasons, we will not attempt to quantify the health benefits of reductions in HAP unless best estimates of risks are available. Also, limited input data on noncancer effects associated with exposure to these HAP do not allow us to quantify the benefits from risk reductions of these effects. Thus, we are unable to provide a monetized estimate of the benefits of HAP reduced by the final rule at this time. The EPA is working with the SAB to develop better methods for analyzing the benefits of reductions in HAP.

We conducted a rough risk assessment which indicated that both the baseline level of adverse health effects and the effects of the final rule on human health are small. This rough risk assessment is available in the docket. The risk estimates from this rough assessment were based on typical facility configurations (*i.e.*, model plants) and are subject to significant uncertainties.

The rough risk assessment indicated that currently there may be up to 100 people exposed to HAP above reference concentration (RfC) levels as a result of emissions from these facilities. The emission reductions required by the final rule would bring all, or almost all, of these people to exposures below the RfC. The rough risk assessment also indicated that currently no one would be exposed to a lifetime cancer risk above 10 in a million and perhaps 6,000

people are exposed to a lifetime cancer risk above 1 in a million as a result of emissions from these facilities. The final rule is not expected to have any significant impact on cancer risk. A more refined risk assessment will be performed as part of the residual risk analysis which is required to occur within 8 years after promulgation of the final rule.

The control technology to reduce the level of HAP emitted from automobile and light-duty truck coating operations is also expected to reduce emissions of criteria pollutants, particularly VOC. Specifically, the final rule achieves a 12,000 to 18,000 tpy reduction in VOC. This represents a significant reduction of VOC emissions from these sources, but less than 1 percent of national VOC emissions. The VOC is a precursor to tropospheric (ground-level) ozone and a small percentage also precipitate in the atmosphere to form particulate matter (PM).

Although we were not able to estimate the monetary value associated with VOC reductions, the health and welfare effects from exposure to ground-level ozone are well documented. Elevated concentrations of ground-level ozone primarily may result in acute respiratory-related impacts such as coughing and difficulty breathing. Chronic exposure to ground-level ozone may lead to structural damage to the lungs, alterations in lung capacity and breathing frequency, increased sensitivity of airways, eye, nose, and throat irritation, malaise, and nausea. Adverse ozone welfare effects include damage to agricultural crops, ornamental plants, and materials damage. Though only a small fraction of VOC forms PM, exposure to PM can result in human health and welfare effects, including excess deaths, morbidity, soiling and materials damage, as well as reduced visibility.

To the extent that reduced exposure to HAP and VOC reduces the instances of the above described health effects, benefits from the final rule will be realized by society through an improvement in environmental quality.

Future and Disproportionate Costs

The UMRA requires that we estimate, where accurate estimation is reasonably feasible, future compliance costs imposed by the final rule and any disproportionate budgetary effects. We do not feel that there will be any disproportionate budgetary effects of the final rule on any particular areas of the country, State, or local governments, types of communities (*e.g.*, urban, rural), or particular industry segments.

Effects on the National Economy

The UMRA requires that we estimate the effect of the rule on the national economy. To the extent feasible, we must estimate the effect on productivity, economic growth, full employment, creation of productive jobs, and international competitiveness of United States goods and services if we determine that accurate estimates are reasonably feasible and that such effect is relevant and material.

The nationwide economic impact of the final rule is presented in the EIA. That analysis provides estimates of the effect of the rule on some of the categories mentioned above.

The estimated direct cost to the automobile and light-duty truck manufacturing industry of compliance with the final rule is approximately $154 million (1999 dollars) annually. Indirect costs of the final rule to industries other than the automobile and light-duty truck manufacturing industry, governments, tribes, and other affected entities are expected to be minor. The final rule is expected to have little impact on domestic productivity, economic growth, full employment, energy markets, creation of productive jobs, and the international competitiveness of United States goods and services.

Consultation With Government Officials

Although the final rule does not affect any State, local, or tribal governments, we have consulted with State and local air pollution control officials. The EPA has held meetings on the final rule with many of the stakeholders from numerous individual companies, environmental groups, consultants and vendors, and other interested parties. The EPA has added materials to the docket to document these meetings.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

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. Pursuant to the terms of Executive Order 13132, it has been determined that the final rule does not have "federalism implications" because it does not meet the necessary criteria. Thus, Executive Order 13132 does not apply to the final rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 9, 2000) requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The final rule does not have tribal implications, as specified in Executive Order 13175. The EPA is not aware of tribal governments that own or operate automobile and light-duty truck surface coating facilities. 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 the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The final rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks.

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

The final rule is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355, May 22,

2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

The final rule affects the automobile and light-duty truck manufacturing industries. There is no crude oil, fuel, or coal production from these industries, therefore there is no direct effect on such energy production related to implementation of the final rule. In addition, the cost of energy distribution will not be affected by the final rule since the rule does not affect energy distribution facilities.

The final rule is projected to trigger an increase in energy use due to the installation and operation of additional pollution control equipment. The estimated increase in energy consumption is 4.9 billion standard cubic feet per year of natural gas and 180 million kilowatt hours per year of electricity nationwide. The nationwide cost of this increased energy consumption is estimated at $26 million per year.

The increase in energy costs does not reflect changes in energy prices, but rather an increase in the quantity of electricity and natural gas demanded. Given that the existing electricity generation capacity in the United States was 785,990 megawatts in 1999[1] and that 23,755 billion cubic feet of natural gas was produced domestically in the same year,[2] the final rule is not likely to have any significant adverse impact on energy prices, distribution, availability, or use.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113; section 12(d) (15 U.S.C. 272 *note*) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

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, 3A, 3B, 4, 24, 25, 25A, 204, 204A–F, and 311. Consistent with the NTTAA, EPA conducted searches to identify VCS in addition to these EPA methods. No applicable VCS were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, 204, 204A through 204F and 311. The search and review results have been documented and are placed in Docket ID No. OAR–2002–0093 and Docket ID No. A–2001–22).

The eight VCS described below were identified as acceptable alternatives to EPA test methods for the purposes of the final rule.

The VCS ANSI/ASME PTC 19.10–1981, "Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus]," is cited in the final rule for its manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas. This part of ANSI/ASME PTC 19.10–1981, Part 10, is an acceptable alternative to Method 3B.

The two VCS, ASTM D2697–86 (Reapproved 1998), "Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings," and ASTM D6093–97 (Reapproved 2003), "Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer," are cited in the final rule as acceptable alternatives to EPA Method 24 to determine the volume solids content of coatings. Currently, EPA Method 24 does not have a procedure for determining the volume of solids in coatings. The two VCS augment the procedures in Method 24, which currently states that volume solids content be calculated from the coating manufacturer's formulation. In addition, we are separately specifying the use of ASTM D1475–98 (Reapproved 2003) for measuring the density of each coating, thinner and/or additive, and cleaning material.

The VCS, ASTM D5066–91 (Reapproved 2001), "Standard Test Method for Determination of the Transfer Efficiency Under Production Conditions for Spray Application of Automotive Paints-Weight Basis," is cited in the final rule as an acceptable procedure to measure transfer efficiency of spray coatings. Currently, no EPA method is available to measure transfer efficiency.

The two VCS, ASTM D6266–00a, "Test Method for Determining the Amount of Volatile Organic Compound (VOC) Released from Waterborne Automotive Coatings and Available for Removal in a VOC Control Device (Abatement)," and ASTM D5087–02 (Reapproved 1994),' "Standard Test Method for Determining Amount of Volatile Organic Compound (VOC) Released from Solventborne Automotive Coatings and Available for Removal in a VOC Control Device (Abatement)," are cited in the final rule as acceptable procedures to measure solvent loading (related to capture efficiency) for the heated flash zone for waterborne basecoats and for bake ovens. Currently, no EPA method is available to measure solvent loading for automobile and light-duty truck coatings. In addition, ASTM D5965–02, "Standard Test Methods for Specific Gravity of Coating Powders," is specified in the rule as a method to determine the volume solids of powder coatings.

Six VCS: ASTM D1475–90, ASTM D2369–95, ASTM D3792–91, ASTM D4017–96a, ASTM D4457–85 (Reapproved 1991), and ASTM D5403–93 are already incorporated by reference (IBR) in EPA Method 24. Five VCS: ASTM D1979–91, ASTM D3432–89, ASTM D4747–87, ASTM D4827–93, and ASTM PS9–94 are IBR in EPA Method 311.

In addition to the VCS included in the final rule, the search for emissions measurement procedures identified 14 other VCS. The EPA determined that 11 of these 14 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. Therefore, EPA did not adopt these standards for this purpose. (See Docket ID No. OAR–2002–0093 and Docket ID No. A–2001–22 for further information on the methods.)

Sections 63.3161 and 63.3166 of the final rule list the EPA testing methods included in the final rule. Under § 63.7(f) of subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods in place of any of the EPA testing methods.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the final

[1] U.S. Department of Energy. 1999. Electric Power Annual, Volume I. Table A2: Industry Capability by Fuel Source and Industry Sector, 1999 and 1998 (Megawatts).

[2] U.S. Department of Energy. 1999. Natural Gas Annual. Table 1: Summary Statistics for Natural Gas in the United States, 1995–1999.

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 a major rule as defined by 5 U.S.C. 804(2). The final rule will be effective 60 days after April 26, 2004.

List of Subjects in 40 CFR Part 63

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

Dated: February 26, 2004.

Michael O. Leavitt,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, parts 63, 264, and 265 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

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

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

Subpart A—[Amended]

■ 2. Section 63.14 is amended by adding and reserving new paragraph (b)(35), adding new paragraphs (b)(36), (37), and (38), and revising paragraphs (b)(24), (25), (26), and (32), and (i)(3) to read as follows:

§ 63.14 Incorporations by reference

* * * * *

(b) * * *

(24) ASTM D2697–86 (Reapproved 1998), "Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings," IBR approved for §§ 63.3161(f)(1), 63.3521(b)(1), 63.3941(b)(1), 63.4141(b)(1), 63.4741(b)(1), 63.4941(b)(1), and 63.5160(c).

(25) ASTM D6093–97 (Reapproved 2003), "Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer," IBR approved for §§ 63.3161(f)(1), 63.3521(b)(1), 63.3941(b)(1), 63.4141(b)(1), 63.4741(b)(1), 63.4941(b)(1), and 63.5160(c).

(26) ASTM D1475–98 (Reapproved 2003), "Standard Test Method for Density of Liquid Coatings, Inks, and Related Products," IBR approved for §§ 63.3151(b), 63.3941(b)(4), 63.3941(c), 63.3951(c), 63.4141(b)(3), 63.4141(c), and 63.4551(c).

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(32) ASTM D5965–02, "Standard Test Methods for Specific Gravity of Coating Powders," IBR approved for §§ 63.3151(b) and 63.3951(c).

* * * * *

(35) [Reserved]

(36) ASTM D5066–91 (Reapproved 2001), "Standard Test Method for Determination of the Transfer Efficiency Under Production Conditions for Spray Application of Automotive Paints-Weight Basis," IBR approved for § 63.3161(g).

(37) ASTM D5087–02, "Standard Test Method for Determining Amount of Volatile Organic Compound (VOC) Released from Solventborne Automotive Coatings and Available for Removal in a VOC Control Device (Abatement)," IBR approved for §§ 63.3165(e) and 63.3176, appendix A.

(38) ASTM D6266–00a, "Test Method for Determining the Amount of Volatile Organic Compound (VOC) Released from Waterborne Automotive Coatings and Available for Removal in a VOC Control Device (Abatement)," IBR approved for § 63.3165(e).

* * * * *

(i) * * *

(3) ANSI/ASME PTC 19.10–1981, "Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus]," IBR approved for §§ 63.865(b), 63.3166(a)(3), 63.3360(e)(1)(iii), 63.3545(a)(3), 63.3555(a)(3), 63.4166(a)(3), 63.4362(a)(3), 63.4766(a)(3), 63.4965(a)(3), 63.5160(d)(1)(iii), 63.9307(c)(2), and 63.9323(a)(3).

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■ 3. Part 63 is amended by adding subpart IIII to read as follows:

Subpart IIII—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks

Sec.

What This Subpart Covers

63.3080 What is the purpose of this subpart?
63.3081 Am I subject to this subpart?
63.3082 What parts of my plant does this subpart cover?
63.3083 When do I have to comply with this subpart?

Emission Limitations

63.3090 What emission limits must I meet for a new or reconstructed affected source?
63.3091 What emission limits must I meet for an existing affected source?
63.3092 How must I control emissions from my electrodeposition primer system if I want to comply with the combined primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive emission limit?
63.3093 What operating limits must I meet?
63.3094 What work practice standards must I meet?

General Compliance Requirements

63.3100 What are my general requirements for complying with this subpart?
63.3101 What parts of the General Provisions apply to me?

Notifications, Reports, and Records

63.3110 What notifications must I submit?
63.3120 What reports must I submit?
63.3130 What records must I keep?
63.3131 In what form and for how long must I keep my records?

Compliance Requirements for Adhesive, Sealer, and Deadener

63.3150 By what date must I conduct the initial compliance demonstration?
63.3151 How do I demonstrate initial compliance with the emission limitations?
63.3152 How do I demonstrate continuous compliance with the emission limitations?

Compliance Requirements for the Combined Electrodeposition Primer, Primer-Surfacer, Topcoat, Final Repair, Glass Bonding Primer, and Glass Bonding Adhesive Emission Limitations

63.3160 By what date must I conduct performance tests and other initial compliance demonstrations?
63.3161 How do I demonstrate initial compliance?
63.3162 [Reserved]
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Subpart IIII—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks

What This Subpart Covers

§ 63.3080 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for facilities which surface coat new automobile or new light-duty truck bodies or body parts for new automobiles or new light-duty trucks. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations.

§ 63.3081 Am I subject to this subpart?

(a) Except as provided in paragraph (c) of this section, the source category to which this subpart applies is automobile and light-duty truck surface coating.

(b) You are subject to this subpart if you own or operate a new, reconstructed, or existing affected source, as defined in § 63.3082, that is located at a facility which applies topcoat to new automobile or new light-duty truck bodies or body parts for new automobiles or new light-duty trucks, and that is a major source, is located at a major source, or is part of a major source of emissions of hazardous air pollutants (HAP). A major source of HAP emissions is any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit any single HAP at a rate of 9.07 megagrams (Mg) (10 tons) or more per year or any combination of HAP at a rate of 22.68 Mg (25 tons) or more per year.

(c) This subpart does not apply to surface coating, surface preparation, or cleaning activities that meet the criteria of paragraph (c)(1) or (2) of this section.

(1) Surface coating subject to any other NESHAP in this part as of June 25, 2004 except as provided in § 63.3082(c).

(2) Surface coating that occurs during research or laboratory activities or that is part of janitorial, building, and facility maintenance operations, including maintenance spray booths used for painting production equipment, furniture, signage, etc., for use within the plant.

§ 63.3082 What parts of my plant does this subpart cover?

(a) This subpart applies to each new, reconstructed, and existing affected source.

(b) The affected source is the collection of all of the items listed in paragraphs (b)(1) through (4) of this section that are used for surface coating of new automobile or new light-duty truck bodies, or body parts for new automobiles or new light-duty trucks:

(1) All coating operations as defined in § 63.3176.

(2) All storage containers and mixing vessels in which coatings, thinners, and cleaning materials are stored or mixed.

(3) All manual and automated equipment and containers used for conveying coatings, thinners, and cleaning materials.

(4) All storage containers and all manual and automated equipment and containers used for conveying waste materials generated by a coating operation.

(c) In addition, you may choose to include in your affected source, and thereby make subject to the requirements of this subpart, any coating operations, as defined in § 63.3176, which would otherwise be subject to the NESHAP for surface coating of miscellaneous metal parts and products (subpart MMMM of this part) or surface coating of plastic parts and products (subpart PPPP of this part) which apply coatings to parts intended for use in new automobiles or new light-duty trucks or as aftermarket repair or replacement parts for automobiles or light-duty trucks.

(d) For all coating operations which you choose to add to your affected source pursuant to paragraph (c) of this section:

(1) All associated storage containers and mixing vessels in which coatings, thinners, and cleaning materials are stored or mixed; manual and automated equipment and containers used for conveying coatings, thinners, and cleaning materials; and storage containers and manual and automated equipment and containers used for conveying waste materials are also included in your affected source and are subject to the requirements of this subpart.

(2) All cleaning and purging of equipment associated with the added surface coating operations is subject to the requirements of this subpart.

(3) You must identify and describe all additions to the affected source made pursuant to paragraph (c) of this section in the initial notification required in § 63.3110(b).

(e) An affected source is a new affected source if you commenced its construction after December 24, 2002, and the construction is of a completely new automobile and light-duty truck assembly plant where previously no automobile and light-duty truck assembly plant had existed, a completely new automobile and light-duty truck paint shop where previously no automobile and light-duty truck paint shop had existed, or a new automobile and light-duty truck topcoat operation where previously no automobile and light-duty truck topcoat operation had existed.

(f) An affected source is reconstructed if its paint shop undergoes replacement of components to such an extent that:

(1) The fixed capital cost of the new components exceeded 50 percent of the fixed capital cost that would be required to construct a new paint shop; and

(2) It was technologically and economically feasible for the reconstructed source to meet the relevant standards established by the Administrator pursuant to section 112 of the Clean Air Act (CAA).

(g) An affected source is existing if it is not new or reconstructed.

§ 63.3083 When do I have to comply with this subpart?

The date by which you must comply with this subpart is called the compliance date. The compliance date for each type of affected source is specified in paragraphs (a) through (c) of this section. The compliance date begins the initial compliance period during which you conduct the initial compliance demonstrations described in §§ 63.3150, 63.3160, and 63.3170.

(a) For a new or reconstructed affected source, the compliance date is the applicable date in paragraph (a)(1) or (2) of this section:

(1) If the initial startup of your new or reconstructed affected source is before June 25, 2004, the compliance date is June 25, 2004.

(2) If the initial startup of your new or reconstructed affected source occurs after June 25, 2004, the compliance date is the date of initial startup of your affected source.

(b) For an existing affected source, the compliance date is April 26, 2007.

(c) For an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP emissions, the compliance date is specified in paragraphs (c)(1) and (2) of this section.

(1) For any portion of the source that becomes a new or reconstructed affected source subject to this subpart, the compliance date is the date of initial startup of the affected source or June 25, 2004, whichever is later.

(2) For any portion of the source that becomes an existing affected source subject to this subpart, the compliance date is the date 1 year after the area source becomes a major source or April 26, 2007, whichever is later.

(d) You must meet the notification requirements in § 63.3110 according to the dates specified in that section and in subpart A of this part. Some of the notifications must be submitted before the compliance dates described in paragraphs (a) through (c) of this section.

Emission Limitations

§ 63.3090 What emission limits must I meet for a new or reconstructed affected source?

(a) Except as provided in paragraph (b) of this section, you must limit combined organic HAP emissions to the atmosphere from electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer and glass bonding adhesive operations plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) to no more than 0.036 kilogram (kg)/liter (0.30 pound (lb)/gallon (gal)) of coating solids deposited during each month, determined according to the requirements in § 63.3161.

(b) If you meet the operating limits of § 63.3092(a) or (b), you must either meet the emission limits of paragraph (a) of this section or limit combined organic HAP emissions to the atmosphere from primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) to no more than 0.060 kg/liter (0.50 lb/gal) of applied coating solids used during each month, determined according to the requirements in § 63.3171. If you do not have an electrodeposition primer system, you must limit combined organic HAP emissions to the atmosphere from primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) to no more than 0.060 kg/liter (0.50 lb/gal) of applied coating solids used during each month, determined according to the requirements in § 63.3171.

(c) You must limit average organic HAP emissions from all adhesive and sealer materials other than materials used as components of glass bonding systems to no more than 0.010 kg/kg (lb/lb) of adhesive and sealer material used during each month.

(d) You must limit average organic HAP emissions from all deadener materials to no more than 0.010 kg/kg (lb/lb) of deadener material used during each month.

(e) For coatings and thinners used in coating operations added to the affected source pursuant to § 63.3082(c):

(1) Adhesive and sealer materials that are not components of glass bonding systems are subject to and must be included in your demonstration of compliance for paragraph (c) of this section.

(2) Deadener materials are subject to and must be included in your demonstration of compliance for paragraph (d) of this section.

(3) All other coatings and thinners are subject to and must be included in your demonstration of compliance for paragraphs (a) or (b) of this section.

(f) If your facility has multiple paint lines (*e.g.*, two or more totally distinct paint lines each serving a distinct assembly line, or a facility with two or more paint lines sharing the same paint kitchen or mix room), then for the operations addressed in paragraphs (a) and (b) of this section:

(1) You may choose to use a single grouping under paragraph (a) of this section for all of your electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations.

(2) You may choose to use a single grouping under paragraph (b) of this section for all of your primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations as long as each of your electrodeposition primer systems meets the operating limits of § 63.3092(a) or (b).

(3) You may choose to use one or more groupings under paragraph (a) of this section for the electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations from one or more of your paint lines; and one or more groupings under paragraph (b) of this section for the primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations from the remainder of your paint lines, as long as each electrodeposition primer system associated with each paint line you include in a grouping under paragraph (b) of this section meets the operating limits of § 63.3092(a) or (b). For example, if your facility has three paint lines, you may choose to use one grouping under paragraph (a) of this section for two of the paint lines; and a separate grouping under paragraph (b) of this section for the third paint line, as long as the electrodeposition primer system associated with the paint line you include in the grouping under paragraph (b) of this section meets the operating limits of § 63.3092(a) or (b). Alternatively, you may choose to use one grouping for two of the paint lines and a separate grouping of the same type for the third paint line. Again, each electrodeposition primer system associated with each paint line you include in a grouping under paragraph (b) of this section must meet the operating limits of § 63.3092(a) or (b).

(4) You may choose to consider the electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations from each of your paint lines as a separate grouping under either paragraph (a) or paragraph (b) of this section. The electrodeposition primer system associated with each paint line you choose to consider in a grouping under paragraph (b) of this section must meet the operating limits of § 63.3092(a) or (b). For example, if your facility has two paint lines, you may choose to use the grouping under paragraph (a) of this section for one paint line and the grouping under paragraph (b) of this section for the other paint line.

§ 63.3091 What emission limits must I meet for an existing affected source?

(a) Except as provided in paragraph (b) of this section, you must limit combined organic HAP emissions to the atmosphere from electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in

coating operations added to the affected source pursuant to § 63.3082(c) to no more than 0.072 kg/liter (0.60 lb/gal) of coating solids deposited during each month, determined according to the requirements in § 63.3161.

(b) If you meet the operating limits of § 63.3092(a) or (b), you must either meet the emission limits of paragraph (a) of this section or limit combined organic HAP emissions to the atmosphere from primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) to no more than 0.132 kg/liter (1.10 lb/gal) of coating solids deposited during each month, determined according to the requirements in § 63.3171. If you do not have an electrodeposition primer system, you must limit combined organic HAP emissions to the atmosphere from primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) to no more than 0.132 kg/liter (1.10 lb/gal) of coating solids deposited during each month, determined according to the requirements in § 63.3171.

(c) You must limit average organic HAP emissions from all adhesive and sealer materials other than materials used as components of glass bonding systems to no more than 0.010 kg/kg (lb/lb) of adhesive and sealer material used during each month.

(d) You must limit average organic HAP emissions from all deadener materials to no more than 0.010 kg/kg (lb/lb) of deadener material used during each month.

(e) For coatings and thinners used in coating operations added to the affected source pursuant to § 63.3082(c):

(1) Adhesive and sealer materials that are not components of glass bonding systems are subject to and must be included in your demonstration of compliance for paragraph (c) of this section.

(2) Deadener materials are subject to and must be included in your demonstration of compliance for paragraph (d) of this section.

(3) All other coatings and thinners are subject to and must be included in your demonstration of compliance for paragraphs (a) or (b) of this section.

(f) If your facility has multiple paint lines (*e.g.*, two or more totally distinct paint lines each serving a distinct assembly line, or a facility with two or more paint lines sharing the same paint kitchen or mix room), then for the operations addressed in paragraphs (a) and (b) of this section:

(1) You may choose to use a single grouping under paragraph (a) of this section for all of your electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations.

(2) You may choose to use a single grouping under paragraph (b) of this section for all of your primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations, as long as each of your electrodeposition primer systems meets the operating limits of § 63.3092(a) or (b).

(3) You may choose to use one or more groupings under paragraph (a) of this section for the electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations from one or more of your paint lines; and one or more groupings under paragraph (b) of this section for the primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations from the remainder of your paint lines, as long as each electrodeposition primer system associated with each paint line you include in a grouping under paragraph (b) of this section meets the operating limits of § 63.3092(a) or (b). For example, if your facility has three paint lines, you may choose to use one grouping under paragraph (a) of this section for two of the paint lines and a separate grouping under paragraph (b) of this section for the third paint line, as long as the electrodeposition primer system associated with the paint line you include in the grouping under paragraph (b) of this section meets the operating limits of § 63.3092(a) or (b). Alternatively, you may choose to use one grouping for two of the paint lines and a separate grouping of the same type for the third paint line. Again, each electrodeposition primer system associated with each paint line you include in a grouping under paragraph (b) of this section must meet the operating limits of § 63.3092(a) or (b).

(4) You may choose to consider the electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations from each of your paint lines as a separate grouping under either paragraph (a) or paragraph (b) of this section. The electrodeposition primer system associated with each paint line you choose to consider in a grouping under paragraph (b) of this section must meet the operating limits of § 63.3092(a) or (b). For example, if your facility has two paint lines, you may choose to use the grouping under paragraph (a) of this section for one paint line and the grouping under paragraph (b) of this section for the other paint line.

§ 63.3092 How must I control emissions from my electrodeposition primer system if I want to comply with the combined primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive emission limit?

If your electrodeposition primer system meets the requirements of either paragraph (a) or (b) of this section, you may choose to comply with the emission limits of § 63.3090(b) or § 63.3091(b) instead of the emission limits of § 63.3090(a) or § 63.3091(a).

(a) Each individual material added to the electrodeposition primer system contains no more than:

(1) 1.0 percent by weight of any organic HAP; and

(2) 0.10 percent by weight of any organic HAP which is an Occupational Safety and Health Administration (OSHA)-defined carcinogen as specified in 29 CFR 1910.1200(d)(4).

(b) Emissions from all bake ovens used to cure electrodeposition primers must be captured and ducted to a control device having a destruction or removal efficiency of at least 95 percent.

§ 63.3093 What operating limits must I meet?

(a) You are not required to meet any operating limits for any coating operation(s) without add-on controls.

(b) Except as provided in paragraph (d) of this section, for any controlled coating operation(s), you must meet the operating limits specified in Table 1 to this subpart. These operating limits apply to the emission capture and add-on control systems on the coating operation(s) for which you use this option, and you must establish the operating limits during the performance test according to the requirements in § 63.3167. You must meet the operating limits at all times after you establish them.

(c) If you choose to meet the emission limitations of § 63.3092(b) and the emission limits of § 63.3090(b) or § 63.3091(b), then except as provided in paragraph (d) of this section, you must operate the capture system and add-on control device used to capture and control emissions from your

electrodeposition primer bake oven(s) so that they meet the operating limits specified in Table 1 to this subpart.

(d) If you use an add-on control device other than those listed in Table 1 to this subpart, or wish to monitor an alternative parameter and comply with a different operating limit, you must apply to the Administrator for approval of alternative monitoring under § 63.8(f).

§ 63.3094 What work practice standards must I meet?

(a) [Reserved]

(b) You must develop and implement a work practice plan to minimize organic HAP emissions from the storage, mixing, and conveying of coatings, thinners, and cleaning materials used in, and waste materials generated by, all coating operations for which emission limits are established under § 63.3090(a) through (d) or § 63.3091(a) through (d). The plan must specify practices and procedures to ensure that, at a minimum, the elements specified in paragraphs (b)(1) through (5) of this section are implemented.

(1) All organic-HAP-containing coatings, thinners, cleaning materials, and waste materials must be stored in closed containers.

(2) The risk of spills of organic-HAP-containing coatings, thinners, cleaning materials, and waste materials must be minimized.

(3) Organic-HAP-containing coatings, thinners, cleaning materials, and waste materials must be conveyed from one location to another in closed containers or pipes.

(4) Mixing vessels, other than day tanks equipped with continuous agitation systems, which contain organic-HAP-containing coatings and other materials must be closed except when adding to, removing, or mixing the contents.

(5) Emissions of organic HAP must be minimized during cleaning of storage, mixing, and conveying equipment.

(c) You must develop and implement a work practice plan to minimize organic HAP emissions from cleaning and from purging of equipment associated with all coating operations for which emission limits are established under § 63.3090(a) through (d) or § 63.3091(a) through (d).

(1) The plan shall, at a minimum, address each of the operations listed in paragraphs (c)(1)(i) through (viii) of this section in which you use organic-HAP-containing materials or in which there is a potential for emission of organic HAP.

(i) The plan must address vehicle body wipe emissions through one or more of the techniques listed in paragraphs (c)(1)(i)(A) through (E) of this section, or an approved alternative.

(A) Use of solvent-moistened wipes.

(B) Keeping solvent containers closed when not in use.

(C) Keeping wipe disposal/recovery containers closed when not in use.

(D) Use of tack-wipes.

(E) Use of solvents containing less than 1 percent organic HAP by weight.

(ii) The plan must address coating line purging emissions through one or more of the techniques listed in paragraphs (c)(1)(ii)(A) through (D) of this section, or an approved alternative.

(A) Air/solvent push-out.

(B) Capture and reclaim or recovery of purge materials (excluding applicator nozzles/tips).

(C) Block painting to the maximum extent feasible.

(D) Use of low-HAP or no-HAP solvents for purge.

(iii) The plan must address emissions from flushing of coating systems through one or more of the techniques listed in paragraphs (c)(1)(iii)(A) through (D) of this section, or an approved alternative.

(A) Keeping solvent tanks closed.

(B) Recovering and recycling solvents.

(C) Keeping recovered/recycled solvent tanks closed.

(D) Use of low-HAP or no-HAP solvents.

(iv) The plan must address emissions from cleaning of spray booth grates through one or more of the techniques listed in paragraphs (c)(1)(iv)(A) through (E) of this section, or an approved alternative.

(A) Controlled burn-off.

(B) Rinsing with high-pressure water (in place).

(C) Rinsing with high-pressure water (off line).

(D) Use of spray-on masking or other type of liquid masking.

(E) Use of low-HAP or no-HAP content cleaners.

(v) The plan must address emissions from cleaning of spray booth walls through one or more of the techniques listed in paragraphs (c)(1)(v)(A) through (E) of this section, or an approved alternative.

(A) Use of masking materials (contact paper, plastic sheet, or other similar type of material).

(B) Use of spray-on masking.

(C) Use of rags and manual wipes instead of spray application when cleaning walls.

(D) Use of low-HAP or no-HAP content cleaners.

(E) Controlled access to cleaning solvents.

(vi) The plan must address emissions from cleaning of spray booth equipment through one or more of the techniques listed in paragraphs (c)(1)(vi)(A) through (E) of this section, or an approved alternative.

(A) Use of covers on equipment (disposable or reusable).

(B) Use of parts cleaners (off-line submersion cleaning).

(C) Use of spray-on masking or other protective coatings.

(D) Use of low-HAP or no-HAP content cleaners.

(E) Controlled access to cleaning solvents.

(vii) The plan must address emissions from cleaning of external spray booth areas through one or more of the techniques listed in paragraphs (c)(1)(vii)(A) through (F) of this section, or an approved alternative.

(A) Use of removable floor coverings (paper, foil, plastic, or similar type of material).

(B) Use of manual and/or mechanical scrubbers, rags, or wipes instead of spray application.

(C) Use of shoe cleaners to eliminate coating track-out from spray booths.

(D) Use of booties or shoe wraps.

(E) Use of low-HAP or no-HAP content cleaners.

(F) Controlled access to cleaning solvents.

(viii) The plan must address emissions from housekeeping measures not addressed in paragraphs (c)(1)(i) through (vii) of this section through one or more of the techniques listed in paragraphs (c)(1)(viii)(A) through (C) of this section, or an approved alternative.

(A) Keeping solvent-laden articles (cloths, paper, plastic, rags, wipes, and similar items) in covered containers when not in use.

(B) Storing new and used solvents in closed containers.

(C) Transferring of solvents in a manner to minimize the risk of spills.

(2) Notwithstanding the requirements of paragraphs (c)(1)(i) through (viii) of this section, if the type of coatings used in any facility with surface coating operations subject to the requirements of this section are of such a nature that the need for one or more of the practices specified under paragraphs (c)(1)(i) through (viii) is eliminated, then the plan may include approved alternative or equivalent measures that are applicable or necessary during cleaning of storage, conveying, and application equipment.

(d) As provided in § 63.6(g), we, the Environmental Protection Agency (EPA), may choose to grant you permission to use an alternative to the work practice standards in this section.

(e) The work practice plans developed in accordance with paragraphs (b) and

(c) of this section are not required to be incorporated in your title V permit. Any revisions to the work practice plans developed in accordance with paragraphs (b) and (c) of this section do not constitute revisions to your title V permit.

(f) Copies of the current work practice plans developed in accordance with paragraphs (b) and (c) of this section, as well as plans developed within the preceding 5 years must be available on-site for inspection and copying by the permitting authority.

General Compliance Requirements

§ 63.3100 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations in §§ 63.3090 and 63.3091 at all times, as determined on a monthly basis.

(b) The coating operations must be in compliance with the operating limits for emission capture systems and add-on control devices required by § 63.3093 at all times except during periods of startup, shutdown, and malfunction.

(c) You must be in compliance with the work practice standards in § 63.3094 at all times.

(d) You must always operate and maintain your affected source including all air pollution control and monitoring equipment you use for purposes of complying with this subpart according to the provisions in § 63.6(e)(1)(i).

(e) You must maintain a log detailing the operation and maintenance of the emission capture systems, add-on control devices, and continuous parameter monitoring systems (CPMS) during the period between the compliance date specified for your affected source in § 63.3083 and the date when the initial emission capture system and add-on control device performance tests have been completed, as specified in § 63.3160.

(f) If your affected source uses emission capture systems and add-on control devices, you must develop and implement a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3). The SSMP must address startup, shutdown, and corrective actions in the event of a malfunction of the emission capture system or the add-on control devices.

§ 63.3101 What parts of the General Provisions apply to me?

Table 2 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

Notifications, Reports, and Records

§ 63.3110 What notifications must I submit?

(a) *General.* You must submit the notifications in §§ 63.7(b) and (c), 63.8(f)(4), and 63.9(b) through (e) and (h) that apply to you by the dates specified in those sections, except as provided in paragraphs (b) and (c) of this section.

(b) *Initial notification.* You must submit the Initial Notification required by § 63.9(b) for a new or reconstructed affected source no later than 120 days after initial startup or 120 days after June 25, 2004, whichever is later. For an existing affected source, you must submit the Initial Notification no later than 1 year after April 26, 2004. Existing sources that have previously submitted notifications of applicability of this rule pursuant to § 112(j) of the CAA are not required to submit an initial notification under § 63.9(b) except to identify and describe all additions to the affected source made pursuant to § 63.3082(c).

(c) *Notification of compliance status.* If you have an existing source, you must submit the Notification of Compliance Status required by § 63.9(h) no later than 30 days following the end of the initial compliance period described in § 63.3160. If you have a new source, you must submit the Notification of Compliance Status required by § 63.9(h) no later than 60 days after the first day of the first full month following completion of all applicable performance tests. The Notification of Compliance Status must contain the information specified in paragraphs (c)(1) through (12) of this section and in § 63.9(h).

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of the report and beginning and ending dates of the reporting period. The reporting period is the initial compliance period described in § 63.3160 that applies to your affected source.

(4) Identification of the compliance option specified in § 63.3090(a) or (b) or § 63.3091(a) or (b) that you used for electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) in the affected source during the initial compliance period.

(5) Statement of whether or not the affected source achieved the emission limitations for the initial compliance period.

(6) If you had a deviation, include the information in paragraphs (c)(6)(i) and (ii) of this section.

(i) A description and statement of the cause of the deviation.

(ii) If you failed to meet any of the applicable emission limits in § 63.3090 or § 63.3091, include all the calculations you used to determine the applicable emission rate or applicable average organic HAP content for the emission limit(s) that you failed to meet. You do not need to submit information provided by the materials suppliers or manufacturers, or test reports.

(7) All data and calculations used to determine the monthly average mass of organic HAP emitted per volume of applied coating solids from:

(i) The combined primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) if you were eligible for and chose to comply with the emission limits of § 63.3090(b) or § 63.3091(b); or

(ii) The combined electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c).

(8) All data and calculations used to determine compliance with the separate limits for electrodeposition primer in § 63.3092(a) or (b) if you were eligible for and chose to comply with the emission limits of § 63.3090(b) or § 63.3091(b).

(9) All data and calculations used to determine the monthly mass average HAP content of materials subject to the emission limits of § 63.3090(c) or (d) or the emission limits of § 63.3091(c) or (d).

(10) All data and calculations used to determine the transfer efficiency for primer-surfacer and topcoat coatings, and for all coatings, except for deadener and for adhesive and sealer that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c).

(11) You must include the information specified in paragraphs (c)(11)(i) through (iii) of this section.

(i) For each emission capture system, a summary of the data and copies of the calculations supporting the determination that the emission capture system is a permanent total enclosure (PTE) or a measurement of the emission capture system efficiency. Include a description of the procedure followed for measuring capture efficiency, summaries of any capture efficiency tests conducted, and any calculations supporting the capture efficiency determination. If you use the data quality objective (DQO) or lower confidence limit (LCL) approach, you must also include the statistical calculations to show you meet the DQO or LCL criteria in appendix A to subpart KK of this part. You do not need to submit complete test reports.

(ii) A summary of the results of each add-on control device performance test. You do not need to submit complete test reports unless requested.

(iii) A list of each emission capture system's and add-on control device's operating limits and a summary of the data used to calculate those limits.

(12) A statement of whether or not you developed and implemented the work practice plans required by § 63.3094(b) and (c).

§ 63.3120 What reports must I submit?

(a) *Semiannual compliance reports.* You must submit semiannual compliance reports for each affected source according to the requirements of paragraphs (a)(1) through (9) of this section. The semiannual compliance reporting requirements may be satisfied by reports required under other parts of the CAA, as specified in paragraph (a)(2) of this section.

(1) *Dates.* Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must prepare and submit each semiannual compliance report according to the dates specified in paragraphs (a)(1)(i) through (iv) of this section.

(i) The first semiannual compliance report must cover the first semiannual reporting period which begins the day after the end of the initial compliance period described in § 63.3160 that applies to your affected source and ends on June 30 or December 31, whichever occurs first following the end of the initial compliance period.

(ii) Each subsequent semiannual compliance report must cover the subsequent semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(iii) Each semiannual compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(iv) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the date specified in paragraph (a)(1)(iii) of this section.

(2) *Inclusion with title V report.* If you have obtained a title V operating permit pursuant to 40 CFR part 70 or 40 CFR part 71, you must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If you submit a semiannual compliance report pursuant to this section along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the semiannual compliance report includes all required information concerning deviations from any emission limit, operating limit, or work practice in this subpart, its submission shall be deemed to satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submission of a semiannual compliance report shall not otherwise affect any obligation you may have to report deviations from permit requirements to the permitting authority.

(3) *General requirements.* The semiannual compliance report must contain the information specified in paragraphs (a)(3)(i) through (iv) of this section, and the information specified in paragraphs (a)(4) through (9) and (c)(1) of this section that are applicable to your affected source.

(i) Company name and address.

(ii) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(iii) Date of report and beginning and ending dates of the reporting period. The reporting period is the 6-month period ending on June 30 or December 31.

(iv) Identification of the compliance option specified in § 63.3090(b) or § 63.3091(b) that you used for electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) in the affected source during the initial compliance period.

(4) *No deviations.* If there were no deviations from the emission limitations, operating limits, or work practices in §§ 63.3090, 63.3091, 63.3092, 63.3093, and 63.3094 that apply to you, the semiannual compliance report must include a statement that there were no deviations from the emission limitations during the reporting period. If you used control devices to comply with the emission limits, and there were no periods during which the CPMS were out of control as specified in § 63.8(c)(7), the semiannual compliance report must include a statement that there were no periods during which the CPMS were out of control during the reporting period.

(5) *Deviations: adhesive, sealer, and deadener.* If there was a deviation from the applicable emission limits in § 63.3090(c) and (d) or § 63.3091(c) and (d), the semiannual compliance report must contain the information in paragraphs (a)(5)(i) through (iv) of this section.

(i) The beginning and ending dates of each month during which the monthly average organic HAP content exceeded the applicable emission limit in § 63.3090(c) and (d) or § 63.3091(c) and (d).

(ii) The volume and organic HAP content of each material used that is subject to the applicable organic HAP content limit.

(iii) The calculation used to determine the average monthly organic HAP content for the month in which the deviation occurred.

(iv) The reason for the deviation.

(6) *Deviations: combined electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer and glass bonding adhesive, or combined primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c).* If there was a deviation from the applicable emission limits in § 63.3090(a) or (b) or § 63.3091(a) or (b),

the semiannual compliance report must contain the information in paragraphs (a)(6)(i) through (xiv) of this section.

(i) The beginning and ending dates of each month during which the monthly organic HAP emission rate from combined electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) exceeded the applicable emission limit in § 63.3090(a) or § 63.3091(a); or the monthly organic HAP emission rate from combined primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) exceeded the applicable emission limit in § 63.3090(b) or § 63.3091(b).

(ii) The calculation used to determine the monthly organic HAP emission rate in accordance with § 63.3161 or § 63.3171. You do not need to submit the background data supporting these calculations, for example information provided by materials suppliers or manufacturers, or test reports.

(iii) The date and time that any malfunctions of the capture system or add-on control devices used to control emissions from these operations started and stopped.

(iv) A brief description of the CPMS.

(v) The date of the latest CPMS certification or audit.

(vi) The date and time that each CPMS was inoperative, except for zero (low-level) and high-level checks.

(vii) The date and time period that each CPMS was out of control, including the information in § 63.8(c)(8).

(viii) The date and time period of each deviation from an operating limit in Table 1 to this subpart; date and time period of each bypass of an add-on control device; and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(ix) A summary of the total duration and the percent of the total source operating time of the deviations from each operating limit in Table 1 to this subpart and the bypass of each add-on control device during the semiannual reporting period.

(x) A breakdown of the total duration of the deviations from each operating limit in Table 1 to this subpart and bypasses of each add-on control device during the semiannual reporting period into those that were due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(xi) A summary of the total duration and the percent of the total source operating time of the downtime for each CPMS during the semiannual reporting period.

(xii) A description of any changes in the CPMS, coating operation, emission capture system, or add-on control devices since the last semiannual reporting period.

(xiii) For each deviation from the work practice standards, a description of the deviation, the date and time period of the deviation, and the actions you took to correct the deviation.

(xiv) A statement of the cause of each deviation.

(7) *Deviations: separate electrodeposition primer organic HAP content limit.* If you used the separate electrodeposition primer organic HAP content limits in § 63.3092(a), and there was a deviation from these limits, the semiannual compliance report must contain the information in paragraphs (a)(7)(i) through (iii) of this section.

(i) Identification of each material used that deviated from the emission limit, and the dates and time periods each was used.

(ii) The determination of mass fraction of each organic HAP for each material identified in paragraph (a)(7)(i) of this section. You do not need to submit background data supporting this calculation, for example, information provided by material suppliers or manufacturers, or test reports.

(iii) A statement of the cause of each deviation.

(8) *Deviations: separate electrodeposition primer bake oven capture and control limitations.* If you used the separate electrodeposition primer bake oven capture and control limitations in § 63.3092(b), and there was a deviation from these limitations, the semiannual compliance report must contain the information in paragraphs (a)(8)(i) through (xii) of this section.

(i) The beginning and ending dates of each month during which there was a deviation from the separate electrodeposition primer bake oven capture and control limitations in § 63.3092(b).

(ii) The date and time that any malfunctions of the capture systems or control devices used to control emissions from the electrodeposition primer bake oven started and stopped.

(iii) A brief description of the CPMS.

(iv) The date of the latest CPMS certification or audit.

(v) The date and time that each CPMS was inoperative, except for zero (low-level) and high-level checks.

(vi) The date, time, and duration that each CPMS was out of control, including the information in § 63.8(c)(8).

(vii) The date and time period of each deviation from an operating limit in Table 1 to this subpart; date and time period of each bypass of an add-on control device; and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(viii) A summary of the total duration and the percent of the total source operating time of the deviations from each operating limit in Table 1 to this subpart and the bypasses of each add-on control device during the semiannual reporting period.

(ix) A breakdown of the total duration of the deviations from each operating limit in Table 1 to this subpart and bypasses of each add-on control device during the semiannual reporting period into those that were due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(x) A summary of the total duration and the percent of the total source operating time of the downtime for each CPMS during the semiannual reporting period.

(xi) A description of any changes in the CPMS, coating operation, emission capture system, or add-on control devices since the last semiannual reporting period.

(xii) A statement of the cause of each deviation.

(9) *Deviations: work practice plans.* If there was a deviation from an applicable work practice plan developed in accordance with § 63.3094(b) or (c), the semiannual compliance report must contain the information in paragraphs (a)(9)(i) through (iii) of this section.

(i) The time period during which each deviation occurred.

(ii) The nature of each deviation.

(iii) The corrective action(s) taken to bring the applicable work practices into compliance with the work practice plan.

(b) *Performance test reports.* If you use add-on control devices, you must submit reports of performance test results for emission capture systems and add-on control devices no later than 60 days after completing the tests as specified in § 63.10(d)(2). You must submit reports of transfer efficiency

tests no later than 60 days after completing the tests as specified in § 63.10(d)(2).

(c) *Startup, shutdown, and malfunction reports.* If you used add-on control devices and you had a startup, shutdown, or malfunction during the semiannual reporting period, you must submit the reports specified in paragraphs (c)(1) and (2) of this section.

(1) If your actions were consistent with your SSMP, you must include the information specified in § 63.10(d) in the semiannual compliance report required by paragraph (a) of this section.

(2) If your actions were not consistent with your SSMP, you must submit an immediate startup, shutdown, and malfunction report as described in paragraphs (c)(2)(i) and (ii) of this section.

(i) You must describe the actions taken during the event in a report delivered by facsimile, telephone, or other means to the Administrator within 2 working days after starting actions that are inconsistent with the plan.

(ii) You must submit a letter to the Administrator within 7 working days after the end of the event, unless you have made alternative arrangements with the Administrator as specified in § 63.10(d)(5)(ii). The letter must contain the information specified in § 63.10(d)(5)(ii).

§ 63.3130 What records must I keep?

You must collect and keep records of the data and information specified in this section. Failure to collect and keep these records is a deviation from the applicable standard.

(a) A copy of each notification and report that you submitted to comply with this subpart, and the documentation supporting each notification and report.

(b) A current copy of information provided by materials suppliers or manufacturers, such as manufacturer's formulation data, or test data used to determine the mass fraction of organic HAP, the density and the volume fraction of coating solids for each coating, the mass fraction of organic HAP and the density for each thinner, and the mass fraction of organic HAP for each cleaning material. If you conducted testing to determine mass fraction of organic HAP, density, or volume fraction of coating solids, you must keep a copy of the complete test report. If you use information provided to you by the manufacturer or supplier of the material that was based on testing, you must keep the summary sheet of results provided to you by the manufacturer or supplier. If you use the results of an analysis conducted by an outside testing lab, you must keep a copy of the test report. You are not required to obtain the test report or other supporting documentation from the manufacturer or supplier.

(c) For each month, the records specified in paragraphs (c)(1) through (6) of this section.

(1) For each coating used for electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations and for each coating, except for deadener and for adhesive and sealer that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c), a record of the volume used in each month, the mass fraction organic HAP content, the density, and the volume fraction of solids.

(2) For each thinner used for electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations and for each thinner, except for thinner used for deadener and for adhesive and sealer that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c), a record of the volume used in each month, the mass fraction organic HAP content, and the density.

(3) For each deadener material and for each adhesive and sealer material, a record of the mass used in each month and the mass organic HAP content.

(4) A record of the calculation of the organic HAP emission rate for electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) for each month if subject to the emission limit of § 63.3090(a) or § 63.3091(a). This record must include all raw data, algorithms, and intermediate calculations. If the guidelines presented in the "Protocol for Determining Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations," EPA–450/3–88–018 (Docket ID No. OAR–2002–0093 and Docket ID No. A–2001–22), are used, you must keep records of all data input to this protocol. If these data are maintained as electronic files, the electronic files, as well as any paper copies must be maintained. These data must be provided to the permitting authority on request on paper, and in (if calculations are done electronically) electronic form.

(5) A record of the calculation of the organic HAP emission rate for primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) for each month if subject to the emission limit of § 63.3090(b) or § 63.3091(b), and a record of the weight fraction of each organic HAP in each material added to the electrodeposition primer system if subject to the limitations of § 63.3092(a). This record must include all raw data, algorithms, and intermediate calculations. If the guidelines presented in the "Protocol for Determining Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations," EPA–450/3–88–018 (Docket ID No. OAR–2002–0093 and Docket ID No. A–2001–22), are used, you must keep records of all data input to this protocol. If these data are maintained as electronic files, the electronic files, as well as any paper copies must be maintained. These data must be provided to the permitting authority on request on paper, and in (if calculations are done electronically) electronic form.

(6) A record, for each month, of the calculation of the average monthly mass organic HAP content of:

(i) Sealers and adhesives; and

(ii) Deadeners.

(d) A record of the name and volume of each cleaning material used during each month.

(e) A record of the mass fraction of organic HAP for each cleaning material used during each month.

(f) A record of the density for each cleaning material used during each month.

(g) A record of the date, time, and duration of each deviation, and for each deviation, a record of whether the deviation occurred during a period of startup, shutdown, or malfunction.

(h) The records required by § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(i) For each capture system that is a PTE, the data and documentation you used to support a determination that the capture system meets the criteria in Method 204 of appendix M to 40 CFR part 51 for a PTE and has a capture efficiency of 100 percent, as specified in § 63.3165(a).

(j) For each capture system that is not a PTE, the data and documentation you used to determine capture efficiency according to the requirements specified in §§ 63.3164 and 63.3165(b) through (g), including the records specified in paragraphs (j)(1) through (4) of this section that apply to you.

(1) *Records for a liquid-to-uncaptured-gas protocol using a temporary total enclosure or building enclosure.* Records of the mass of total volatile hydrocarbon (TVH), as measured by Method 204A or F of appendix M to 40 CFR part 51, for each material used in the coating operation, and the total TVH for all materials used during each capture efficiency test run, including a copy of the test report. Records of the mass of TVH emissions not captured by the capture system that exited the temporary total enclosure or building enclosure during each capture efficiency test run, as measured by Method 204D or E of appendix M to 40 CFR part 51, including a copy of the test report. Records documenting that the enclosure used for the capture efficiency test met the criteria in Method 204 of appendix M to 40 CFR part 51 for either a temporary total enclosure or a building enclosure.

(2) *Records for a gas-to-gas protocol using a temporary total enclosure or a building enclosure.* Records of the mass of TVH emissions captured by the emission capture system, as measured by Method 204B or C of appendix M to 40 CFR part 51, at the inlet to the add-on control device, including a copy of the test report. Records of the mass of TVH emissions not captured by the capture system that exited the temporary total enclosure or building enclosure during each capture efficiency test run, as measured by Method 204D or E of appendix M to 40 CFR part 51, including a copy of the test report. Records documenting that the enclosure used for the capture efficiency test met the criteria in Method 204 of appendix M to 40 CFR part 51 for either a temporary total enclosure or a building enclosure.

(3) *Records for panel tests.* Records needed to document a capture efficiency determination using a panel test as described in § 63.3165(e) and (g), including a copy of the test report and calculations performed to convert the panel test results to percent capture efficiency values.

(4) *Records for an alternative protocol.* Records needed to document a capture efficiency determination using an alternative method or protocol, as specified in § 63.3165(f), if applicable.

(k) The records specified in paragraphs (k)(1) and (2) of this section for each add-on control device organic HAP destruction or removal efficiency determination as specified in § 63.3166.

(1) Records of each add-on control device performance test conducted according to §§ 63.3164 and 63.3166.

(2) Records of the coating operation conditions during the add-on control device performance test showing that the performance test was conducted under representative operating conditions.

(l) Records of the data and calculations you used to establish the emission capture and add-on control device operating limits as specified in § 63.3167 and to document compliance with the operating limits as specified in Table 1 to this subpart.

(m) Records of the data and calculations you used to determine the transfer efficiency for primer-surfacer and topcoat coatings and for all coatings, except for deadener and for adhesive and sealer that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c).

(n) A record of the work practice plans required by § 63.3094(b) and (c) and documentation that you are implementing the plans on a continuous basis. Appropriate documentation may include operational and maintenance records, records of documented inspections, and records of internal audits.

(o) Records pertaining to the design and operation of control and monitoring systems must be maintained on-site for the life of the equipment in a location readily available to plant operators and inspectors.

§ 63.3131 In what form and for how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review according to § 63.10(b)(1). Where appropriate, the records may be maintained as electronic spreadsheets or as a database.

(b) Except as provided in § 63.3130(o), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record, as specified in § 63.10(b)(1).

(c) Except as provided in § 63.3130(o), 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.

Compliance Requirements for Adhesive, Sealer, and Deadener

§ 63.3150 By what date must I conduct the initial compliance demonstration?

You must complete the initial compliance demonstration for the initial compliance period according to the requirements of § 63.3151. The initial compliance period begins on the applicable compliance date specified in § 63.3083 and ends on the last day of the month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next month. You must determine the mass average organic HAP content of the materials used each month for each group of materials for which an emission limitation is established in § 63.3090(c) and (d) or § 63.3091(c) and (d). The initial compliance demonstration includes the calculations according to § 63.3151 and supporting documentation showing that during the initial compliance period, the mass average organic HAP content for each group of materials was equal to or less than the applicable emission limits in § 63.3090(c) and (d) or § 63.3091(c) and (d).

§ 63.3151 How do I demonstrate initial compliance with the emission limitations?

You must separately calculate the mass average organic HAP content of the materials used during the initial compliance period for each group of materials for which an emission limit is established in § 63.3090(c) and (d) or § 63.3091(c) and (d). If every individual material used within a group of materials meets the emission limit for that group of materials, you may demonstrate compliance with that emission limit by documenting the name and the organic HAP content of each material used during the initial compliance period. If any individual material used within a group of materials exceeds the emission limit for that group of materials, you must determine the mass average organic HAP content according to the procedures of paragraph (d) of this section.

(a) *Determine the mass fraction of organic HAP for each material used.* You must determine the mass fraction of organic HAP for each material used during the compliance period by using one of the options in paragraphs (a)(1) through (5) of this section.

(1) *Method 311 (appendix A to 40 CFR part 63).* You may use Method 311 for determining the mass fraction of organic HAP. Use the procedures

specified in paragraphs (a)(1)(i) and (ii) of this section when performing a Method 311 test.

(i) Count each organic HAP that is measured to be present at 0.1 percent by mass or more for OSHA-defined carcinogens, as specified in 29 CFR 1910.1200(d)(4), and at 1.0 percent by mass or more for other compounds. For example, if toluene (not an OSHA carcinogen) is measured to be 0.5 percent of the material by mass, you do not have to count it. Express the mass fraction of each organic HAP you count as a value truncated to four places after the decimal point (*e.g.,* 0.3791).

(ii) Calculate the total mass fraction of organic HAP in the test material by adding up the individual organic HAP mass fractions and truncating the result to three places after the decimal point (*e.g.,* 0.7638 truncates to 0.763).

(2) *Method 24 (appendix A to 40 CFR part 60).* For coatings, you may use Method 24 to determine the mass fraction of nonaqueous volatile matter and use that value as a substitute for mass fraction of organic HAP.

(3) *Alternative method.* You may use an alternative test method for determining the mass fraction of organic HAP once the Administrator has approved it. You must follow the procedure in § 63.7(f) to submit an alternative test method for approval.

(4) *Information from the supplier or manufacturer of the material.* You may rely on information other than that generated by the test methods specified in paragraphs (a)(1) through (3) of this section, such as manufacturer's formulation data, if it represents each organic HAP that is present at 0.1 percent by mass or more for OSHA-defined carcinogens, as specified in 29 CFR 1910.1200(d)(4), and at 1.0 percent by mass or more for other compounds. For example, if toluene (not an OSHA carcinogen) is 0.5 percent of the material by mass, you do not have to count it. If there is a disagreement between such information and results of a test conducted according to paragraphs (a)(1) through (3) of this section, then the test method results will take precedence, unless after consultation, the facility demonstrates to the satisfaction of the enforcement authority that the facility's data are correct.

(5) *Solvent blends.* Solvent blends may be listed as single components for some materials in data provided by manufacturers or suppliers. Solvent blends may contain organic HAP which must be counted toward the total organic HAP mass fraction of the materials. When neither test data nor manufacturer's data for solvent blends are available, you may use the default values for the mass fraction of organic HAP in the solvent blends listed in Table 3 or 4 to this subpart. If you use the tables, you must use the values in Table 3 for all solvent blends that match Table 3 entries, and you may only use Table 4 if the solvent blends in the materials you use do not match any of the solvent blends in Table 3 and you only know whether the blend is aliphatic or aromatic. However, if the results of a Method 311 test indicate higher values than those listed on Table 3 or 4 to this subpart, the Method 311 results will take precedence, unless after consultation, the facility demonstrates to the satisfaction of the enforcement authority that the data from Table 3 or 4 are correct.

(b) *Determine the density of each material used.* Determine the density of each material used during the compliance period from test results using ASTM Method D1475–98 (Reapproved 2003), "Standard Test Method for Density of Liquid Coatings, Inks, and Related Products" (incorporated by reference, see § 63.14), or for powder coatings, test method A or test method B of ASTM Method D5965–02, "Standard Test Methods for Specific Gravity of Coating Powders," (incorporated by reference, see § 63.14), or information from the supplier or manufacturer of the material. If there is disagreement between ASTM Method D1475–98 (Reapproved 2003) test results or ASTM Method D5965–02, test method A or test method B test results and the supplier's or manufacturer's information, the test results will take precedence unless after consultation, the facility demonstrates to the satisfaction of the enforcement authority that the facility's data are correct.

(c) *Determine the volume of each material used.* Determine the volume (liters) of each material used during each month by measurement or usage records.

(d) *Determine the mass average organic HAP content for each group of materials.* Determine the mass average organic HAP content of the materials used during the initial compliance period for each group of materials for which an emission limit is established in § 63.3090(c) and (d) or § 63.3091(c) and (d), using Equations 1 and 2 of this section.

(1) Calculate the mass average organic HAP content of adhesive and sealer materials other than components of the glass bonding system used in the initial compliance period using Equation 1 of this section:

$$C_{avg,as} = \frac{\sum_{j=1}^{r} \left(Vol_{as,j}\right)\left(D_{as,j}\right)\left(W_{as,j}\right)}{\sum_{j=1}^{r} \left(Vol_{as,j}\right)\left(D_{as,j}\right)} \quad \text{(Eq. 1)}$$

Where:

$C_{avg,as}$ = Mass average organic HAP content of adhesives and sealer materials used, kg/kg.

$Vol_{as,j}$ = Volume of adhesive or sealer material, j, used, liters.

$D_{as,j}$ = Density of adhesive or sealer material, j, used, kg per liter.

$W_{as,j}$ = Mass fraction of organic HAP in adhesive or sealer material, j, kg/kg.

r = Number of adhesive and sealer materials used.

(2) Calculate the mass average organic HAP content of deadener materials used in the initial compliance period using Equation 2 of this section:

$$C_{avg,d} = \frac{\sum_{m=1}^{s} (Vol_{d,m})(D_{d,m})(W_{d,m})}{\sum_{m=1}^{s} (Vol_{d,m})(D_{d,m})} \quad \text{(Eq. 2)}$$

Where:

$C_{avg,d}$ = Mass average organic HAP content of deadener material used, kg/kg.

$Vol_{d,m}$ = Volume of deadener material, m, used, liters.

$D_{d,m}$ = Density of deadener material, m, used, kg per liter.

$W_{d,m}$ = Mass fraction of organic HAP in deadener material, m, kg/kg.

s = Number of deadener materials used.

(e) *Compliance demonstration.* The mass average organic HAP content for the compliance period must be less than or equal to the applicable emission limit in § 63.3090(c) and (d) or § 63.3091(c) and (d). You must keep all records as required by §§ 63.3130 and 63.3131. As part of the Notification of Compliance Status required by § 63.3110, you must submit a statement that the coating operations were in compliance with the emission limitations during the initial compliance period because the mass average organic HAP content was less than or equal to the applicable emission limits in § 63.3090(c) and (d) or § 63.3091(c) and (d), determined according to this section.

§ 63.3152 How do I demonstrate continuous compliance with the emission limitations?

(a) To demonstrate continuous compliance, the mass average organic HAP content for each compliance period, determined according to § 63.3151(a) through (d), must be less than or equal to the applicable emission limit in § 63.3090(c) and (d) or § 63.3091(c) and (d). A compliance period consists of 1 month. Each month after the end of the initial compliance period described in § 63.3150 is a compliance period consisting of that month.

(b) If the mass average organic HAP emission content for any compliance period exceeds the applicable emission limit in § 63.3090(c) and (d) or § 63.3091(c) and (d), this is a deviation from the emission limitations for that compliance period and must be reported as specified in §§ 63.3110(c)(6) and 63.3120(a)(5).

(c) You must maintain records as specified in §§ 63.3130 and 63.3131.

Compliance Requirements for the Combined Electrodeposition Primer, Primer-Surfacer, Topcoat, Final Repair, Glass Bonding Primer, and Glass Bonding Adhesive Emission Limitations

§ 63.3160 By what date must I conduct performance tests and other initial compliance demonstrations?

(a) *New and reconstructed affected sources.* For a new or reconstructed affected source, you must meet the requirements of paragraphs (a)(1) through (4) of this section.

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.3083. You must conduct a performance test of each capture system and add-on control device according to §§ 63.3164 through 63.3166 and establish the operating limits required by § 63.3093 no later than 180 days after the applicable compliance date specified in § 63.3083.

(2) You must develop and begin implementing the work practice plans required by § 63.3094(b) and (c) no later than the compliance date specified in § 63.3083.

(3) You must complete the initial compliance demonstration for the initial compliance period according to the requirements of § 63.3161. The initial compliance period begins on the applicable compliance date specified in § 63.3083 and ends on the last day of the month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next month. You must determine the mass of organic HAP emissions and volume of coating solids deposited in the initial compliance period. The initial compliance demonstration includes the results of emission capture system and add-on control device performance tests conducted according to §§ 63.3164 through 63.3166; supporting documentation showing that during the initial compliance period the organic HAP emission rate was equal to or less than the emission limit in § 63.3090(a); the operating limits established during the performance tests and the results of the continuous parameter monitoring required by § 63.3168; and documentation of whether you developed and implemented the work practice plans required by § 63.3094(b) and (c).

(4) You do not need to comply with the operating limits for the emission capture system and add-on control device required by § 63.3093 until after you have completed the performance tests specified in paragraph (a)(1) of this section. Instead, you must maintain a log detailing the operation and maintenance of the emission capture system, add-on control device, and CPMS during the period between the compliance date and the performance test. You must begin complying with the operating limits for your affected source on the date you complete the performance tests specified in paragraph (a)(1) of this section.

(b) *Existing affected sources.* For an existing affected source, you must meet the requirements of paragraphs (b)(1) through (3) of this section.

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.3083. You must conduct a performance test of each capture system and add-on control device according to the procedures in §§ 63.3164 through 63.3166 and establish the operating limits required by § 63.3093 no later than the compliance date specified in § 63.3083.

(2) You must develop and begin implementing the work practice plans required by § 63.3094(b) and (c) no later than the compliance date specified in § 63.3083.

(3) You must complete the initial compliance demonstration for the initial compliance period according to the requirements of § 63.3161. The initial compliance period begins on the applicable compliance date specified in § 63.3083 and ends on the last day of the month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next month. You must determine the mass of organic HAP emissions and volume of coating solids deposited during the initial compliance period. The initial compliance demonstration includes the results of emission capture system and add-on control device performance tests conducted according to §§ 63.3164 through 63.3166;

supporting documentation showing that during the initial compliance period the organic HAP emission rate was equal to or less than the emission limits in § 63.3091(a); the operating limits established during the performance tests and the results of the continuous parameter monitoring required by § 63.3168; and documentation of whether you developed and implemented the work practice plans required by § 63.3094(b) and (c).

(c) You are not required to conduct an initial performance test to determine capture efficiency or destruction efficiency of a capture system or control device if you receive approval to use the results of a performance test that has been previously conducted on that capture system (either a previous stack test or a previous panel test) or control device. You are not required to conduct an initial test to determine transfer efficiency if you receive approval to use the results of a test that has been previously conducted. Any such previous tests must meet the conditions described in paragraphs (c)(1) through (3) of this section.

(1) The previous test must have been conducted using the methods and conditions specified in this subpart.

(2) Either no process or equipment changes have been made since the previous test was performed or the owner or operator must be able to demonstrate that the results of the performance test reliably demonstrate compliance despite process or equipment changes.

(3) Either the required operating parameters were established in the previous test or sufficient data were collected in the previous test to establish the required operating parameters.

§ 63.3161 How do I demonstrate initial compliance?

(a) You must meet all of the requirements of this section to demonstrate initial compliance. To demonstrate initial compliance, the organic HAP emissions from the combined electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) must meet the applicable emission limitation in § 63.3090(a) or § 63.3091(a).

(b) *Compliance with operating limits.* Except as provided in § 63.3160(a)(4), you must establish and demonstrate continuous compliance during the initial compliance period with the operating limits required by § 63.3093, using the procedures specified in §§ 63.3167 and 63.3168.

(c) *Compliance with work practice requirements.* You must develop, implement, and document your implementation of the work practice plans required by § 63.3094(b) and (c) during the initial compliance period, as specified in § 63.3130.

(d) *Compliance with emission limits.* You must follow the procedures in paragraphs (e) through (o) of this section to demonstrate compliance with the applicable emission limit in § 63.3090(a) or § 63.3091(a). You may also use the guidelines presented in "Protocol for Determining Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations," EPA–450/3–88–018 (Docket ID No. OAR–2002–0093 and Docket ID No. A–2001–22) in making this demonstration.

(e) *Determine the mass fraction of organic HAP, density and volume used.* Follow the procedures specified in § 63.3151(a) through (c) to determine the mass fraction of organic HAP and the density and volume of each coating and thinner used during each month.

(f) *Determine the volume fraction of coating solids for each coating.* You must determine the volume fraction of coating solids (liter of coating solids per liter of coating) for each coating used during the compliance period by a test or by information provided by the supplier or the manufacturer of the material, as specified in paragraphs (f)(1) and (2) of this section. If test results obtained according to paragraph (f)(1) of this section do not agree with the information obtained under paragraph (f)(2) of this section, the test results will take precedence unless after consultation, the facility demonstrates to the satisfaction of the enforcement authority that the facility's data are correct.

(1) *ASTM Method D2697–86 (Reapproved 1998) or ASTM Method D6093–97 (Reapproved 2003).* You may use ASTM Method D2697–86 (Reapproved 1998), "Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings" (incorporated by reference, see § 63.14), or ASTM Method D6093–97 (Reapproved 2003), "Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer" (incorporated by reference, see § 63.14), to determine the volume fraction of coating solids for each coating. Divide the nonvolatile volume percent obtained with the methods by 100 to calculate volume fraction of coating solids.

(2) *Information from the supplier or manufacturer of the material.* You may obtain the volume fraction of coating solids for each coating from the supplier or manufacturer.

(g) *Determine the transfer efficiency for each coating.* You must determine the transfer efficiency for each primer-surfacer and topcoat coating, and for all coatings, except for deadener and for adhesive and sealer that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) using ASTM Method D5066–91 (Reapproved 2001), "Standard Test Method for Determination of the Transfer Efficiency Under Production Conditions for Spray Application of Automotive Paints-Weight Basis" (incorporated by reference, see § 63.14), or the guidelines presented in "Protocol for Determining Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations," EPA–450/3–88–018 (Docket ID No. OAR–2002–0093 and Docket ID No. A–2001–22). You may conduct transfer efficiency testing on representative coatings and for representative spray booths as described in "Protocol for Determining Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations," EPA–450/3–88–018 (Docket ID No. OAR–2002–0093 and Docket ID No. A–2001–22). You may assume 100 percent transfer efficiency for electrodeposition primer coatings, glass bonding primers, and glass bonding adhesives. For final repair coatings, you may assume 40 percent transfer efficiency for air atomized spray and 55 percent transfer efficiency for electrostatic spray and high volume, low pressure spray.

(h) *Calculate the total mass of organic HAP emissions before add-on controls.* Calculate the total mass of organic HAP emissions before consideration of add-on controls from all coatings and thinners used during each month in the combined electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) using Equation 1 of this section:

$$H_{BC} = A + B \qquad \text{(Eq. 1)}$$

Where:

H_{BC} = Total mass of organic HAP emissions before consideration of add-on controls during the month, kg.

A = Total mass of organic HAP in the coatings used during the month, kg, as calculated in Equation 1A of this section.

B = Total mass of organic HAP in the thinners used during the month, kg, as calculated in Equation 1B of this section.

(1) Calculate the kg organic HAP in the coatings used during the month using Equation 1A of this section:

$$A = \sum_{i=1}^{m} \left(Vol_{c,i}\right)\left(D_{c,i}\right)\left(W_{c,i}\right) \qquad \text{(Eq. 1A)}$$

Where:

A = Total mass of organic HAP in the coatings used during the month, kg.

$Vol_{c,i}$ = Total volume of coating, i, used during the month, liters.

$D_{c,i}$ = Density of coating, i, kg coating per liter coating.

$W_{c,i}$ = Mass fraction of organic HAP in coating, i, kg organic HAP per kg coating.

m = Number of different coatings used during the month.

(2) Calculate the kg of organic HAP in the thinners used during the month using Equation 1B of this section:

$$B = \sum_{j=1}^{n} \left(Vol_{t,j}\right)\left(D_{t,j}\right)\left(W_{t,j}\right) \qquad \text{(Eq. 1B)}$$

Where:

B = Total mass of organic HAP in the thinners used during the month, kg.

$Vol_{t,j}$ = Total volume of thinner, j, used during the month, liters.

$D_{t,j}$ = Density of thinner, j, kg per liter.

$W_{t,j}$ = Mass fraction of organic HAP in thinner, j, kg organic HAP per kg thinner.

n = Number of different thinners used during the month.

(i) *Calculate the organic HAP emission reduction for each controlled coating operation.* Determine the mass of organic HAP emissions reduced for each controlled coating operation during each month. The emission reduction determination quantifies the total organic HAP emissions captured by the emission capture system and destroyed or removed by the add-on control device. Use the procedures in paragraph (j) of this section to calculate the mass of organic HAP emission reduction for each controlled coating operation using an emission capture system and add-on control device other than a solvent recovery system for which you conduct liquid-liquid material balances. For each controlled coating operation using a solvent recovery system for which you conduct a liquid-liquid material balance, use the procedures in paragraph (k) of this section to calculate the organic HAP emission reduction.

(j) *Calculate the organic HAP emission reduction for each controlled coating operation not using liquid-liquid material balances.* For each controlled coating operation using an emission capture system and add-on control device other than a solvent recovery system for which you conduct liquid-liquid material balances, calculate the mass of organic HAP emission reduction for the controlled coating operation, excluding all periods of time in which a deviation, including a deviation during a period of startup, shutdown, or malfunction, from an operating limit or from any CPMS requirement for the capture system or control device serving the controlled coating operation occurred, during the month using Equation 2 of this section. The calculation of mass of organic HAP emission reduction for the controlled coating operation during the month applies the emission capture system efficiency and add-on control device efficiency to the mass of organic HAP contained in the coatings and thinners that are used in the coating operation served by the emission capture system and add-on control device during each month. Except as provided in paragraph (p) of this section, for any period of time in which a deviation, including a deviation during a period of startup, shutdown, or malfunction, from an operating limit or from any CPMS requirement of the capture system or control device serving the controlled coating operation occurred, you must assume zero efficiency for the emission capture system and add-on control device. Equation 2 of this section treats the materials used during such a deviation as if they were used on an uncontrolled coating operation for the time period of the deviation.

$$H_{Cn} = \left(A_C + B_C - A_{unc} - B_{unc}\right)\left(\frac{CE}{100} \times \frac{DRE}{100}\right) \qquad \text{(Eq. 2)}$$

Where:

H_{Cn} = Mass of organic HAP emission reduction, excluding all periods of time in which a deviation, including a deviation during a period of startup, shutdown, or malfunction, from an operating limit or from any CPMS requirement for the capture system or control device serving the controlled coating operation occurred, for the controlled coating operation during the month, kg.

A_C = Total mass of organic HAP in the coatings used in the controlled coating operation during the month, kg, as calculated in Equation 2A of this section.

B_C = Total mass of organic HAP in the thinners used in the controlled coating operation during the month, kg, as calculated in Equation 2B of this section.

A_{unc} = Total mass of organic HAP in the coatings used during all periods of time in which a deviation, including a deviation during a period of startup, shutdown, or malfunction, from an operating limit or from any CPMS requirement for the capture system or control device serving the controlled coating operation occurred for the controlled coating operation during the month, kg, as calculated in Equation 2C of this section.

B_{unc} = Total mass of organic HAP in the thinners used during all periods of time in which a deviation, including a deviation during a period of startup, shutdown, or malfunction, from an operating limit or from any CPMS requirement for the capture system or control device serving the controlled coating operation occurred for the controlled coating operation during the month, kg, as calculated in Equation 2D of this section.

CE = Capture efficiency of the emission capture system vented to the add-on control device, percent. Use the test methods and procedures specified in §§ 63.3164 and 63.3165 to measure and record capture efficiency.

DRE = Organic HAP destruction or removal efficiency of the add-on control device, percent. Use the test methods and procedures in §§ 63.3164 and 63.3166 to measure and record the organic HAP destruction or removal efficiency.

(1) Calculate the mass of organic HAP in the coatings used in the controlled coating operation, kg, using Equation 2A of this section.

$$A_c = \sum_{i=1}^{m} (Vol_{c,i})(D_{c,i})(W_{c,i}) \quad \text{(Eq. 2A)}$$

Where:

A_C = Total mass of organic HAP in the coatings used in the controlled coating operation during the month, kg.

$Vol_{c,i}$ = Total volume of coating, i, used during the month, liters.

$D_{c,i}$ = Density of coating, i, kg per liter.

$W_{c,i}$ = Mass fraction of organic HAP in coating, i, kg per kg.

m = Number of different coatings used.

(2) Calculate the mass of organic HAP in the thinners used in the controlled coating operation, kg, using Equation 2B of this section.

$$B_c = \sum_{j=1}^{n} (Vol_{t,j})(D_{t,j})(W_{t,j}) \quad \text{(Eq. 2B)}$$

Where:

B_C = Total mass of organic HAP in the thinners used in the controlled coating operation during the month, kg.

$Vol_{t,j}$ = Total volume of thinner, j, used during the month, liters.

$D_{t,j}$ = Density of thinner, j, kg per liter.

$W_{t,j}$ = Mass fraction of organic HAP in thinner, j, kg per kg.

n = Number of different thinners used.

(3) Calculate the mass of organic HAP in the coatings used in the controlled coating operation during deviations specified in § 63.3163(c) and (d), using Equation 2C of this section:

$$A_{unc} = \sum_{i=1}^{m} (VOLD_i)(D_i)(W_i) \quad \text{(Eq. 2C)}$$

Where:

A_{unc} = Total mass of organic HAP in the coatings used during all periods of time in which a deviation, including a deviation during a period of startup, shutdown, or malfunction, from an operating limit or from any CPMS requirement for the capture system or control device serving the controlled coating operation occurred for the controlled coating operation during the month, kg.

$VOLD_i$ = Total volume of coating, i, used in the controlled coating operation during deviations, liters.

D_i = Density of coating, i, kg per liter.

W_i = Mass fraction of organic HAP in coating, i, kg organic HAP per kg coating.

m = Number of different coatings.

(4) Calculate the mass of organic HAP in the thinners used in the controlled coating operation during deviations specified in § 63.3163(c) and (d), using Equation 2D of this section:

$$B_{unc} = \sum_{j=1}^{n} (VOLD_j)(D_j)(W_j) \quad \text{(Eq. 2D)}$$

Where:

B_{unc} = Total mass of organic HAP in the thinners used during all periods of time in which a deviation, including a deviation during a period of startup, shutdown, or malfunction, from an operating limit or from any CPMS requirement for the capture system or control device serving the controlled coating operation occurred for the controlled coating operation during the month, kg.

$VOLD_j$ = Total volume of thinner, j, used in the controlled coating operation during deviations, liters.

D_j = Density of thinner, j, kg per liter.

W_h = Mass fraction of organic HAP in thinner, j, kg organic HAP per kg coating.

n = Number of different thinners.

(k) *Calculate the organic HAP emission reduction for each controlled coating operation using liquid-liquid material balances.* For each controlled coating operation using a solvent recovery system for which you conduct liquid-liquid material balances, calculate the mass of organic HAP emission reduction for the coating operation controlled by the solvent recovery system using a liquid-liquid material balance during the month by applying the volatile organic matter collection and recovery efficiency to the mass of organic HAP contained in the coatings and thinners used in the coating operation controlled by the solvent recovery system during each month. Perform a liquid-liquid material balance for each month as specified in paragraphs (k)(1) through (6) of this section. Calculate the mass of organic HAP emission reduction by the solvent recovery system as specified in paragraph (k)(7) of this section.

(1) For each solvent recovery system, install, calibrate, maintain, and operate according to the manufacturer's specifications, a device that indicates the cumulative amount of volatile organic matter recovered by the solvent recovery system each month. The device must be initially certified by the manufacturer to be accurate to within ± 2.0 percent of the mass of volatile organic matter recovered.

(2) For each solvent recovery system, determine the mass of volatile organic matter recovered for the month, kg, based on measurement with the device required in paragraph (k)(1) of this section.

(3) Determine the mass fraction of volatile organic matter for each coating and thinner used in the coating operation controlled by the solvent recovery system during the month, kg volatile organic matter per kg coating. You may determine the volatile organic matter mass fraction using Method 24 of 40 CFR part 60, appendix A, or an EPA approved alternative method, or you may use information provided by the manufacturer or supplier of the coating. In the event of any inconsistency between information provided by the manufacturer or supplier and the results of Method 24 of 40 CFR part 60, appendix A, or an approved alternative method, the test method results will govern unless after consultation, the facility demonstrates to the satisfaction of the enforcement authority that the facility's data are correct.

(4) Determine the density of each coating and thinner used in the coating operation controlled by the solvent recovery system during the month, kg per liter, according to § 63.3151(b).

(5) Measure the volume of each coating and thinner used in the coating operation controlled by the solvent recovery system during the month, liters.

(6) Each month, calculate the solvent recovery system's volatile organic matter collection and recovery efficiency, using Equation 3 of this section:

$$R_v = 100 \frac{M_{VR}}{\sum_{i=1}^{m} Vol_i D_i WV_{c,i} + \sum_{j=1}^{n} Vol_j D_j WV_{t,j}} \quad \text{(Eq. 3)}$$

Where:

R_V = Volatile organic matter collection and recovery efficiency of the solvent recovery system during the month, percent.

M_{VR} = Mass of volatile organic matter recovered by the solvent recovery system during the month, kg.

Vol_i = Volume of coating, i, used in the coating operation controlled by the solvent recovery system during the month, liters.

D_i = Density of coating, i, kg per liter.

$WV_{c,i}$ = Mass fraction of volatile organic matter for coating, i, kg volatile organic matter per kg coating.

Vol_j = Volume of thinner, j, used in the coating operation controlled by the solvent recovery system during the month, liters.

D_j = Density of thinner, j, kg per liter.

$WV_{t,j}$ = Mass fraction of volatile organic matter for thinner, j, kg volatile organic matter per kg thinner.

m = Number of different coatings used in the coating operation controlled by the solvent recovery system during the month.

n = Number of different thinners used in the coating operation controlled by the solvent recovery system during the month.

(7) Calculate the mass of organic HAP emission reduction for the coating operation controlled by the solvent recovery system during the month, using Equation 4 of this section:

$$H_{CSR} = (A_{CSR} + B_{CSR})\left(\frac{R_V}{100}\right) \quad \text{(Eq. 4)}$$

Where:

H_{CSR} = Mass of organic HAP emission reduction for the coating operation controlled by the solvent recovery system using a liquid-liquid material balance during the month, kg.

A_{CSR} = Total mass of organic HAP in the coatings used in the coating operation controlled by the solvent recovery system, kg, calculated using Equation 4A of this section.

B_{CSR} = Total mass of organic HAP in the thinners used in the coating operation controlled by the solvent recovery system, kg, calculated using Equation 4B of this section.

R_V = Volatile organic matter collection and recovery efficiency of the solvent recovery system, percent, from Equation 3 of this section.

(i) Calculate the mass of organic HAP in the coatings used in the coating operation controlled by the solvent recovery system, kg, using Equation 4A of this section.

$$A_{CSR} = \sum_{i=1}^{m} (Vol_{c,i})(D_{c,i})(W_{c,i}) \quad \text{(Eq. 4A)}$$

Where:

A_{CSR} = Total mass of organic HAP in the coatings used in the coating operation controlled by the solvent recovery system during the month, kg.

$Vol_{c,i}$ = Total volume of coating, i, used during the month in the coating operation controlled by the solvent recovery system, liters.

$D_{c,i}$ = Density of coating, i, kg per liter.

$W_{c,i}$ = Mass fraction of organic HAP in coating, i, kg per kg.

m = Number of different coatings used.

(ii) Calculate the mass of organic HAP in the thinners used in the coating operation controlled by the solvent recovery system, kg, using Equation 4B of this section.

$$B_{CSR} = \sum_{j=1}^{n} (Vol_{t,j})(D_{t,j})(W_{t,j}) \quad \text{(Eq. 4B)}$$

Where:

B_{CSR} = Total mass of organic HAP in the thinners used in the coating operation controlled by the solvent recovery system during the month, kg.

$Vol_{t,j}$ = Total volume of thinner, j, used during the month in the coating operation controlled by the solvent recovery system, liters.

$D_{t,j}$ = Density of thinner, j, kg per liter.

$W_{t,j}$ = Mass fraction of organic HAP in thinner, j, kg per kg.

n = Number of different thinners used.

(l) *Calculate the total volume of coating solids deposited.* Determine the total volume of coating solids deposited, liters, in the combined electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) using Equation 5 of this section:

$$V_{sdep} = \sum_{i=1}^{m} (Vol_{c,i})(V_{s,i})(TE_{c,i})/100 \quad \text{(Eq. 5)}$$

Where:

V_{sdep} = Total volume of coating solids deposited during the month, liters.

$Vol_{c,i}$ = Total volume of coating, i, used during the month, liters.

$V_{s,i}$ = Volume fraction of coating solids for coating, i, liter solids per liter coating, determined according to § 63.3161(f).

$TE_{c,i}$ = Transfer efficiency of coating, i, determined according to § 63.3161(g), expressed as a decimal, for example 60 percent must be expressed as 0.60.

m = Number of coatings used during the month.

(m) *Calculate the mass of organic HAP emissions for each month.* Determine the mass of organic HAP emissions, kg, during each month, using Equation 6 of this section.

$$H_{HAP} = H_{BC} - \sum_{i=1}^{q} \left(H_{Cn,i}\right) - \sum_{j=1}^{r} \left(H_{CSR,j}\right) - \sum_{k=1}^{q} \sum_{m=1}^{Sk} \left(H_{DEV,k,m}\right) \qquad \text{(Eq. 6)}$$

Where:

H_{HAP} = Total mass of organic HAP emissions for the month, kg.

H_{BC} = Total mass of organic HAP emissions before add-on controls from all the coatings and thinners used during the month, kg, determined according to paragraph (h) of this section.

$H_{Cn,i}$ = Total mass of organic HAP emission reduction for controlled coating operation, i, not using a liquid-liquid material balance, excluding all periods of time in which a deviation, including a deviation during a period of startup, shutdown, or malfunction, from an operating limit or from any CPMS requirement for the capture system or control device serving the controlled coating operation occurred, for the controlled coating operation during the month, from Equation 2 of this section.

$H_{CSR,j}$ = Total mass of organic HAP emission reduction for coating operation, j, controlled by a solvent recovery system using a liquid-liquid material balance, during the month, kg, from Equation 4 of this section.

$H_{DEV,k,m}$ = Mass of organic HAP emission reduction, based on the capture system and control device efficiency approved under paragraph (p) of this section for period of deviation, m, for controlled coating operation, k, kg, as determined using Equation 8 of this section.

q = Number of controlled coating operations not using a liquid-liquid material balance.

r = Number of coating operations controlled by a solvent recovery system using a liquid-liquid material balance.

S_k = Number of periods of deviation in the month for which non-zero capture and control device efficiencies have been approved for controlled coating operation, k.

(n) *Calculate the organic HAP emission rate for the month.* Determine the organic HAP emission rate for the month, kg organic HAP per liter coating solids deposited, using Equation 7 of this section:

$$H_{rate} = \left(H_{HAP}\right)/\left(V_{sdep}\right) \qquad \text{(Eq. 7)}$$

Where:

H_{rate} = Organic HAP emission rate for the month compliance period, kg organic HAP per liter coating solids deposited.

H_{HAP} = Mass of organic HAP emissions for the month, kg, determined according to Equation 6 of this section.

V_{sdep} = Total volume of coating solids deposited during the month, liters, from Equation 5 of this section.

(o) *Compliance demonstration.* To demonstrate initial compliance, the organic HAP emissions from the combined electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) must be less than or equal to the applicable emission limitation in § 63.3090(a) or § 63.3091(a). You must keep all records as required by §§ 63.3130 and 63.3131. As part of the Notification of Compliance Status required by § 63.3110, you must submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the initial compliance period because the organic HAP emission rate was less than or equal to the applicable emission limit in § 63.3090(a) or § 63.3091(a) and you achieved the operating limits required by § 63.3093 and the work practice standards required by § 63.3094.

(p) You may request approval from the Administrator to use non-zero capture efficiencies and add-on control device efficiencies for any period of time in which a deviation, including a deviation during a period of startup, shutdown, or malfunction, from an operating limit or from any CPMS requirement for the capture system or add-on control device serving a controlled coating operation occurred.

(1) If you have manually collected parameter data indicating that a capture system or add-on control device was operating normally during a CPMS malfunction, a CPMS out-of-control period, or associated repair, then these data may be used to support and document your request to use the normal capture efficiency or add-on control device efficiency for that period of deviation.

(2) If you have data indicating the actual performance of a capture system or add-on control device (*e.g.*, capture efficiency measured at a reduced flow rate or add-on control device efficiency measured at a reduced thermal oxidizer temperature) during a deviation, including a deviation during a period of startup, shutdown, or malfunction, from an operating limit or from any CPMS requirement for the capture system or add-on control device serving a controlled coating operation, then these data may be used to support and document your request to use these values for that period of deviation.

(3) The organic HAP emission reduction achieved during each period of deviation, including a deviation during a period of startup, shutdown, or malfunction, from an operating limit or from any CPMS requirement for the capture system or add-on control device serving a controlled coating operation for which the Administrator has approved the use of non-zero capture efficiency and add-on control device efficiency values is calculated using Equation 8 of this section.

$$H_{DEV} = (A_{DEV} + B_{DEV})\left(\frac{CE_{DEV}}{100}\right)\left(\frac{DRE_{DEV}}{100}\right) \quad \text{(Eq. 8)}$$

Where:

H_{DEV} = Mass of organic HAP emission reduction achieved during a period of deviation for the controlled coating operation, kg.

A_{DEV} = Total mass of organic HAP in the coatings used in the controlled coating operation during the period of deviation, kg, as calculated in Equation 8A of this section.

B_{DEV} = Total mass of organic HAP in the thinners used in the controlled coating operation during the period of deviation, kg, as calculated in Equation 8B of this section.

CE_{DEV} = Capture efficiency of the emission capture system vented to the add-on control device, approved for the period of deviation, percent.

DRE_{DEV} = Organic HAP destruction or removal efficiency of the add-on control device approved for the period of deviation, percent.

(4) Calculate the total mass of organic HAP in the coatings used in the controlled coating operation during the period of deviation using equation 8A of this section:

$$A_{DEV} = \sum_{i=i}^{m}\left(VOL_{CDEV,i}\right)\left(D_{c,i}\right)\left(W_{c,i}\right) \quad \text{(Eq. 8A)}$$

Where:

A_{DEV} = Total mass of organic HAP in the coatings used in the controlled coating operation during the period of deviation, kg.

$VOL_{CDEV,i}$ = total volume of coating, i, used in the controlled coating operation during the period of deviation, liters.

$D_{c,i}$ = Density of coating, i, kg per liter.

$W_{c,i}$ = Mass fraction of organic HAP in coating, i, kg per kg.

m = Number of different coatings used.

(5) Calculate the total mass of organic HAP in the thinners used in the controlled coating operation during the period of deviation using equation 8B of this section:

$$B_{DEV} = \sum_{j=i}^{n}\left(VOL_{TDEV,j}\right)\left(D_{t,j}\right)\left(W_{t,j}\right) \quad \text{(Eq. 8B)}$$

Where:

B_{DEV} = Total mass of organic HAP in the thinners used in the controlled coating operation during the period of deviation, kg.

$VOL_{TDEV,j}$ = Total volume of thinner, j, used in the controlled coating operation during the period of deviation, liters.

$D_{t,j}$ = Density of thinner, j, kg per liter.

$W_{t,j}$ = Mass fraction of organic HAP in thinner, j, kg per kg.

n = Number of different thinners used.

§ 63.3162 [Reserved]

§ 63.3163 How do I demonstrate continuous compliance with the emission limitations?

(a) To demonstrate continuous compliance with the applicable emission limit in § 63.3090(a) or § 63.3091(a), the organic HAP emission rate for each compliance period, determined according to the procedures in § 63.3161, must be equal to or less than the applicable emission limit in § 63.3090(a) or § 63.3091(a). A compliance period consists of 1 month. Each month after the end of the initial compliance period described in § 63.3160 is a compliance period consisting of that month. You must perform the calculations in § 63.3161 on a monthly basis.

(b) If the organic HAP emission rate for any 1 month compliance period exceeded the applicable emission limit in § 63.3090(a) or § 63.3091(a), this is a deviation from the emission limitation for that compliance period and must be reported as specified in §§ 63.3110(c)(6) and 63.3120(a)(6).

(c) You must demonstrate continuous compliance with each operating limit required by § 63.3093 that applies to you, as specified in Table 1 to this subpart.

(1) If an operating parameter is out of the allowed range specified in Table 1 to this subpart, this is a deviation from the operating limit that must be reported as specified in §§ 63.3110(c)(6) and 63.3120(a)(6).

(2) If an operating parameter deviates from the operating limit specified in Table 1 to this subpart, then you must assume that the emission capture system and add-on control device were achieving zero efficiency during the time period of the deviation except as provided in § 63.3161(p).

(d) You must meet the requirements for bypass lines in § 63.3168(b) for control devices other than solvent recovery systems for which you conduct liquid-liquid material balances. If any bypass line is opened and emissions are diverted to the atmosphere when the coating operation is running, this is a deviation that must be reported as specified in § 63.3110(c)(6) and 63.3120(a)(6). For the purposes of completing the compliance calculations specified in § 63.3161(k), you must assume that the emission capture system and add-on control device were achieving zero efficiency during the time period of the deviation.

(e) You must demonstrate continuous compliance with the work practice standards in § 63.3094. If you did not develop a work practice plan, if you did not implement the plan, or if you did not keep the records required by § 63.3130(n), this is a deviation from the work practice standards that must be reported as specified in §§ 63.3110(c)(6) and 63.3120(a)(6).

(f) If there were no deviations from the emission limitations, submit a statement as part of the semiannual compliance report that you were in compliance with the emission limitations during the reporting period because the organic HAP emission rate for each compliance period was less than or equal to the applicable emission limit in § 63.3090(a) or § 63.3091(a), and you achieved the operating limits required by § 63.3093 and the work practice standards required by § 63.3094 during each compliance period.

(g) During periods of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency, you must operate in accordance with the SSMP required by § 63.3100(f).

(h) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the SSMP. The Administrator will determine whether deviations that occur during a period you identify as a startup, shutdown, or malfunction are violations according to the provisions in § 63.6(e).

(i) [Reserved]

(j) You must maintain records as specified in §§ 63.3130 and 63.3131.

§ 63.3164 What are the general requirements for performance tests?

(a) You must conduct each performance test required by § 63.3160 according to the requirements in § 63.7(e)(1) and under the conditions in this section unless you obtain a waiver of the performance test according to the provisions in § 63.7(h).

(1) *Representative coating operation operating conditions.* You must conduct the performance test under representative operating conditions for the coating operation. Operations during periods of startup, shutdown, or malfunction, and during periods of nonoperation do not constitute representative conditions. You must record the process information that is necessary to document operating conditions during the test and explain why the conditions represent normal operation.

(2) *Representative emission capture system and add-on control device operating conditions.* You must conduct the performance test when the emission capture system and add-on control device are operating at a representative flow rate, and the add-on control device is operating at a representative inlet concentration. You must record information that is necessary to document emission capture system and add-on control device operating conditions during the test and explain why the conditions represent normal operation.

(b) You must conduct each performance test of an emission capture system according to the requirements in § 63.3165. You must conduct each performance test of an add-on control device according to the requirements in § 63.3166.

§ 63.3165 How do I determine the emission capture system efficiency?

You must use the procedures and test methods in this section to determine capture efficiency as part of the performance test required by § 63.3160. For purposes of this subpart, a spray booth air seal is not considered a natural draft opening in a PTE or a temporary total enclosure provided you demonstrate that the direction of air movement across the interface between the spray booth air seal and the spray booth is into the spray booth. For purposes of this subpart, a bake oven air seal is not considered a natural draft opening in a PTE or a temporary total enclosure provided you demonstrate that the direction of air movement across the interface between the bake oven air seal and the bake oven is into the bake oven. You may use lightweight strips of fabric or paper, or smoke tubes to make such demonstrations as part of showing that your capture system is a PTE or conducting a capture efficiency test using a temporary total enclosure. You cannot count air flowing from a spray booth air seal into a spray booth as air flowing through a natural draft opening into a PTE or into a temporary total enclosure unless you elect to treat that spray booth air seal as a natural draft opening. You cannot count air flowing from a bake oven air seal into a bake oven as air flowing through a natural draft opening into a PTE or into a temporary total enclosure unless you elect to treat that bake oven air seal as a natural draft opening.

(a) *Assuming 100 percent capture efficiency.* You may assume the capture system efficiency is 100 percent if both of the conditions in paragraphs (a)(1) and (2) of this section are met:

(1) The capture system meets the criteria in Method 204 of appendix M to 40 CFR part 51 for a PTE and directs all the exhaust gases from the enclosure to an add-on control device.

(2) All coatings and thinners used in the coating operation are applied within the capture system, and coating solvent flash-off and coating curing and drying occurs within the capture system. For example, this criterion is not met if parts enter the open shop environment when being moved between a spray booth and a curing oven.

(b) *Measuring capture efficiency.* If the capture system does not meet both of the criteria in paragraphs (a)(1) and (2) of this section, then you must use one of the five procedures described in paragraphs (c) through (g) of this section to measure capture efficiency. The capture efficiency measurements use TVH capture efficiency as a surrogate for organic HAP capture efficiency. For the protocols in paragraphs (c) and (d) of this section, the capture efficiency measurement must consist of three test runs. Each test run must be at least 3 hours duration or the length of a production run, whichever is longer, up to 8 hours. For the purposes of this test, a production run means the time required for a single part to go from the beginning to the end of production, which includes surface preparation activities and drying or curing time.

(c) *Liquid-to-uncaptured-gas protocol using a temporary total enclosure or building enclosure.* The liquid-to-uncaptured-gas protocol compares the mass of liquid TVH in materials used in the coating operation to the mass of TVH emissions not captured by the emission capture system. Use a temporary total enclosure or a building enclosure and the procedures in paragraphs (c)(1) through (6) of this section to measure emission capture system efficiency using the liquid-to-uncaptured-gas protocol.

(1) Either use a building enclosure or construct an enclosure around the coating operation where coatings and thinners are applied, and all areas where emissions from these applied coatings and thinners subsequently occur, such as flash-off, curing, and drying areas. The areas of the coating operation where capture devices collect emissions for routing to an add-on control device, such as the entrance and exit areas of an oven or spray booth, must also be inside the enclosure. The enclosure must meet the applicable definition of a temporary total enclosure or building enclosure in Method 204 of appendix M to 40 CFR part 51.

(2) Use Method 204A or F of appendix M to 40 CFR part 51 to determine the mass fraction of TVH liquid input from each coating and thinner used in the coating operation during each capture efficiency test run. To make the determination, substitute TVH for each occurrence of the term volatile organic compounds (VOC) in the methods.

(3) Use Equation 1 of this section to calculate the total mass of TVH liquid input from all the coatings and thinners used in the coating operation during each capture efficiency test run.

$$TVH_{used} = \sum_{i=1}^{n} (TVH_i)(Vol_i)(D_i) \qquad \text{(Eq. 1)}$$

Where:

TVH_i = Mass fraction of TVH in coating or thinner, i, used in the coating operation during the capture efficiency test run, kg TVH per kg material.

Vol_i = Total volume of coating or thinner, i, used in the coating operation during the capture efficiency test run, liters.

D_i = Density of coating or thinner, i, kg material per liter material.

n = Number of different coatings and thinners used in the coating operation during the capture efficiency test run.

(4) Use Method 204D or E of appendix M to 40 CFR part 51 to measure the total mass, kg, of TVH emissions that are not captured by the emission capture system; they are measured as they exit the temporary total enclosure or building enclosure during each capture efficiency test run. To make the measurement, substitute TVH for each occurrence of the term VOC in the methods.

(i) Use Method 204D if the enclosure is a temporary total enclosure.

(ii) Use Method 204E if the enclosure is a building enclosure. During the capture efficiency measurement, all organic compound emitting operations inside the building enclosure, other than the coating operation for which capture efficiency is being determined, must be shut down, but all fans and blowers must be operating normally.

(5) For each capture efficiency test run, determine the percent capture efficiency of the emission capture system using Equation 2 of this section:

$$CE = \frac{\left(TVH_{used} - TVH_{uncaptured}\right)}{TVH_{used}} \times 100 \qquad \text{(Eq. 2)}$$

Where:

CE = Capture efficiency of the emission capture system vented to the add-on control device, percent.

TVH_{used} = Total mass of TVH liquid input used in the coating operation during the capture efficiency test run, kg.

$TVH_{uncaptured}$ = Total mass of TVH that is not captured by the emission capture system and that exits from the temporary total enclosure or building enclosure during the capture efficiency test run, kg.

(6) Determine the capture efficiency of the emission capture system as the average of the capture efficiencies measured in the three test runs.

(d) *Gas-to-gas protocol using a temporary total enclosure or a building enclosure.* The gas-to-gas protocol compares the mass of TVH emissions captured by the emission capture system to the mass of TVH emissions not captured. Use a temporary total enclosure or a building enclosure and the procedures in paragraphs (d)(1) through (5) of this section to measure emission capture system efficiency using the gas-to-gas protocol.

(1) Either use a building enclosure or construct an enclosure around the coating operation where coatings and thinners are applied, and all areas where emissions from these applied coatings and thinners subsequently occur, such as flash-off, curing, and drying areas. The areas of the coating operation where capture devices collect emissions generated by the coating operation for routing to an add-on control device, such as the entrance and exit areas of an oven or a spray booth, must also be inside the enclosure. The enclosure must meet the applicable definition of a temporary total enclosure or building enclosure in Method 204 of appendix M to 40 CFR part 51.

(2) Use Method 204B or C of appendix M to 40 CFR part 51 to measure the total mass, kg, of TVH emissions captured by the emission capture system during each capture efficiency test run as measured at the inlet to the add-on control device. To make the measurement, substitute TVH for each occurrence of the term VOC in the methods.

(i) The sampling points for the Method 204B or C measurement must be upstream from the add-on control device and must represent total emissions routed from the capture system and entering the add-on control device.

(ii) If multiple emission streams from the capture system enter the add-on control device without a single common duct, then the emissions entering the add-on control device must be simultaneously or sequentially measured in each duct, and the total emissions entering the add-on control device must be determined.

(3) Use Method 204D or E of appendix M to 40 CFR part 51 to measure the total mass, kg, of TVH emissions that are not captured by the emission capture system; they are measured as they exit the temporary total enclosure or building enclosure during each capture efficiency test run. To make the measurement, substitute TVH for each occurrence of the term VOC in the methods.

(i) Use Method 204D if the enclosure is a temporary total enclosure.

(ii) Use Method 204E if the enclosure is a building enclosure. During the capture efficiency measurement, all organic compound emitting operations inside the building enclosure, other than the coating operation for which capture efficiency is being determined, must be shut down, but all fans and blowers must be operating normally.

(4) For each capture efficiency test run, determine the percent capture efficiency of the emission capture system using Equation 3 of this section:

$$CE = \frac{TVH_{captured}}{\left(TVH_{captured} + TVH_{uncaptured}\right)} \times 100 \qquad \text{(Eq. 3)}$$

Where:

CE = Capture efficiency of the emission capture system vented to the add-on control device, percent.

$TVH_{captured}$ = Total mass of TVH captured by the emission capture system as measured at the inlet to the add-on control device during the emission capture efficiency test run, kg.

$TVH_{uncaptured}$ = Total mass of TVH that is not captured by the emission capture system and that exits from the temporary total enclosure or building enclosure during the capture efficiency test run, kg.

(5) Determine the capture efficiency of the emission capture system as the average of the capture efficiencies measured in the three test runs.

(e) *Panel testing to determine the capture efficiency of flash-off or bake oven emissions.* You may conduct panel testing to determine the capture efficiency of flash-off or bake oven emissions using ASTM Method D5087–02, "Standard Test Method for Determining Amount of Volatile Organic Compound (VOC) Released from Solventborne Automotive Coatings and Available for Removal in a VOC Control Device (Abatement)" (incorporated by reference, see § 63.14), ASTM Method D6266–00a, "Test Method for Determining the Amount of Volatile Organic Compound (VOC) Released from Waterborne Automotive Coatings and Available for Removal in a VOC Control Device (Abatement)" (incorporated by reference, see § 63.14), or the guidelines presented in "Protocol for Determining Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations," EPA–450/3–88–018 (Docket ID No. OAR–2002–0093 and Docket ID No. A–2001–22). You may conduct panel testing on representative coatings as described in "Protocol for Determining Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations," EPA–450/3–88–018 (Docket ID No. OAR–2002–0093 and Docket ID No. A–2001–22). The results of these panel testing procedures are in units of mass of VOC per volume of coating solids deposited and must be converted to a percent value for use in this subpart. If you panel test representative coatings, then you may convert the panel test result for each representative coating either to a unique percent capture efficiency for each coating grouped with that representative coating by using coating specific values for the volume of coating solids deposited per volume of coating used, mass of VOC per volume of coating, volume fraction solids, transfer efficiency, density and mass fraction VOC in Equations 4 through 6 of this section; or to a composite percent capture efficiency for the group of coatings by using composite values for the group of coatings for the volume of coating solids deposited per volume of coating used and for the mass of VOC per volume of coating, and average values for the group of coatings for volume fraction solids, transfer efficiency, density and mass fraction VOC in Equations 4 through 6 of this section. If you panel test each coating, then you must convert the panel test result for each coating to a unique percent capture efficiency for that coating by using coating specific values for the volume of coating solids deposited per volume of coating used, mass of VOC per volume of coating, volume fraction solids, transfer efficiency, density, and mass fraction VOC in Equations 4 through 6 of this section. Panel test results expressed in units of mass of VOC per volume of coating solids deposited must be converted to percent capture efficiency using Equation 4 of this section. (An alternative for using panel test results expressed in units of mass of VOC per mass of coating solids deposited is presented in paragraph (e)(3) of this section.)

$$CE_i = (P_i)(V_{sdep,i})(100)/(VOC_i) \qquad \text{(Eq. 4)}$$

Where:

CE_i = Capture efficiency for coating, i, or for the group of coatings including coating, i, for the flash-off area or bake oven for which the panel test is conducted, percent.

P_i = Panel test result for coating, i, or for the coating representing coating, i, in the panel test, kg of VOC per liter of coating solids deposited.

$V_{sdep,i}$ = Volume of coating solids deposited per volume of coating used for coating, i, or composite volume of coating solids deposited per volume of coating used for the group of coatings including coating, i, in the spray booth(s) preceding the flash-off area or bake oven for which the panel test is conducted, liter of coating solids deposited per liter of coating used, from Equation 5 of this section.

VOC_i = Mass of VOC per volume of coating for coating, i, or composite mass of VOC per volume of coating for the group of coatings including coating, i, kg per liter, from Equation 6 of this section.

(1) Calculate the volume of coating solids deposited per volume of coating used for coating, i, or the composite volume of coating solids deposited per volume of coating used for the group of coatings including coating, i, used during the month in the spray booth(s) preceding the flash-off area or bake oven for which the panel test is conducted using Equation 5 of this section:

$$V_{sdep,i} = (V_{s,i})(TE_{c,i}) \qquad \text{(Eq. 5)}$$

Where:

$V_{sdep,i}$ = Volume of coating solids deposited per volume of coating used for coating, i, or composite volume of coating solids deposited per volume of coating used for the group of coatings including coating, i, in the spray booth(s) preceding the flash-off area or bake oven for which the panel test is conducted, liter of coating solids deposited per liter of coating used.

$V_{s,i}$ = Volume fraction of coating solids for coating, i, or average volume fraction of coating solids for the group of coatings including coating, i, liter coating solids per liter coating, determined according to § 63.3161(f).

$TE_{c,i}$ = Transfer efficiency of coating, i, or average transfer efficiency for the group of coatings including coating, i, in the spray booth(s) for the flash-off area or bake oven for which the panel test is conducted determined according to § 63.3161(g), expressed as a decimal, for example 60 percent must be expressed as 0.60. (Transfer efficiency also may be determined by testing representative coatings. The same coating groupings may be appropriate for both transfer efficiency testing and panel testing. In this case, all of the coatings in a panel test grouping would have the same transfer efficiency.)

(2) Calculate the mass of VOC per volume of coating for coating, i, or the composite mass of VOC per volume of coating for the group of coatings including coating, i, used during the month in the spray booth(s) preceding

the flash-off area or bake oven for which the panel test is conducted, kg, using Equation 6 of this section:

$$VOC_i = (D_{c,i})(Wvoc_{c,i}) \quad \text{(Eq. 6)}$$

Where:

VOC_i = Mass of VOC per volume of coating for coating, i, or composite mass of VOC per volume of coating for the group of coatings including coating, i, used during the month in the spray booth(s) preceding the flash-off area or bake oven for which the panel test is conducted, kg VOC per liter coating.

$D_{c,i}$ = Density of coating, i, or average density of the group of coatings including coating, i, kg coating per liter coating, density determined according to § 63.3151(b).

$Wvoc_{c,i}$ = Mass fraction of VOC in coating, i, or average mass fraction of VOC for the group of coatings including coating, i, kg VOC per kg coating, determined by Method 24 (appendix A to 40 CFR part 60) or the guidelines for combining analytical VOC content and formulation solvent content presented in "Protocol for Determining Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations," EPA–450/3–88–018 (Docket ID No. OAR–2002–0093 and Docket ID No. A–2001–22).

(3) As an alternative, you may choose to express the results of your panel tests in units of mass of VOC per mass of coating solids deposited and convert such results to a percent using Equation 7 of this section. If you panel test representative coatings, then you may convert the panel test result for each representative coating either to a unique percent capture efficiency for each coating grouped with that representative coating by using coating specific values for the mass of coating solids deposited per mass of coating used, mass fraction VOC, transfer efficiency, and mass fraction solids in Equations 7 and 8 of this section; or to a composite percent capture efficiency for the group of coatings by using composite values for the group of coatings for the mass of coating solids deposited per mass of coating used and average values for the mass of VOC per volume of coating, average values for the group of coatings for mass fraction VOC, transfer efficiency, and mass fraction solids in Equations 7 and 8 of this section. If you panel test each coating, then you must convert the panel test result for each coating to a unique percent capture efficiency for that coating by using coating specific values for the mass of coating solids deposited per mass of coating used, mass fraction VOC, transfer efficiency, and mass fraction solids in Equations 7 and 8 of this section. Panel test results expressed in units of mass of VOC per volume of coating solids deposited must be converted to percent capture efficiency using Equation 7 of this section:

$$CE_i = (P_{m,i})(W_{sdep,i})/(Wvoc_{c,i}) \quad \text{(Eq. 7)}$$

Where:

CE_i = Capture efficiency for coating, i, or for the group of coatings including coating, i, for the flash-off area or bake oven for which the panel test is conducted, percent.

$P_{m,i}$ = Panel test result for coating, i, or for the coating representing coating, i, in the panel test, kg of VOC per kg of coating solids deposited.

$W_{sdep,i}$ = Mass of coating solids deposited per mass of coating used for coating i, or composite mass of coating solids deposited per mass of coating used for the group of coatings including coating, i, in the spray booth(s) preceding the flash-off area or bake oven for which the panel test is conducted, kg of solids deposited per kg of coating used, from Equation 8 of this section.

$Wvoc_{c,i}$ = Mass fraction of VOC in coating, i, or average mass fraction of VOC for the group of coatings including coating, i, kg VOC per kg coating, determined by Method 24 (appendix A to 40 CFR part 60) or the guidelines for combining analytical VOC content and formulation solvent content presented in "Protocol for Determining Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations," EPA–450/3–88–018 (Docket ID No. OAR–2002–0093 and Docket ID No. A–2001–22).

(4) Calculate the mass of coating solids deposited per mass of coating used for each coating or the composite mass of coating solids deposited per mass of coating used for each group of coatings used during the month in the spray booth(s) preceding the flash-off area or bake oven for which the panel test is conducted using Equation 8 of this section:

$$W_{sdep,i} = (W_{s,i})(TE_{c,i}) \quad \text{(Eq. 8)}$$

Where:

$W_{sdep,i}$ = Mass of coating solids deposited per mass of coating used for coating, i, or composite mass of coating solids deposited per mass of coating used for the group of coatings including coating, i, in the spray booth(s) preceding the flash-off area or bake oven for which the panel test is conducted, kg coating solids deposited per kg coating used.

$W_{s,i}$ = Mass fraction of coating solids for coating, i, or average mass fraction of coating solids for the group of coatings including coating, i, kg coating solids per kg coating, determined by Method 24 (appendix A to 40 CFR part 60) or the guidelines for combining analytical VOC content and formulation solvent content presented in "Protocol for Determining Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations," EPA–450/3–88–018 (Docket ID No. OAR–2002–0093 and Docket ID No. A–2001–22).

$TE_{c,i}$ = Transfer efficiency of coating, i, or average transfer efficiency for the group of coatings including coating, i, in the spray booth(s) for the flash-off area or bake oven for which the panel test is conducted determined according to § 63.3161(g), expressed as a decimal, for example 60 percent must be expressed as 0.60. (Transfer efficiency also may be determined by testing representative coatings. The same coating groupings may be appropriate used for both transfer efficiency testing and panel testing. In this case, all of the coatings in a panel test grouping would have the same transfer efficiency.)

(f) *Alternative capture efficiency procedure.* As an alternative to the procedures specified in paragraphs (c) through (e) and (g) of this section, you may determine capture efficiency using any other capture efficiency protocol and test methods that satisfy the criteria of either the DQO or LCL approach as

described in appendix A to subpart KK of this part.

(g) *Panel testing to determine the capture efficiency of spray booth emissions from solvent-borne coatings.* You may conduct panel testing to determine the capture efficiency of spray booth emissions from solvent-borne coatings using the procedure in appendix A to this subpart.

§ 63.3166 How do I determine the add-on control device emission destruction or removal efficiency?

You must use the procedures and test methods in this section to determine the add-on control device emission destruction or removal efficiency as part of the performance test required by § 63.3160. You must conduct three test runs as specified in § 63.7(e)(3), and each test run must last at least 1 hour.

(a) For all types of add-on control devices, use the test methods specified in paragraphs (a)(1) through (5) of this section.

(1) Use Method 1 or 1A of appendix A to 40 CFR part 60, as appropriate, to select sampling sites and velocity traverse points.

(2) Use Method 2, 2A, 2C, 2D, 2F, or 2G of appendix A to 40 CFR part 60, as appropriate, to measure gas volumetric flow rate.

(3) Use Method 3, 3A, or 3B of appendix A to 40 CFR part 60, as appropriate, for gas analysis to determine dry molecular weight. The ANSI/ASME PTC 19.10–1981, "Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus]" (incorporated by reference, see § 63.14), may be used as an alternative to Method 3B.

(4) Use Method 4 of appendix A to 40 CFR part 60 to determine stack gas moisture.

(5) Methods for determining gas volumetric flow rate, dry molecular weight, and stack gas moisture must be performed, as applicable, during each test run.

(b) Measure total gaseous organic mass emissions as carbon at the inlet and outlet of the add-on control device simultaneously, using either Method 25 or 25A of appendix A to 40 CFR part 60, as specified in paragraphs (b)(1) through (3) of this section. You must use the same method for both the inlet and outlet measurements.

(1) Use Method 25 if the add-on control device is an oxidizer and you expect the total gaseous organic concentration as carbon to be more than 50 parts per million by volume (ppmv) at the control device outlet.

(2) Use Method 25A if the add-on control device is an oxidizer and you expect the total gaseous organic concentration as carbon to be 50 ppmv or less at the control device outlet.

(3) Use Method 25A if the add-control device is not an oxidizer.

(c) If two or more add-on control devices are used for the same emission stream, then you must measure emissions at the outlet of each device. For example, if one add-on control device is a concentrator with an outlet for the high-volume, dilute stream that has been treated by the concentrator, and a second add-on control device is an oxidizer with an outlet for the low-volume, concentrated stream that is treated with the oxidizer, you must measure emissions at the outlet of the oxidizer and the high volume dilute stream outlet of the concentrator.

(d) For each test run, determine the total gaseous organic emissions mass flow rates for the inlet and the outlet of the add-on control device, using Equation 1 of this section. If there is more than one inlet or outlet to the add-on control device, you must calculate the total gaseous organic mass flow rate using Equation 1 of this section for each inlet and each outlet and then total all of the inlet emissions and total all of the outlet emissions.

$$M_f = Q_{sd} C_c (12)(0.0416)\left(10^{-6}\right) \qquad \text{(Eq. 1)}$$

Where:

M_f = Total gaseous organic emissions mass flow rate, kg per hour (kg/h).

C_c = Concentration of organic compounds as carbon in the vent gas, as determined by Method 25 or Method 25A, ppmv, dry basis.

Q_{sd} = Volumetric flow rate of gases entering or exiting the add-on control device, as determined by Method 2, 2A, 2C, 2D, 2F, or 2G, dry standard cubic meters per hour (dscm/h).

0.0416 = Conversion factor for molar volume, kg-moles per cubic meter (mol/m^3) (@ 293 Kelvin (K) and 760 millimeters of mercury (mmHg)).

(e) For each test run, determine the add-on control device organic emissions destruction or removal efficiency using Equation 2 of this section:

$$DRE = \frac{M_{fi} - M_{fo}}{M_{f_i}}(100) \qquad \text{(Eq. 2)}$$

Where:

DRE = Organic emissions destruction or removal efficiency of the add-on control device, percent.

M_{fi} = Total gaseous organic emissions mass flow rate at the inlet(s) to the add-on control device, using Equation 1 of this section, kg/h.

M_{fo} = Total gaseous organic emissions mass flow rate at the outlet(s) of the add-on control device, using Equation 1 of this section, kg/h.

(f) Determine the emission destruction or removal efficiency of the add-on control device as the average of the efficiencies determined in the three test runs and calculated in Equation 2 of this section.

§ 63.3167 How do I establish the add-on control device operating limits during the performance test?

During the performance test required by § 63.3160 and described in §§ 63.3164 and 63.3166, you must establish the operating limits required by § 63.3093 according to this section, unless you have received approval for alternative monitoring and operating limits under § 63.8(f) as specified in § 63.3093.

(a) *Thermal oxidizers.* If your add-on control device is a thermal oxidizer, establish the operating limit according to paragraphs (a)(1) through (3) of this section.

(1) During the performance test, you must monitor and record the combustion temperature at least once every 15 minutes during each of the three test runs. You must monitor the temperature in the firebox of the thermal oxidizer or immediately downstream of the firebox before any substantial heat exchange occurs.

(2) Use all valid data collected during the performance test to calculate and record the average combustion temperature maintained during the performance test. This average combustion temperature is the minimum operating limit for your thermal oxidizer.

(3) As an alternative, if the latest operating permit issued before April 26, 2007, for the thermal oxidizer at your facility contains recordkeeping and reporting requirements for the combustion temperature that are consistent with the requirements for thermal oxidizers in 40 CFR 60.395(c), then you may set the minimum operating limit for the combustion temperature for each such thermal oxidizer at your affected source at 28 degrees Celsius (50 degrees Fahrenheit) below the average combustion temperature during the performance test of that thermal oxidizer. If you do not have an operating permit for the thermal oxidizer at your facility and the latest construction permit issued before April 26, 2007, for the thermal oxidizer at your facility contains recordkeeping and reporting requirements for the combustion temperature that are consistent with the requirements for

thermal oxidizers in 40 CFR 60.395(c), then you may set the minimum operating limit for the combustion temperature for each such thermal oxidizer at your affected source at 28 degrees Celsius (50 degrees Fahrenheit) below the average combustion temperature during the performance test of that thermal oxidizer. If you use 28 degrees Celsius (50 degrees Fahrenheit) below the combustion temperature maintained during the performance test as the minimum operating limit for a thermal oxidizer, then you must keep the combustion temperature set point on that thermal oxidizer no lower than 14 degrees Celsius (25 degrees Fahrenheit) below the lower of that set point during the performance test for that thermal oxidizer and the average combustion temperature maintained during the performance test for that thermal oxidizer.

(b) *Catalytic oxidizers.* If your add-on control device is a catalytic oxidizer, establish the operating limits according to either paragraphs (b)(1) through (3) or paragraphs (b)(4) through (6) of this section.

(1) During the performance test, you must monitor and record the temperature just before the catalyst bed and the temperature difference across the catalyst bed at least once every 15 minutes during each of the three test runs.

(2) Use all valid data collected during the performance test to calculate and record the average temperature just before the catalyst bed and the average temperature difference across the catalyst bed maintained during the performance test. The minimum operating limits for your catalytic oxidizer are the average temperature just before the catalyst bed maintained during the performance test of that catalytic oxidizer and 80 percent of the average temperature difference across the catalyst bed maintained during the performance test of that catalytic oxidizer, except during periods of low production the latter minimum operating limit is to maintain a positive temperature gradient across the catalyst bed. A low production period is when production is less than 80 percent of production rate during the performance test of that catalytic oxidizer.

(3) As an alternative, if the latest operating permit issued before April 26, 2007, for the catalytic oxidizer at your facility contains recordkeeping and reporting requirements for the temperature before the catalyst bed that are consistent with the requirements for catalytic oxidizers in 40 CFR 60.395(c), then you may set the minimum operating limits for each such catalytic oxidizer at your affected source at 28 degrees Celsius (50 degrees Fahrenheit) below the average temperature just before the catalyst bed maintained during the performance test for that catalytic oxidizer and 80 percent of the average temperature difference across the catalyst bed maintained during the performance test for that catalytic oxidizer, except during periods of low production the latter minimum operating limit is to maintain a positive temperature gradient across the catalyst bed. If you do not have an operating permit for the catalytic oxidizer at your facility and the latest construction permit issued before April 26, 2007, for the catalytic oxidizer at your facility contains recordkeeping and reporting requirements for the temperature before the catalyst bed that are consistent with the requirements for catalytic oxidizers in 40 CFR 60.395(c), then you may set the minimum operating limits for each such catalytic oxidizer at your affected source at 28 degrees Celsius (50 degrees Fahrenheit) below the average temperature just before the catalyst bed maintained during the performance test for that catalytic oxidizer and 80 percent of the average temperature difference across the catalyst bed maintained during the performance test for that catalytic oxidizer, except during periods of low production the latter minimum operating limit is to maintain a positive temperature gradient across the catalyst bed. A low production period is when production is less than 80 percent of production rate during the performance test. If you use 28 degrees Celsius (50 degrees Fahrenheit) below the average temperature just before the catalyst bed maintained during the performance test as the minimum operating limits for a catalytic oxidizer, then you must keep the set point for the temperature just before the catalyst bed on that catalytic oxidizer no lower than 14 degrees Celsius (25 degrees Fahrenheit) below the lower of that set point during the performance test for that catalytic oxidizer and the average temperature just before the catalyst bed maintained during the performance test for that catalytic oxidizer.

(4) As an alternative to monitoring the temperature difference across the catalyst bed, you may monitor the temperature at the inlet to the catalyst bed and implement a site-specific inspection and maintenance plan for your catalytic oxidizer as specified in paragraph (b)(6) of this section. During the performance test, you must monitor and record the temperature just before the catalyst bed at least once every 15 minutes during each of the three test runs. Use all valid data collected during the performance test to calculate and record the average temperature just before the catalyst bed during the performance test. This is the minimum operating limit for your catalytic oxidizer.

(5) If the latest operating permit issued before April 26, 2007, for the catalytic oxidizer at your facility contains recordkeeping and reporting requirements for the temperature before the catalyst bed that are consistent with the requirements for catalytic oxidizers in 40 CFR 60.395(c), then you may set the minimum operating limit for each such catalytic oxidizer at your affected source at 28 degrees Celsius (50 degrees Fahrenheit) below the average temperature just before the catalyst bed maintained during the performance test for that catalytic oxidizer. If you do not have an operating permit for the catalytic oxidizer at your facility and the latest construction permit issued before April 26, 2007, for the catalytic oxidizer at your facility contains recordkeeping and reporting requirements for the temperature before the catalyst bed that are consistent with the requirements for catalytic oxidizers in 40 CFR 60.395(c), then you may set the minimum operating limit for each such catalytic oxidizer at your affected source at 28 degrees Celsius (50 degrees Fahrenheit) below the average temperature just before the catalyst bed maintained during the performance test for that catalytic oxidizer. If you use 28 degrees Celsius (50 degrees Fahrenheit) below the average temperature just before the catalyst bed maintained during the performance test as the minimum operating limit for a catalytic oxidizer, then you must keep the set point for the temperature just before the catalyst bed on that catalytic oxidizer no lower than 14 degrees Celsius (25 degrees Fahrenheit) below the lower of that set point during the performance test for that catalytic oxidizer and the average temperature just before the catalyst bed maintained during the performance test for that catalytic oxidizer.

(6) You must develop and implement an inspection and maintenance plan for your catalytic oxidizer(s) for which you elect to monitor according to paragraph (b)(4) or (5) of this section. The plan must address, at a minimum, the elements specified in paragraphs (b)(6)(i) through (iii) of this section.

(i) Annual sampling and analysis of the catalyst activity (*i.e.*, conversion efficiency) following the oxidizer manufacturer's or catalyst supplier's recommended procedures.

(ii) Monthly inspection of the oxidizer system, including the burner assembly

and fuel supply lines for problems and, as necessary, adjustment of the equipment to assure proper air-to-fuel mixtures.

(iii) Annual internal and monthly external visual inspection of the catalyst bed to check for channeling, abrasion, and settling. If problems are found, you must replace the catalyst bed and conduct a new performance test to determine destruction efficiency according to § 63.3166.

(c) *Regenerative carbon adsorbers.* If your add-on control device is a regenerative carbon adsorber, establish the operating limits according to paragraphs (c)(1) and (2) of this section.

(1) You must monitor and record the total regeneration desorbing gas (*e.g.*, steam or nitrogen) mass flow for each regeneration cycle and the carbon bed temperature after each carbon bed regeneration and cooling cycle for the regeneration cycle either immediately preceding or immediately following the performance test.

(2) The operating limits for your carbon adsorber are the minimum total desorbing gas mass flow recorded during the regeneration cycle and the maximum carbon bed temperature recorded after the cooling cycle.

(d) *Condensers.* If your add-on control device is a condenser, establish the operating limits according to paragraphs (d)(1) and (2) of this section.

(1) During the performance test, you must monitor and record the condenser outlet (product side) gas temperature at least once every 15 minutes during each of the three test runs.

(2) Use all valid data collected during the performance test to calculate and record the average condenser outlet (product side) gas temperature maintained during the performance test. This average condenser outlet gas temperature is the maximum operating limit for your condenser.

(e) *Concentrators.* If your add-on control device includes a concentrator, you must establish operating limits for the concentrator according to paragraphs (e)(1) and (2)of this section.

(1) During the performance test, you must monitor and record the desorption gas inlet temperature at least once every 15 minutes during each of the three runs of the performance test.

(2) Use all valid data collected during the performance test to calculate and record the average desorption gas inlet temperature. The minimum operating limit for the concentrator is 8 degrees Celsius (15 degrees Fahrenheit) below the average desorption gas inlet temperature maintained during the performance test for that concentrator. You must keep the set point for the desorption gas inlet temperature no lower than 6 degrees Celsius (10 degrees Fahrenheit) below the lower of that set point during the performance test for that concentrator and the average desorption gas inlet temperature maintained during the performance test for that concentrator.

(f) *Emission capture systems.* For each capture device that is not part of a PTE that meets the criteria of § 63.3165(a) and that is not capturing emissions from a downdraft spray booth or from a flash-off area or bake oven associated with a downdraft spray booth, establish an operating limit for either the gas volumetric flow rate or duct static pressure, as specified in paragraphs (f)(1) and (2) of this section. The operating limit for a PTE is specified in Table 1 to this subpart.

(1) During the capture efficiency determination required by § 63.3160 and described in §§ 63.3164 and 63.3165, you must monitor and record either the gas volumetric flow rate or the duct static pressure for each separate capture device in your emission capture system at least once every 15 minutes during each of the three test runs at a point in the duct between the capture device and the add-on control device inlet.

(2) Calculate and record the average gas volumetric flow rate or duct static pressure for the three test runs for each capture device, using all valid data. This average gas volumetric flow rate or duct static pressure is the minimum operating limit for that specific capture device.

§ 63.3168 What are the requirements for continuous parameter monitoring system installation, operation, and maintenance?

(a) *General.* You must install, operate, and maintain each CPMS specified in paragraphs (c), (e), (f), and (g) of this section according to paragraphs (a)(1) through (6) of this section. You must install, operate, and maintain each CPMS specified in paragraphs (b) and (d) of this section according to paragraphs (a)(3) through (5) of this section.

(1) The CPMS must complete a minimum of one cycle of operation for each successive 15-minute period. You must have a minimum of four equally-spaced successive cycles of CPMS operation in 1 hour.

(2) You must determine the average of all recorded readings for each successive 3-hour period of the emission capture system and add-on control device operation.

(3) You must record the results of each inspection, calibration, and validation check of the CPMS.

(4) You must maintain the CPMS at all times and have available necessary parts for routine repairs of the monitoring equipment.

(5) You must operate the CPMS and collect emission capture system and add-on control device parameter data at all times that a controlled coating operation is operating, except during monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, if applicable, calibration checks and required zero and span adjustments).

(6) You must not use emission capture system or add-on control device parameter data recorded during monitoring malfunctions, associated repairs, out-of-control periods, or required quality assurance or control activities when calculating data averages. You must use all the data collected during all other periods in calculating the data averages for determining compliance with the emission capture system and add-on control device operating limits.

(7) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the CPMS to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions. Any period for which the monitoring system is out of control and data are not available for required calculations is a deviation from the monitoring requirements.

(b) *Capture system bypass line.* You must meet the requirements of paragraphs (b)(1) and (2) of this section for each emission capture system that contains bypass lines that could divert emissions away from the add-on control device to the atmosphere.

(1) You must monitor or secure the valve or closure mechanism controlling the bypass line in a nondiverting position in such a way that the valve or closure mechanism cannot be opened without creating a record that the valve was opened. The method used to monitor or secure the valve or closure mechanism must meet one of the requirements specified in paragraphs (b)(1)(i) through (iv) of this section.

(i) *Flow control position indicator.* Install, calibrate, maintain, and operate according to the manufacturer's specifications a flow control position indicator that takes a reading at least once every 15 minutes and provides a record indicating whether the emissions are directed to the add-on control device or diverted from the add-on control device. The time of occurrence and flow control position must be recorded, as well as every time the flow direction is changed. The flow control position

indicator must be installed at the entrance to any bypass line that could divert the emissions away from the add-on control device to the atmosphere.

(ii) *Car-seal or lock-and-key valve closures.* Secure any bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. You must visually inspect the seal or closure mechanism at least once every month to ensure that the valve is maintained in the closed position, and the emissions are not diverted away from the add-on control device to the atmosphere.

(iii) *Valve closure monitoring.* Ensure that any bypass line valve is in the closed (nondiverting) position through monitoring of valve position at least once every 15 minutes. You must inspect the monitoring system at least once every month to verify that the monitor will indicate valve position.

(iv) *Automatic shutdown system.* Use an automatic shutdown system in which the coating operation is stopped when flow is diverted by the bypass line away from the add-on control device to the atmosphere when the coating operation is running. You must inspect the automatic shutdown system at least once every month to verify that it will detect diversions of flow and shut down the coating operation.

(2) If any bypass line is opened, you must include a description of why the bypass line was opened and the length of time it remained open in the semiannual compliance reports required in § 63.3120.

(c) *Thermal oxidizers and catalytic oxidizers.* If you are using a thermal oxidizer or catalytic oxidizer as an add-on control device (including those used to treat desorbed concentrate streams from concentrators or carbon adsorbers), you must comply with the requirements in paragraphs (c)(1) through (3) of this section:

(1) For a thermal oxidizer, install a gas temperature monitor in the firebox of the thermal oxidizer or in the duct immediately downstream of the firebox before any substantial heat exchange occurs.

(2) For a catalytic oxidizer, install a gas temperature monitor upstream of the catalyst bed. If you establish the operating parameters for a catalytic oxidizer under § 63.3167(b)(1) through (3), you must also install a gas temperature monitor downstream of the catalyst bed. The temperature monitors must be in the gas stream immediately before and after the catalyst bed to measure the temperature difference across the bed. If you establish the operating parameters for a catalytic oxidizer under § 63.3167(b)(4) through (6), you need not install a gas temperature monitor downstream of the catalyst bed.

(3) For all thermal oxidizers and catalytic oxidizers, you must meet the requirements in paragraphs (a)(1) through (6) and (c)(3)(i) through (vii) of this section for each gas temperature monitoring device.

(i) Locate the temperature sensor in a position that provides a representative temperature.

(ii) Use a temperature sensor with a measurement sensitivity of 4 degrees Fahrenheit or 0.75 percent of the temperature value, whichever is larger.

(iii) Shield the temperature sensor system from electromagnetic interference and chemical contaminants.

(iv) If a gas temperature chart recorder is used, it must have a measurement sensitivity in the minor division of at least 20 degrees Fahrenheit.

(v) Perform an electronic calibration at least semiannually according to the procedures in the manufacturer's owners manual. Following the electronic calibration, you must conduct a temperature sensor validation check in which a second or redundant temperature sensor placed nearby the process temperature sensor must yield a reading within 30 degrees Fahrenheit of the process temperature sensor reading.

(vi) Conduct calibration and validation checks any time the sensor exceeds the manufacturer's specified maximum operating temperature range or install a new temperature sensor.

(vii) At least monthly, inspect components for integrity and electrical connections for continuity, oxidation, and galvanic corrosion.

(d) *Regenerative carbon adsorbers.* If you are using a regenerative carbon adsorber as an add-on control device, you must monitor the total regeneration desorbing gas (*e.g.*, steam or nitrogen) mass flow for each regeneration cycle, the carbon bed temperature after each regeneration and cooling cycle, and comply with paragraphs (a)(3) through (5) and (d)(1) and (2) of this section.

(1) The regeneration desorbing gas mass flow monitor must be an integrating device having a measurement sensitivity of plus or minus 10 percent, capable of recording the total regeneration desorbing gas mass flow for each regeneration cycle.

(2) The carbon bed temperature monitor must have a measurement sensitivity of 1 percent of the temperature (as expressed in degrees Fahrenheit) recorded or 1 degree Fahrenheit, whichever is greater, and must be capable of recording the temperature within 15 minutes of completing any carbon bed cooling cycle.

(e) *Condensers.* If you are using a condenser, you must monitor the condenser outlet (product side) gas temperature and comply with paragraphs (a)(1) through (6) and (e)(1) and (2) of this section.

(1) The gas temperature monitor must have a measurement sensitivity of 1 percent of the temperature (expressed in degrees Fahrenheit) recorded or 1 degree Fahrenheit, whichever is greater.

(2) The temperature monitor must provide a gas temperature record at least once every 15 minutes.

(f) *Concentrators.* If you are using a concentrator, such as a zeolite wheel or rotary carbon bed concentrator, you must install a temperature monitor in the desorption gas stream. The temperature monitor must meet the requirements in paragraphs (a)(1) through (6) and (c)(3) of this section.

(g) *Emission capture systems.* The capture system monitoring system must comply with the applicable requirements in paragraphs (g)(1) and (2) of this section.

(1) For each flow measurement device, you must meet the requirements in paragraphs (a)(1) through (6) and (g)(1)(i) through (iv) of this section.

(i) Locate a flow sensor in a position that provides a representative flow measurement in the duct from each capture device in the emission capture system to the add-on control device.

(ii) Reduce swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(iii) Conduct a flow sensor calibration check at least semiannually.

(iv) At least monthly, inspect components for integrity, electrical connections for continuity, and mechanical connections for leakage.

(2) For each pressure drop measurement device, you must comply with the requirements in paragraphs (a)(1) through (6) and (g)(2)(i) through (vi) of this section.

(i) Locate the pressure tap(s) in a position that provides a representative measurement of the pressure drop across each opening you are monitoring.

(ii) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(iii) Check pressure tap pluggage daily.

(iv) Using an inclined manometer with a measurement sensitivity of 0.0002 inch water, check gauge calibration quarterly and transducer calibration monthly.

(v) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum

operating pressure range or install a new pressure sensor.

(vi) At least monthly, inspect components for integrity, electrical connections for continuity, and mechanical connections for leakage.

Compliance Requirements for the Combined Primer-Surfacer, Topcoat, Final Repair, Glass Bonding Primer, and Glass Bonding Adhesive Emission Limitations and the Separate Electrodeposition Primer Emission Limitations

§ 63.3170 By what date must I conduct performance tests and other initial compliance demonstrations?

(a) *New and reconstructed affected sources.* For a new or reconstructed affected source, you must meet the requirements of paragraphs (a)(1) through (4) of § 63.3160.

(b) *Existing affected sources.* For an existing affected source, you must meet the requirements of paragraphs (b)(1) through (3) of § 63.3160.

§ 63.3171 How do I demonstrate initial compliance?

(a) You must meet all of the requirements of this section to demonstrate initial compliance. To demonstrate initial compliance, the organic HAP emissions from the combined primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) must meet the applicable emission limitation in § 63.3090(b) or § 63.3091(b); and the organic HAP emissions from the electrodeposition primer operation must meet the applicable emissions limitations in § 63.3092(a) or (b).

(b) *Compliance with operating limits.* Except as provided in § 63.3160(a)(4), you must establish and demonstrate continuous compliance during the initial compliance period with the operating limits required by § 63.3093, using the procedures specified in §§ 63.3167 and 63.3168.

(c) *Compliance with work practice requirements.* You must develop, implement, and document your implementation of the work practice plans required by § 63.3094(b) and (c) during the initial compliance period, as specified in § 63.3130.

(d) *Compliance with emission limits.* You must follow the procedures in § 63.3161(e) through (n), excluding materials used in electrodeposition primer operations, to demonstrate compliance with the applicable emission limit in § 63.3090(b) or § 63.3091(b). You must follow the procedures in paragraph (e) of this section to demonstrate compliance with the emission limit in § 63.3092(a), or paragraphs (f) through (g) of this section to demonstrate compliance with the emission limitations in § 63.3092(b).

(e) *Determine the mass fraction of each organic HAP in each material used in the electrodeposition primer operation.* You must determine the mass fraction of each organic HAP for each material used in the electrodeposition primer operation during the compliance period by using one of the options in paragraphs (e)(1) through (3) of this section.

(1) *Method 311 (appendix A to 40 CFR part 63).* You may use Method 311 for determining the mass fraction of each organic HAP.

(2) *Alternative method.* You may use an alternative test method for determining the mass fraction of organic HAP once the Administrator has approved it. You must follow the procedure in § 63.7(f) to submit an alternative test method for approval.

(3) *Information from the supplier or manufacturer of the material.* You may rely on information other than that generated by the test methods specified in paragraphs (e)(1) and (2) of this section, such as manufacturer's formulation data, if it represents each organic HAP that is present at 0.1 percent by mass or more for OSHA-defined carcinogens, as specified in 29 CFR 1910.1200(d)(4), and at 1.0 percent by mass or more for other compounds. If there is a disagreement between such information and results of a test conducted according to paragraph (e)(1) or (2) of this section, then the test method results will take precedence unless after consultation, the facility demonstrates to the satisfaction of the enforcement authority that the facility's data are correct.

(f) *Capture of electrodeposition bake oven emissions.* You must show that the electrodeposition bake oven meets the criteria in sections 5.3 through 5.5 of Method 204 of appendix M to 40 CFR part 51 and directs all of the exhaust gases from the bake oven to an add-on control device.

(g) *Control of electrodeposition bake oven emissions.* Determine the efficiency of each control device on each electrodeposition bake oven using the procedures in §§ 63.3164 and 63.3166.

(h) *Compliance demonstration.* To demonstrate initial compliance, the organic HAP emissions from the combined primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) must meet the applicable emission limitation in § 63.3090(b) or § 63.3091(b); the organic HAP emissions from the electrodeposition primer operation must meet the applicable emissions limitations in § 63.3092(a) or (b). You must keep all records as required by §§ 63.3130 and 63.3131. As part of the Notification of Compliance Status required by § 63.3110, you must submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the initial compliance period because the organic HAP emission rate from the combined primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) was less than or equal to the applicable emission limit in § 63.3090(b) or § 63.3091(b), and the organic HAP emissions from the electrodeposition primer operation met the applicable emissions limitations in § 63.3092(a) or (b), and you achieved the operating limits required by § 63.3093 and the work practice standards required by § 63.3094.

§ 63.3172 [Reserved]

§ 63.3173 How do I demonstrate continuous compliance with the emission limitations?

(a) To demonstrate continuous compliance with the applicable emission limit in § 63.3090(b) or § 63.3091(b), the organic HAP emission rate for each compliance period determined according to the procedures in § 63.3171 must be equal to or less than the applicable emission limit in § 63.3090(b) or § 63.3091(b). A compliance period consists of 1 month. Each month after the end of the initial compliance period described in § 63.3170 is a compliance period consisting of that month. You must perform the calculations in § 63.3171 on a monthly basis.

(b) If the organic HAP emission rate for any 1 month compliance period exceeded the applicable emission limit in § 63.3090(b) or § 63.3091(b), this is a deviation from the emission limitation for that compliance period and must be

reported as specified in §§ 63.3110(c)(6) and 63.3120(a)(6).

(c) You must meet the requirements of § 63.3163(c) through (j).

Other Requirements and Information

§ 63.3175 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, EPA, or a delegated authority such as your State, local, or tribal agency. If the Administrator has delegated authority to your State, local, or tribal agency, then that agency (as well as EPA) has the authority to implement and enforce this subpart. You should contact your EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the EPA Administrator and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are listed in paragraphs (c)(1) through (4) of this section:

(1) Approval of alternatives to the work practice standards in § 63.3094 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.

§ 63.3176 What definitions apply to this subpart?

Terms used in this subpart are defined in the CAA, in the General Provisions of this part, and in this section as follows:

Add-on control device means an air pollution control device, such as a thermal oxidizer or carbon adsorber, that reduces pollution in an air stream by destruction or removal before discharge to the atmosphere.

Add-on control device efficiency means the ratio of the emissions collected or destroyed by an add-on air pollution control device to the total emissions that are introduced into the control device, expressed as a percentage.

Adhesive means any chemical substance that is applied for the purpose of bonding two surfaces together.

Adhesive and sealer material means adhesives, sealers and thinners added to adhesives or sealers.

Anti-chip coating means a specialty type of coating designed to reduce stone chipping damage. It is applied on selected vehicle surfaces that are exposed to impingement by stones and other road debris. It is typically applied after the electrodeposition primer and before the topcoat Anti-chip coatings are a type of *primer-surfacer.*

Automobile means a motor vehicle designed to carry up to eight passengers, excluding vans, sport utility vehicles, and motor vehicles designed primarily to transport light loads of property. See also *Light-duty truck.*

Automobile and/or light-duty truck assembly plant means facilities involved primarily in assembly of automobiles and light-duty trucks, including coating facilities and processes.

Bake oven air seal means an entry or entry vestibule to or an exit or exit vestibule from a bake oven which isolates the bake oven from the area immediately preceding (for an entry or entry vestibule) or immediately following (for an exit or exit vestibule) the bake oven. No significant VOC generating activity takes place in a bake oven air seal. Fresh air is supplied into a bake oven air seal and is then directed in part into the bake oven and in part into the area immediately preceding or immediately following the bake oven.

Basecoat/clearcoat means a topcoat system applied to exterior and selected interior vehicle surfaces primarily to provide an aesthetically pleasing appearance and acceptable durability performance. It consists of a layer of pigmented basecoat color coating, followed directly by a layer of a clear or semitransparent coating. It may include multiple layers of color coats or tinted clear materials.

Blackout coating means a type of specialty coating applied on selected vehicle surfaces (including areas of the engine compartment visible through the grill, and window and pillar trim) to provide a cosmetic appearance. Typically black or dark gray color. Blackout coating may be included in either the primer-surfacer or topcoat operations.

Body part means exterior parts such as hoods, fenders, doors, roof, quarter panels, decklids, tail gates, and cargo beds. Body parts were traditionally made of sheet metal, but now are also made of plastic. Bumpers, fascia, and cladding are not body parts.

Capture device means a hood, enclosure, room, floor sweep, or other means of containing or collecting emissions and directing those emissions into an add-on air pollution control device.

Capture efficiency or capture system efficiency means the portion (expressed as a percentage) of the pollutants from an emission source that is delivered to an add-on control device.

Capture system means one or more capture devices intended to collect emissions generated by a coating operation in the use of coatings, both at the point of application and at subsequent points where emissions from the coatings occur, such as flash-off, drying, or curing. As used in this subpart, multiple capture devices that collect emissions generated by a coating operation are considered a single capture system.

Catalytic oxidizer means a device for oxidizing pollutants or waste materials via flame and heat incorporating a catalyst to aid the combustion at lower operating temperature.

Cleaning material means a solvent used to remove contaminants and other materials such as dirt, grease, oil, and dried (*e.g.*, depainting) or wet coating from a substrate before or after coating application; or from equipment associated with a coating operation, such as spray booths, spray guns, tanks, and hangers. Thus, it includes any cleaning material used on substrates or equipment or both.

Coating means a material applied to a substrate for decorative, protective, or functional purposes. Such materials include, but are not limited to, paints, sealants, caulks, inks, adhesives, primers, deadeners, and maskants. Decorative, protective, or functional materials that consist only of protective oils for metal, acids, bases, or any combination of these substances are not considered coatings for the purposes of this subpart.

Coating operation means equipment used to apply coating to a substrate (coating application) and to dry or cure the coating after application. A single coating operation always includes at least the point at which a coating is applied and all subsequent points in the affected source where organic HAP emissions from that coating occur. There may be multiple coating operations in an affected source. Coating application with hand-held nonrefillable aerosol containers, touchup bottles, touchup markers, marking pens, or pinstriping equipment is not a coating operation for the purposes of this subpart. The application of temporary materials such as protective oils and "travel waxes" that are designed to be removed from the vehicle before it is delivered to a

retail purchaser is not a coating operation for the purposes of this subpart.

Coating solids means the nonvolatile portion of the coating.

Container means a receptacle, such as a can, vessel, tote, or tank, in which coatings, solvents or cleaning materials are held, stored, mixed, or carried.

Continuous parameter monitoring system (CPMS) means the total equipment that may be required to meet the data acquisition and availability requirements of this subpart; used to sample, condition (if applicable), analyze, and provide a record of coating operation, or capture system, or add-on control device parameters.

Controlled coating operation means a coating operation from which some or all of the organic HAP emissions are routed through an emission capture system and add-on control device.

Day tank means tank with agitation and pumping system used for mixing and continuous circulation of coatings from the paint storage area to the spray booth area of the paint shop.

Deadener means a specialty coating applied to selected vehicle surfaces for the purpose of reducing the sound of road noise in the passenger compartment.

Deadener material means deadener and thinner added to deadener.

Deposited solids means the coating solids which remain on the substrate or object being painted.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limit, operating limit, or work practice standard; 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 fails to meet any emission limit or operating limit or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart. A deviation is not always a violation.

Electrodeposition primer or electrocoating primer means a process of applying a protective, corrosion-resistant waterborne primer on exterior and interior surfaces that provides thorough coverage of recessed areas. It is a dip coating method that uses an electrical field to apply or deposit the conductive coating onto the part. The object being painted acts as an electrode that is oppositely charged from the particles of paint in the dip tank. Also referred to as E-Coat, Uni-Prime, and ELPO Primer.

Emission limitation means an emission limit, operating limit, or work practice standard.

Final repair means the operations performed and coating(s) applied to completely-assembled motor vehicles or to parts that are not yet on a completely assembled motor vehicle to correct damage or imperfections in the coating. The curing of the coatings applied in these operations is accomplished at a lower temperature than that used for curing primer-surfacer and topcoat. This lower temperature cure avoids the need to send parts that are not yet on a completely assembled vehicle through the same type of curing process used for primer-surfacer and topcoat and is necessary to protect heat sensitive components on completely assembled motor vehicles.

Flash-off area means the portion of a coating process between the coating application station and the next coating application station or drying oven where solvent begins to evaporate from the coated vehicle.

Glass bonding adhesive means an adhesive used to bond windshield or other glass to an automobile or light-duty truck body.

Glass bonding primer means a primer applied to windshield or other glass, or to body openings to prepare the glass or body openings for the application of glass bonding adhesive, or the installation of adhesive bonded glass.

Guide coat means *Primer-surfacer.*

In-line repair means the operation performed and coating(s) applied to correct damage or imperfections in the topcoat on parts that are not yet on a completely assembled motor vehicle. The curing of the coatings applied in these operations is accomplished at essentially the same temperature as that used for curing the previously applied topcoat. Also referred to as high bake repair or high bake reprocess. In-line repair is considered part of topcoat.

Light-duty truck means vans, sport utility vehicles, and motor vehicles designed primarily to transport light loads of property with gross vehicle weight rating of 8,500 lbs or less.

Manufacturer's formulation data means data on a material (such as a coating) that are supplied by the material manufacturer based on knowledge of the ingredients used to manufacture that material, rather than based on testing of the material with the test methods specified in §§ 63.3151 and 63.3161. Manufacturer's formulation data may include, but are not limited to, information on density, organic HAP content, volatile organic matter content, and coating solids content.

Mass fraction of organic HAP means the ratio of the mass of organic HAP to the mass of a material in which it is contained, expressed as kg of organic HAP per kg of material.

Month means a calendar month or a pre-specified period of 28 days to 35 days to allow for flexibility in recordkeeping when data are based on a business accounting period.

Organic HAP content means the mass of organic HAP per mass of coating material.

Paint line means a set of coating operations which includes a topcoat operation and, if present, includes electrodeposition primer, primer-surfacer, final repair, glass bonding primer and glass bonding adhesive operations in which the same new automobile or new light-duty truck bodies, or body parts for new automobiles, or new light-duty trucks are coated. The most typical paint line consists of a set of electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations in which the same new automobile or new light-duty truck bodies are coated.

Paint shop means the collection of all areas at the facility in which new automobile or new light-duty truck bodies, or body parts for new automobiles or new light-duty trucks are phosphated and coated (including application, flash-off, drying and curing of electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, glass bonding adhesive, deadener, adhesives and sealers); all coating operations added to the affected source pursuant to § 63.3082(c); all areas at the facility in which substrates or equipment are cleaned relating to the coating of new automobile or new light-duty truck bodies, the coating of body parts for new automobiles or new light-duty trucks, or coating operations added to the affected source pursuant to § 63.3082(c); and all areas at the facility used for storage, mixing, conveying and waste handling of coatings, thinners and cleaning materials related to the coating of new automobile or new light-duty truck bodies, the coating of body parts for new automobiles or new light-duty trucks, or coating operations added to the affected source pursuant to § 63.3082(c). If there is no application of topcoat to new automobile or new light-duty truck bodies, or body parts for new automobiles or new light-duty trucks at the facility, then for purposes of this subpart the facility does not have a paint shop.

Permanent total enclosure (PTE) means a permanently installed enclosure that meets the criteria of Method 204 of appendix M, 40 CFR part 51, for a PTE and that directs all the exhaust gases from the enclosure to an add-on control device.

Primer-surfacer means an intermediate protective coating applied on the electrodeposition primer and under the topcoat. It provides adhesion, protection, and appearance properties to the total finish. Also called a guide coat or surfacer. *Anti-chip coatings* are a type of primer-surfacer.

Purge/clean operation means the process of flushing paint out and cleaning the spray lines when changing colors or to remove undesired material. It includes use of air and solvents to clean the lines.

Purge capture means the capture of purge solvent and materials into a closed collection system immediately after purging the system. It is used to prevent the release of organic HAP emissions and includes the disposal of the captured purge material.

Purge material means the coating and associated cleaning solvent materials expelled from the spray system during the process of cleaning the spray lines and applicators when color-changing or to maintain the cleanliness of the spray system.

Protective oil means an organic material that is applied to metal for the purpose of providing lubrication or protection from corrosion without forming a solid film. This definition of protective oil includes, but is not limited to, lubricating oils, evaporative oils (including those that evaporate completely), and extrusion oils.

Research or laboratory operations means surface coating for which the primary purpose is research and development of new processes and products, that is conducted under the close supervision of technically trained personnel, and that is not part of the manufacture of final or intermediate products for commercial purposes, except in a *de minimis* manner.

Responsible official means responsible official as defined in 40 CFR 70.2.

Sealer means a high solids, high viscosity material, generally, but not always, applied in the paint shop after the body has received an electrodeposition primer coating. The primary purpose of sealers is to fill body joints completely so that there is no intrusion of water, gases or corrosive materials into the passenger area of the body compartment. Also referred to as sealants.

Spray booth means a ventilated structure housing automatic and/or manual spray application equipment for coating operations. Includes facilities for the capture and entrapment of particulate overspray.

Spray booth air seal means an entry vestibule to or exit vestibule from a spray booth which isolates the spray booth from the area immediately preceeding (for an entry vestibule) or immediately following (for an exit vestibule) the spray booth. No coating application or other VOC generating activity takes place in a spray booth air seal. Fresh air is supplied into a spray booth air seal and is then directed in part into the spray booth and in part into the area immediately preceeding or immediately following the spray booth.

Startup, initial means the first time equipment is used in a facility to produce a salable product.

Surface preparation means use of a cleaning material on a portion of or all of a substrate. This includes use of a cleaning material to remove dried coating, which is sometimes called "depainting."

Surfacer means *Primer-surfacer.*

Tack-wipe means solvent impregnated cloth used to remove dust from surfaces prior to application of coatings.

Temporary total enclosure means an enclosure constructed for the purpose of measuring the capture efficiency of pollutants emitted from a given source as defined in Method 204 of appendix M, 40 CFR part 51.

Thermal oxidizer means a device for oxidizing air pollutants or waste materials via flame and heat.

Thinner means an organic solvent that is added to a coating after the coating is received from the supplier.

Topcoat means the final coating system applied to provide the final color and/or a protective finish. The topcoat may be a monocoat color or basecoat/clearcoat system. In-line repair and two-tone are part of topcoat.

Total volatile hydrocarbon (TVH) means the total amount of nonaqueous volatile organic matter determined according to Methods 204 and 204A through F of appendix M to 40 CFR part 51 and substituting the term TVH each place in the methods where the term VOC is used. The TVH includes both VOC and non-VOC.

Touchup bottle means a glass or metal bottle of less than 0.10 liter volume furnished with a brush that is permanently attached to the bottle closure.

Transfer efficiency means the ratio of the amount of coating solids deposited onto the surface of the object to the total amount of coating solids sprayed while applying the coating to the object.

Uncontrolled coating operation means a coating operation from which none of the organic HAP emissions are routed through an emission capture system and add-on control device.

Volatile organic compound (VOC) means any compound defined as VOC in 40 CFR 51.100(s).

Volume fraction of coating solids means the ratio of the volume of coating solids (also known as volume of nonvolatiles) to the volume of coating; liters of coating solids per liter of coating.

Tables to Subpart IIII of Part 63

If you are required to comply with operating limits by § 63.3093, you must comply with the applicable operating limits in the following table:

TABLE 1 TO SUBPART IIII OF PART 63.—OPERATING LIMITS FOR CAPTURE SYSTEMS AND ADD-ON CONTROL DEVICES

For the following device . . .	You must meet the following operating limit . . .	And you must demonstrate continuous compliance with the operating limit by
1. Thermal oxidizer	a. The average combustion temperature in any 3-hour period must not fall below the combustion temperature limit established according to § 63.3167(a).	i. Collecting the combustion temperature data according to § 63.3168(c); ii. Reducing the data to 3-hour block averages; and iii. Maintaining the 3-hour average combustion temperature at or above temperature limit.
2. Catalytic oxidizer	a. The average temperature measured just before the catalyst bed in any 3-hour period must not fall below the limit established according to § 63.3167(b); and either.	i. Collecting the temperature data temperature according to § 63.3168(c); ii. Reducing the data to 3-hour block averages; and iii. Maintaining the 3-hour average temperature before the catalyst bed at or above the temperature limit.

TABLE 1 TO SUBPART IIII OF PART 63.—OPERATING LIMITS FOR CAPTURE SYSTEMS AND ADD-ON CONTROL DEVICES—Continued

For the following device . . .	You must meet the following operating limit . . .	And you must demonstrate continuous compliance with the operating limit by
	b. Ensure that the average temperature difference across the catalyst bed in any 3-hour period does not fall below the temperature difference limit established according to §63.3167(b)(2); or.	i. Collecting the temperature data according to §63.3168(c); ii. Reducing the data to 3-hour block averages; and iii. Maintaining the 3-hour average temperature difference at or above the temperature difference limit; or
	c. Develop and implement an inspection and maintenance plan according to §63.3167(b)(4).	i. Maintaining an up-to-date inspection maintenance plan, records of annual catalyst activity checks, records of monthly inspections of the oxidizer system, and records of the annual internal inspections of the catalyst bed. If a problem is discovered during a monthly or annual inspection required by §63.3167(b)(4), you must take corrective action as soon as practicable consistent with the manufacturer's recommendations.
3. Regenerative carbon adsorber.	a. The total regeneration desorbing gas (*e.g.*, steam or nitrogen) mass flow for each carbon bed regeneration cycle must not fall below the total regeneration desorbing gas mass flow limit established according to §63.3167(c). b. The temperature of the carbon bed after completing each regeneration and any cooling cycle must not exceed the carbon bed temperature limit established according to §63.3167(c).	i. Measuring the total regeneration desorbing gas (*e.g.*, steam or nitrogen) mass flow for each regeneration cycle according to §63.3168(d); and ii. Maintaining the total regeneration desorbing gas mass flow at or above the mass flow limit. i. Measuring the temperature of the carbon bed after completing each regeneration and any cooling cycle according to §63.3168(d); and ii. Operating the carbon beds such that each carbon bed is not returned to service until completing each regeneration and any cooling cycle until the recorded temperature of the carbon bed is at or below the temperature limit.
4. Condenser	a. The average condenser outlet (product side) gas temperature in any 3-hour period must not exceed the temperature limit established according to §63.3167(d).	i. Collecting the condenser outlet (product side) gas temperature according to §63.3168(e); ii. Reducing the data to 3-hour block averages; and iii. Maintaining the 3-hour average gas temperature at the outlet at or below the temperature limit.
5. Concentrators, including zeolite wheels and rotary carbon adsorbers.	a. The average desorption gas inlet temperature in any 3-hour period must not fall below the limit established according to §63.3167(e).	i. Collecting the temperature data according to §63.3168(f); ii. Reducing the data to 3-hour block averages; and iii. maintaining the 3-hour average temperature at or above the temperature limit.
6. Emission capture system that is a PTE.	a. The direction of the air flow at all times must be into the enclosure; and either. b. The average facial velocity of air through all natural draft openings in the enclosure must be at least 200 feet per minute; or. c. The pressure drop across the enclosure must be at least 0.007 inch water, as established in Method 204 of appendix M to 40 CFR part 51.	i. Collecting the direction of air flow, and either the facial velocity of air through all natural draft openings according to §63.3168(g)(1) or the pressure drop across the enclosure according to §63.3168(g)(2); and ii. Maintaining the facial velocity of air flow through all natural draft openings or the pressure drop at or above the facial velocity limit or pressure drop limit, and maintaining the direction of air flow into the enclosure at all times.
7. Emission capture system that is not a PTE.	a. The average gas volumetric flow rate or duct static pressure in each duct between a capture device and add-on control device inlet in any 3-hour period must not fall below the average volumetric flow rate or duct static pressure limit established for that capture device according to §63.3167(f).	i. Vollecting the gas volumetric flow rate or duct static pressure for each capture device according to §63.3168(g); ii. Reducing the data to 3-hour block averages; and iii. Maintaining the 3-hour average gas volumetric flow rate or duct static pressure for each capture device at or above the gas volumetric flow rate or duct static pressure limit.

You must comply with the applicable General Provisions requirements according to the following table:

TABLE 2 TO SUBPART IIII OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART IIII OF PART 63

Citation	Subject	Applicable to subpart IIII	Explanation
§ 63.1(a)(1)–(12)	General Applicability	Yes.	
§ 63.1(b)(1)–(3)	Initial Applicability Determination	Yes	Applicability to subpart IIII is also specified in § 63.3081.
§ 63.1(c)(1)	Applicability After Standard Established	Yes.	
§ 63.1(c)(2)	Applicability of Permit Program for Area Sources.	No	Area sources are not subject to subpart IIII.
§ 63.1(c)(5)	Extensions and Notifications	Yes.	
§ 63.1(e)	Applicability of Permit Program Before Relevant Standard is Set.	Yes.	
§ 63.2	Definitions	Yes	Additional definitions are specified in § 63.3176.
§ 63.3(a)–(c)	Units and Abbreviations	Yes.	
§ 63.4(a)(1)–(5)	Prohibited Activities	Yes.	
§ 63.4(b)–(c)	Circumvention/Fragmentation	Yes.	
§ 63.5(a)	Preconstruction Review Applicability	Yes.	
§ 63.5(b)(1)–(6)	Requirements for Existing, Newly Constructed, and Reconstructed Sources.	Yes.	
§ 63.5(d)	Application for Approval of Construction/Reconstruction.	Yes.	
§ 63.5(e)	Approval of Construction/Reconstruction	Yes.	
§ 63.5(f)	Approval of Construction/Reconstruction Based on Prior State Review.	Yes.	
§ 63.6(a)	Compliance With Standards and Maintenance Requirements—Applicability.	Yes.	
§ 63.6(b)(1)–(7)	Compliance Dates for New and Reconstructed Sources.	Yes	Section 63.3083 specifies the compliance dates.
§ 63.6(c)(1)–(5)	Compliance Dates for Existing Sources	Yes	Section 63.3083 specifies the compliance dates.
§ 63.6(e)(1)–(2)	Operation and Maintenance	Yes.	
§ 63.6(e)(3)	SSMP	Yes	Only sources using an add-on control device to comply with the standard must complete SSMP.
§ 63.6(f)(1)	Compliance Except During Startup, Shutdown, and Malfunction.	Yes	Applies only to sources using an add-on control device to comply with the standards.
§ 63.6(f)(2)–(3)	Methods for Determining Compliance	Yes.	
§ 63.6(g)(1)–(3)	Use of an Alternative Standard	Yes.	
§ 63.6(h)	Compliance With Opacity/Visible Emission Standards.	No	Subpart IIII does not establish opacity standards and does not require continuous opacity monitoring systems (COMS).
§ 63.6(i)	Extension of Compliance	Yes.	
63.6(j)	Presidential Compliance Exemption	Yes.	
§ 63.7(a)(1)	Performance Test Requirements—Applicability.	Yes	Applies to all affected sources. Additional requirements for performance testing are specified in §§ 63.3164 and 63.3166.
§ 63.7(a)(2)	Performance Test Requirements—Dates.	Yes	Applies only to performance tests for capture system and control device efficiency at sources using these to comply with the standards. Section 63.3160 specifies the schedule for performance test requirements that are earlier than those specified in § 63.7(a)(2).
§ 63.7(a)(3)	Performance Tests Required By the Administrator.	Yes.	
§ 63.7(b)–(e)	Performance Test Requirements—Notification, Quality Assurance, Facilities Necessary for Safe Testing Conditions During Test.	Yes	Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standards.
§ 63.7(f)	Performance Test Requirements—Use of Alternative Test Method.	Yes	Applies to all test methods except those used to determine capture system efficiency.
§ 63.7(g)–(h)	Performance Test Requirements—Data Analysis, Recordkeeping, Reporting, Waiver of Test.	Yes	Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standards.

TABLE 2 TO SUBPART IIII OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART IIII OF PART 63—Continued

Citation	Subject	Applicable to subpart IIII	Explanation
§ 63.8(a)(1)–(3)	Monitoring Requirements—Applicability	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standards. Additional requirements for monitoring are specified in § 63.3168.
§ 63.8(a)(4)	Additional Monitoring Requirements	No	Subpart IIII does not have monitoring requirements for flares.
§ 63.8(b)	Conduct of Monitoring	Yes	
63.8(c)(1)–(3)	Continuous Monitoring Systems (CMS) Operation and Maintenance.	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standards. Additional requirements for CMS operations and maintenance are specified in § 63.3168.
§ 63.8(c)(4)	CMS	No	Section 63.3168 specifies the requirements for the operation of CMS for capture systems and add-on control devices at sources using these to comply with the standards.
§ 63.89(c)(5)	COMS	No	Subpart IIII does not have opacity or visible emission standards.
§ 63.8(c)(6)	CMS Requirements	No	Section 63.3168 specifies the requirements for monitoring systems for capture systems and add-on control devices at sources using these to comply with the standards.
§ 63.8(c)(7)	CMS Out-of-Control Periods	No	
§ 63.8(c)(8)	CMS Out-of-Control Periods Reporting	No	Section 63.3120 requires reporting of CMS out-of-control periods.
§ 63.8(d)–(e)	Quality Control Program and CMS Performance Evaluation.	No	Subpart IIII does not require the use of continuous emissions monitoring systems.
§ 63.8(f)(1)–(5)	Use of an Alternative Monitoring Method.	Yes.	
§ 63.8(f)(6)	Alternative to Relative Accuracy Test	No	Subpart IIII does not require the use of continuous emissions monitoring systems.
§ 63.8(g)(1)–(5)	Data Reduction	No	Sections 63.3167 and 63.3168 specify monitoring data reduction.
§ 63.9(a)–(d)	Notification Requirements	Yes.	
§ 63.9(e)	Notification of Performance Test	Yes	Applies only to capture system and add-on control device performance tests at sources using these to comply with the standards.
§ 63.9(f)	Notification of Visible Emissions/Opacity Test.	No	Subpart IIII does not have opacity or visible emission standards.
§ 63.9(g)(1)–(3)	Additional Notifications When Using CMS.	No	Subpart IIII does not require the use of continuous emissions monitoring systems.
§ 63.9(h)	Notification of Compliance Status	Yes	Section 63.3110 specifies the dates for submitting the notification of compliance status.
§ 63.9(i)	Adjustment of Submittal Deadlines	Yes	
§ 63.9(j)	Change in Previous Information	Yes.	
§ 63.10(a)	Recordkeeping/Reporting—Applicability and General Information.	Yes.	
§ 63.10(b)(1)	General Recordkeeping Requirements	Yes	Additional requirements are specified in §§ 63.3130 and 63.3131.
§ 63.10(b)(2)(i)–(v)	Recordkeeping Relevant to Startup, Shutdown, and Malfunction Periods and CMS.	Yes	Requirements for startup, shutdown, and malfunction records only apply to capture systems and add-on control devices used to comply with the standards.
§ 63.10(b)(2)(vi)–(xi)		Yes.	
§ 63.10(b)(2)(xii)	Records	Yes.	

TABLE 2 TO SUBPART IIII OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART IIII OF PART 63—Continued

Citation	Subject	Applicable to subpart IIII	Explanation
§63.10(b)(2)(xiii)		No	Subpart IIII does not require the use of continuous emissions monitoring systems.
§63.10(b)(2)(xiv)		Yes.	
§63.10(b)(3)	Recordkeeping Requirements for Applicability Determinations.	Yes.	
§63.10(c)(1)–(6)	Additional Recordkeeping Requirements for Sources with CMS.	Yes.	
§63.10(c)(7)–(8)		No	The same records are required in §63.3120(a)(6).
§63.10(c)(9)–(15)		Yes	
§63.10(d)(1)	General Reporting Requirements	Yes	Additional requirements are specified in §63.3120.
§63.10(d)(2)	Report of Performance Test Results	Yes	Additional requirements are specified in §63.3120(b).
§63.10(d)(3)	Reporting Opacity or Visible Emissions Observations.	No	Subpart IIII does not require opacity or visible emissions observations.
§63.10(d)(4)	Progress Reports for Sources With Compliance Extensions.	Yes.	
§63.10(d)(5)	Startup, Shutdown, and Malfunction Reports.	Yes	Applies only to capture systems and add-on control devices used to comply with the standards.
§63.10(e)(1)–(2)	Additional CMS Reports	No	Subpart IIII does not require the use of continuous emissions monitoring systems.
§63.10(e)(3)	Excess Emissions/CMS Performance Reports.	No	Section 63.3120(b) specifies the contents of periodic compliance reports.
§63.10(e)(4)	COMS Data Reports	No	Subpart IIII does not specify requirements for opacity or COMS.
§63.10(f)	Recordkeeping/Reporting Waiver	Yes	
§63.11	Control Device Requirements/Flares	No	Subpart IIII does not specify use of flares for compliance.
§63.12	State Authority and Delegations	Yes.	
§63.13	Addresses	Yes.	
§63.14	Incorporation by Reference	Yes.	
§63.15	Availability of Information/Confidentiality	Yes.	

You may use the mass fraction values in the following table for solvent blends for which you do not have test data or manufacturer's formulation data:

TABLE 3 TO SUBPART IIII OF PART 63.—DEFAULT ORGANIC HAP MASS FRACTION FOR SOLVENTS AND SOLVENT BLENDS

Solvent/solvent blend	CAS. No.	Average organic HAP mass fraction	Typical organic HAP, percent by mass
1. Toluene	108–88–3	1.0	Toluene.
2. Xylene(s)	1330–20–7	1.0	Xylenes, ethylbenzene.
3. Hexane	110–54–3	0.5	n-hexane.
4. n-Hexane	110–54–3	1.0	n-hexane.
5. Ethylbenzene	100–41–4	1.0	Ethylbenzene.
6. Aliphatic 140		0	None.
7. Aromatic 100		0.02	1% xylene, 1% cumene.
8. Aromatic 150		0.09	Naphthalene.
9. Aromatic naphtha	64742–95–6	0.02	1% xylene, 1% cumene.
10. Aromatic solvent	64742–94–5	0.1	Naphthalene.
11. Exempt mineral spirits	8032–32–4	0	None.
12. Ligroines (VM & P)	8032–32–4	0	None.
13. Lactol spirits	64742–89–6	0.15	Toluene.
14. Low aromatic white spirit	64742–82–1	0	None.
15. Mineral spirits	64742–88–7	0.01	Xylenes.
16. Hydrotreated naphtha	64742–48–9	0	None.
17. Hydrotreated light distillate	64742–47–8	0.001	Toluene.
18. Stoddard solvent	8052–41–3	0.01	Xylenes.
19. Super high-flash naphtha	64742–95–6	0.05	Xylenes.
20. Varsol® solvent	8052–49–3	0.01	0.5% xylenes, 0.5% ethylbenzene.
21. VM & P naphtha	64742–89–8	0.06	3% toluene, 3% xylene.

TABLE 3 TO SUBPART IIII OF PART 63.—DEFAULT ORGANIC HAP MASS FRACTION FOR SOLVENTS AND SOLVENT BLENDS—Continued

Solvent/solvent blend	CAS. No.	Average organic HAP mass fraction	Typical organic HAP, percent by mass
22. Petroleum distillate mixture	68477–31–6	0.08	4% naphthalene, 4% biphenyl.

You may use the mass fraction values in the following table for solvent blends for which you do not have test data or manufacturer's formulation data:

TABLE 4 TO SUBPART IIII OF PART 63.—DEFAULT ORGANIC HAP MASS FRACTION FOR PETROLEUM SOLVENT GROUPS [a]

Solvent type	Average organic HAP mass fraction	Typical organic HAP, percent by mass
Aliphatic [b]	0.03	1% Xylene, 1% Toluene, and 1% Ethylbenzene.
Aromatic [c]	0.06	4% Xylene, 1% Toluene, and 1% Ethylbenzene.

[a] Use this table only if the solvent blend does not match any of the solvent blends in Table 3 to this subpart, and you only know whether the blend is aliphatic or aromatic.

[b] *E.g.*, Mineral Spirits 135, Mineral Spirits 150 EC, Naphtha, Mixed Hydrocarbon, Aliphatic Hydrocarbon, Aliphatic Naphtha, Naphthol Spirits, Petroleum Spirits, Petroleum Oil, Petroleum Naphtha, Solvent Naphtha, Solvent Blend.

[c] *E.g.*, Medium-flash Naphtha, High-flash Naphtha, Aromatic Naphtha, Light Aromatic Naphtha, Light Aromatic Hydrocarbons, Aromatic Hydrocarbons, Light Aromatic Solvent.

Appendix A to Subpart IIII of Part 63—Determination of Capture Efficiency of Automobile and Light-Duty Truck Spray Booth Emissions From Solvent-borne Coatings Using Panel Testing

1.0 Applicability, Principle, and Summary of Procedure.

1.1 Applicability.

This procedure applies to the determination of capture efficiency of automobile and light-duty truck spray booth emissions from solvent-borne coatings using panel testing. This procedure can be used to determine capture efficiency for partially controlled spray booths (*e.g.*, automated spray zones controlled and manual spray zones not controlled) and for fully controlled spray booths.

1.2 Principle.

1.2.1 The volatile organic compounds (VOC) associated with the coating solids deposited on a part (or panel) in a controlled spray booth zone (or group of contiguous controlled spray booth zones) partition themselves between the VOC that volatilize in the controlled spray booth zone (principally between the spray gun and the part) and the VOC that remain on the part (or panel) when the part (or panel) leaves the controlled spray booth zone. For solvent-borne coatings essentially all of the VOC associated with the coating solids deposited on a part (or panel) in a controlled spray booth zone that volatilize in the controlled spray booth zone pass through the waterwash and are exhausted from the controlled spray booth zone to the control device.

1.2.2 The VOC associated with the overspray coating solids in a controlled spray booth zone partition themselves between the VOC that volatilize in the controlled spray booth zone and the VOC that are still tied to the overspray coating solids when the overspray coating solids hit the waterwash. For solvent-borne coatings almost all of the VOC associated with the overspray coating solids that volatilize in the controlled spray booth zone pass through the waterwash and are exhausted from the controlled spray booth zone to the control device. The exact fate of the VOC still tied to the overspray coating solids when the overspray coating solids hit the waterwash is unknown. This procedure assumes that none of the VOC still tied to the overspray coating solids when the overspray coating solids hit the waterwash are captured and delivered to the control device. Much of this VOC may become entrained in the water along with the overspray coating solids. Most of the VOC that become entrained in the water along with the overspray coating solids leave the water, but the point at which this VOC leave the water is unknown. Some of the VOC still tied to the overspray coating solids when the overspray coating solids hit the waterwash may pass through the waterwash and be exhausted from the controlled spray booth zone to the control device.

1.2.3 This procedure assumes that the portion of the VOC associated with the overspray coating solids in a controlled spray booth zone that volatilizes in the controlled spray booth zone, passes through the waterwash and is exhausted from the controlled spray booth zone to the control device is equal to the portion of the VOC associated with the coating solids deposited on a part (or panel) in that controlled spray booth zone that volatilizes in the controlled spray booth zone, passes through the waterwash, and is exhausted from the controlled spray booth zone to the control device. This assumption is equivalent to treating all of the coating solids sprayed in the controlled spray booth zone as if they are deposited coating solids (*i.e.*, assuming 100 percent transfer efficiency) for purposes of using a panel test to determine spray booth capture efficiency.

1.2.4 This is a conservative (low) assumption for the portion of the VOC associated with the overspray coating solids in a controlled spray booth zone that volatilizes in the controlled spray booth zone. Thus, this assumption results in an underestimate of conservative capture efficiency. The overspray coating solids have more travel time and distance from the spray gun to the waterwash than the deposited coating solids have between the spray gun and the part (or panel). Therefore, the portion of the VOC associated with the overspray coating solids in a controlled spray booth zone that volatilizes in the controlled spray booth zone should be greater than the portion of the VOC associated with the coating solids deposited on a part (or panel) in that controlled spray booth zone that volatilizes in that controlled spray booth zone.

1.3 Summary of Procedure.

1.3.1 A panel test is performed to determine the mass of VOC that remains on the panel when the panel leaves a controlled spray booth zone. The total mass of VOC associated with the coating solids deposited on the panel is calculated.

1.3.2 The percent of the total VOC associated with the coating solids deposited on the panel in the controlled spray booth zone that remains on the panel when the panel leaves the controlled section of the spray booth is then calculated from the ratio of the two previously determined masses. The percent of the total VOC associated with the coating solids deposited on the panel in the controlled spray booth zone that is captured and delivered to the control device equals 100 minus this percentage. (The mass of VOC associated with the coating solids deposited on the panel which is volatilized and captured in the controlled spray booth zone equals the difference between the total mass of VOC associated with the coating solids deposited on the panel and the mass of VOC remaining with the coating solids

deposited on the panel when the panel leaves the controlled spray booth zone.)

1.3.3 The percent of the total VOC associated with the coating sprayed in the controlled spray booth zone that is captured and delivered to the control device is assumed to be equal to the percent of the total VOC associated with the coating solids deposited on the panel in the controlled spray booth zone that is captured and delivered to the control device. The percent of the total VOC associated with the coating sprayed in the entire spray booth that is captured and delivered to the control device can be calculated by multiplying the percent of the total VOC associated with the coating sprayed in the controlled spray booth zone that is captured and delivered to the control device by the fraction of coating sprayed in the spray booth that is sprayed in the controlled spray booth zone.

2.0 Procedure.

2.1 You may conduct panel testing to determine the capture efficiency of spray booth emissions. You must follow the instructions and calculations in this appendix A, and use the panel testing procedures in ASTM Method D5087–02, "Standard Test Method for Determining Amount of Volatile Organic Compound (VOC) Released from Solventborne Automotive Coatings and Available for Removal in a VOC Control Device (Abatement)" (incorporated by reference, see § 63.14), or the guidelines presented in "Protocol for Determining Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations," EPA–450/3–88–018 (Docket ID No. OAR–2002–0093 and Docket ID No. A–2001–22). You must weigh panels at the points described in section 2.5 of this appendix A and perform calculations as described in sections 3 and 4 of this appendix A. You may conduct panel tests on the production paint line in your facility or in a laboratory simulation of the production paint line in your facility.

2.2 You may conduct panel testing on representative coatings as described in "Protocol for Determining Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations," EPA–450/3–88–018 (Docket ID No. OAR–2002–0093 and Docket ID No. A–2001–22). If you panel test representative coatings, then you may calculate either a unique percent capture efficiency value for each coating grouped with that representative coating, or a composite percent capture efficiency value for the group of coatings. If you panel test each coating, then you must convert the panel test result for each coating to a unique percent capture efficiency value for that coating.

2.3 Identification of Controlled Spray Booth Zones.

You must identify each controlled spray booth zone or each group of contiguous controlled spray booth zones to be tested. (For example, a controlled bell zone immediately followed by a controlled robotic zone.) Separate panel tests are required for non-contiguous controlled spray booth zones. The flash zone between the last basecoat zone and the first clearcoat zone makes these zones non-contiguous.

2.4 Where to Apply Coating to the Panel.

If you are conducting a panel test for a single controlled spray booth zone, then you must apply coating to the panel only in that controlled spray booth zone. If you are conducting a panel test for a group of contiguous controlled spray booth zones, then you must apply coating to the panel only in that group of contiguous controlled spray booth zones.

2.5 How to Process and When to Weigh the Panel.

The instructions in this section pertain to panel testing of coating, i, or of the coating representing the group of coatings that includes coating, i.

2.5.1 You must weigh the blank panel. (Same as in bake oven panel test.) The mass of the blank panel is represented by $W_{blank,i}$ (grams).

2.5.2 Apply coating, i, or the coating representing coating, i, to the panel in the controlled spray booth zone or group of contiguous controlled spray booth zones being tested (in plant test), or in a simulation of the controlled spray booth zone or group of contiguous controlled spray booth zones being tested (laboratory test).

2.5.3 Remove and weigh the wet panel as soon as the wet panel leaves the controlled spray booth zone or group of contiguous controlled spray booth zones being tested. (Different than bake oven panel test.) This weighing must be conducted quickly to avoid further evaporation of VOC. The mass of the wet panel is represented by $W_{wet,i}$ (grams).

2.5.4 Return the wet panel to the point in the coating process or simulation of the coating process where it was removed for weighing.

2.5.5 Allow the panel to travel through the rest of the coating process in the plant or laboratory simulation of the coating process. You must not apply any more coating to the panel after it leaves the controlled spray booth zone (or group of contiguous controlled spray booth zones) being tested. The rest of the coating process or simulation of the coating process consists of:

2.5.5.1 All of the spray booth zone(s) or simulation of all of the spray booth zone(s) located after the controlled spray booth zone or group of contiguous controlled spray booth zones being tested and before the bake oven where the coating applied to the panel is cured,

2.5.5.2 All of the flash-off area(s) or simulation of all of the flash-off area(s) located after the controlled spray booth zone or group of contiguous controlled spray booth zones being tested and before the bake oven where the coating applied to the panel is cured, and

2.5.5.3 The bake oven or simulation of the bake oven where the coating applied to the panel is cured.

2.5.6 After the panel exits the bake oven, you must cool and weigh the baked panel. (Same as in bake oven panel test.) The mass of the baked panel is represented by $W_{baked,i}$ (grams).

3.0 Panel Calculations.

The instructions in this section pertain to panel testing of coating, i, or of the coating representing the group of coatings that includes coating, i.

3.1 The mass of coating solids (from coating, i, or from the coating representing coating, i, in the panel test) deposited on the panel equals the mass of the baked panel minus the mass of the blank panel as shown in Equation A–1.

$$W_{sdep,i} = W_{baked,i} - W_{blank,i} \qquad \text{(Eq. A-1)}$$

Where:

$W_{sdep,i}$ = Mass of coating solids (from coating, i, or from the coating representing coating, i, in the panel test) deposited on the panel, grams.

3.2 The mass of VOC (from coating, i, or from the coating representing coating, i, in the panel test) remaining on the wet panel when the wet panel leaves the controlled spray booth zone or group of contiguous controlled spray booth zones being tested equals the mass of the wet panel when the wet panel leaves the controlled spray booth zone or group of contiguous controlled spray booth zones being tested minus the mass of the baked panel as shown in Equation A–2.

$$W_{rem,i} = W_{wet,i} - W_{baked,i} \qquad \text{(Eq. A-2)}$$

Where:

$W_{rem,i}$ = Mass of VOC (from coating, i, or from the coating representing coating, i, in the panel test) remaining on the wet panel when the wet panel leaves the controlled spray booth zone or group of contiguous controlled spray booth zones being tested, grams.

3.3 Calculate the mass of VOC (from coating, i, or from the coating representing coating, i, in the panel test) remaining on the wet panel when the wet panel leaves the controlled spray booth zone or group of contiguous controlled spray booth zones being tested per mass of coating solids deposited on the panel as shown in Equation A–3.

$$P_{m,i} = \left(W_{rem,i}\right)/\left(W_{sdep,i}\right) \qquad \text{(Eq. A-3)}$$

Where:

$P_{m,i}$ = Mass of VOC (from coating, i, or from the coating representing coating, i, in the panel test) remaining on the wet panel when the wet panel leaves the controlled spray booth zone or group of contiguous controlled spray booth zones being tested per mass of coating solids deposited on the panel, grams of VOC remaining per gram of coating solids deposited.

$W_{rem,i}$ = Mass of VOC (from coating, i, or from the coating representing coating, i, in the panel test) remaining on the wet panel when the wet panel leaves the controlled spray booth zone or group of contiguous controlled spray booth zones being tested, grams.

$W_{sdep,i}$ = Mass of coating solids (from coating, i, or from the coating representing coating, i, in the panel test) deposited on the panel, grams.

4.0 Converting Panel Result to Percent Capture.

The instructions in this section pertain to panel testing of for coating, i, or of the coating representing the group of coatings that includes coating, i.

4.1 If you panel test representative coatings, then you may convert the panel test result for each representative coating from section 3.3 of this appendix A either to a unique percent capture efficiency value for each coating grouped with that representative coating by using coating specific values for the mass fraction coating solids and mass fraction VOC in section 4.2 of this appendix A, or to a composite percent capture efficiency value for the group of coatings by using the average values for the group of coatings for mass fraction coating solids and mass fraction VOC in section 4.2 of this appendix A. If you panel test each coating, then you must convert the panel test result for each coating to a unique percent capture efficiency value by using coating specific values for the mass fraction coating solids and mass fraction VOC in section 4.2 of this appendix A. The mass fraction of VOC in the coating and the mass fraction of solids in the coating must be determined by Method 24 (appendix A to 40 CFR part 60) or by following the guidelines for combining analytical VOC content and formulation solvent content presented in "Protocol for Determining Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations," EPA–450/3–88–018 (Docket ID No. OAR–2002–0093 and Docket ID No. A–2001–22).

4.2 The percent of VOC for coating, i, or composite percent of VOC for the group of coatings including coating, i, associated with the coating solids deposited on the panel that remains on the wet panel when the wet panel leaves the controlled spray booth zone or group of contiguous controlled spray booth zones being tested is calculated using Equation A–4.

$$Pvoc_{pan,i} = (P_{m,i})(W_{s,i})(100)/(Wvoc_{c,i}) \qquad \text{(Eq. A-4)}$$

Where:

$Pvoc_{pan,i}$ = Percent of VOC for coating, i, or composite percent of VOC for the group of coatings including coating, i, associated with the coating solids deposited on the panel that remains on the wet panel when the wet panel leaves the controlled spray booth zone (or group of contiguous controlled spray booth zones) being tested, percent.

$P_{m,i}$ = Mass of VOC (from coating, i, or from the coating representing coating, i, in the panel test) remaining on the wet panel when the wet panel leaves the controlled spray booth zone or group of contiguous controlled spray booth zones being tested per mass of coating solids deposited on the panel, grams of VOC remaining per gram of coating solids deposited.

$W_{s,i}$ = Mass fraction of coating solids for coating, i, or average mass fraction of coating solids for the group of coatings including coating, i, grams coating solids per gram coating, determined by Method 24 (appendix A to 40 CFR part 60) or by following the guidelines for combining analytical VOC content and formulation solvent content presented in "Protocol for Determining Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations," EPA–450/3–88–018 (Docket ID No. OAR–2002–0093 and Docket ID No. A–2001–22).

$Wvoc_{c,i}$ = Mass fraction of VOC in coating, i, or average mass fraction of VOC for the group of coatings including coating, i, grams VOC per grams coating, determined by Method 24 (appendix A to 40 CFR part 60) or the guidelines for combining analytical VOC content and formulation solvent content presented in "Protocol for Determining Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations," EPA–450/3–88–018 (Docket ID No. OAR–2002–0093 and Docket ID No. A–2001–22).

4.3 The percent of VOC for coating, i, or composite percent of VOC for the group of coatings including coating, i, associated with the coating sprayed in the controlled spray booth zone (or group of contiguous controlled spray booth zones) being tested that is captured in the controlled spray booth zone or group of contiguous controlled spray booth zones being tested, $CE_{zone,i}$ (percent), is calculated using Equation A–5.

$$CE_{zone,i} = 100 - Pvoc_{pan,i} \qquad \text{(Eq. A-5)}$$

Where:

$CE_{zone,i}$ = Capture efficiency for coating, i, or for the group of coatings including coating, i, in the controlled spray booth zone or group of contiguous controlled spray booth zones being tested as a percentage of the VOC in the coating, i, or of the group of coatings including coating, i, sprayed in the controlled spray booth zone or group of contiguous controlled spray booth zones being tested, percent.

4.4 Calculate the percent of VOC for coating, i, or composite percent of VOC for the group of coatings including coating, i, associated with the entire volume of coating, i, or with the total volume of all of the coatings grouped with coating, i, sprayed in the entire spray booth that is captured in the controlled spray booth zone or group of contiguous controlled spray booth zones being tested, using Equation A–6. The volume of coating, i, or of the group of coatings including coating, i, sprayed in the controlled spray booth zone or group of contiguous controlled spray booth zones being tested, and the volume of coating, i, or of the group of coatings including coating, i, sprayed in the entire spray booth may be determined from gun on times and fluid flow rates or from direct measurements of coating usage.

$$CE_i = (CE_{zone,i})(V_{zone,i})/(V_{booth,i}) \qquad \text{S(Eq. A-6)}$$

Where:

CE_i = Capture efficiency for coating, i, or for the group of coatings including coating, i, in the controlled spray booth zone (or group of contiguous controlled spray booth zones) being tested as a percentage of the VOC in the coating, i, or of the group of coatings including coating, i, sprayed in the entire spray booth in which the controlled spray booth zone (or group of contiguous controlled spray booth zones) being tested, percent.

$V_{zone,i}$ = Volume of coating, i, or of the group of coatings including coating, i, sprayed in the controlled spray booth zone or group of contiguous controlled spray booth zones being tested, liters.

$V_{booth,i}$ = Volume of coating, i, or of the group of coatings including coating, i, sprayed in the entire spray booth containing the controlled spray booth zone (or group of contiguous controlled spray booth zones) being tested, liters.

4.5 If you conduct multiple panel tests for the same coating or same group of coatings in the same spray booth (either because the coating or group of coatings is controlled in non-contiguous zones of the spray booth, or because you choose to conduct separate panel tests for contiguous controlled spray booth zones), then you may add the result from section 4.4 for each such panel test to get the total capture efficiency for the coating or group of coatings over all of the controlled zones in the spray booth for the coating or group of coatings.

Subpart MMMM—[Amended]

■ 4. Section 63.3881 is amended by adding paragraphs (c)(17), and (d), and revising paragraphs (e)(2) introductory text and (e)(3) to read as follows:

§ 63.3881 Am I subject to this subpart?

* * * * *

(c) * * *

(17) Surface coating of metal components of automobiles and light-duty trucks that meets the applicability criteria in § 63.3082(b) for the Surface Coating of Automobiles and Light-Duty Trucks NESHAP (40 CFR part 63, subpart IIII) at a facility that meets the applicability criteria in § 63.3081(b).

(d) If your facility meets the applicability criteria in § 63.3081(b) of the Surface Coating of Automobiles and Light-Duty Trucks NESHAP (40 CFR part 63, subpart IIII), and you perform surface coating of metal parts or products that meets both the applicability criteria in § 63.3082(c) and the applicability criteria of the Surface Coating of Miscellaneous Metal Parts and Products (40 CFR part 63, subpart MMMM), then for the surface coating of any or all of your metal parts or products that meets the applicability criteria in § 63.3082(c), you may choose to comply with the requirements of subpart IIII of this part in lieu of complying with the Surface Coating of Miscellaneous Metal Parts and Products NESHAP. Surface coating operations on metal parts or products not intended for use in automobiles or light-duty trucks (for example, parts for motorcycles or lawn mowers) cannot be made part of your affected source under subpart IIII of this part.

(e) * * *

(2) You may comply with the emission limitation representing the predominant surface coating activity at your facility, as determined according to paragraphs (e)(2)(i) and (ii) of this section. However, you may not establish high performance, rubber-to-metal, or extreme performance fluoropolymer coating operations as the predominant activity. You must not consider any surface coating activity that is subject to the Surface Coating of Automobiles and Light-Duty Trucks NESHAP (40 CFR part 63, subpart IIII) in determining the predominant surface coating activity at your facility.

* * * * *

(3) You may comply with a facility-specific emission limit calculated from the relative amount of coating activity that is subject to each emission limit. If you elect to comply using the facility-specific emission limit alternative, then compliance with the facility-specific emission limit and the emission limitations in this subpart for all surface coating operations constitutes compliance with this and other applicable surface coating NESHAP. The procedures for calculating the facility-specific emission limit are specified in § 63.3890. In calculating a facility-specific emission limit, you must include coating activities that meet the applicability criteria of other surface coating NESHAP and constitute more than 1 percent of total coating activities at your facility. You must not consider any surface coating activity that is subject to the Surface Coating of Automobiles and Light-Duty Trucks NESHAP (40 CFR part 63, subpart IIII) in determining a facility-specific emission limit for your facility. Coating activities that meet the applicability criteria of other surface coating NESHAP but comprise less than 1 percent of total coating activities need not be included in the calculation of the facility-specific emission limit but must be included in the compliance calculations.

■ 5. Section 63.3910 is amended by revising paragraph (b) to read as follows:

§ 63.3910 What notifications must I submit?

* * * * *

(b) *Initial Notification.* You must submit the initial notification required by § 63.9(b) for a new or reconstructed affected source no later than 120 days after initial startup or 120 days after January 2, 2004, whichever is later. For an existing affected source, you must submit the initial notification no later than 1 year after January 2, 2004. If you are using compliance with the Surface Coating of Automobiles and Light-Duty Trucks NESHAP (subpart IIII of this part) as provided for under § 63.3881(d) to constitute compliance with this subpart for any or all of your metal parts coating operations, then you must include a statement to this effect in your initial notification, and no other notifications are required under this subpart in regard to those metal parts coating operations. If you are complying with another NESHAP that constitutes the predominant activity at your facility under § 63.3881(e)(2) to constitute compliance with this subpart for your metal parts coating operations, then you must include a statement to this effect in your initial notification, and no other notifications are required under this subpart in regard to those metal parts coating operations.

* * * * *

Subpart PPPP—[Amended]

■ 6. Section 63.4481 is amended by adding paragraphs (c)(16) and (d), and revising paragraphs (e)(2) introductory text and (3) to read as follows:

§ 63.4481 Am I subject to this subpart?

* * * * *

(c) * * *

(16) Surface coating of plastic components of automobiles and light-duty trucks that meet the applicability criteria in § 63.3082(b) of the Surface Coating of Automobiles and Light-Duty Trucks NESHAP (40 CFR part 63, subpart IIII) at a facility that meets the applicability criteria in § 63.3081(b).

(d) If your facility meets the applicability criteria in § 63.3081(b) of the Surface Coating of Automobiles and Light-Duty Trucks NESHAP (40 CFR part 63, subpart IIII) and you perform surface coating of plastic parts or products that meets both the applicability criteria in § 63.3082(c) and the applicability criteria of this subpart, then for the surface coating of any or all of your plastic parts or products that meets the applicability criteria in § 63.3082(c), you may choose to comply with the requirements of subpart IIII of this part in lieu of complying with this subpart. Surface coating operations on plastic parts or products not intended for use in automobiles or light-duty trucks (for example, parts for motorcycles or lawn mowers) cannot be made part of your affected source under subpart IIII of this part.

(e) * * *

(2) You may comply with the emission limitation representing the predominant surface coating activity at your facility, as determined according to paragraphs (e)(2)(i) and (ii) of this section. However, you may not establish assembled on-road vehicle or automotive lamp coating operations as the predominant activity. You must not consider any surface coating activity that is subject to the Surface Coating of Automobiles and Light-Duty Trucks NESHAP (40 CFR part 63, subpart IIII) in determining the predominant surface coating activity at your facility.

* * * * *

(3) You may comply with a facility-specific emission limit calculated from the relative amount of coating activity that is subject to each emission limit. If you elect to comply using the facility-specific emission limit alternative, then compliance with the facility-specific emission limit and the emission limitations in this subpart for all surface coating operations constitutes compliance with this subpart and other applicable surface coating NESHAP.

The procedures for calculating the facility-specific emission limit are specified in § 63.4490. In calculating a facility-specific emission limit, you must include coating activities that meet the applicability criteria of other surface coating NESHAP and constitute more than 1 percent of total coating activities at your facility. You must not consider any surface coating activity that is subject to the Surface Coating of Automobiles and Light-Duty Trucks NESHAP (40 CFR part 63, subpart IIII) in determining a facility-specific emission limit for your facility. Coating activities that meet the applicability criteria of other surface coating NESHAP but comprise less than 1 percent of total coating activities need not be included in the calculation of the facility-specific emission limit but must be included in the compliance calculations.

■ 7. Section 63.4510 is amended by revising paragraph (b) to read as follows:

§ 63.4510 What notifications must I submit?

* * * * *

(b) *Initial notification.* You must submit the initial notification required by § 63.9(b) for a new or reconstructed affected source no later than 120 days after initial startup or 120 days after April 19, 2004, whichever is later. For an existing affected source, you must submit the initial notification no later than 1 year after April 19, 2004. If you are using compliance with the Surface Coating of Automobiles and Light-Duty Trucks NESHAP (subpart IIII of this part) as provided for under § 63.4481(d) to constitute compliance with this subpart for any or all of your plastic parts coating operations, then you must include a statement to this effect in your initial notification, and no other notifications are required under this subpart in regard to those plastic parts coating operations. If you are complying with another NESHAP that constitutes the predominant activity at your facility under § 63.4481(e)(2) to constitute compliance with this subpart for your plastic parts coating operations, then you must include a statement to this effect in your initial notification, and no other notifications are required under this subpart in regard to those plastic parts coating operations.

* * * * *

PART 264—[AMENDED]

■ 8. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925, *et seq.*

■ 9. Section 264.1050 is amended by adding paragraph (h) after paragraph (g) and before the note to read as follows:

§ 264.1050 Applicability.

* * * * *

(h) Purged coatings and solvents from surface coating operations subject to the national emission standards for hazardous air pollutants (NESHAP) for the surface coating of automobiles and light-duty trucks at 40 CFR part 63, subpart IIII, are not subject to the requirements of this subpart.

* * * * *

PART 265—[AMENDED]

■ 10. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935, *et seq.*

■ 11. Section 265.1050 is amended by adding paragraph (g) after paragraph (f) and before the note to read as follows:

§ 265.1050 Applicability.

* * * * *

(g) Purged coatings and solvents from surface coating operations subject to the national emission standards for hazardous air pollutants (NESHAP) for the surface coating of automobiles and light-duty trucks at 40 CFR part 63, subpart IIII, are not subject to the requirements of this subpart.

* * * * *

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Monday,
April 26, 2004

Part III

Nuclear Regulatory Commission

10 CFR Parts 170 and 171
Revision of Fee Schedules; Fee Recovery for FY 2004; Final Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN 3150–AH37

Revision of Fee Schedules; Fee Recovery for FY 2004

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending the licensing, inspection, and annual fees charged to its applicants and licensees. The amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), as amended, which requires that the NRC recover approximately 92 percent of its budget authority in fiscal year (FY) 2004, less the amounts appropriated from the Nuclear Waste Fund (NWF). The amount to be recovered for FY 2004 is approximately $545.3 million.

DATES: Effective Date: June 25, 2004.

ADDRESSES: The comments received and the NRC's work papers that support these final changes to 10 CFR Parts 170 and 171 are available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, or 301–415–4737, or by email to *pdr@nrc.gov*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR.

Comments received may also be viewed via the NRC's interactive rulemaking website (*http://ruleforum.llnl.gov*). This site provides the ability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, 301–415–5905; e-mail *CAG@nrc.gov*.

For a period of 90 days after the effective date of this final rule, the work papers may also be examined at the NRC Public Document Room, Room O–1F22, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738. The PDR reproduction contractor will copy documents for a fee.

FOR FURTHER INFORMATION CONTACT: Tammy Croote, telephone 301–415–6041; Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Background

For FYs 1991 through 2000, OBRA–90 (42 U.S.C. 2214), as amended, required that the NRC recover approximately 100 percent of its budget authority, less the amount appropriated from the U.S. Department of Energy (DOE) administered NWF, by assessing fees. To address fairness and equity concerns raised by the NRC related to charging NRC license holders for agency budgeted costs that do not provide a direct benefit to the licensee, the FY 2001 Energy and Water Development Appropriations Act (Pub. L. 106–377) amended OBRA–90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005. As a result, the NRC is required to recover approximately 92 percent of its FY 2004 budget authority, less the amounts appropriated from the NWF, through fees. The Energy and Water Development Appropriations Act, 2004 (Pub. L. 108–137), was adjusted by the Consolidated Appropriations Act, 2004 (Pub. L. 108–199), Division H, Section 168(b) to authorize a 0.59 percent across-the-board rescission of NRC's net budget authority. The amount appropriated to the NRC for FY 2004 is $625.6 million. This sum includes $32.9 million appropriated from the NWF. The total amount NRC is required to recover in fees for FY 2004 is approximately $545.3 million.

The NRC assesses two types of fees to meet the requirements of OBRA–90, as amended. First, license and inspection fees, established in 10 CFR Part 170 under the authority of the Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. 9701, recover the NRC's costs of providing special benefits to identifiable applicants and licensees. Examples of the services provided by the NRC for which these fees are assessed are the review of applications for new licenses, and for certain types of existing licenses, the review of renewal applications, the review of amendment requests, and inspections. Second, annual fees, established in 10 CFR Part 171 under the authority of OBRA–90, recover generic and other regulatory costs not otherwise recovered through 10 CFR Part 170 fees.

II. Response to Comments

The NRC published the FY 2004 proposed fee rule on February 2, 2004 (69 FR 4865) to solicit public comment on its proposed revisions to 10 CFR Parts 170 and 171. The NRC received 11 comments dated on or before the close of the comment period (March 3, 2004) and three additional comments thereafter, for a total of 14 comments that were considered in this fee rulemaking. The comments have been grouped by issues and are addressed in a collective response.

A. Legal Issues

Information Provided by NRC in Support of Proposed Rule

Comment. Several commenters urged the NRC to provide licensees and the public with a more detailed explanation of the activities and associated costs that form the basis for NRC's fees. These commenters stated that the NRC should inform stakeholders of the costs associated with each component of reactor regulation and all other generic costs in sufficient detail to enable them to provide meaningful comment on the proposed fee rules. The commenters stated that the NRC should provide an itemized accounting of the major elements that comprise the annual fee, including detailed information on the outstanding major contracts, their purpose, and their costs.

These commenters further stated that industry's ability to evaluate the NRC's application of resources and priorities is impeded because the NRC allocated 74 percent of its recoverable budget to the generic assessment under part 171, while only 26 percent is recovered under the discrete fee provisions of part 170. Similarly, another commenter stated that it is "inaccurate to assume" that a large majority of budget increases are not directly related to licensees and should therefore only be recovered through general annual fees. This commenter stated these costs should instead be allocated to individual licensees.

Response. Consistent with the requirements of OBRA–90, as amended, the purpose of this rulemaking is to establish fees necessary to recover 92 percent of the NRC's FY 2004 budget authority, less the amounts appropriated from the NWF, from applicants and the

various classes of NRC licensees. The proposed rule described the types of activities included in the proposed fees and explained how the fees were calculated to recover the budgeted costs for those activities. Therefore, the NRC believes that ample information was available on which to base constructive comments on the proposed revisions to parts 170 and 171 and that its fee schedule development is a transparent process.

In addition to the information provided in the proposed rule, the supporting work papers were available for public examination in the NRC's Agencywide Documents Access and Management System (ADAMS) and, during the 30-day comment period, in the NRC Public Document Room at One White Flint North, 11555 Rockville Pike, Rockville, MD. The work papers show the total budgeted full time equivalent (FTE) and contract costs at the planned accomplishment level for each agency activity. The work papers also include extensive information detailing the allocation of the budgeted costs for each planned accomplishment within each program of each strategic arena to the various classes of licenses, as well as information on categories of costs included in the hourly rate.

The NRC has also made available in the Public Document Room NUREG–1100, Volume 19, "Budget Estimates and Performance Plan, Fiscal Year 2004" (February 2003), which discusses the NRC's budget for FY 2004, including the activities to be performed in each strategic arena. This document is also available on the NRC public Web site at *http://www.nrc.gov/reading-rm.html.* The extensive information available to the public meets all legal requirements and the NRC believes it has provided the public with sufficient information on which to base their comments on the proposed fee rule. Additionally, the contacts listed in the proposed fee rule were available during the public comment period to answer any questions that commenters had on the development of the proposed fees.

The NRC notes that, regarding the comments that expressed concern that too much of the NRC's budget was designated for recovery under part 171, it assesses part 170 fees under the IOAA, and consistent with Office of Management and Budget (OMB) Circular A–25, to recover the costs incurred from each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public. Further, the NRC notes that, as required by OBRA–90, the part 171 annual fee recovery amounts are offset by the estimated part 170 fee collections. The NRC is not at liberty to allocate fees indiscriminately between parts 170 and 171, because fee allocation is controlled by statute. Generic costs that do not provide special benefits to identifiable recipients cannot be recovered under part 170. The NRC's workpapers clearly set forth the components of these generic costs and how those costs are recovered through annual fees. Additionally, the NRC notes that it has taken action to maximize the amount recovered under part 170, consistent with existing Federal law and policy. For example, in FY 1998 the NRC began charging part 170 fees for all resident inspectors' time and in FY 1999 the NRC started charging part 170 fees for all project manager activities associated with oversight of the assigned license or plant. In FY 2003, the NRC also amended its regulations to allow the NRC to recover costs associated with contested hearings on licensing actions involving U.S. Government national security initiatives through part 170 fees assessed to the affected applicant or licensee (67 FR 64033; October 17, 2002). Included under this provision are activities involving the fabrication and use of mixed oxide fuel. Thus, contrary to one commenter's assertion, rather than assuming that "a large majority of budget increases are not directly related to licensees and should therefore only be recovered through general annual fees," the NRC seeks whenever possible, consistent with applicable law, to align its fee billing with the identifiable recipient of the benefit provided.

B. Specific Part 170 Issues

Reciprocity Fees

Comment. One commenter noted that Washington State licensees will experience a $200 fee increase (from $1,400 to $1,600) when seeking reciprocity from the NRC. The commenter also noted that the proposed fee increases are warranted and appropriate.

Response. The NRC acknowledges the commenter's support of the NRC's establishment of fees. The NRC does note, however, that the comment is in error as to any increases in this fee. The reciprocity fee for Agreement State licensees who conduct activities under the reciprocity provisions of § 150.20 remains $1,500 in FY 2004, the same as it was in FY 2003, as set forth in the FY 2004 proposed fee rule. This fee is listed in the Schedule of Materials Fees at § 170.31, category 16.

C. Specific Part 171 Issues

1. Annual Fees for Materials Users, Including Small Entities

Comment. One commenter, who is an operator of a small radiology and nuclear medicine outpatient laboratory, expressed concerns regarding fee increases for medical facilities. The commenter stated that there are many cost pressures on these facilities, and it is becoming more difficult for these facilities to operate profitably. The commenter expressed concern that increasing fees could result in decreasing the availability of quality healthcare in many areas of the country due to these types of medical facilities having to close.

Response. The NRC recognizes the concerns raised by the commenter regarding cost pressures on the healthcare industry. Only one category of medical licenses will pay a higher fee for FY 2004 than they paid in FY 2003. The annual fees for category 7B went from $24,700 to $25,000 under § 171.16. The fees decreased slightly for three categories of medical licenses (category 7A under §§ 170.31 and 171.16, and category 7C under § 171.16), and remained the same in two instances (category 7B and 7C under § 170.3). Since FY 1991, when the 100 percent fee recovery requirement was first implemented, the NRC has recognized that the assessment of fees to recover the NRC's costs may result in a substantial financial hardship for some licensees. However, consistent with the OBRA–90 requirement that annual fees must have, to the maximum extent practicable, a reasonable relationship to the cost of providing regulatory services, the NRC's annual fees for each class of license reflect the NRC's budgeted cost of its regulatory services to the class. The NRC determines the budgeted costs to be allocated to each class of licensee through a comprehensive review of every planned accomplishment in each of the agency's major program areas. Furthermore, a reduction in the fees assessed to one class of licensees would require a corresponding increase in the fees assessed to other classes. Accordingly, the NRC has not based its annual fees on licensees' economic status, market conditions, or the inability of licensees to pass through the costs to its customers. Instead, the NRC has only considered the impacts that it is required to address by law.

The NRC notes that a medical (or any other type) facility qualifies for reduced annual fees if it meets the criteria for being a small entity, as established in 10 CFR 2.810. The NRC provides these reduced annual fees based on the

provisions of the Regulatory Flexibility Act (RFA). The NRC last re-examined its small entity fees in its FY 2003 final fee rule (68 FR 36714; June 18, 2003), in which the NRC determined that the current small entity fees of $500 and $2,300 continued to meet the objective of providing relief to many small entities while recovering from them some of the NRC costs associated with regulatory activities that benefit these licensees.

2. Annual Fees for Uranium Recovery Licensees

Comment. The NRC received two comments regarding annual fees for uranium recovery licensees. These comments supported the continuation of the 2002 determination that the Department of Energy must be assessed one-half of all NRC budgeted costs attributed to generic/other activities for the uranium recovery program. These commenters also supported the proposed fee structure for annual fees for Title II specific licensees as a fair and equitable arrangement for the uranium recovery industry in the United States. The commenters indicated that this fee structure will relieve a substantial burden on the remaining existing uranium mills in the United States as they await higher uranium prices that would allow them to resume full operation.

Response. The NRC appreciates the support it received regarding uranium recovery license fees. This final rule reflects the same methodology for calculating annual fees for uranium recovery licensees as set forth in the proposed rule. This methodology is described in more detail in Section III.B.1.b. below. This methodology has resulted in FY 2004 annual fees of $14,500 for Class I licensees (conventional mills), $12,900 for Class II (solution mining) and 11e.(2) disposal incidental to existing tailings sites licensees, and $12,800 for 11e.(2) disposal licensees. Some of these fees are slightly lower than those set forth in the FY 2004 proposed fee rule because fewer budgeted resources were allocated to these categories in light of the 0.59 percent across the board rescission of NRC's net budget authority enacted under the Consolidated Appropriations Act, 2004.

3. Annual Fees for Power Reactor Licensees

Comment. One commenter stated that NRC fees represent a nontrivial percentage of a nuclear station's annual operating budget. This commenter stated that NRC fees place an even heavier burden, as a percentage of total plant operating and maintenance costs, on plants with comparatively smaller electrical output. The commenter suggested that NRC revisit its current annual fee assessment scheme for reactors, possibly basing a plant's annual fee on its licensed thermal power fraction of the total licensed thermal power of all 103 reactors with operating licenses.

Response. As required, by statute, the NRC's annual fees must "to the maximum extent practicable," bear a "reasonable relationship to the cost of providing regulatory services and may be based on the allocation of the Commission's resources among licensees or classes of licensees." 42. U.S.C. 2214(c)(3). The NRC's part 171 annual fee per power reactor is derived by dividing the budgeted costs allocated to that class by the number of power reactors. (Note that this fee applies to all power reactors licensed to operate (currently 104) by the NRC.) Each power reactor is assessed an equal portion of the generic costs allocated to that class of licensee. Before FY 1995, the NRC did not assess uniform annual fees to reactors, but rather determined a reactor's annual fee based on a detailed analysis of vendor group, location, and other factors, such as type of containment. However, the NRC streamlined its fee program in FY 1995 (60 FR 32218; June 20, 1995) by establishing a uniform annual fee for power reactors, based on the fact that the difference in fees resulting from this more detailed analysis was small relative to the size of the annual fee per reactor. The NRC continues to believe that this uniform fee is a fair and equitable way to recover the generic costs allocated to the power reactor class and that, in general, any difference in generic costs attributable to one power reactor as compared to another power reactor is not significant. Hence, the NRC does not believe that a change to its power reactor annual fee calculation methodology is justified.

D. Other Issues

1. Recovery of Security Costs

Comment. Several commenters strongly objected to the NRC collecting security-related costs from licensees. These commenters stated that homeland security issues related to nuclear power plants are part of the U.S. government's overall responsibility to protect its critical infrastructure, and hence these costs should be excluded from the fee structure and funded through the general treasury. These commenters noted that the nuclear industry has already incurred significant security costs, and that these costs have not been reimbursed by the Federal government, unlike what has occurred for other industries. While the commenters stated that they recognized the public benefit of enhancing the already strong security at nuclear facilities, they thought it fundamentally unfair to require licensees to pay for the NRC's additional security-related oversight.

Some commenters noted that power reactor licensees would face an increase in annual fees in FY 2004, mostly due to homeland security. These commenters noted that while the NRC has received relief under the FY 2001 Energy and Water Development Appropriations Act to address concerns regarding the recovery of costs not directly attributable to a class of licensees, the practical effect of the inclusion of the costs of homeland security activities negates the fee relief provided. Some commenters also stated that they believe the resources allocated to security, particularly in terms of FTE, were too large and did not maximize NRC efficiency and effectiveness. Some commenters also stated that they believe NRC's needed security resources should decrease once activities related to the April 2003 orders were concluded.

Because of concerns raised regarding homeland security activities and their cost recovery, these comments urged the NRC to continue to engage the Department of Homeland Security and congressional leaders to achieve a more equitable outcome for NRC licensees.

Response. The NRC appreciates the concerns raised by commenters regarding homeland security costs being funded through license fees. However, the NRC's required fee recovery is set by statute and therefore, is outside the scope of this rulemaking. The Energy and Water Development Appropriations Act, 2004, as amended by the Consolidated Appropriations Act, 2004, appropriated to the NRC $625.6 million for FY 2004. This sum includes $32.9 million appropriated from the NWF. OBRA–90, as amended by the FY 2001 Energy and Water Development Appropriations Act, requires the NRC to recover 92 percent of its budget, less the NWF. The total amount NRC is required to recover in fees for FY 2004 is approximately $545.3 million.

The NRC has supported previous legislative efforts to remove homeland security costs from the fee base, and continues to do so. In the 2003 Congressional session, an Energy Policy Bill (H.R.6) was introduced that would amend OBRA–90 to remove many homeland security costs from the fee base (except homeland security costs associated with fingerprinting,

background checks, and security inspections). In its August 29, 2003, letter to the House Committee on Energy and Commerce, the Commission supported the fee recovery provisions of the Energy Policy Bill. The House has approved the Energy Policy Bill produced by the conference committee and the Senate started debate on the conference committee report. However, as of the date of this rule, no further action has been taken by the Senate or House on this bill. The successor to H.R.6, S.2095, introduced in the current session of Congress, also would remove many homeland security costs from the fee-base. The NRC continues to support legislative efforts to remove homeland security costs from the fee base.

In response to the comments that expressed concern regarding how the NRC is expending homeland security funds, as stated previously, the NRC's budget and manner in which the NRC carries out its activities are not within the scope of this rulemaking. The NRC notes that its FY 2005 budget request for homeland security direct resources is $41.9 million, which is down from the FY 2004 budget of $51.1 million. This decrease reflects the completion of work on vulnerability assessments and mitigating strategies and the completion of the reviews of nuclear power plant security plans that include the revised design-basis threat.

2. NRC Budget

Comment. Some commenters stated that NRC fees should reflect NRC efficiencies and provided suggestions for reducing NRC's budget and for more efficient/different use of NRC's resources. Many of these comments addressed expenditures on homeland security, while others suggested more generally that NRC reduce expenditures, streamline processes, or otherwise perform activities more efficiently, without impeding operational safety. Commenters suggested that changes in NRC's regulatory approach, such as the reactor oversight process, as well as revised inspection, assessment and enforcement processes, should result in reduced fees. Some comments included suggestions to reallocate resources dedicated to inspection of areas of plants that have little or no safety significance, to efforts to risk-inform regulations, review license renewal applications and license new reactor designs. These comments also suggested that fewer resources should be applied to the oversight of materials licensees, because NRC Agreement States have taken over some of this work, and that NRC could enhance efficiency by accepting the groundwater quality assessments conducted by a state or the Environmental Protection Agency instead of performing them with NRC staff. These comments further encouraged NRC to proceed expeditiously to apply, as appropriate, the Reactor Oversight Process to fuel cycle licensees (uranium recovery, conversion, enrichment and fuel fabrication). Some comments expressed concern that while the NRC's obligation to recover its budget authority through fees decreases by 2 percent each year [until it reaches 10 percent in 2005], the total budget increase has more than offset this decrease.

Response. The NRC's budget and the manner in which the NRC carries out its activities are not within the scope of this rulemaking. Therefore, this final rule does not address the commenters' suggestions concerning the NRC's budget and the use of NRC resources. The NRC's budget is submitted to the Office of Management and Budget and to Congress for review and approval. The Congressional budget process affords stakeholders and the public opportunities to comment, including oversight meetings, testimony, press briefings, etc. The Congressionally-approved budget resulting from this process reflects the resources deemed necessary for NRC to carry out its statutory obligations. In compliance with OBRA–90, the fees are established to recover the required percentage of the approved budget. However, the NRC will continue efforts to ensure that the NRC carries out its statutory obligations in an efficient manner.

3. Fee Rule Communication and Timing

Comment. Several commenters raised concerns that the timing of issuance of the fee rule makes it difficult for licensees to plan for regulatory expenses within the framework of their normal budget cycles, while recognizing that, for FY 2004, the NRC published its proposed fee rule about two months earlier than last year. To address this issue, commenters suggested that the NRC publish an estimate of fees for the following year, coincident with issuance of the proposed fee rule each year. The commenters recognized that while it would likely be impossible for the NRC to offer exact projections, the Commission should be able to develop reasonable estimates of the next year's fees.

Response. The NRC acknowledges the concerns raised by these commenters. However, because the NRC does not know in advance what its future budgets will be (*i.e.*, proposed budgets must be submitted to the Office of Management and Budget for its review before the President submits the budget to Congress for enactment), the NRC believes it is not practicable to project fees based on future estimated budgets. The NRC will continue to strive to issue its fee regulations as early in the fiscal year as is practicable to give as much time as possible for licensees to plan for changes in fees.

III. Final Action

The NRC is amending its licensing, inspection, and annual fees to recover approximately 92 percent of its FY 2004 budget authority less the appropriations received from the NWF. The NRC's total budget authority for FY 2004 is $625.6 million, of which approximately $32.9 million has been appropriated from the NWF. Based on the 92 percent fee recovery requirement, the NRC must recover approximately $545.3 million in FY 2004 through part 170 licensing and inspection fees, part 171 annual fees, and other offsetting receipts. The total amount to be recovered through fees and other offsetting receipts for FY 2004 is $19.0 million more than the amount estimated for recovery in FY 2003.

The FY 2004 fee recovery amount is reduced by a $3.5 million carryover from additional collections in FY 2003 that were unanticipated at the time the final FY 2003 fee rule was published. This leaves approximately $541.8 million to be recovered in FY 2004 through part 170 licensing and inspection fees, part 171 annual fees, and other offsetting receipts.

The NRC estimates that approximately $149.9 million will be recovered in FY 2004 from part 170 fees and other offsetting receipts. For FY 2004, the NRC also estimates a net adjustment of approximately $2.0 million for FY 2004 invoices that the NRC estimates will not be paid during the fiscal year, and for payments received in FY 2004 for FY 2003 invoices. The remaining $389.9 million will be recovered through the part 171 annual fees, compared to $396.8 million for FY 2003.

The primary reason for the increase in total fees for FY 2004 is that the amount to be recovered for FY 2004 includes $51.1 million for homeland security activities, compared to $35.4 million in FY 2003. Other reasons for the fee increases include the 2004 Federal pay raise and the increased resources for reactor license renewals and new reactor licensing.

Table I summarizes the budget and fee recovery amounts for FY 2004. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE I.—BUDGET AND FEE RECOVERY AMOUNTS FOR FY 2004

[Dollars in millions]

Total Budget Authority	$625.6
Less NWF	− 32.9
Balance	$592.7
Fee Recovery Rate for FY 2004	× 92.0%
Total Amount to be Recovered for FY 2004	$545.3
Less Carryover from FY 2003	− 3.5
Amount to be Recovered Through Fees and Other Receipts	$541.8
Less Estimated Part 170 Fees and Other Receipts	− 149.9
Part 171 Fee Collections Required	$391.9
Part 171 Billing Adjustments:	
Unpaid FY 2004 Invoices (estimated)	2.7
Less Payments Received in FY 2004 for Prior Year Invoices (estimated)	−4.7
Subtotal	− 2.0
Adjusted Part 171 Collections Required	$389.9

The FY 2004 final fee rule is a "major rule" as defined by the Small Business Regulatory Enforcement Fairness Act of 1996. Therefore, the NRC's fee schedules for FY 2004 will become effective 60 days after publication of the final rule in the **Federal Register**. The NRC will send an invoice for the amount of the annual fee to reactors and major fuel cycle facilities upon publication of the FY 2004 final rule. For these licensees, payment will be due on the effective date of the FY 2004 rule. Those materials licensees whose license anniversary date during FY 2004 falls before the effective date of the final FY 2004 rule will be billed for the annual fee during the anniversary month of the license at the FY 2003 annual fee rate. Those materials licensees whose license anniversary date falls on or after the effective date of the final FY 2004 rule will be billed for the annual fee at the FY 2004 annual fee rate during the anniversary month of the license, and payment will be due on the date of the invoice.

The NRC has discontinued mailing the final fee rule to all licensees as a cost saving measure, in accordance with its FY 1998 announcement. Accordingly, the NRC does not plan to routinely mail the FY 2004 final fee rule or future final fee rules to licensees. However, the NRC will send the final rule to any licensee or other person upon specific request. To request a copy, contact the License Fee Team, Division of Financial Management, Office of the Chief Financial Officer, at 301–415–7554, or e-mail *fees@nrc.gov*. In addition to publication in the **Federal Register**, the final rule will be available on the Internet at *http://ruleforum.llnl.gov* for at least 90 days after the effective date of the final rule.

The NRC is amending 10 CFR Parts 170 and 171 as discussed in Sections A and B below.

A. Amendments to 10 CFR Part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, as Amended

The NRC is revising the hourly rates used to calculate fees and to adjust the part 170 fees based on the revised hourly rates.

The amendments are as follows:

1. Hourly Rates

The NRC is revising the two professional hourly rates for NRC staff time established in § 170.20. These rates are based on the number of FY 2004 direct program full time equivalents (FTEs) and the FY 2004 NRC budget, excluding direct program support costs and NRC's appropriations from the NWF. These rates are used to determine the part 170 fees. The rate for the reactor program is $157 per hour ($278,957 per direct FTE). This rate is applicable to all activities for which fees are assessed under § 170.21 of the fee regulations. The rate for the materials program (nuclear materials and nuclear waste programs) is $156 per hour ($276,598 per direct FTE). This rate is applicable to all activities for which fees are assessed under § 170.31 of the fee regulations. In the FY 2003 final fee rule, the reactor and materials program rates were $156 and $158, respectively.

The primary reason for the increase to the reactor rate is the salary and benefits increase that results primarily from the Government-wide pay raise. While salary and benefits also increase for the materials program, the increase is offset by a reduction in overhead costs and allocated agency management and support costs under this program.

The method used to determine the two professional hourly rates is as follows:

a. Direct program FTE levels are identified for the reactor program and the materials program (nuclear materials and nuclear waste programs). All program costs, except contract support, are included in the hourly rate for each program by allocating them uniformly by the total number of direct FTEs for the program. Direct contract support, which is the use of contract or other services in support of the line organization's direct program, is excluded from the calculation of the hourly rates because the costs for direct contract support are recovered through part 170 fees.

b. All non-program direct costs for management and support and the Office of the Inspector General, are allocated to each program based on that program's costs.

This method results in the following costs which are included in the hourly rates. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE II.—FY 2004 BUDGET AUTHORITY TO BE INCLUDED IN HOURLY RATES

	Reactor program	Materials program
Direct Program Salaries & Benefits.	$145.6M ...	$35.4M
Overhead Salaries & Benefits, Program Travel and Other Support.	69.9M	16.7M

TABLE II.—FY 2004 BUDGET AUTHORITY TO BE INCLUDED IN HOURLY RATES—Continued

	Reactor program	Materials program
Allocated Agency Management and Support.	120.3M	29.1M
Subtotal	$335.8M ..	$81.1M
Less Offsetting Receipts.	−0.1M	−0.00M
Total Budget Included in Hourly Rate.	$335.7M ...	$81.1M
Program Direct FTEs.	1203.4	293.4
Rate per Direct FTE.	$278,957 ..	$276,598
Professional Hourly Rate (Rate per direct FTE divided by 1,776 hours).	$157	$156

As shown in Table II, dividing the $335.7 million budgeted amount (rounded) included in the hourly rate for the reactor program by the reactor program direct FTEs (1203.4) results in a rate for the reactor program of $278,957 per FTE for FY 2004. The Direct FTE Hourly Rate for the reactor program will be $157 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE ($278,957) by the number of productive hours in one year (1,776 hours) as set forth in the revised OMB Circular A–76, "Performance of Commercial Activities." Similarly, dividing the $81.1 million budgeted amount (rounded) included in the hourly rate for the materials program by the program direct FTEs (293.4) results in a rate of $276,598 per FTE for FY 2004. The Direct FTE Hourly Rate for the materials program will be $156 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE ($276,598) by the number of productive hours in one year (1,776 hours).

2. Fee Adjustments

The NRC is adjusting the current part 170 fees in §§ 170.21 and 170.31 to reflect the changes in the revised hourly rates. The full cost fees assessed under §§ 170.21 and 170.31 are based on the revised professional hourly rates and any direct program support (contractual services) costs expended by the NRC. Any professional hours expended on or after the effective date of the final rule will be assessed at the FY 2004 hourly rates.

The fees in §§ 170.21 and 170.31 that are based on the average time to review an application ("flat" fees) have been adjusted to reflect the change in the materials program professional hourly rate from FY 2003. The amounts of the materials licensing "flat" fees were rounded to be convenient to the user. Fees under $1,000 are rounded to the nearest $10, fees that are greater than $1,000 but less than $100,000 are rounded to the nearest $100, and fees that are greater than $100,000 are rounded to the nearest $1,000.

The licensing "flat" fees are applicable for fee categories K.1 through K.5 of § 170.21, and fee categories 1.C, 1.D, 2.B, 2.C, 3.A through 3.P, 4.B through 9.D, 10.B, 15.A through 15.E, and 16 of § 170.31. Applications filed on or after the effective date of the final rule will be subject to the revised fees in this final rule.

The NRC is expanding category 10 of § 170.31 to include category 10.C for evaluation of security plans, route approvals and surveys, and transportation security devices, including immobilization devices. There has been an increase in the number of transportation security activities that the NRC oversees and an increase in the number and types of licensees covered by the transportation security requirements. Therefore, category 10 is being updated to clarify that licensees will be assessed full-cost fees for security-related activities as stated above.

Additionally, the NRC is modifying § 170.21 category K. and § 170.31 category 15 to clarify the import and export license language. This clarification is being made to reflect the current work being performed under these categories and to ensure consistency with 10 CFR Part 110.

3. Administrative Amendments

The NRC is modifying category 13 of § 170.31, to include licensing and inspection fees under category 13.A and delete category 13.C. This change is being made so that § 170.31 corresponds with the categorization used in § 171.16(d).

Additionally, the NRC is modifying § 170.12(f) to replace "License Fee and Accounts Receivable Branch" with "Accounts Receivable Team." This change is being made so that the regulation reflects the current Office of the Chief Financial Officer organizational structure.

The NRC is also revising § 170.31 footnote 1(c) to remove information related to amendment fees associated with licenses other than export and import licenses. The NRC eliminated Part 170 "flat" amendment fees for materials licenses in FY 1999 (64 FR 31448; June 10, 1999). The amendment costs are now recovered through Part 171 annual fees assessed to materials licensees.

In summary, the NRC is amending 10 CFR Part 170 to—

1. Revise the materials and reactor programs FTE hourly rates;
2. Revise the licensing fees to be assessed to reflect the reactor and materials program hourly rates;
3. Revise § 170.31 to add category 10.C to clarify transportation security activities;
4. Modify § 170.21 category K. and § 170.31 category 15 to ensure consistency with 10 CFR Part 110;
5. Make an administrative change to fee category 13 of § 170.31 to be consistent with category 13 of § 171.16(d).
6. Revise § 170.12(f) to replace "License Fee and Accounts Receivable Branch" with "Accounts Receivable Team."
7. Revise § 170.31 footnote 1(c) to remove information related to amendment fees associated with licenses other than export and import licenses.

B. Amendments to 10 CFR Part 171: Annual Fees for Reactor Licenses, and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals, and Government Agencies Licensed by the NRC

The NRC is revising the annual fees for FY 2004 as follows.

1. Annual Fees

The NRC is establishing rebaselined annual fees for FY 2004. The Commission's policy commitment, made in the statement of considerations accompanying the FY 1995 fee rule (60 FR 32225; June 20, 1995), and further explained in the statement of considerations accompanying the FY 1999 fee rule (64 FR 31448; June 10, 1999), determined that base annual fees will be re-established (rebaselined) at least every third year, and more frequently if there is a substantial change in the total NRC budget or in the magnitude of the budget allocated to a specific class of licenses. The fees were last rebaselined in FY 2003. Based on the substantial change in the total budget from FY 2003 to FY 2004 and the magnitude of the budget allocated to certain classes of licensees, the Commission has determined that it is appropriate to rebaseline the annual fees again this year. Rebaselining fees results

in increased annual fees compared to FY 2003 for three classes of licenses (power reactors, rare earth mills, and transportation), and decreased annual fees for three classes (spent fuel storage/reactor decommissioning, non-power reactors, and fuel facilities). For the uranium recovery and small materials classes, some of the categories (subclasses) of licenses will have decreased annual fees and others will have increased annual fees.

The annual fees in §§ 171.15 and 171.16 will be revised for FY 2004 to recover approximately 92 percent of the NRC's FY 2004 budget authority, less the estimated amount to be recovered through part 170 fees and the amounts appropriated from the NWF. The total amount to be recovered through annual fees for FY 2004 is $389.9 million, compared to $396.8 million for FY 2003.

Within the nine fee classes of licensees, the FY 2004 annual fees will decrease from the previous year for many categories of licenses, increase for other categories, and remain the same for five categories. Of the five categories that remain the same, category 3P comprises the largest number of materials licensees. The increases in annual fees range from approximately .8 percent for licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 for research and development that do not authorize commercial distribution to approximately 108.1 percent for the uranium recovery disposal incidental to operations category. The decreases in annual fees range from approximately .9 percent for the category of commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material (*i.e.*, nuclear laundry category) to approximately 77.2 percent for the conventional mills category.

Factors affecting the changes to the annual fee amounts include: adjustments in budgeted costs for the different classes of licenses; the reduction in the fee recovery rate from 94 percent for FY 2003 to 92 percent for FY 2004; the estimated part 170 collections for the various classes of licenses; the decrease in the number of licenses for certain categories of licenses; and the $3.5 million carryover from additional collections in FY 2003 that were unanticipated at the time the final FY 2003 final rule was published (*i.e.*, there was no carryover from FY 2002 to reduce the FY 2003 fees).

Table III below shows the rebaselined annual fees for FY 2004 for a representative list of categories of licenses.

TABLE III.—REBASELINED ANNUAL FEES FOR FY 2004

Class/category of licenses	FY 2004 annual fee
Operating Power Reactors (including Spent Fuel Storage/Reactor Decommissioning annual fee)	$3,283,000
Spent Fuel Storage/Reactor Decommissioning	203,000
Nonpower Reactors	62,500
High Enriched Uranium Fuel Facility	4,573,000
Low Enriched Uranium Fuel Facility	1,533,000
UF_6 Conversion Facility	657,000
Conventional Mills	14,500
Transportation:	
Users/Fabricators	91,300
Users Only	7,400
Typical Materials Users:	
Radiographers	11,900
Well Loggers	4,600
Gauge Users (Category 3P)	2,500
Broad Scope Medical	25,000

The annual fees assessed to each class of licenses include a surcharge to recover those NRC budgeted costs that are not directly or solely attributable to the classes of licenses, but must be recovered from licensees to comply with the requirements of OBRA–90, as amended. Based on the FY 2001 Energy and Water Development Appropriations Act which amended OBRA–90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005, the total surcharge costs for FY 2004 will be reduced by approximately $47.4 million. The total FY 2004 budgeted costs for these activities and the reduction to the total surcharge amount for fee recovery purposes are shown in Table IV. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE IV.—SURCHARGE COSTS

[Dollars in millions]

Category of costs	FY 2004 budgeted costs
1. Activities not attributable to an existing NRC licensee or class of licensee:	
a. International activities	$10.8
b. Agreement State oversight	10.5
c. Low-level waste (LLW) disposal generic activities	3.8
d. Complex materials site decommissioning activities not recovered under part 170	3.4
2. Activities not assessed part 170 licensing and inspection fees or part 171 annual fees based on existing law or Commission policy:	
a. Fee exemption for nonprofit educational institutions	7.2
b. Licensing and inspection activities associated with other Federal agencies	2.5

TABLE IV.—SURCHARGE COSTS—Continued

[Dollars in millions]

Category of costs	FY 2004 budgeted costs
c. Costs not recovered from small entities under 10 CFR 171.16(c)	4.7
3. Activities supporting NRC operating licensees and others:	
a. Regulatory support to Agreement States	19.4
b. Generic decommissioning/reclamation (except those related to power reactors)	6.3
Total surcharge costs	68.6
Less 8 percent of NRC's FY 2004 total budget (less NWF)	−47.4
Total Surcharge Costs to be Recovered	$21.2

As shown in Table IV, $21.2 million is the total surcharge cost allocated to the various classes of licenses for FY 2004. The NRC will continue to allocate the surcharge costs, except LLW surcharge costs, to each class of licenses based on the percent of the budget for that fee class compared to the NRC's total budget. The NRC will continue to allocate the LLW surcharge costs based on the volume of LLW disposal of certain classes of licenses. The surcharge costs allocated to each class will be included in the annual fee assessed to each licensee. The FY 2004 surcharge costs allocated to each class of licenses are shown in Table V. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE V.—ALLOCATION OF SURCHARGE

	LLW surcharge		Non-LLW surcharge		Total surcharge
	Percent	$M	Percent	$M	$M
Operating Power Reactors	74	2.8	82.8	14.4	17.2
Spent Fuel Storage/Reactor Decomm.	.....	.....	5.4	0.9	0.9
Nonpower Reactors	.....	.....	0.1	0.0	0.0
Fuel Facilities	8	0.3	6.8	1.2	1.5
Materials Users	18	0.7	3.2	0.6	1.2
Transportation	.....	.....	1.2	0.2	0.2
Rare Earth Facilities	.....	.....	0.1	0.0	0.0
Uranium Recovery	.....	.....	0.4	0.1	0.1
Total Surcharge	100	3.8	100.0	17.4	21.2

The budgeted costs allocated to each class of licenses and the calculations of the rebaselined fees are described in a. through h. below. The workpapers which support this final rule show in detail the allocation of NRC's budgeted resources for each class of licenses and how the fees are calculated. The workpapers are available electronically at the NRC's Electronic Reading Room on the Internet at Web site address *http://www.nrc.gov/reading-rm/adams.html*. For a period of 90 days after the effective date of this final rule, the workpapers may also be examined at the NRC Public Document Room located at One White Flint North, Room O–1F22, 11555 Rockville Pike, Rockville, MD 20852–2738.

a. *Fuel Facilities.* The FY 2004 budgeted costs to be recovered in annual fees assessment to the fuel facility class of licenses is approximately $21.6 million compared to $27.0 million in FY 2003. The annual fee decrease is attributable to the increase in part 170 fees for the fuel facility class due to an increase in the mixed-oxide fuel effort. In addition, $2.1 million in part 170 fees will be recovered in FY 2004 for contract costs associated with the review of the Duke-Cogema Stone and Webster application. The costs associated with this review were improperly coded and not factored into the calculations for FY 2001, FY 2002, and FY 2003.

The annual fees are allocated to the individual fuel facility licensees based on the effort/fee determination matrix established in the FY 1999 final fee rule (64 FR 31448; June 10, 1999). In the matrix (which is included in the NRC workpapers that are publicly available), licensees are grouped into five categories according to their licensed activities (*i.e.*, nuclear material enrichment, processing operations, and material form) and according to the level, scope, depth of coverage, and rigor of generic regulatory programmatic effort applicable to each category from a safety and safeguards perspective. This methodology can be applied to determine fees for new licensees, current licensees, licensees in unique license situations, and certificate holders.

The methodology is adaptable to changes in the number of licensees or certificate holders, licensed or certified material and/or activities, and total programmatic resources to be recovered through annual fees. When a license or certificate is modified, it may result in a change of category for a particular fuel facility licensee as a result of the methodology used in the fuel facility effort/fee matrix. Consequently, this change may also have an effect on the fees assessed to other fuel facility licensees and certificate holders. For example, if a fuel facility licensee amends its license/certificate in such a way (*e.g.*, decommissioning or license termination) that results in it not being subject to part 171 costs applicable to the fee class, then the budgeted costs for

the safety and/or safeguards components will be spread among the remaining fuel facility licensees/certificate holders, resulting in higher fees for those affected licensees.

The methodology is applied as follows. First, a fee category is assigned based on the nuclear material and activity authorized by license or certificate. Although a licensee/certificate holder may elect not to fully use a license/certificate, the license/certificate is still used as the source for determining authorized nuclear material possession and use/activity. Next, the category and license/certificate information are used to determine where the licensee/certificate holder fits into the matrix. The matrix depicts the categorization of licensees/certificate holders by authorized material types and use/activities, and the relative generic regulatory programmatic effort associated with each category. The programmatic effort (expressed as a value in the matrix) reflects the safety and safeguards risk significance associated with the nuclear material and use/activity, and the commensurate generic regulatory program (*i.e.*, scope, depth and rigor) level of effort.

On February 24, 2004, the NRC issued a license to the United States Enrichment Corporation, Inc. to possess and use source and special nuclear material at the American Centrifuge Lead Cascade facility at the Portsmouth Gaseous Diffusion Plant site in Piketon, Ohio. The fuel facility matrix has been updated to include the effort factors for this licensee.

The effort factors for the various subclasses of fuel facility licenses are summarized in Table VI.

TABLE VI.—EFFORT FACTORS FOR FUEL FACILITIES

Facility type	Number of facilities	Effort factors (in percent)	
		Safety	Safeguards
High Enriched Uranium Fuel	2	91 (35.5)	76 (55.1)
Enrichment	2	70 (27.3)	34 (24.6)
Low Enriched Uranium Fuel	3	66 (25.8)	18 (13.0)
UF_6 Conversion	1	12 (4.7)	0 (0)
Limited Operations Facility	1	8 (3.1)	3 (2.2)
Others	2	9 (3.5)	7 (5.1)

Applying these factors to the safety, safeguards, and surcharge components of the $21.6 million total annual fee amount for the fuel facility class results in annual fees for each licensee within the categories of this class summarized in Table VII.

TABLE VII.—ANNUAL FEES FOR FUEL FACILITIES

Facility type	FY 2004 annual fee
High Enriched Uranium Fuel	$4,573,000
Uranium Enrichment	2,848,000
Low Enriched Uranium	1,533,000
UF_6 Conversion	657,000
Limited Operations Facility	602,000
Others	438,000

b. *Uranium Recovery Facilities.* The FY 2004 budgeted costs, including surcharge costs, to be recovered through annual fees assessed to the uranium recovery class is approximately $546,000. Approximately $453,000 of this amount will be assessed to DOE. The remaining $93,000 will be recovered through annual fees assessed to conventional mills, in-situ leach solution mining facilities, and 11e.(2) mill tailings disposal facilities.

Consistent with the change in methodology adopted in the FY 2002 final fee rule (67 FR 42612; June 24, 2002), the total annual fee amount, less the amounts specifically budgeted for Title I activities, is allocated equally between Title I and Title II licensees. This will result in an annual fee being assessed to DOE to recover the costs specifically budgeted for NRC's Title I activities plus 50 percent of the remaining annual fee amount, including the surcharge and generic/other costs, for the uranium recovery class. The remaining 50 percent of the surcharge and generic/other costs are assessed to the NRC Title II program licensees that are subject to annual fees. The costs to be recovered through annual fees assessed to the uranium recovery class are shown below. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

DOE Annual Fee Amount (UMTRCA Title I and Title II general licenses):	
UMTRCA Title I budgeted costs	$ 359,578
50 percent of generic/other uranium recovery budgeted costs	55,025
50 percent of uranium recovery surcharge	38,121
Total Annual Fee Amount for DOE	452,723
Annual Fee Amount for UMTRCA Title II Specific Licenses:	
50 percent of generic/other uranium recovery budgeted costs	55,025

50 percent of uranium recovery surcharge	38,121
Total Annual Fee Amount for Title II Specific Licenses	93,145

The matrix used to allocate the costs of various categories of Title II specific licensees has been updated to reflect NRC's increased efforts related to facility closure compared to facility operations, and the matrix also revises the weighting factors to reflect the effort levels per category. However, consistent with the methodology established in the FY 1995 fee rule (60 FR 32218; June 20, 1995), the approach for establishing part 171 annual fees for Title II uranium recovery licensees has not changed, and is as follows:

(1) The methodology identifies three categories of licenses: conventional uranium mills (Class I facilities), uranium solution mining facilities (Class II facilities), and mill tailings disposal facilities (11e.(2) disposal facilities). Each of these categories benefits from the generic uranium recovery program efforts (*e.g.*, rulemakings, staff guidance documents);

(2) The matrix relates the category and the level of benefit by program element and subelement;

(3) The two major program elements of the generic uranium recovery program are activities related to facility operations and those related to facility closure;

(4) Each of the major program elements was further divided into three subelements;

(5) The three major subelements of generic activities associated with uranium facility operations are regulatory efforts related to the operation of mills, handling and disposal of waste, and prevention of groundwater contamination. The three major subelements of generic activities associated with uranium facility closure are regulatory efforts related to decommissioning of facilities and land clean-up, reclamation and closure of tailings impoundments, and groundwater clean-up. Weighted values were assigned to each program element and subelement considering health and safety implications and the associated effort to regulate these activities. The applicability of the generic program in each subelement to each uranium recovery category was qualitatively estimated as either significant, some, minor, or none.

The relative weighted factors per facility type for the various categories of specifically licensed Title II uranium recovery licensees are as follows:

TABLE VIII.—WEIGHTED FACTORS FOR URANIUM RECOVERY LICENSES

Facility type	Number of facilities	Cateogry weight	Level of benefit total weight	
			Value	Percent
Class I (conventional mills)	2	900	1,800	31
Class II (solution mining)	3	800	2,400	41
11e.(2) disposal	1	795	795	14
11e.(2) disposal incident to existing tailings sites	1	800	800	14

Applying these factors to the approximately $93,000 in budgeted costs to be recovered from Title II specific licensees results in the following revised annual fees:

TABLE IX.—ANNUAL FEES FOR TITLE II SPECIFIC LICENSES

Facility type	FY 2004 annual fee
Class I (conventional mills)	$14,500
Class II (solution mining)	12,900
11e.(2) disposal	12,800
11e.(2) disposal incidental to existing tailings sites	12,900

In the FY 2001 final rule (66 FR 32478; June 14, 2001), the NRC revised § 171.19 to establish a quarterly billing schedule for Class I and Class II licensees, regardless of the annual fee amount. Therefore, as provided in § 171.19(b), if the amounts collected in the first three quarters of FY 2004 exceed the amount of the revised annual fee, the overpayment will be refunded; if the amounts collected in the first three quarters are less than the final revised annual fee, the remainder will be billed after the FY 2004 final fee rule is published. The remaining categories of Title II facilities are subject to billing based on the anniversary date of the license as provided in § 171.19(c).

c. *Power Reactors.* The approximately $320.3 million in budgeted costs to be recovered through FY 2004 annual fees assessed to the power reactor class, including budgeted costs for homeland security activities related to power reactors, is divided equally among the 104 power reactors licensed to operate. This results in a FY 2004 annual fee of $3,080,000 per reactor. Additionally, each power reactor licensed to operate will be assessed the FY 2004 spent fuel storage/reactor decommissioning annual fee of $203,000, which is discussed in paragraph d below. This results in a total FY 2004 annual fee of $3,283,000 for each power reactor licensed to operate.

d. *Spent Fuel Storage/Reactor Decommissioning.* For FY 2004, budgeted costs of approximately $24.6 million for spent fuel storage/reactor decommissioning are to be recovered through annual fees assessed to part 50 power reactors, and to part 72 licensees who do not hold a part 50 license. Those reactor licensees that have ceased

operations and have no fuel onsite are not subject to these annual fees. The costs are divided equally among the 121 licensees, resulting in an FY 2004 annual fee of $203,000 per licensee.

e. *Non-power Reactors.* Approximately $250,000 in budgeted costs is to be recovered through annual fees assessed to the non-power reactor class of licenses for FY 2004. This amount is divided equally among the four non-power reactors subject to annual fees. This results in an FY 2004 annual fee of $62,500 for each licensee.

f. *Rare Earth Facilities.* The FY 2004 budgeted costs of $157,600 for rare earth facilities to be recovered through annual fees will be assessed to the one licensee who has a specific license for receipt and processing of source material. Before FY 2004, one rare earth facility requested that its license be amended to authorize decommissioning activities only. Consequently, this license is no longer subject to annual fees. The result is an FY 2004 annual fee of $157,600 for the one remaining licensee.

g. *Materials Users.* To equitably and fairly allocate the $21.6 million in FY 2004 budgeted costs to be recovered in annual fees assessed to the approximately 4,500 diverse materials users and registrants, the NRC has continued to use the FY 1999 methodology to establish baseline annual fees for this class. The annual fees are based on the part 170 application fees and an estimated cost for inspections. Because the application fees and inspection costs are indicative of the complexity of the license, this approach continues to provide a proxy for allocating the generic and other regulatory costs to the diverse categories of licenses based on how much it costs the NRC to regulate each category. The fee calculation also continues to consider the inspection frequency (priority), which is indicative of the safety risk and resulting regulatory costs associated with the categories of licenses. The annual fee for these categories of licenses is developed as follows:

Annual fee = Constant × [Application Fee + (Average Inspection Cost divided by Inspection Priority)] + Inspection Multiplier × (Average Inspection Cost divided by Inspection Priority) + Unique Category Costs.

The constant is the multiple necessary to recover approximately $16.5 million in general costs and is 1.18 for FY 2004. The inspection multiplier is the multiple necessary to recover approximately $4.1 million in inspection costs for FY 2004, and is 0.98 for FY 2004. The unique category costs are any special costs that the NRC has budgeted for a specific category of licenses. For FY 2004, approximately $83,000 in budgeted costs for the implementation of revised part 35, Medical Use of Byproduct Material (unique costs), has been allocated to holders of NRC human use licenses.

The annual fee assessed to each licensee also includes a share of the $555,500 in surcharge costs allocated to the materials user class of licenses and, for certain categories of these licenses, a share of the approximately $676,800 in LLW surcharge costs allocated to the class. The annual fee for each fee category is shown in § 171.16(d).

h. *Transportation.* Of the approximately $5.4 million in FY 2004 budgeted costs to be recovered through annual fees assessed to the transportation class of licenses, approximately $1.5 million will be recovered from annual fees assessed to DOE based on the number of part 71 Certificates of Compliance that it holds. Of the remaining $3.9 million, approximately 21 percent is allocated to the 75 quality assurance plans authorizing use only and the 37 quality assurance plans authorizing use and design/fabrication. The remaining 79 percent is allocated only to the 37 quality assurance plans authorizing use and design/fabrication. This results in an annual fee of $7,400 for each of the holders of quality assurance plans that authorize use only, and an annual fee of $91,300 for each of the holders of quality assurance plans that authorize use and design/fabrication.

2. Agreement State Activities

On July 23, 2003, the NRC approved an Agreement with the State of Wisconsin under Section 274 of the Atomic Energy Act (AEA) of 1954, as amended. This Agreement transferred to the State the Commission's regulatory authority over byproduct material, source material and special nuclear material in quantities not sufficient to form a critical mass. This Agreement became effective August 10, 2003. Currently, there are 33 Agreement States.

As a result of this Agreement, 222 former NRC licensees are now Wisconsin licensees. Thirty additional licenses were partially transferred to Wisconsin because the NRC retained jurisdiction over certain activities of those licensees. Because NRC does not charge fees to Agreement States or their licensees, the NRC will not collect fees in FY 2004 or thereafter for the 222 former NRC licensees, and will collect fees from the 30 partially transferred licensees only for those activities over which the NRC retains jurisdiction. The costs of Agreement State regulatory support and oversight activities for Wisconsin, as for any other Agreement State, will be recovered through the surcharge, consistent with existing fee policy.

On January 2, 2003, the State of Utah requested an amended Agreement between the NRC and itself per Section 274b of the AEA. This amendment would transfer regulatory responsibility for uranium mills and tailings to the State. Utah previously had become an Agreement State for certain other categories of materials, effective April 1, 1984. The request for this amendment is currently under review by the Commission and a decision on this matter is expected in May 2004. If the Commission approves this Agreement, four licensees would be transferred from NRC to Utah. Two of these licensees are uranium mills that are in reclamation, and therefore, currently do not pay part 171 annual fees. However, the other two licensees do pay NRC annual fees; if these licensees are removed from the uranium recovery class of licensees, the annual fees for the remaining NRC licensees in that class would likely increase in FY 2005.

3. Master Materials Licenses

On March 17, 2003, the NRC issued a master material license to the U.S. Department of Veterans Affairs (VA) to take over principal regulatory functions for its medical facilities throughout the United States. Including the VA, there are now three master materials licenses.

The VA will conduct its own inspections to ensure compliance with NRC regulations and with the terms of the VA-issued permits. It will also take enforcement action if violations of requirements are identified. The NRC retains the authority to take enforcement action, if appropriate. The NRC will continue to conduct evaluations of the VA's performance and conduct independent inspections of a sample of VA medical facilities.

As a result of the issuance of the master materials license to the VA, 116 medical facilities that were previously licensed by the NRC for various uses of radioactive materials for the diagnosis and treatment of diseases are now included in the master materials license. Thus, the number of licenses in the master materials category has increased from two to three, while the number of licenses for certain other categories has decreased.

4. Administrative Amendment

The NRC is modifying category 10 of § 171.16(d) to add category 10.C for the evaluation of security plans, route

approvals, route surveys, and transportation security devices, including immobilization devices. This is an administrative change that is being made only to ensure consistency with fee category 10.C of § 170.31 as described above. The NRC is not proposing an annual fee for category 10.C.

Additionally, the NRC is modifying § 171.19(a) to replace On-Line Payment and Collection System (OPACs) with Intragovernmental Payment and Collection System (IPAC). This change is being made so that the regulation reflects the current payment process.

In summary, the NRC has—

1. Established rebaselined annual fees for FY 2004;

2. Adjusted the annual fees to reflect the changes in agreement state activities and the master materials licenses;

3. Made an administrative change to add fee category 10.C to § 171.16(d) to ensure consistency with the addition of category 10.C to § 170.31.

4. Revised § 171.19(a) to replace "On-Line Payment and Collection System" (OPACs) with "Intragovernmental Payment and Collection System" (IPAC).

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using these standards is inconsistent with applicable law or is otherwise impractical. In this final rule, the NRC is amending the licensing, inspection, and annual fees charged to its licensees and applicants as necessary to recover approximately 92 percent of its budget authority in FY 2004 as required by the Omnibus Budget Reconciliation Act of 1990, as amended. This action does not constitute the establishment of a standard that contains generally applicable requirements.

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental assessment nor an environmental impact statement has been prepared for the final regulation. By its very nature, this regulatory action does not affect the environment and, therefore, no environmental justice issues are raised.

VI. Paperwork Reduction Act Statement

This final rule does not contain information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VII. Regulatory Analysis

With respect to 10 CFR Part 170, this final rule was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in *National Cable Television Association, Inc.* v. *United States*, 415 U.S. 36 (1974) and *Federal Power Commission* v. *New England Power Company*, 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the "value to the recipient" of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia: *National Cable Television Association* v. *Federal Communications Commission*, 554 F.2d 1094 (DC Cir. 1976); *National Association of Broadcasters* v. *Federal Communications Commission*, 554 F.2d 1118 (DC Cir. 1976); *Electronic Industries Association* v. *Federal Communications Commission*, 554 F.2d 1109 (DC Cir. 1976); and *Capital Cities Communication, Inc.* v. *Federal Communications Commission*, 554 F.2d 1135 (DC Cir. 1976). The Commission's fee guidelines were developed based on these legal decisions.

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in *Mississippi Power and Light Co.* v. *U.S. Nuclear Regulatory Commission*, 601 F.2d 223 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980). This court held that—

(1) The NRC had the authority to recover the full cost of providing services to identifiable beneficiaries;

(2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act and with applicable regulations;

(3) The NRC could charge for costs incurred in conducting environmental reviews required by NEPA;

(4) The NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule;

(5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and

(6) The NRC's fees were not arbitrary or capricious.

With respect to 10 CFR Part 171, on November 5, 1990, the Congress passed Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), which required that, for FYs 1991 through 1995, approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. OBRA–90 was subsequently amended to extend the 100 percent fee recovery requirement through FY 2000. The FY 2001 Energy and Water Development Appropriations Act amended OBRA–90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005. The NRC's fee recovery amount for FY 2004 is 92 percent. To comply with this statutory requirement and in accordance with § 171.13, the NRC is publishing the amount of the FY 2004 annual fees for reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and devices and QA program approvals, and Government agencies. OBRA–90, consistent with the accompanying Conference Committee Report, and the amendments to OBRA–90, provides that—

(1) The annual fees be based on approximately 92 percent of the Commission's FY 2004 budget of $625.6 million less the amounts collected from part 170 fees and funds directly appropriated from the NWF to cover the NRC's high level waste program;

(2) The annual fees shall, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by the Commission; and

(3) The annual fees be assessed to those licensees the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment.

10 CFR Part 171, which established annual fees for operating power reactors effective October 20, 1986 (51 FR 33224; September 18, 1986), was challenged and upheld in its entirety in *Florida Power and Light Company* v. *United States*, 846 F.2d 765 (DC Cir. 1988), *cert. denied*, 490 U.S. 1045 (1989). Further, the NRC's FY 1991 annual fee rule methodology was upheld by the DC Circuit Court of Appeals in *Allied Signal* v. *NRC*, 988 F.2d 146 (DC Cir. 1993).

VIII. Regulatory Flexibility Analysis

The NRC is required by the Omnibus Budget Reconciliation Act of 1990, as amended, to recover approximately 92 percent of its FY 2004 budget authority through the assessment of user fees. This act further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

This final rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 2004. The final rule will result in increases in the annual fees charged to certain licensees and holders of certificates, registrations, and approvals, and decreases in annual fees for others. Licensees affected by the annual fee increases and decreases include those that qualify as a small entity under NRC's size standards in 10 CFR 2.810. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this final rule.

The Small Business Regulatory Enforcement Fairness Act of 1996 requires all Federal agencies to prepare a written compliance guide for each rule for which the agency is required by 5 U.S.C. 604 to prepare a regulatory flexibility analysis. Therefore, in compliance with the law, Attachment 1 to the Regulatory Flexibility Analysis is the small entity compliance guide for FY 2004.

IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and that a backfit analysis is not required for this final rule. The backfit analysis is not required because these amendments do not require the modification of or additions to systems, structures, components, or the design of a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct, or operate a facility.

X. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, the NRC has determined that this action is a major rule and has verified the determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

List of Subjects

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, Registrations, Approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Parts 170 and 171.

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

■ 1. The authority citation for part 170 continues to read as follows:

Authority: Sec. 9701, Pub. L. 97–258, 96 Stat. 1051 (31 U.S.C. 9701); sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205a, Pub. L. 101–576, 104 Stat. 2842, as amended (31 U.S.C. 901, 902); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 *note*).

■ 2. Section 170.20 is revised to read as follows:

§ 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, part 55 re-qualification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 will be calculated using the following applicable professional staff-hour rates:

(a) Reactor Program (§ 170.21 Activities): $157 per hour

(b) Nuclear Materials and Nuclear Waste Program (§ 170.31 Activities): $156 per hour

■ 3. In § 170.21, Category K in the table is revised to read as follows:

§ 170.21 Schedule of fees for production and utilization facilities, review of standard referenced design approvals, special projects, inspections, and import and export licenses.

* * * * *

SCHEDULE OF FACILITY FEES

[See footnotes at end of table]

Facility categories and type of fees	Fees [1, 2]
* * * * * * *	
K. Import and export licenses:	
Licenses for the import and export only of production and utilization facilities or the export only of components for production and utilization facilities issued under 10 CFR Part 110.	
1. Application for import or export of production and utilization facilities [4] (including reactors and other facilities) and exports of components requiring Commission and Executive Branch review, for example, actions under 10 CFR 110.40(b).	
Application-new license	$10,100
Amendment	$10,100
2. Application for export of reactor and other components requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(1)–(9).	
Application-new license	$5,900
Amendment	$5,900
3. Application for export of components requiring only the assistance of the Executive Branch to obtain foreign government assurances.	
Application-new license	$1,900
Amendment	$1,900

SCHEDULE OF FACILITY FEES—Continued

[See footnotes at end of table]

Facility categories and type of fees	Fees [1, 2]
4. Application for export of facility components and equipment (examples provided in 10 CFR part 110, Appendix A, Items (5) through (9)) not requiring Commission or Executive Branch review, or obtaining foreign government assurances.	
Application-new license	$1,200
Amendment	$1,200
5. Minor amendment of any active export or import license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms or conditions or to the type of facility or component authorized for export and therefore, do not require in-depth analysis or review or consultation with the Executive Branch, U.S. host state, or foreign government authorities.	
Amendment	$230.

[1] Fees will not be charged for orders issued by the Commission under § 2.202 of this chapter or for amendments resulting specifically from the requirements of these types of Commission orders. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (*e.g.*, 10 CFR 50.12, 73.5) and any other sections in effect now or in the future, regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100 percent of the facility's full rated power). Thus, if a licensee received a low power license or a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined through that period when authority is granted for full power operation. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100 percent of full rated power, the total costs for the license will be at that determined lower operating power level and not at the 100 percent capacity.

[2] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect at the time the service was provided. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for any topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

* * * * * * * *

[4] Imports only of major components for end-use at NRC-licensed reactors are now authorized under NRC general import license.

* * * * *

■ 4. Section 170.31 is revised to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

Applicants for materials licenses, import and export licenses, and other regulatory services, and holders of materials licenses or import and export licenses shall pay fees for the following categories of services. The following schedule includes fees for health and safety and safeguards inspections where applicable:

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2, 3]
1. Special nuclear material:	
A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U–235 in unsealed form or 200 grams or more of U–233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only:	
Licensing and Inspection	Full Cost.
B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI):	
Licensing and inspection	Full Cost.
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers: [4]	
Application	$720
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A: [4]	
Application	$1,400
E. Licenses or certificates for construction and operation of a uranium enrichment facility:	
Licensing and inspection	Full Cost.
2. Source material:	
A. (1) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, and ion exchange facilities, and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode:	
Licensing and inspection	Full Cost.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2, 3]
(2) Licenses that authorize the receipt of byproduct material, as defined in Section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal except those licenses subject to fees in Category 2A(1):	
Licensing and inspection	Full Cost.
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2A(1):	
Licensing and inspection	Full Cost.
B. Licenses which authorize the possession, use, and/or installation of source material for shielding:	
Application	$170
C. All other source material licenses:	
Application	$6,100
3. Byproduct material:	
A. Licenses of broad scope for the possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application	$7,300
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application	$2,800
C. Licenses issued under §§ 32.72 and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4). These licenses are covered by fee Category 3D.	
Application	$6,000
D. Licenses and approvals issued under §§ 32.72 and and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§ 32.72 and/or 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4).	
Application	$2,600
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):	
Application	$1,800
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application	$3,600
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application	$8,700
H. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter. The category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application	$4,200
I. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application	$4,300
J. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application	$1,100
K. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application	$640
L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution:	
Application	$6,100
M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution:	
Application	$3,000
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and (2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C:	
Application	$3,300

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2, 3]
O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations:	
Application	$3,200
P. All other specific byproduct material licenses, except those in Categories 4A through 9D:	
Application	$1,200
Q. Registration of a device(s) generally licensed under part 31 of this chapter:	
Registration	$610
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material:	
Licensing and inspection	Full Cost.
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application	$1,900
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application	$2,800
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:	
Application	$2,000
B. Licenses for possession and use of byproduct material for field flooding tracer studies:	
Licensing	Full Cost.
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material:	
Application	$12,400
7. Medical licenses:	
A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application	$6,800
B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application	$4,900
C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application	$1,900
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:	
Application	$360
9. Device, product, or sealed source safety evaluation:	
A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution:	
Application—each device	$5,600
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices:	
Application—each device	$5,600
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:	
Application—each source	$1,800
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel:	
Application—each source	$590
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers:	
Licensing and inspection	Full Cost.
B. Evaluation of 10 CFR Part 71 quality assurance programs:	
Application	$2,100
Inspections	Full Cost.
C. Evaluation of security plans, route approvals, route surveys, and transportation security devices (including immobilization devices):	
Licensing and inspection	Full Cost.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2, 3]
11. Review of standardized spent fuel facilities:	
Licensing and inspection	Full Cost.
12. Special projects:	
Approvals and preapplication/Licensing activities	Full Cost.
Inspections	Full Cost.
13. A. Spent fuel storage cask Certificate of Compliance:	
Licensing	Full Cost.
Inspections	Full Cost.
B. Inspections related to storage of spent fuel under § 72.210 of this chapter	Full Cost.
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter:	
Licensing and inspection	Full Cost.
15. Import and Export licenses:	
Licenses issued under part 110 of this chapter for the import and export only of special nuclear material, source material, tritium and other byproduct material, and the export only of heavy water, or nuclear grade graphite.	
A. Application for export or import of nuclear materials, including radioactive waste requiring Commission and Executive Branch review, for example, those actions under 10 CFR 110.40(b). This category includes application for export and import of radioactive waste.	
Application—new license	$10,100
Amendment	$10,100
B. Application for export or import of nuclear material, including radioactive waste, requiring Executive Branch review, but not Commission review. This category also includes application for the export and import of radioactive waste, which requires NRC to consult with domestic host state authorities, Low-Level Radioactive Waste Compact Commissions, the U.S. Environmental Protection Agency, etc.	
Application—new license	$5,900
Amendment	$5,900
C. Application for export of nuclear material, for example, routine reloads of low enriched uranium reactor fuel and/or natural uranium source material requiring only the assistance of the Executive Branch to obtain foreign government assurances.	
Application—new license	$1,900
Amendment	$1,900
D. Application for export or import of nuclear material, including radioactive waste, not requiring Commission or Executive Branch review, or obtaining foreign government assurances. This category includes application for export or import of radioactive waste where the NRC has previously authorized the export or import of the same form of waste to or from the same or similar parties located in the same country, requiring only confirmation from the receiving facility and licensing authorities that the shipments may proceed according to previously agreed understandings and procedures.	
Application—new license	$1,200
Amendment	$1,200
E. Minor amendment of any active export or import license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms and conditions or to the type/quantity/chemical composition of the material authorized for export and therefore, do not require in-depth analysis, review, or consultations with Executive Branch, U.S. host state, or foreign government authorities.	
Amendment	$230
16. Reciprocity:	
Agreement State licensees who conduct activities under the reciprocity provisions of 10 CFR 150.20.	
Application	$1,500

[1] *Types of fees*—Separate charges, as shown in the schedule, will be assessed for pre-application consultations and reviews and applications for new licenses and approvals, issuance of new licenses and approvals, certain amendments and renewals to existing licenses and approvals, safety evaluations of sealed sources and devices, generally licensed device registrations, and certain inspections. The following guidelines apply to these charges:

(a) *Application and registration fees.* Applications for new materials licenses and export and import licenses; applications to reinstate expired, terminated, or inactive licenses except those subject to fees assessed at full costs; applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20; and applications for amendments to materials licenses that would place the license in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for each category.

(1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(2) Applications for new licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for fee Category 1C only.

(b) *Licensing fees.* Fees for reviews of applications for new licenses and for renewals and amendments to existing licenses, for pre-application consultations and for reviews of other documents submitted to NRC for review, and for project manager time for fee categories subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(b).

(c) *Amendment fees.* Applications for amendments to export and import licenses must be accompanied by the prescribed amendment fee for each license affected.

(d) *Inspection fees.* Inspections resulting from investigations conducted by the Office of Investigations and non-routine inspections that result from third-party allegations are not subject to fees. Inspection fees are due upon notification by the Commission in accordance with § 170.12(c).

(e) *Generally licensed device registrations under 10 CFR 31.5.* Submittals of registration information must be accompanied by the prescribed fee.

[2] Fees will not be charged for orders issued by the Commission under 10 CFR 2.202 or for amendments resulting specifically from the requirements of these types of Commission orders. However, fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (*e.g.*, 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections in effect now or in the future), regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

[3] Full cost fees will be determined based on the professional staff time multiplied by the appropriate professional hourly rate established in § 170.20 in effect at the time the service is provided, and the appropriate contractual support services expended. For applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

[4] Licensees paying fees under Categories 1A, 1B, and 1E are not subject to fees under Categories 1C and 1D for sealed sources authorized in the same license except for an application that deals only with the sealed sources authorized by the license.

PART 171—ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC.

■ 5. The authority citation for part 171 continues to read as follows:

Authority: Sec. 7601, Pub. L. 99–272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100–203, 101 Stat. 1330, as amended by sec. 3201, Pub. L. 101–239, 103 Stat. 2132, as amended by sec. 6101, Pub. L. 101–508, 104 Stat. 1388, as amended by sec. 2903a, Pub. L. 102–486, 106 Stat. 3125 (42 U.S.C. 2213, 2214); sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841); Sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 *note*).

■ 6. In § 171.15 paragraphs (b), (c), (d), and (e) are revised to read as follows:

§ 171.15 Annual Fees: Reactor licenses and independent spent fuel storage licenses.

* * * * *

(b)(1) The FY 2004 annual fee for each operating power reactor which must be collected by September 30, 2004, is $3,283,000.

(2) The FY 2004 annual fee is comprised of a base annual fee for power reactors licensed to operate, a base spent fuel storage/reactor decommissioning annual fee, and associated additional charges (surcharges). The activities comprising the FY 2004 spent storage/reactor decommissioning base annual fee are shown in paragraphs (c)(2)(i) and (ii) of this section. The activities comprising the FY 2004 surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 2004 base annual fee for operating power reactors are as follows:

(i) Power reactor safety and safeguards regulation except licensing and inspection activities recovered under part 170 of this chapter and generic reactor decommissioning activities.

(ii) Research activities directly related to the regulation of power reactors, except those activities specifically related to reactor decommissioning.

(iii) Generic activities required largely for NRC to regulate power reactors (*e.g.*, updating part 50 of this chapter, or operating the Incident Response Center). The base annual fee for operating power reactors does not include generic activities specifically related to reactor decommissioning.

(c)(1) The FY 2004 annual fee for each power reactor holding a part 50 license that is in a decommissioning or possession only status and has spent fuel onsite and each independent spent fuel storage part 72 licensee who does not hold a part 50 license is $203,000.

(2) The FY 2004 annual fee is comprised of a base spent fuel storage/reactor decommissioning annual fee (which is also included in the operating power reactor annual fee shown in paragraph (b) of this section), and an additional charge (surcharge). The activities comprising the FY 2004 surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 2004 spent fuel storage/reactor decommissioning rebaselined annual fee are:

(i) Generic and other research activities directly related to reactor decommissioning and spent fuel storage; and

(ii) Other safety, environmental, and safeguards activities related to reactor decommissioning and spent fuel storage, except costs for licensing and inspection activities that are recovered under part 170 of this chapter.

(d)(1) The activities comprising the FY 2004 surcharge are as follows:

(i) Low-level waste disposal generic activities;

(ii) Activities not attributable to an existing NRC licensee or class of licenses (*e.g.*, international cooperative safety program and international safeguards activities, support for the Agreement State program, and complex materials site decommissioning activities not covered under Part 170); and

(iii) Activities not currently subject to 10 CFR part 170 licensing and inspection fees based on existing law or Commission policy (*e.g.*, reviews and inspections conducted of nonprofit educational institutions, licensing actions for Federal agencies, and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*).

(2) The total FY 2004 surcharge allocated to the operating power reactor class of licenses is $17.2 million, not including the amount allocated to the spent fuel storage/reactor decommissioning class. The FY 2004 operating power reactor surcharge to be assessed to each operating power reactor is approximately $165,000. This amount is calculated by dividing the total operating power reactor surcharge ($17.2 million) by the number of operating power reactors (104).

(3) The FY 2004 surcharge allocated to the spent fuel storage/reactor decommissioning class of licenses is $900,000. The FY 2004 spent fuel storage/reactor decommissioning surcharge to be assessed to each operating power reactor, each power reactor in decommissioning or possession only status that has spent fuel onsite, and to each independent spent fuel storage part 72 licensee who does not hold a part 50 license is approximately $7,800. This amount is calculated by dividing the total surcharge costs allocated to this class by the total number of power reactor licenses, except those that permanently ceased operations and have no fuel onsite, and part 72 licensees who do not hold a part 50 license.

(e) The FY 2004 annual fees for licensees authorized to operate a non-power (test and research) reactor licensed under part 50 of this chapter, unless the reactor is exempted from fees under § 171.11(a), are as follows:

Research reactor—$62,500.

Test reactor—$62,500.

■ 7. In § 171.16, paragraphs (c), (d), and (e) are revised to read as follows:

§ 171.16 Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals, and Government Agencies Licensed by the NRC.

* * * * *

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides

the Commission with the proper certification along with its annual fee payment, the licensee may pay reduced annual fees as shown in the following table. Failure to file a small entity certification in a timely manner could result in the denial of any refund that might otherwise be due. The small entity fees are as follows:

	Maximum annual fee per licensed category
Small Businesses Not Engaged in Manufacturing and Small Not-For-Profit Organizations (Gross Annual Receipts)	
$350,000 to $5 million	$2,300
Less than $350,000	500
Manufacturing entities that have an average of 500 employees or less	
35 to 500 employees	2,300
Less than 35 employees	500
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population)	
20,000 to 50,000	2,300
Less than 20,000	500
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less	
35 to 500 employees	2,300
Less than 35 employees	500

(1) A licensee qualifies as a small entity if it meets the size standards established by the NRC (See 10 CFR 2.810).

(2) A licensee who seeks to establish status as a small entity for the purpose of paying the annual fees required under this section must file a certification statement with the NRC. The licensee must file the required certification on NRC Form 526 for each license under which it is billed. NRC Form 526 can be accessed through the NRC's website at *http://www.nrc.gov*. For licensees who cannot access the NRC's website, NRC Form 526 may be obtained through the local point of contact listed in the NRC's "Materials Annual Fee Billing Handbook," NUREG/BR–0238, which is enclosed with each annual fee billing. The form can also be obtained by calling the fee staff at 301–415–7554, or by e-mailing the fee staff at *fees@nrc.gov*.

(3) For purposes of this section, the licensee must submit a new certification with its annual fee payment each year.

(4) The maximum annual fee a small entity is required to pay is $2,300 for each category applicable to the license(s).

(d) The FY 2004 annual fees are comprised of a base annual fee and an additional charge (surcharge). The activities comprising the FY 2004 surcharge are shown for convenience in paragraph (e) of this section. The FY 2004 annual fees for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are shown in the following table:

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

[See footnotes at end of table]

Category of materials licenses	Annual fees[1 2 3]
1. Special nuclear material:	
A. (1) Licenses for possession and use of U–235 or plutonium for fuel fabrication activities.	
(a) Strategic Special Nuclear Material:	
BWX Technologies SNM–42	$4,573,000
Nuclear Fuel Services SNM–124	4,573,000
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel:	
Global Nuclear Fuel SNM–1097	1,533,000
Framatome ANP Richland SNM–1227	1,533,000
Westinghouse Electric Company SNM–1107	1,533,000
(2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities.	
(a) Facilities with limited operations:	
Framatome ANP SNM–1168	602,000
(b) All Others:	
General Electric SNM–960	438,000
USEC Lead Cascade SNM–7003	438,000
B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI)	[11]N/A
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers	1,900
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2)	4,700
E. Licenses or certificates for the operation of a uranium enrichment facility	2,848,000
2. Source material:	
A. (1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride	657,000

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees[1 2 3]
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.	
Class I facilities[4]	14,500
Class II facilities[4]	12,900
Other facilities[4]	157,600
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2A(2) or Category 2A(4)	12,800
(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2A(2)	12,900
B. Licenses that authorize only the possession, use and/or installation of source material for shielding	700
C. All other source material licenses	11,500
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	22,000
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	6,700
C. Licenses issued under §§ 32.72 and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when included on the same license. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 171.11(a)(1). These licenses are covered by fee under Category 3D	11,000
D. Licenses and approvals issued under §§ 32.72 and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§ 32.72 and 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under § 171.11(a)(1). This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when included on the same license	4,500
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units)	3,500
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	6,400
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	23,700
H. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter	5,800
I. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter	6,000
J. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter	2,200
K. Licenses issued under Subpart B of part 31 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter	1,300
L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution	11,900
M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution	5,900
N. Licenses that authorize services for other licensees, except: (1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and (2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C	6,400
O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when authorized on the same license	11,900
P. All other specific byproduct material licenses, except those in Categories 4A through 9D	2,500
Q. Registration of devices generally licensed pursuant to part 31 of this chapter	[13] N/A

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees[1 2 3]
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material	[5] N/A
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	10,500
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	7,700
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies	4,600
B. Licenses for possession and use of byproduct material for field flooding tracer studies	[5] N/A
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material	22,900
7. Medical licenses:	
A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license	10,700
B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9]	25,000
C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9]	4,500
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities	1,300
9. Device, product, or sealed source safety evaluation:	
A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution	6,700
B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices	6,700
C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution	2,200
D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel	710
10. Transportation of radioactive material:	
A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers.	
Spent Fuel, High-Level Waste, and plutonium air packages	[6] N/A
Other Casks	[6] N/A
B. Quality assurance program approvals issued under part 71 of this chapter.	
Users and Fabricators	91,300
Users	7,400
C. Evaluation of security plans, route approvals, route surveys, and transportation security devices (including immobilization devices)	[6] N/A
11. Standardized spent fuel facilities	[6] N/A
12. Special Projects	[6] N/A
13. A. Spent fuel storage cask Certificate of Compliance	[6] N/A
B. General licenses for storage of spent fuel under 10 CFR 72.210	[12] N/A
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter	[7] N/A
15. Import and Export licenses	[8] N/A
16. Reciprocity	[8] N/A
17. Master materials licenses of broad scope issued to Government agencies	247,000
18. Department of Energy:	
A. Certificates of Compliance	[10] 1,525,000

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees[1] [2] [3]
B. Uranium Mill Tailing Radiation Control Act (UMTRCA) activities	453,000

[1] Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the current fiscal year. However, the annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses before October 1, 2003, and permanently ceased licensed activities entirely by September 30, 2003. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a possession only license during the fiscal year and for new licenses issued during the fiscal year will be prorated in accordance with the provisions of § 171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (*e.g.*, human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1A(1) are not subject to the annual fees for Category 1C and 1D for sealed sources authorized in the license.

[2] Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of parts 30, 40, 70, 71, 72, or 76 of this chapter.

[3] Each fiscal year, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the **Federal Register** for notice and comment.

[4] A Class I license includes mill licenses issued for the extraction of uranium from uranium ore. A Class II license includes solution mining licenses (in-situ and heap leach) issued for the extraction of uranium from uranium ores including research and development licenses. An "other" license includes licenses for extraction of metals, heavy metals, and rare earths.

[5] There are no existing NRC licenses in these fee categories. If NRC issues a license for these categories, the Commission will consider establishing an annual fee for this type of license.

[6] Standardized spent fuel facilities, 10 CFR Parts 71 and 72 Certificates of Compliance, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to users of the designs, certificates, and topical reports.

[7] Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

[8] No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

[9] Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions who also hold nuclear medicine licenses under Categories 7B or 7C.

[10] This includes Certificates of Compliance issued to DOE that are not under the Nuclear Waste Fund.

[11] See § 171.15(c).

[12] See § 171.15(c).

[13] No annual fee is charged for this category because the cost of the general license registration program applicable to licenses in this category will be recovered through 10 CFR Part 170 fees.

(e) The activities comprising the surcharge are as follows:

(1) LLW disposal generic activities;

(2) Activities not directly attributable to an existing NRC licensee or class(es) of licenses (*e.g.*, international cooperative safety program and international safeguards activities; support for the Agreement State program; complex materials site decommissioning activities not covered under Part 170 activities); and

(3) Activities not currently assessed licensing and inspection fees under 10 CFR Part 170 based on existing law or Commission policy (*e.g.*, reviews and inspections of nonprofit educational institutions and reviews for Federal agencies; activities related to decommissioning and reclamation; and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*).

Dated at Rockville, Maryland, this 9th day of April, 2004.

For the Nuclear Regulatory Commission.

Jesse L. Funches,

Chief Financial Officer.

Note: This appendix will not appear in the Code of Federal Regulations.

Appendix A to This Final Rule—Draft Regulatory Flexibility Analysis for the Amendments to 10 CFR Part 170 (License Fees) and 10 CFR Part 171 (Annual Fees)

I. Background

The Regulatory Flexibility Act (RFA), as amended (5 U.S.C. 601 *et seq.*), requires that agencies consider the impact of their rulemakings on small entities and, consistent with applicable statutes, consider alternatives to minimize these impacts on the businesses, organizations, and government jurisdictions to which they apply.

The NRC has established standards for determining which NRC licensees qualify as small entities (10 CFR 2.810). These size standards were established based on the Small Business Administration's most common receipts-based size standards and include a size standard for business concerns that are manufacturing entities. The NRC uses the size standards to reduce the impact of annual fees on small entities by establishing a licensee's eligibility to qualify for a maximum small entity fee. The small entity fee categories in § 171.16(c) of this final rule are based on the NRC's size standards.

From FY 1991 through FY 2000, the Omnibus Budget Reconciliation Act (OBRA–90), as amended, required that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, by assessing license and annual fees. The FY 2001 Energy and Water Development Appropriations Act amended OBRA–90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005. The amount to be recovered for FY 2004 is approximately $545.3 million.

OBRA–90 requires that the schedule of charges established by rulemaking should fairly and equitably allocate the total amount to be recovered from the NRC's licensees and be assessed under the principle that licensees who require the greatest expenditure of agency resources pay the greatest annual charges. Since FY 1991, the NRC has complied with OBRA–90 by issuing a final rule that amends its fee regulations. These final rules have established the methodology used by NRC in identifying and determining the fees to be assessed and collected in any given fiscal year.

In FY 1995, the NRC announced that, to stabilize fees, annual fees would be adjusted only by the percentage change (plus or minus) in NRC's total budget authority, adjusted for changes in estimated collections for 10 CFR Part 170 fees, the number of licensees paying annual fees, and as otherwise needed to assure the billed amounts resulted in the required collections. The NRC indicated that if there were a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licenses, the annual fee base would be recalculated.

In FY 1999, the NRC concluded that there had been significant changes in the allocation of agency resources among the various classes of licenses and established

rebaselined annual fees for FY 1999. The NRC stated in the final FY 1999 rule that to stabilize fees it would continue to adjust the annual fees by the percent change method established in FY 1995, unless there is a substantial change in the total NRC budget or the magnitude of the budget allocated to a specific class of licenses, in which case the annual fee base would be reestablished.

Based on the change in the magnitude of the budget to be recovered through fees, the Commission has determined that it is appropriate to rebaseline its part 171 annual fees again in FY 2004. Rebaselining fees will result in decreased annual fees for a majority of the categories of licenses (including many materials licensees) and increased annual fees for other categories.

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) is intended to reduce regulatory burdens imposed by Federal agencies on small businesses, nonprofit organizations, and governmental jurisdictions. SBREFA also provides Congress with the opportunity to review agency rules before they go into effect. Under this legislation, the NRC annual fee rule is considered a "major" rule and must be reviewed by Congress and the Comptroller General before the rule becomes effective. SBREFA also requires that an agency prepare a guide to assist small entities in complying with each rule for which a final regulatory flexibility analysis is prepared. This Regulatory Flexibility Analysis (RFA) and the small entity compliance guide (Attachment 1) have been prepared for the FY 2004 fee rule as required by law.

II. Impact on Small Entities

The fee rule results in substantial fees being charged to those individuals, organizations, and companies that are licensed by the NRC, including those licensed under the NRC materials program. The comments received on previous proposed fee rules and the small entity certifications received in response to previous final fee rules indicate that NRC licensees qualifying as small entities under the NRC's size standards are primarily materials licensees. Therefore, this analysis will focus on the economic impact of the annual fees on materials licensees. About 27 percent of these licensees (approximately 1,300 licensees for FY 2003) have requested small entity certification in the past. A 1993 NRC survey of its materials licensees indicated that about 25 percent of these licensees could qualify as small entities under the NRC's size standards.

The commenters on previous fee rulemakings consistently indicated that the following results would occur if the proposed annual fees were not modified:

1. Large firms would gain an unfair competitive advantage over small entities. Commenters noted that small and very small companies ("Mom and Pop" operations) would find it more difficult to absorb the annual fee than a large corporation or a high-volume type of operation. In competitive markets, such as soil testing, annual fees would put small licensees at an extreme competitive disadvantage with their much larger competitors because the proposed fees would be the same for a two-person licensee as for a large firm with thousands of employees.

2. Some firms would be forced to cancel their licenses. A licensee with receipts of less than $500,000 per year stated that the proposed rule would, in effect, force it to relinquish its soil density gauge and license, thereby reducing its ability to do its work effectively. Other licensees, especially well-loggers, noted that the increased fees would force small businesses to get rid of the materials license altogether. Commenters stated that the proposed rule would result in about 10 percent of the well-logging licensees terminating their licenses immediately and approximately 25 percent terminating their licenses before the next annual assessment.

3. Some companies would go out of business.

4. Some companies would have budget problems. Many medical licensees noted that, along with reduced reimbursements, the proposed increase of the existing fees and the introduction of additional fees would significantly affect their budgets. Others noted that, in view of the cuts by Medicare and other third party carriers, the fees would produce a hardship and some facilities would experience a great deal of difficulty in meeting this additional burden.

Approximately 3,000 license, approval, and registration terminations have been requested since the NRC first established annual fees for materials licenses. Although some of these terminations were requested because the license was no longer needed or licenses or registrations could be combined, indications are that other termination requests were due to the economic impact of the fees.

To alleviate the significant impact of the annual fees on a substantial number of small entities, the NRC considered the following alternatives in accordance with the RFA, in developing each of its fee rules since FY 1991.

1. Base fees on some measure of the amount of radioactivity possessed by the licensee (*e.g.*, number of sources).

2. Base fees on the frequency of use of the licensed radioactive material (*e.g.*, volume of patients).

3. Base fees on the NRC size standards for small entities.

The NRC has reexamined its previous evaluations of these alternatives and continues to believe that establishment of a maximum fee for small entities is the most appropriate and effective option for reducing the impact of its fees on small entities.

III. Maximum Fee

The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic impact on a small entity; therefore, the NRC has no benchmark to assist it in determining the amount or the percent of gross receipts that should be charged to a small entity. In developing the maximum small entity annual fee in FY 1991, the NRC examined its 10 CFR Part 170 licensing and inspection fees and Agreement State fees for those fee categories which were expected to have a substantial number of small entities. Six Agreement States (Washington, Texas, Illinois, Nebraska, New York, and Utah), were used as benchmarks in the establishment of the maximum small entity annual fee in FY 1991. Because small entities in those Agreement States were paying the fees, the NRC concluded that these fees did not have a significant impact on a substantial number of small entities. Therefore, those fees were considered a useful benchmark in establishing the NRC maximum small entity annual fee.

The NRC maximum small entity fee was established as an annual fee only. In addition to the annual fee, NRC small entity licensees were required to pay amendment, renewal and inspection fees. In setting the small entity annual fee, NRC ensured that the total amount small entities paid annually would not exceed the maximum paid in the six benchmark Agreement States.

Of the six benchmark states, the maximum Agreement State fee of $3,800 in Washington was used as the ceiling for the total fees. Thus the NRC's small entity fee was developed to ensure that the total fees paid by NRC small entities would not exceed $3,800. Given the NRC's FY 1991 fee structure for inspections, amendments, and renewals, a small entity annual fee established at $1,800 allowed the total fee (small entity annual fee plus yearly average for inspections, amendments and renewal fees) for all categories to fall under the $3,800 ceiling.

In FY 1992, the NRC introduced a second, lower tier to the small entity fee in response to concerns that the $1,800 fee, when added to the license and inspection fees, still imposed a significant impact on small entities with relatively low gross annual receipts. For purposes of the annual fee, each small entity size standard was divided into an upper and lower tier. Small entity licensees in the upper tier continued to pay an annual fee of $1,800 while those in the lower tier paid an annual fee of $400.

Based on the changes that had occurred since FY 1991, the NRC re-analyzed its maximum small entity annual fees in FY 2000, and determined that the small entity fees should be increased by 25 percent to reflect the increase in the average fees paid by other materials licensees since FY 1991, as well as changes in the fee structure for materials licensees. The structure of the fees that NRC charged to its materials licensees changed during the period between 1991 and 1999. Costs for materials license inspections, renewals, and amendments, which were previously recovered through part 170 fees for services, are now included in the part 171 annual fees assessed to materials licensees. As a result, the maximum small entity annual fee increased from $1,800 to $2,300 in FY 2000. By increasing the maximum annual fee for small entities from $1,800 to $2,300, the annual fee for many small entities was reduced while at the same time materials licensees, including small entities, would pay for most of the costs attributable to them. The costs not recovered from small entities are allocated to other materials licensees and to power reactors.

While reducing the impact on many small entities, the NRC determined that the

maximum annual fee of $2,300 for small entities may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars range. Therefore, the NRC continued to provide a lower-tier small entity annual fee for small entities with relatively low gross annual receipts, and for manufacturing concerns and educational institutions not State or publicly supported, with less than 35 employees. The NRC also increased the lower tier small entity fee by the same percentage increase to the maximum small entity annual fee. This 25 percent increase resulted in the lower tier small entity fee increasing from $400 to $500 in FY 2000.

The NRC examined the small entity fees again in FY 2001 (66 FR 32452; June 14, 2001), and determined that a change was not warranted to the small entity fees established in FY 2000. The NRC stated in the Regulatory Flexibility Analysis for the FY 2001 final fee rule that it would re-examine the small entity fees every two years, in the same years in which it conducts the biennial review of fees as required by the CFO Act.

Accordingly, the NRC re-examined the small entity fees for FY 2003, and did not believe that a change to the small entity fees was warranted. Unlike the annual fees assessed to other licensees, the small entity fees are not designed to recover the agency costs associated with particular licensees. Instead, the reduced fees for small entities are designed to provide some fee relief for qualifying small entity licensees while at the same time recovering from them some of the agency's costs for activities that benefit them. The costs not recovered from small entities for activities that benefit them must be recovered from other licensees. Given the reduction in annual fees and the relative low inflation rates, the NRC has determined that the current small entity fees of $500 and $2,300 continue to meet the objective of providing relief to many small entities while recovering from them some of the costs that benefit them.

Therefore, the NRC is retaining the $2,300 small entity annual fee and the $500 lower tier small entity annual fee for FY 2004. The NRC plans to re-examine the small entity fees again in FY 2005.

IV. Summary

The NRC has determined that the 10 CFR Part 171 annual fees significantly impact a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to recover 92 percent of the NRC budget and the requirement to consider means of reducing the impact of the fee on small entities. Based on its regulatory flexibility analysis, the NRC concludes that a maximum annual fee of $2,300 for small entities and a lower-tier small entity annual fee of $500 for small businesses and not-for-profit organizations with gross annual receipts of less than $350,000, small governmental jurisdictions with a population of less than 20,000, small manufacturing entities that have less than 35 employees, and educational institutions that are not State or publicly supported and have less than 35 employees reduces the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA–90. Thus, the fees for small entities maintain a balance between the objectives of OBRA–90 and the RFA. Therefore, the analysis and conclusions previously established remain valid for FY 2004.

Attachment 1 to Appendix A—U. S. Nuclear Regulatory Commission Small Entity Compliance Guide, Fiscal Year 2004

Contents

Introduction

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires all Federal agencies to prepare a written guide for each "major" final rule, as defined by the Act. The NRC's fee rule, published annually to comply with the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), as amended, is considered a "major" rule under SBREFA. Therefore, in compliance with the law, this guide has been prepared to assist NRC materials licensees in complying with the FY 2004 fee rule.

Licensees may use this guide to determine whether they qualify as a small entity under NRC regulations and are eligible to pay reduced FY 2004 annual fees assessed under 10 CFR Part 171. The NRC has established two tiers of annual fees for those materials licensees who qualify as small entities under the NRC's size standards.

Licensees who meet the NRC's size standards for a small entity must submit a completed NRC Form 526 "Certification of Small Entity Status for the Purposes of Annual Fees Imposed Under 10 CFR Part 171" to qualify for the reduced annual fee. This form can be accessed on the NRC's website at *http://www.nrc.gov*. The form can then be accessed by selecting "License Fees" and under "Forms" selecting NRC Form 526. For licensees who cannot access the NRC's website, NRC Form 526 may be obtained through the local point of contact listed in the NRC's "Materials Annual Fee Billing Handbook," NUREG/BR–0238, which is enclosed with each annual fee billing. Alternatively, the form may be obtained by calling the fee staff at 301–415–7554, or by e-mailing the fee staff at *fees@nrc.gov*. The completed form, the appropriate small entity fee, and the payment copy of the invoice should be mailed to the U.S. Nuclear Regulatory Commission, License Fee Team, at the address indicated on the invoice. Failure to file the NRC small entity certification Form 526 in a timely manner may result in the denial of any refund that might otherwise be due.

NRC Definition of Small Entity

For purposes of compliance with its regulations (10 CFR 2.810), the NRC has defined a small entity as follows:

(1) *Small business*—a for-profit concern that provides a service, or a concern that is not engaged in manufacturing, with average gross receipts of $5 million or less over its last 3 completed fiscal years;

(2) *Manufacturing industry*—a manufacturing concern with an average of 500 or fewer employees during each pay period for the preceding 12 calendar months;

(3) *Small organizations*—a not-for-profit organization that is independently owned and operated and has annual gross receipts of $5 million or less;

(4) *Small governmental jurisdiction*—a government of a city, county, town, township, village, school district or special district, with a population of less than 50,000;

(5) *Small educational institution*—an educational institution supported by a qualifying small governmental jurisdiction, or one that is not State or publicly supported and has 500 or fewer employees.[1]

To further assist licensees in determining if they qualify as a small entity, the following guidelines are provided, which are based on the Small Business Administration's regulations (13 CFR Part 121).

(1) A small business concern is an independently owned and operated entity which is not considered dominant in its field of operations.

(2) The number of employees means the total number of employees in the parent company, any subsidiaries and/or affiliates, including both foreign and domestic locations (*i.e.*, not solely the number of employees working for the licensee or conducting NRC licensed activities for the company).

(3) Gross annual receipts includes all revenue received or accrued from any source, including receipts of the parent company, any subsidiaries and/or affiliates, and account for both foreign and domestic locations. Receipts include all revenues from sales of products and services, interest, rent, fees, and commissions, from whatever sources derived (*i.e.*, not solely receipts from NRC licensed activities).

(4) A licensee who is a subsidiary of a large entity does not qualify as a small entity.

NRC Small Entity Fees

In 10 CFR 171.16 (c), the NRC has established two tiers of fees for licensees that qualify as small entity under the NRC's size standards. The fees are as follows:

[1] An educational institution referred to in the size standards is an entity whose primary function is education, whose programs are accredited by a nationally recognized accrediting agency or association, who is legally authorized to provide a program of organized instruction or study, who provides an educational program for which it awards academic degrees, and whose educational programs are available to the public.

	Maximum annual fee per licensed category
Small business not engaged in manufacturing and small not-for profit organizations (Gross Annual Receipts)	
$350,000 to $5 million	$2,300
Less than $350,000	500
Manufacturing entities that have an average of 500 employees or less	
35 to 500 employees	2,300
Less than 35 employees	500
Small Governmental Jurisdictions (Including publicly supported educational institutions) (population)	
20,000 to 50,000	2,300
Less than 20,000	500
Educational institutions that are not State or publicly supported, and have 500 Employees or less	
35 to 500 employees	2,300
Less than 35 employees	500

To pay a reduced annual fee, a licensee must use NRC Form 526. Licensees can access this form on the NRC's website at *http://www.nrc.gov*. The form can then be accessed by selecting "License Fees" and under "Forms" selecting NRC Form 526. Those licensees that qualify as a "small entity" under the NRC size standards at 10 CFR Part 2.810 can complete the form in accordance with the instructions provided, and submit the completed form and the appropriate payment to the address provided on the invoice. For licensees who cannot access the NRC's website, NRC Form 526 may be obtained through the local point of contact listed in the NRC's "Materials Annual Fee Billing Handbook," NUREG/BR–0238, which is enclosed with each annual fee invoice. Alternatively, licensees may obtain the form by calling the fee staff at 301–415–7544, or by e-mailing us at *fees@nrc.gov*.

Instructions for Completing NRC Small Entity Form 526

(1) File a separate NRC Form 526 for each annual fee invoice received.

(2) Complete all items on NRC Form 526, as follows:

a. Enter the license number and invoice number exactly as they appear on the annual fee invoice.

b. Enter the Standard Industrial Classification (SIC) or North American Industry Classification System (NAICS) if known.

c. Enter the licensee's name and address as they appear on the invoice. Name and/or address changes for billing purposes must be annotated on the invoice. Correcting the name and/or address on NRC Form 526, or on the invoice does not constitute a request to amend the license. Any request to amend a license must be submitted to the respective licensing staff in the NRC's regional or headquarters offices.

d. Check the appropriate size standard for which the licensee qualifies as a small entity. Check only one box. Note the following:

(i) A licensee who is a subsidiary of a large entity does not qualify as a small entity.

(ii) The size standards apply to the licensee, including all parent companies and affiliates— not the individual authorized users listed in the license or the particular segment of the organization that uses licensed material.

(iii) Gross annual receipts means all revenue in whatever form received or accrued from whatever sources—not solely receipts from licensed activities. There are limited exceptions as set forth at 13 CFR 121.104. These are: The term receipts excludes net capital gains or losses; taxes collected for and remitted to a taxing authority (if included in gross or total income), proceeds from the transactions between a concern and its domestic or foreign affiliates (if also excluded from gross or total income on a consolidated return filed with the IRS); and amounts collected for another entity by a travel agent, real estate agent, advertising agent, or conference management service provider.

(iv) The owner of the entity, or an official empowered to act on behalf of the entity, must sign and date the small entity certification.

The NRC sends invoices to its licensees for the full annual fee, even though some licensees qualify for reduced fees as small entities. Licensees who qualify as small entities and file NRC Form 526, which certifies eligibility for small entity fees, may pay the reduced fee, which is either $2,300 or $500 for a full year, depending on the size of the entity, for each fee category shown on the invoice. Licensees granted a license during the first 6 months of the fiscal year, and licensees who file for termination or for a "possession only" license and permanently cease licensed activities during the first 6 months of the fiscal year, pay only 50 percent of the annual fee for that year. Such invoices state that the "amount billed represents 50% proration." This means that the amount due from a small entity is not the prorated amount shown on the invoice, but rather one-half of the maximum annual fee shown on NRC Form 526 for the size standard under which the licensee qualifies, resulting in a fee of either $1,150 or $250 for each fee category billed (instead of the full small entity annual fee of $2,300 or $500).

Licensees must file a new small entity form (NRC Form 526) with the NRC each fiscal year to qualify for reduced fees in that year. Because a licensee's "size," or the size standards, may change from year to year, the invoice reflects the full fee and licensees must complete and return form 526 for the fee to be reduced to the small entity fee amount. Licensees will not receive a new invoice for the reduced amount. The completed NRC Form 526, the payment of the appropriate small entity fee, and the "Payment Copy" of the invoice should be mailed to the U.S. Nuclear Regulatory Commission, License Fee Team at the address indicated on the invoice.

If you have questions regarding the NRC's annual fees, please contact the license fee staff at 301–415–7554, e-mail the fee staff at *fees@nrc.gov*, or write to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Office of the Chief Financial Officer.

False certification of small entity status could result in civil sanctions being imposed by the NRC under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801 *et seq.* NRC's implementing regulations are found at 10 CFR Part 13.

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Federal Register

Monday,
April 26, 2004

Part IV

Department of Agriculture

Agricultural Marketing Service

7 CFR Parts 1150, 1160, et al.
Proposed Rule To Exempt Organic Producers From Assessment by Research and Promotion Programs; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1150, 1160, 1205, 1207, 1209, 1210, 1215, 1216, 1218, 1219, 1220, 1230, 1240, 1250, 1260, and 1280

[Docket No. PY–02–006]

RIN 0581–AC15

Proposed Rule To Exempt Organic Producers From Assessment by Research and Promotion Programs

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would exempt any person producing and marketing solely 100 percent organic products from paying assessments to any research and promotion program administered by the Agricultural Marketing Service (AMS). A proposed rule to exempt any person producing and marketing solely 100 percent organic products from paying assessments to certain marketing order programs administered by AMS was published previously in the **Federal Register**.

DATES: Comments must be received by May 26, 2004. Pursuant to the Paperwork Reduction Act, comments on the information collection burden that would result from this proposal must be received by June 25, 2004.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to Angela C. Snyder, Office of the Deputy Administrator, Poultry Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW.; STOP 0256, Room 3932—South; Washington, DC 20250. Comments should be submitted in duplicate. Comments may also be submitted electronically to: *organicassessment@usda.gov* or *www.regulations.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All comments received will be made available for public inspection at Poultry Programs, AMS, USDA, Room 3932—South; 1400 Independence Avenue, SW.; Washington, DC 20250 during regular business hours. A copy of this proposed rule may be found at: *http://www.ams.usda.gov/2002farmbill/organicexempt*.

Pursuant to the Paperwork Reduction Act (PRA), send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information to the above address. Comments concerning the information collection under the PRA should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Angela C. Snyder, Office of the Deputy Administrator, Poultry Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW.; STOP 0256, Room 3932—South; Washington, DC 20250; (202) 720–4476; (202) 720–5631 (fax); or e-mail at *organicassessment@usda.gov*.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be "not significant" for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This proposed rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Commodity Promotion, Research, and Information Act of 1996; Cotton Research and Promotion Act; Dairy Production Stabilization Act of 1983; Egg Research and Consumer Information Act; Fluid Milk Promotion Act of 1990; Hass Avocado Promotion, Research, and Information Act of 2000; Honey Research, Promotion, and Consumer Information Act; Mushroom Promotion, Research, and Consumer Information Act of 1990; Popcorn Promotion, Research, and Consumer Information Act; Pork Promotion, Research, and Consumer Information Act of 1985; Potato Research and Promotion Act; Soybean Promotion, Research, and Consumer Information Act; and Watermelon Research and Promotion Act provide that administrative proceedings must be exhausted before parties may file suit in court. Under these acts, any person subject to an order may file a petition with the Secretary of Agriculture stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. The petitioner is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary will make a ruling on the petition. The acts provide that the district courts of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry of ruling. There are no administrative proceedings that must be exhausted prior to any judicial challenge to the provisions of the Beef Promotion and Research Act of 1985.

Background

Section 10607 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171)—known as the 2002 Farm Bill—amended Section 501 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7401) (FAIR Act) on May 13, 2002. The amendment exempts any person that produces and markets solely 100 percent organic products, and that does not produce any conventional or nonorganic products, from paying assessments under a commodity promotion law with respect to any agricultural commodity that is produced on a certified organic farm as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502).

The U.S. Department of Agriculture is proposing amendments to the orders and/or rules and regulations of the 16 research and promotion programs for which it has oversight. These amendments will establish a provision for organic producers and marketers meeting the specified criteria and procedures to be exempt from paying assessments for research and promotion. The Department proposed amendments to the general regulations affecting 28 marketing order programs in a separate rule published in the December 2, 2003, **Federal Register** [68 FR 67381]. The comment period for this proposed rule ended on February 2, 2004. The comments received in that rulemaking currently are being reviewed by AMS.

The FAIR Act amendment covers research and promotion programs established under either freestanding legislation (beef, cotton, eggs, fluid milk, dairy, Hass avocados, honey, mushrooms, popcorn, pork, potatoes, soybeans, and watermelons) or the Commodity Promotion, Research, and Information Act of 1996 (blueberries, lamb, and peanuts).

The FAIR Act amendment would also cover a program for mangos, once one is established. The mango industry has requested a program, and rulemaking is ongoing. A second proposed rule on the

Mango Promotion, Research and Information Order was published in the October 9, 2003, issue of the **Federal Register** [68 FR 58556]. In November 2003, first handlers and importers of mangos voted to approve a national mango promotion, research, and information order. A final rule would have to be issued before the mango research and promotion program could become effective. However, it is anticipated that provisions similar to those proposed in this document for Hass avocados (7 CFR part 1219) would be needed to exempt persons producing and marketing solely 100 percent organic products from paying assessments under a mango research and promotion program.

Wholly industry-funded and -operated and charged with creating and expanding markets for the agricultural commodities they represent, these programs are overseen by AMS, including review of budgets, plans, and projects. Producers, handlers, importers, and/or others in the marketing chain pay assessments to these commodity boards to fund the programs. Industries voluntarily request these programs. Research and promotion programs allow industries to establish, finance, and carry out coordinated programs of research, producer and consumer education, and promotion to improve, maintain, and develop markets for their commodities.

Under this proposal, language would be added to the orders, plans, and/or regulations of each program specifying the criteria for identifying persons eligible to obtain an assessment exemption and procedures for applying for an exemption. The provision would be tailored to each of the sixteen programs, all of which have structural and operational distinctions. The result would be some procedural differences between the programs' regulatory language. For example, under the cotton program, producers would be required to reapply for exemption every year on or before the beginning of the crop year (see § 1205.519(b) of this proposal). Under the watermelon program, however, producers would reapply for exemption on or before January 1 of each year (see § 1210.516(b) of this proposal).

Who Is Eligible for Exemption

To be eligible for an exemption, the person must be subject to an assessment under a research and promotion program. Of the 16 research and promotion programs covered under this proposed rule, 14 assess producers. Most of these programs also assess other entities, including handlers, first handlers, importers, exporters, feeders, and seed stock producers. The remaining two research and promotion programs assess processors.

The FAIR Act amendment specifies that to be exempt from a commodity promotion assessment, a person—meaning an individual, group of individuals, corporation, association, cooperative, or other business entity—must produce and market solely 100 percent organic products and must not produce any nonorganic or conventional products. For purposes of this proposed rule, "produce" means to grow or produce food, feed, livestock, or fiber or to receive food, feed, livestock, or fiber and alter that product by means of feeding, slaughtering, or processing.

To meet this requirement, that person need not be just a producer. Under this proposed rule, producers, handlers, first handlers, processors, importers, exporters, feeders, and seed stock producers may be eligible for exemption if they meet the definition of "produce" as outlined in this proposed rule. Regardless, to be exempt, such persons must possess certification from a USDA-accredited certifying agent and certify that the farm or handling operation meets the requirements of 100 percent organic as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502).

This definition of "produce" would be added to the regulatory text of all but four of the sixteen programs to ensure that non-traditional producers meeting the criteria and procedures may obtain an exemption. Four programs—dairy, peanuts, soybeans, and eggs—are strictly producer programs. Because traditional producers are the only parties assessed, it is not necessary to redefine "produce" for purposes of obtaining an exemption. The definition referenced above is only needed to include assessment payers other than non-traditional producers.

Examples

- A farmer grows 100 percent organic soybeans and 100 percent organic corn. The farmer is eligible for exemption under the soybean promotion, research, and consumer information program.
- A farmer grows 100 percent organic soybeans and conventional corn. While the farmer's soybean land may be certified organic as a split farm operation under the Organic Foods Production Act of 1990 (7 U.S.C. 6502), the farmer is not eligible for exemption under the soybean promotion, research, and consumer information program because the farmer's production is not solely 100 percent organic.
- An importer imports 100 percent organic live cattle, feeds and grows the cattle, and is a certified handling operation. The importer is eligible for exemption under the beef promotion and research program.
- An importer imports 100 percent organic boxed beef and sells it to another party. The importer is not eligible for exemption under the beef promotion and research program because the importer is not a producer as defined in this proposed rule.
- An importer imports 100 percent organic boxed beef. The importer also imports 100 percent organic beef and processes it into ground beef. The importer is eligible for exemption under the beef promotion and research program.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], this proposed rule also announces that AMS is seeking emergency approval for a new information collection request enabling organic entities to apply for an exemption from paying assessments under the following programs: 7 CFR Parts 1150, 1160, 1205, 1207, 1209, 1210, 1215, 1216, 1218, 1219, 1220, 1230, 1240, 1250, 1260, and 1280.

Title: Organic Producer and Marketer Exemption From Assessment Under Research and Promotion Programs.

OMB Number: 0581–NEW.

Type of Request: New collection.

Abstract: Research and promotion program, though overseen by AMS, are wholly industry-funded and -operated and are charged with creating and expanding markets for the agricultural commodities they represent. Producers, handlers, importers, and/or others in the marketing chain pay assessments to these commodity boards to fund the programs. Research and promotion programs allow industries to establish, finance, and carry out coordinated programs of research, producer and consumer education, and promotion to improve, maintain, and develop markets for their commodities.

On May 13, 2002, Section 501 of the FAIR Act was amended under the 2002 Farm Bill to exempt any person that produces and markets solely 100 percent organic products, and that does not produce any conventional or non-organic products, from paying assessments under a commodity promotion law with respect to any agricultural commodity that is produced on a certified organic farm as defined in Section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502). To be exempt from paying assessments

under a research and promotion program, the person would submit an application—"Organic Exemption Request Form"—to the applicable board or council. The form would need to be submitted to the board, council, or other party designated by the board or council prior to or during the initial applicable assessment period, and annually thereafter, as long as the applicant continues to be eligible for the exemption. This application would include the applicant's name, name and address of the company, telephone and fax numbers, a copy of the applicant's organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent under the Organic Foods Production Act of 1990 (7 U.S.C. 6502), and a signed certification that the applicant meets all of the requirements specified for an assessment exemption. If the applicant complies with these requirements and is eligible for a promotion assessment exemption, the board or council would approve the exemption and notify the applicant within 30 days of receiving the applicant's application. If the application is disapproved, the board or council would notify the applicant of the reason(s) for disapproval. The Secretary may review any decisions made by the boards or councils at her or his discretion.

Most of the programs require that the person responsible for remitting assessments on behalf of the exempt party maintain a record of that party's exemption. In most cases, this is a handler maintaining a record of an exempt producer. The burdens on these persons for such recordkeeping requirements are included in the information collection requests previously approved for all of the programs—Hass avocados under OMB control number 0581–0197, beef and pork under 0590–0001, lamb under 0581–0198, and the rest under 0581–0093.

The form's design has been carefully reviewed, and every effort has been made to minimize any unnecessary recordkeeping requirements. AMS has determined that there is no practical method for collecting the required information without the use of this form. The form would be available from the boards and councils. In addition, an electronic fillable form would be made available. The information collection would be used only by authorized board or council employees and representatives of USDA, including AMS staff. Authorized board and council employees will be the primary users of the information, and AMS will be the secondary user.

The request for approval of the new information collection is as follows:

Form AMS–15, Organic Exemption Request Form

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 30 minutes per response.

Respondents: Eligible Certified Organic Producers and Marketers.

Estimated Number of Respondents: 2,159.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1,079.5 hours.

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology.

A 60-day period is provided to comment on the information collection burden. Comments should reference OMB No. 0581–NEW and be sent to *organicassessment@usda.gov*. All comments received will be available for public inspection during regular business hours at the same address. All responses to this proposed rule will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Comments concerning the information collection under the PRA should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA), the Agricultural Marketing Service (AMS) has examined the impact of the proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

As previously mentioned, producers, handlers, first handlers, processors, importers, exporters, feeders, and seed stock producers pay assessments to the national boards or councils that administer various commodity research and promotion programs, or in some cases to other parties designated by a board or council to collect assessments. Initiated as a result of the 2002 Farm Bill, which amended Section 501 of the Federal Agricultural Improvement and Reform Act of 1996 (FAIR Act), this proposed rule would exempt from assessment those entities that produce and market solely 100 percent organic products.

To obtain the exemption, eligible producers, handlers, first handlers, processors, importers, exporters, feeders, and seed stock producers must submit a request for exemption to the appropriate board or council on a form. While the proposed rule would impose certain reporting and recordkeeping requirements on these entities, the form requires the minimum information necessary to effectively administer the exemption provision, and its use is necessary for compliance purposes.

In preparing its initial regulatory flexibility analysis, AMS attempted to identify the entities that would be affected by the proposed rule and to examine the potential impact on such entities. However, information was not available to allow AMS to determine whether any importers would be covered by this proposed rule under the beef and pork programs. In addition, information was not available to allow AMS to identify the respondents under the lamb program as producers, first handlers, feeders, exporters, and seed stock producers, so AMS addressed the lamb program in the aggregate to determine the economic impact.

The estimated respondents providing new information to the boards or councils and the burden associated with the information collections is as follows. There would be an estimated 2,159 respondents providing new information to the boards or councils under the following programs:

Beef: 167 producers, number of importers unknown (167 total).

Blueberries: 7 producers, 0 importers (7 total).

Cotton: 100 producers, 10 importers (110 total).

Dairy: 600 producers.

Eggs: 0 producers.

Fluid milk: 0 processors.

Hass avocados: 60 producers, 0 importers (60 total).

Honey: 10 producers, 0 importers (10 total).

Lamb: 40 respondents (including producers, first handlers, feeders, seed stock producers, and exporters).

Mushrooms: 2 producers, 0 importers (2 total).

Peanuts: 54 producers.

Popcorn: 0 processors.

Pork: 18 producers, number of importers unknown (18 total).

Potatoes: 35 producers, 0 importers (35 total).

Soybeans: 1,028 producers.

Watermelons: 27 producers, 1 handler, 0 importers (28 total).

No respondents were identified for the fluid milk, popcorn, and egg programs. The fluid milk and egg programs exempt smaller entities from assessment—fluid milk processors processing less than $3 million pounds and egg producers owning 75,000 or fewer laying hens. Among assessment payers, no solely 100 percent organic processors or producers are known; if they exist, they are already exempt for *de minimis* reasons. No popcorn processors that produce (as defined in this rule) solely 100 percent organic product were identified because of the current nature of the popcorn industry.

The burden associated with the information collection would be $10,795.00 for all respondents, or $5.00 per respondent. These totals have been estimated by multiplying the burden hours associated with the exemption request form by $10.00 per hour, a sum deemed to be reasonable should the respondents be compensated for their time.

Under the 16 research and promotion programs, those assessed pay assessments to the boards and councils that administer the programs. The total annual collections and assessment rates for each board or council are as follows:

Beef: $83.6 million; $1 per head.

Blueberries: $1.5 million; $12 per ton.

Cotton: $65.2 million; $1 per bale plus 0.5 percent of the value of the lint in each bale.

Dairy: $255.0 million; 15 cents per cwt.

Eggs: $19.7 million; 10 cents per 30-dozen case of eggs.

Fluid milk: $106.2 million; 20 cents per cwt.

Hass avocados: $16.3 million; 2.5 cents per pound.

Honey: $3.6 million; 1 cent per pound.

Lamb: $3.5 million; $0.005 per pound of live weight, $0.30 per head on lambs purchased for slaughter.

Mushrooms: $1.7 million; .002 cents per pound.

Peanuts: $6.7 million; 1 percent of the value of the peanuts.

Popcorn: $558,000; 6 cents per cwt.

Pork: $47.8 million; 0.40 percent of the market value.

Potatoes: $8.6 million; 2 cents per cwt.

Soybeans: $77.8 million; ½ of 1 percent of the net market value.

Watermelons: $1.5 million; 2 cents per cwt for domestic watermelons, 4 cents per cwt for imported watermelons.

The Small Business Administration [13 CFR 121.201] defines small agricultural producers as those having annual receipts of $750,000 or less annually and small agricultural service firms as those having annual receipts of $5 million or less. These include producers, feeders, and seed stock producers. Importers, exporters, handlers, and first handlers would be considered agricultural service firms. Using these criteria, most if not all of the agricultural producers and agricultural service firms covered by the proposed rule would be considered small businesses.

The proposed rule would allow producers and marketers of solely 100 percent organic products to request an exemption from paying assessments. These exemptions were estimated by multiplying the exempt volume by the assessment rate, and the amounts for exempt entities would be as follows:

Beef: producers—$15,197; importers—unknown.

Blueberries: producers—$5,833; importers—$0 ($5,833 total).

Cotton: producers—$52,000; importers—$25,000 ($77,000 total).

Dairy: producers—$1.33 million.

Eggs: producers—$0.

Fluid milk: processors—$0.

Hass avocados: producers—$91,000; importers—$0 ($91,000 total).

Honey: producers—$11,174; importers—$0 ($11,174 total).

Lamb: $2,987 total (includes producers, first handlers, feeders, seed stock producers, and exporters).

Mushrooms: producers—$14,400; importers—$0 ($14,400 total).

Peanuts: producers—$18,690.

Popcorn: processors—$0.

Pork: producers—$966; importers—unknown.

Potatoes: producers—$45,000; importers—$0 ($45,000 total).

Soybeans: producers—$40,273.

Watermelons: producers—$17,890; handlers—$950; importers—$0 ($18,840 total).

Therefore, the estimated net economic impact of this proposed rule on the respondents is as follows:

Program	Paperwork burden costs	Exemption from assessments	Net amount
Beef	$835	$15,197	$14,362
Blueberries	35	5,833	5,798
Cotton	550	77,000	76,450
Dairy	3,000	1,330,000	1,327,000
Eggs	0	0	0
Fluid milk	0	0	0
Hass avocados	300	91,000	90,700
Honey	50	11,174	11,124
Lamb	200	2,987	2,787
Mushrooms	10	14,400	14,390
Peanuts	270	18,690	18,420
Popcorn	0	0	0
Pork	90	966	876
Potatoes	175	45,000	44,825
Soybeans	5,140	40,273	35,133
Watermelons	140	18,840	18,700
Total	10,795	1,671,360	1,660,565

Based on the above figures, this rule should have only a beneficial economic effect on small entities.

To ensure that AMS is able to thoroughly assess the potential impact of this proposed rule on affected entities, interested parties are invited to submit comments, views, and opinions on the probable regulatory and informational impact of this proposed rule on small entities. Comments may indicate the size, number, and type of entities that would be affected by this proposed rule and explain the potential effects of the proposed amendments on those entities.

In accordance with the PRA, the reporting and recordkeeping provisions that would be generated by this proposed rule will be submitted to the Office of Management and Budget (OMB) under OMB No. 0581–NEW.

Reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

There are no viable alternatives to proposing these organic assessment exemption procedures. The FAIR Act requires USDA to take this action to lessen the assessment costs for persons who produce and market solely 100 percent organic products. The anticipated assessment reductions for eligible persons are expected to greatly outweigh the costs related to the additional reporting.

A 30-day comment period is provided for interested persons to submit written comments on the criteria for identifying persons eligible to obtain an assessment exemption and the procedural details for obtaining an exemption under the various research and promotion programs. Thirty days is deemed appropriate because this action was mandated by Congress under the 2002 Farm Bill and is intended to provide relief to producers and marketers of solely 100 percent organic products. Pursuant to the Paperwork Reduction Act, comments on the information collecting burden must be received within 60 days after the date of publication of this proposed rule in the **Federal Register**.

List of Subjects

7 CFR Part 1150

Dairy products, Reporting and recordkeeping requirements, Research.

7 CFR Part 1160

Fluid milk products, Milk, Promotion.

7 CFR Part 1205

Advertising, Agricultural Research, Cotton, Reporting and recordkeeping requirements.

7 CFR Part 1207

Advertising, Agricultural research, Potatoes, Reporting and recordkeeping requirements.

7 CFR Part 1209

Advertising, Agricultural Research, Marketing agreements, Mushrooms, Reporting and recordkeeping requirements.

7 CFR Part 1210

Administrative practice and procedure, Advertising, Agricultural research, Reporting and recordkeeping requirements, Watermelons.

7 CFR Part 1215

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Popcorn, Promotion, Reporting and recordkeeping requirements.

7 CFR Part 1216

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Peanut promotion, Reporting and recordkeeping requirements.

7 CFR Part 1218

Administrative practice and procedure, Advertising, Blueberries, Consumer information, Marketing agreements, Blueberry promotion, Reporting and recordkeeping requirements.

7 CFR Part 1219

Administrative practice and procedure, Advertising, Consumer information, Hass avocados, Marketing agreements, Promotion, Reporting and recordkeeping requirements.

7 CFR Part 1220

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Soybeans and soybean products, Reporting and recordkeeping requirements.

7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreement, Meat and meat products, Pork and pork products.

7 CFR Part 1240

Advertising, Agricultural research, Honey, Imports, Reporting and recordkeeping requirements.

7 CFR Part 1250

Administrative practice and procedure, Advertising, Agricultural research, Eggs and egg products, Reporting and recordkeeping requirements.

7 CFR Part 1260

Administrative practice and procedure, Advertising, Agricultural research, Imports, Marketing agreements, Meat and meat products, Reporting and recordkeeping requirements.

7 CFR Part 1280

Administrative practice and procedure, Advertising, Consumer information, Lamb and lamb products, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Parts 1150, 1160, 1205, 1207, 1209, 1210, 1215, 1216, 1218, 1219, 1220, 1230, 1240, 1250, 1260, and 1280 are proposed to be amended as follows:

PART 1150—DAIRY PROMOTION

1. The authority citation for Part 1150 is revised to read as follows:

Authority: 7 U.S.C. 4501–4514 and 7 U.S.C. 7401.

2. Add a new § 1150.157 to read as follows:

§ 1150.157 Assessment exemption.

(a) A producer described in § 1150.152(a) and (b) who produces and markets solely 100 percent organic products and does not produce any conventional or non-organic products shall be exempt from the payment of assessments on milk provided the milk is produced on a certified organic farm as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502).

(b) To apply for an exemption under this section, a producer pursuant to § 1150.152(a) and (b) shall submit a request for exemption to the Board on a form provided by the Board at any time initially and annually thereafter on or before July 1 as long as the producer continues to be eligible for the exemption.

(c) The request shall include the following: the producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), and a signed certification that the applicant meets all of the requirements specified

in paragraph (a) of this section for an assessment exemption.

(d) If a producer described in § 1150.152(a) and (b) complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days of receipt of the producer's request.

(e) The producer described in paragraph (c) of this section shall provide a copy of the Certificate of Exemption to each person responsible for remitting assessments to the Board on behalf of the producer pursuant to § 1150.152.

(f) The person responsible for remitting assessments to the Board pursuant to § 1150.152 shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board pursuant to § 1150.172.

3. Revise § 1150.187 to read as follows:

§ 1150.187 Paperwork Reduction Act assigned number.

The information collection and recordkeeping requirements contained in §§ 1150.133, 1150.152, 1150.153, 1150.157, 1150.171, 1150.172, and 1150.273 of these regulations (7 CFR Part 1150) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0581–0093.

PART 1160—FLUID MILK PROMOTION

4. The authority citation for Part 1160 is revised to read as follows:

Authority: 7 U.S.C. 6401–6417 and 7 U.S.C. 7401.

5. In § 1160.211, paragraph (a)(1) is revised to read as follows:

§ 1160.211 Assessments.

(a)(1) Each fluid milk processor shall pay to the Board or its designated agent an assessment of $.20 per hundredweight of fluid milk products processed and marketed commercially in consumer-type packages in the United States by such fluid milk processor. Any fluid milk processor who markets milk of its own production directly to consumers as prescribed under section 113(g) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4504(g)), and not exempt under § 1160.108 or § 1160.215, shall also pay the assessment under this subpart. The Secretary shall have the authority to receive assessments on behalf of the Board.

* * * * *

6. Section 1160.215 is added to read as follows:

§ 1160.215 Assessment exemption.

(a) No assessment shall be required on fluid milk products exported from the United States.

(b) A fluid milk processor described in § 1160.211(a) who produces and markets solely 100 percent organic products, and who does not produce any conventional or non-organic products, shall be exempt from the payment of assessments on fluid milk products produced on a certified organic farm as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502). For purposes of this section, *produce* means to grow or produce food, feed, livestock, or fiber or to receive food, feed, livestock, or fiber and alter that product by means of feeding, slaughtering, or processing.

(c) To apply for an assessment exemption, a fluid milk processor described in § 1160.211 paragraph (a) shall submit a request for exemption to the Board on a form provided by the Board at any time initially and annually thereafter on or before July 1 as long as the fluid milk processor continues to be eligible for the assessment exemption.

(d) The request shall include the following: The fluid milk processor's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), and a signed certification that the applicant meets all of the requirements specified in paragraph (b) of this section for an assessment exemption.

(e) The Board will grant an assessment exemption to any fluid milk processor meeting the criteria in § 1160.215(b) and issue a Certificate of Exemption to the fluid milk processor within 30 days of receipt of the fluid milk processor's request, provided such fluid milk processor meets the requirements of this section.

PART 1205—COTTON RESEARCH AND PROMOTION

7. The authority citation for Part 1205 is revised to read as follows:

Authority: 7 U.S.C. 2101–2118 and 7 U.S.C. 7401.

8. Section 1205.519 is added to read as follows:

§ 1205.519 Organic exemption.

(a) A person who produces and markets solely 100 percent organic products, and who does not produce any conventional or nonorganic products, shall be exempt from the payment of assessments with respect to any cotton that is produced on a certified organic farm as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502). For purposes of this section, *produce* means to grow or produce food, feed, livestock, or fiber or to receive food, feed, livestock, or fiber and alter that product by means of feeding, slaughtering, or processing.

(b) To apply for an exemption under this section, an eligible cotton producer shall submit a request for exemption to the Board—on a form provided by the Board—at any time initially and annually thereafter on or before the beginning of the crop year as long as the producer continues to be eligible for the exemption.

(c) The request shall include the following: the producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), and a signed certification that the applicant meets all of the requirements specified in paragraph (a) of this section for an assessment exemption.

(d) If the producer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the producer within 30 days of receipt of the producer's application. The producer shall provide a copy of the Certificate of Exemption to each handler to whom the producer sells cotton. The handler shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(e) An importer who meets the criteria in paragraph (a) of this section may submit documentation to the Board and request an exemption from assessment on 100 percent organic cotton and 100 percent organic cotton products—on a form provided by the Board—at any time initially and annually thereafter on or before the beginning of the crop year as long as the importer continues to be eligible for the exemption. This documentation shall include a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502) and a signed certification that the applicant meets all of the requirements specified for an assessment exemption. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a

Certificate of Exemption to the importer within 30 days of receipt of the importer's application. The Board will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer, in the appropriate location as determined by the U.S. Customs Service, on the Customs entry documentation. Any line item entry of 100 percent organic cotton and cotton products bearing this HTS classification assigned by the Board will not be subject to assessments.

PART 1207—POTATO RESEARCH AND PROMOTION

9. The authority citation for Part 1207 is revised to read as follows:

Authority: 7 U.S.C. 2611–2627 and 7 U.S.C. 7401.

10. Section 1207.514 is added to read as follows:

§ 1207.514 Exemption for organic potatoes.

(a) A person who produces and markets solely 100 percent organic products, and who does not produce any conventional or nonorganic products, shall be exempt from the payment of assessments with respect to any potatoes that are produced on a certified organic farm as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502). For purposes of this section, *produce* means to grow or produce food, feed, livestock, or fiber or to receive food, feed, livestock, or fiber and alter that product by means of feeding, slaughtering, or processing.

(b) To apply for an exemption under this section, the producer shall submit a request for exemption to the Board—on a form provided by the Board—at any time initially and annually thereafter on or before July 1 as long as the producer continues to be eligible for the exemption.

(c) The request shall include the following: the producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), and a signed certification that the applicant meets all of the requirements specified in paragraph (a) of this section for an assessment exemption.

(d) If the producer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the producer within 30 days of receipt of the producer's application. The producer shall provide a copy of the Certificate of Exemption to each handler to whom the producer sells potatoes. The handler shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(e) An importer who meets the criteria in paragraph (a) of this section may submit documentation to the Board and request an exemption from assessment on 100 percent organic potatoes, potato products, and seed potatoes—on a form provided by the Board—at any time initially and annually thereafter on or before July 1 as long as the importer continues to be eligible for the exemption. This documentation shall include a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502) and a signed certification that the applicant meets all of the requirements specified for an assessment exemption. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer within 30 days of receipt of the importer's application. The Board will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer, in the appropriate location as determined by the U.S. Customs Service, on the Customs entry documentation. Any line item entry of 100 percent organic potatoes, potato products, and seed potatoes bearing this HTS classification assigned by the Board will not be subject to assessments.

PART 1209—MUSHROOM PROMOTION, RESEARCH, AND CONSUMER INFORMATION

11. The authority citation for Part 1209 is revised to read as follows:

Authority: 7 U.S.C. 6101–6112 and 7 U.S.C. 7401.

12. In § 1209.52, revise paragraph (a) to read as follows:

§ 1209.52 Exemption from assessment.

(a) The following persons shall be exempt from assessments under this part:

(1) A person who produces or imports, on average, 500,000 pounds or less of mushrooms annually; and

(2) A person who produces and markets solely 100 percent organic products on a certified organic farm as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502) and does not produce any conventional or nonorganic products. For purposes of this section, *produce* means to grow or produce food, feed, livestock, or fiber or to receive food, feed, livestock, or fiber and alter that product by means of feeding, slaughtering, or processing.

13. In § 1209.252, paragraph (a) is revised to read as follows:

§ 1209.252 Exemption procedures.

(a) *Types of exemptions and requirements.* (1) Any person who produces or imports, on average, 500,000 pounds or less of mushrooms annually and who desires to claim an exemption from assessments during a fiscal year shall apply to the Council, on a form provided by the Council, for a Certificate of Exemption. The producer or importer shall certify that the person's production or importation of mushrooms shall not exceed 500,000 pounds, on average, for the fiscal year for which the exemption is claimed. An average shall be calculated by averaging a person's estimated production or importation for the fiscal year for which an exemption is claimed with the person's production or importation in the preceding fiscal year.

(2) To apply for an exemption for organic mushrooms, an eligible mushroom producer shall submit a request for exemption to the Council—on a form provided by the Council—at any time initially and annually thereafter on or before January 1 as long as the producer continues to be eligible for the exemption. The request shall include the following: The producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), and a signed certification that the applicant meets all of the requirements specified for an assessment exemption. If the applicant complies with the requirements of § 1209.52(a)(2), the Council will grant the exemption and issue a Certificate of Exemption to the producer within 30 days of receipt of the producer's request. An importer who meets the criteria in § 1290.52(a)(2) may submit documentation to the Council and request an exemption from assessment on 100 percent organic mushrooms—on a form provided by the Council—at any time initially and annually thereafter on or before January 1 as long as the importer continues to be eligible for the exemption. This

documentation shall include a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502) and a signed certification that the applicant meets all of the requirements specified for an assessment exemption. If the importer complies with the requirements of this section, the Council will grant the exemption and issue a Certificate of Exemption to the importer within 30 days of receipt of the importer's application. The Council will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer, in the appropriate location as determined by the U.S. Customs Service, on the Customs entry documentation. Any line item entry of 100 percent organic mushrooms bearing this HTS classification assigned by the Council will not be subject to assessments.

* * * * *

PART 1210—WATERMELON RESEARCH AND PROMOTION

14. The authority citation for Part 1210 is revised to read as follows:

Authority: 7 U.S.C. 4901–4916 and 7 U.S.C. 7401.

15. Section 1210.516 is added to read as follows:

§ 1210.516 Exemption for organic watermelons.

(a) A person who produces and markets solely 100 percent organic products, and who does not produce any conventional or nonorganic products, shall be exempt from the payment of assessments with respect to any watermelons that are produced on a certified organic farm as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502). For purposes of this section, *produce* means to grow or produce food, feed, livestock, or fiber or to receive food, feed, livestock, or fiber and alter that product by means of feeding, slaughtering, or processing.

(b) To apply for this exemption, the producer or handler shall submit the request to the Board—on a form provided by the Board—at any time initially and annually thereafter on or before January 1 as long as the producer or handler continues to be eligible for the exemption.

(c) The request shall include the following: The applicant's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), and a signed certification that the applicant meets all of the requirements specified for an assessment exemption.

(d) If the producer or handler complies with the requirements of this section, the Board will approve the exemption and issue a Certificate of Exemption to the producer or handler within 30 days of receipt of the application. The producer shall provide a copy of the Certificate of Exemption to each handler to whom the producer sells watermelons. The handler shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(e) An importer who meets the criteria in paragraph (a) of this section may submit documentation to the Board and request an exemption from assessment on 100 percent organic watermelons—on a form provided by the Board—at any time initially and annually thereafter on or before January 1 as long as the importer continues to be eligible for the exemption. This documentation shall include a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502) and a signed certification that the applicant meets all of the requirements specified for an assessment exemption. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer within 30 days of receipt of the importer's application. The Board will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer, in the appropriate location as determined by the U.S. Customs Service, on the Customs entry documentation. Any line item entry of 100 percent organic watermelons bearing this HTS classification assigned by the Board will not be subject to assessments.

PART 1215—POPCORN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

16. The authority citation for Part 1215 is revised to read as follows:

Authority: 7 U.S.C. 7481–7491 and 7 U.S.C. 7401.

17. Section 1215.52 is revised to read as follows:

§ 1215.52 Exemption from assessment.

(a) Persons that process and distribute 4 million pounds or less of popcorn annually, based on the previous year, shall be exempted from assessment.

(b) Persons who produce and market solely 100 percent organic products and who do not produce any conventional or nonorganic products shall be exempt from the payment of assessments with respect to any popcorn that is produced on a certified organic farm as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502). For purposes of this section, *produce* means to grow or produce food, feed, livestock, or fiber or to receive food, feed, livestock, or fiber and alter that product by means of feeding, slaughtering, or processing.

(c) To claim an exemption, persons shall apply to the Board, in the form and manner prescribed in the rules and regulations.

18. Section 1215.300 is amended by:

(a) Revising paragraphs (b) and (c);

(b) Redesignating paragraph (d) as paragraph (e);

(c) Adding a new paragraph (d).

Revisions read as follows:

§ 1215.300 Exemption procedures.

* * * * *

(b) A person who produces and markets solely 100 percent organic products and who does not produce any conventional or nonorganic products as provided in § 1215.52(b) of this part may apply for an exemption by submitting a request for exemption to the Board on a form provided by the Board at any time initially. The request shall include the following: the applicant's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), and a signed certification that the applicant meets all of the requirements specified for an assessment exemption.

(c) Upon receipt of an application, the Board shall determine whether an exemption may be granted and issue a Certificate of Exemption to the producer within 30 days of receipt of the applicant's request.

(d) Any person who desires to renew the exemption from assessments for a subsequent fiscal year shall reapply to the Board by January 1 of that year.

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PART 1216—PEANUT PROMOTION, RESEARCH, AND INFORMATION

19. The authority citation for Part 1216 is revised to read as follows:

Authority: 7 U.S.C. 7411–7425 and 7 U.S.C. 7401.

20. Section 1216.56 is added to read as follows:

§ 1216.56 Exemption for organic peanuts.

(a) A person who produces and markets solely 100 percent organic products, and who does not produce any conventional or nonorganic products, shall be exempt from the payment of assessments with respect to any peanuts that are produced on a certified organic farm as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502).

(b) In order to apply for this exemption, an eligible peanut producer shall submit a request for exemption to the Board—on a form provided by the Board—at any time initially and annually thereafter on or before August 1 as long as the producer continues to be eligible for the exemption.

(c) The request shall include the following: the producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), and a signed certification that the applicant meets all of the requirements specified for an assessment exemption.

(d) If the producer complies with the requirements of this section, the Board will approve the exemption and issue a Certificate of Exemption to the producer within 30 days of receipt of the producer's application.

(e) The producer shall provide a copy of the Certificate of Exemption to each handler to whom the producer sells peanuts. The handler shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

PART 1218—BLUEBERRY PROMOTION, RESEARCH, AND INFORMATION

21. The authority citation for Part 1218 is revised to read as follows:

Authority: 7 U.S.C. 7411–7425 and 7 U.S.C. 7401.

22. Section 1218.53 is amended by:

(a) Redesignating paragraphs (b) through (e) as paragraphs (f) through (i).

(b) Revising paragraph (a).

(c) Adding new paragraphs (b) through (e) to read as follows:

§ 1218.53 Exemption procedures.

(a) Any producer who produces less than 2,000 pounds of blueberries annually shall be exempt from the payment of assessments. Such producer may apply to the USACBC, on a form provided by the USACBC, for a certificate of exemption. Such producer shall certify that the producer's production of blueberries shall be less than 2,000 pounds for the fiscal year for which the exemption is claimed.

(b) Any importer who imports less than 2,000 pounds of fresh and frozen blueberries annually shall be exempt from the payment of assessments. Such importer may apply to the USACBC, on a form provided by the USACBC, for a certificate of exemption. Such importer shall certify that the importer's importation of fresh and frozen blueberries shall not exceed 2,000 pounds for the fiscal year for which the exemption is claimed.

(c) A person who produces and markets solely 100 percent organic products, and who does not produce any conventional or nonorganic products, shall be exempt from the payment of assessments with respect to any blueberries that are produced on a certified organic farm as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502). For purposes of this section, *produce* means to grow or produce food, feed, livestock, or fiber or to receive food, feed, livestock, or fiber and alter that product by means of feeding, slaughtering, or processing.

(d) To apply for this exemption, a producer shall submit a request for exemption to the USACBC—on a form provided by the USACBC—at any time initially and annually thereafter on or before January 1 as long as the producer continues to be eligible for the exemption. The request shall include the following: the producer's name and address, with a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990, and a signed certification that the applicant meets all of the requirements specified for an assessment exemption. If a producer complies with the requirements in paragraph (c) of this section, the USACBC will grant an assessment exemption and issue a certification of exemption to the producer within 30 days of receipt of the producer's request.

(e) An importer who meets the criteria in paragraph (c) of this section may submit documentation to the Board and request an exemption from assessment on 100 percent organic fresh and frozen blueberries—on a form provided by the USACBC—at any time initially and annually thereafter on or before January 1 as long as the importer continues to be eligible for the exemption. This documentation shall include a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502) and a signed certification that the applicant meets all of the requirements specified for an assessment exemption. If the importer complies with the requirements of this section, the USACBC will grant the exemption and issue a Certificate of Exemption to the importer within 30 days of receipt of the importer's application. The USACBC will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer, in the appropriate location as determined by the U.S. Customs Service, on the Customs entry documentation. Any line item entry of 100 percent organic fresh and frozen blueberries bearing this HTS classification assigned by the USACBC will not be subject to assessments.

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PART 1219—HASS AVOCADO PROMOTION, RESEARCH, AND INFORMATION

23. The authority citation for Part 1219 is revised to read as follows:

Authority: 7 U.S.C. 7801–7813 and 7 U.S.C. 7401.

24. In part 1219, add a new Subpart C—Rules and Regulations to read as follows:

Subpart C—Rules and Regulations

§ 1219.200 Terms defined.

Unless otherwise defined in this subpart, the definitions of terms used in this subpart shall have the same meaning as the definitions of such terms which appear in Subpart A—Hass Avocado Promotion, Research, and Information Order of this part.

§ 1219.201 Definitions.

Organic Act means section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502).

§ 1219.202 Exemption for organic Hass avocados.

(a) A person who produces and markets solely 100 percent organic products, and who does not produce any conventional or nonorganic

products, shall be exempt from the payment of assessments with respect to any Hass avocados that are produced on a certified organic farm as defined in the Organic Act. For purposes of this section, *produce* means to grow or produce food, feed, livestock, or fiber or to receive food, feed, livestock, or fiber and alter that product by means of feeding, slaughtering, or processing.

(b) To obtain this exemption, an eligible Hass avocado producer shall submit a request for exemption to the Board—on a form provided by the Board—at any time initially and annually thereafter on or before November 1 as long as the producer continues to be eligible for the exemption.

(c) The request shall include the following: the producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in the Organic Act, and a signed certification that the applicant meets all of the requirements specified for an assessment exemption.

(d) If the producer complies with the requirements of paragraph (a) of this section, the Board will grant an assessment exemption and shall issue a Certificate of Exemption to the producer within 30 days of receiving the producer's application. The producer shall provide a copy of the Certificate of Exemption to each handler to whom the producer sells Hass avocados. The handler shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(e) An importer who meets the criteria in paragraph (b) of this section may submit documentation to the Board and request an exemption from assessment on 100 percent organic Hass avocados—on a form provided by the Board—at any time initially and annually thereafter on or before November 1 as long as the importer continues to be eligible for the exemption. This documentation shall include a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Act and a signed certification that the applicant meets all of the requirements specified for an assessment exemption. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer within 30 days of receipt of the importer's application. The Board will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer, in the appropriate location as determined by the U.S. Customs Service, on the Customs entry documentation. Any line item entry of 100 percent organic Hass avocados bearing this HTS classification assigned by the Board will not be subject to assessments.

PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

25. The authority citation for Part 1220 is revised to read as follows:

Authority: 7 U.S.C. 6301–6311 and 7 U.S.C. 7401.

26. Section 1220.302 is added to read as follows:

§ 1220.302 Exemption.

(a) A person who produces and markets solely 100 percent organic products, and who does not produce any conventional or non-organic products, shall be exempt from the payment of assessment with respect to any soybeans that are produced on a certified organic farm as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502).

(b) To apply for an exemption under this section, the producer shall submit the request to the Board or other party as designated by the Board—on a form provided by the Board—at any time initially and annually thereafter on or before January 1 as long as the producer continues to be eligible for the exemption.

(c) The request shall include the following: the producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), and a signed certification that the applicant meets all of the requirements specified for an assessment exemption.

(d) If the producer complies with the requirements of this section, the Board or designee will grant the exemption and issue a Certificate of Exemption to the producer within 30 days of receipt of the producer's application.

(e) The producer shall provide a copy of the Certificate of Exemption to each first purchaser. The first purchaser shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

27. The authority citation for Part 1230 is revised to read as follows:

Authority: 7 U.S.C. 4801–4819 and 7 U.S.C. 7401.

28. Section 1230.102 is added to read as follows:

§ 1230.102 Exemption.

(a) A person who produces and markets solely 100 percent organic products, and who does not produce any conventional or non-organic products, shall be exempt from the payment of assessment with respect to any porcine animals or pork and pork products that are produced on a certified organic farm as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502). For purposes of this section, *produce* means to grow or produce food, feed, livestock, or fiber or to receive food, feed, livestock, or fiber and alter that product by means of feeding, slaughtering, or processing.

(b) To apply for an exemption under this section, the producer shall submit the request to the Board—on a form provided by the Board—at any time initially and annually thereafter on or before January 1 as long as the producer continues to be eligible for the exemption.

(c) The request shall include the following: the producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), and a signed certification that the applicant meets all of the requirements specified for an assessment exemption.

(d) If the producer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the producer within 30 days of receipt of the producer's application.

(e) The producer shall provide a copy of the Certificate of Exemption to each person responsible for collecting and remitting the assessment to the Board.

(f) The person responsible for collecting and remitting the assessment to the Board shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(g) An importer who meets the criteria in paragraph (a) above may submit documentation to the Board and request an exemption from assessment on 100 percent organic porcine animals or pork

and pork products—on a form provided by the Board—at any time initially and annually thereafter on or before January 1 as long as the importer continues to be eligible for the exemption. This documentation shall include a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502) and a signed certification that the applicant meets all of the requirements specified for an assessment exemption. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer within 30 days of receipt of the importer's application. The Board will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer, in the appropriate location as determined by the U.S. Customs Service, on the Customs entry documentation. Any line item entry of 100 percent organic porcine animals or pork and pork products bearing this HTS classification assigned by the Board will not be subject to assessments.

PART 1240—HONEY RESEARCH, PROMOTION, AND CONSUMER INFORMATION

29. The authority citation for Part 1240 continues to read as follows:

Authority: 7 U.S.C. 4601–4612 and 7 U.S.C. 7401.

30. Section 1240.42 is amended by:

(a) Redesignating paragraph (d) as paragraph (f).

(b) Revising paragraph (c).

(c) Adding new paragraphs (d) and (e).

Revisions read as follows:

§ 1240.42 Exemption from assessment.

* * * * *

(c) If, after a person has been exempt from paying assessments for any year pursuant to paragraphs (a) and (b) of this section, and the person no longer meets the requirements of paragraphs (a) and (b) of this section for exemption, the person shall file a report with the Board in the form and manner prescribed by the Board and pay an assessment on or before March 15 of the subsequent year on all honey or honey products produced or imported by such person during the year for which the person claimed the exemption.

(d) A person who produces and markets solely 100 percent organic products, and who does not produce any conventional or nonorganic products, shall be exempt from the payment of assessments with respect to any honey that is produced on a certified organic farm as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502). For purposes of this section, *produce* means to grow or produce food, feed, livestock, or fiber or to receive food, feed, livestock, or fiber and alter that product by means of feeding, slaughtering, or processing. A person is a producer, first-handler, or producer-packer.

(e) An importer who meets the criteria in paragraph (d) of this section may submit documentation to the Board and request an exemption from assessment on 100 percent organic honey and honey products.

* * * * *

31. Amend § 1240.50 by revising paragraph (d) to read as follows:

§ 1240.50 Reports.

* * * * *

(d) For persons who have an exemption from assessments under § 1240.42, such information as deemed necessary by the Board, and approved by the Secretary, concerning the exemption including disposition of exempted honey.

32. Revise § 1240.114 to read as follows:

§ 1240.114 Exemption procedures.

(a) To obtain a Certificate of Exemption for organic honey, an eligible person shall submit a request for exemption to the Board—on a form provided by the Board—at any time initially and annually thereafter on or before January 1 as long as the producer continues to be eligible for the exemption. The request shall include the following: the person's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), and a signed certification that the applicant meets all of the requirements specified for an assessment exemption.

(b) If the person complies with the requirements of this section, the Board will approve the exemption and issue a Certificate of Exemption to the producer within 30 days of receiving the producer's application.

(c) A person receiving an organic exemption shall provide a copy of the Certificate of Exemption to each handler to whom the producer sells honey. The handler shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(d) An importer who is eligible to be exempt from the payment of assessments on imported organic honey and honey products may request an exemption from assessment on 100 percent organic honey and honey products—on a form provided by the Board—at any time initially and on or before January 1 as long as the importer continues to be eligible for the exemption. This documentation shall include a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502) and a signed certification that the applicant meets all of the requirements specified for an assessment exemption. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer within 30 days of receipt of the importer's application. The Board will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer, in the appropriate location as determined by the U.S. Customs Service, on the Customs entry documentation. Any line item entry of 100 percent organic honey and honey products bearing this HTS classification assigned by the Board will not be subject to assessments.

33. In § 1240.115, revise paragraph (b)(1) to read as follows:

§ 1240.115 Levy of assessments.

* * * * *

(b) * * *

(1) Any persons other than importers holding a valid exemption certificate pursuant to § 1240.42 during the 12-month period ending on December 31;

* * * * *

34. Amend § 1240.118 by revising the first sentence to read as follows:

§ 1240.118 Reports of disposition of exempted honey.

The Board may require reports by first handlers, producer-packers, importers, or any persons who receive an exemption from assessments under § 1240.42 on the handling and disposition of exempted honey. * * *

35. Revise § 1240.120 to read as follows:

§ 1240.120 Retention period for records.

Each first handler, producer-packer, importer, or any person who receives an

exemption from assessments under § 1240.42 and is required to make reports pursuant to this subpart shall maintain and retain for at least two years beyond the marketing year of their applicability:

(a) One copy of each report made to the Board;

(b) Records of all exempt producers, producer-packers, and importers including certification of exemption as necessary to verify the address of such exempt person; and

(c) Such records as are necessary to verify such reports.

36. Revise § 1240.121 to read as follows:

§ 1240.121 Availability of records.

Each first handler, producer-packer, importer, or any person who receives an exemption from assessments under § 1240.42 and is required to make reports pursuant to this subpart shall make available for inspection by authorized employees of the Board or the Secretary during regular business hours, such records as are appropriate and necessary to verify reports required under this subpart.

37. Revise § 1240.122 to read as follows:

§ 1240.122 Confidential books, records, and reports.

All information obtained from the books, records, and reports of handlers, producer-packers, importers or any persons who receive an exemption from assessments under § 1240.42 and all information with respect to refunds of assessments made to individual producers and importers shall be kept confidential in the manner and to the extent provided for in § 1240.52 of the Order.

PART 1250—EGG RESEARCH AND PROMOTION

38. The authority citation for Part 1250 is revised to read as follows:

Authority: 7 U.S.C. 2701–2718 and 7 U.S.C. 7401.

39. Revise § 1250.530 to read as follows:

§ 1250.530 Certification of exempt producers.

(a) *Number of laying hens.* Egg producers not subject to the provisions of the Act pursuant to § 1250.348 shall file with all handlers to whom they sell eggs a statement certifying their exemption from the provisions of the Act in accordance with the criterion of § 1250.348. Certification shall be made on forms approved and provided by the Egg Board to collecting handlers for use by exempt producers. The certification form shall be filed with each handler on or before January 1 of each year as long as the producer continues to do business with the handler. A copy of the certificate of exemption shall be forwarded to the Egg Board by the handler within 30 days of receipt. The certification shall list the following: the name and address of the producer, the basis for producer exemption according to the requirements of § 1250.348, and the signature of the producer.

(b) *Organic Production.* A person who produces and markets solely 100 percent organic products, and who does not produce any conventional or nonorganic products, shall be exempt from the payment of assessments with respect to any eggs produced on a certified organic farm as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502).

(1) To apply for an exemption under this section, a producer shall submit a request for exemption to the Board on a form provided by the Board at any time initially and annually thereafter on or before January 1 as long as the producer continues to be eligible for the exemption.

(2) The request shall include the following: the producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), and a signed certification that the applicant meets all of the requirements specified in paragraph (b) of this section for an assessment exemption.

(3) If the producer complies with the requirements of this section, the Board will grant an assessment exemption and issue a certificate of exemption to the producer within 30 days of receipt of the producer's request.

(4) The producer shall provide a copy of the certificate of exemption to each handler to whom the producer sells eggs. The handler shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(c) If the exempt producer no longer qualifies for an exemption as specified in § 1250.348 or § 1250.530(b), that producer shall notify, within 10 days, all handlers with whom the producer has filed a certificate of exemption.

PART 1260—BEEF PROMOTION AND RESEARCH

40. The authority citation for Part 1260 is revised to read as follows:

Authority: 7 U.S.C. 2901–2911 and 7 U.S.C. 7401.

41. Section 1260.302 is added to read as follows:

§ 1260.302 Exemption.

(a) A person who produces and markets solely 100 percent organic products, and who does not produce any conventional or non-organic products, shall be exempt from the payment of the promotion and research assessment with respect to any cattle or beef and beef products that are produced on a certified organic farm as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502). For purposes of this section, *produce* means to grow or produce food, feed, livestock, or fiber or to receive food, feed, livestock, or fiber and alter that product by means of feeding, slaughtering, or processing.

(b) To apply for an exemption under this section, the producer shall submit the request to the Board or other party as designated by the Board—on a form provided by the Board—at any time initially and annually thereafter on or before January 1 as long as the producer continues to be eligible for the exemption.

(c) The request shall include the following: The producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), and a signed certification that the applicant meets all of the requirements specified for an assessment exemption.

(d) If the producer complies with the requirements of this section, the Board or designee will grant the exemption and issue a Certificate of Exemption to the producer within 30 days of receipt of the producer's application.

(e) The producer shall provide a copy of the Certificate of Exemption to each person responsible for collecting and remitting the assessment.

(f) The person responsible for collecting and remitting the assessment shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board or designee.

(g) An importer who meets the criteria in paragraph (a) of this section may submit documentation to the Board and request an exemption from assessment on 100 percent organic cattle or beef and beef products'on a form provided by the Board'at any time initially and annually thereafter on or before January 1 as long as the importer continues to be eligible for the exemption. This documentation

shall include a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502) and a signed certification that the applicant meets all of the requirements specified for an assessment exemption. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer within 30 days of receipt of the importer's application. The Board will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer, in the appropriate location as determined by the U.S. Customs Service, on the Customs entry documentation. Any line item entry of 100 percent organic cattle or beef and beef products bearing this HTS classification assigned by the Board will not be subject to assessments.

PART 1280—LAMB RESEARCH AND PROMOTION

42. The authority citation for Part 1280 is revised to read as follows:

Authority: 7 U.S.C. 7411–7425 and 7 U.S.C. 7401.

43. Section 1280.406 is added to read as follows:

§ 1280.406 Exemption.

(a) A person who produces and markets solely 100 percent organic products, and who does not produce any conventional or non-organic products, shall be exempt from the payment of assessment with respect to any ovine animals or lamb and lamb products that are produced on a certified organic farm as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502). For purposes of this section, *produce* means to grow or produce food, feed, livestock, or fiber or to receive food, feed, livestock, or fiber and alter that product by means of feeding, slaughtering, or processing. A person is a producer, seed stock producer, feeder, exporter, or first handler.

(b) To apply for an exemption under this section, the person shall submit the request to the Board—on a form provided by the Board—at any time initially and annually thereafter on or before January 1 as long as the person continues to be eligible for the exemption.

(c) The request shall include the following: the person's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), and a signed certification that the applicant meets all of the requirements specified for an assessment exemption.

(d) If the person complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the producer within 30 days of receipt of the person's application.

(e) An exempt producer shall provide a copy of the Certificate of Exemption to each person to whom the producer sells ovine animals or lamb and lamb products. The Certificate of Exemption must accompany the ovine animals through the production chain to the person responsible for remitting the assessment to the Board.

(f) The person shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

Dated: April 19, 2004.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–9259 Filed 4–23–04; 8:45 am]

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Federal Register

Monday,
April 26, 2004

Part V

Securities and Exchange Commission

17 CFR Parts 232, 239, et al.
Mandated Electronic Filing for Form ID; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 232, 239, 249, 259, 269 and 274

[Release Nos. 33–8410, 34–49585, 35–27837, 39–2420, IC–26421; File No. S7–14–04]

RIN 3235–AJ09

Mandated Electronic Filing for Form ID

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting rule and form amendments to mandate the electronic filing of Form ID on a new on-line system. Form ID is the application for access codes to file on EDGAR. The intended effect of the amendments is to facilitate the more efficient transmission and processing of the information Form ID requires in a manner that will benefit investors, filers and the Commission.

DATES: Effective Date: April 26, 2004.

FOR FURTHER INFORMATION CONTACT: For assistance with questions about the rule and form amendments in general, contact Mark W. Green, Senior Special Counsel (Regulatory Policy), at (202) 942–1940, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20459–0301. For assistance with technical questions about EDGAR, call the EDGAR Filer Support Office at (202) 942–8900.

SUPPLEMENTARY INFORMATION: We are adopting [1] amendments that will revise Rules 10,[2] 101,[3] 104,[4] 201 [5] and 202 [6] under Regulation S–T [7] and Form ID.[8]

I. Background and New Filing System

Before the effective date of the amendments adopted by this release, new issuers and other applicants applying for access codes to file on the Commission's Electronic Data Gathering, Analysis and Retrieval System ("EDGAR") must file a Form ID in paper [9] by fax.[10] When we initially launched the EDGAR system, we required applicants [11] to file Form ID in paper by mail. In November 2001, however, we began to require that applicants file Form ID solely by fax.[12] The electronic filing of Form ID will facilitate the more efficient transmission and processing of the information Form ID requires in a manner that will benefit investors, filers and the Commission. The information will be transmitted in a speedy, secure and reliable manner and will directly enter the Commission's records rather than having to be keyed in by Commission personnel.

By the time the rules requiring electronic filing of Forms ID are effective, a related new on-line filing system accessed through an EDGAR Filer Management website will be completed.[13]

New issuers and other applicants who are new filers will be required to file Forms ID.[14] Applicants will be required to access the EDGAR Filer Management website to fill out and submit the forms, as EDGARLink filing will not be available for submission of these forms. Other types of filers (*i.e.*, those who are not new filers) that wish to obtain access codes will be able to do so through the EDGAR Filer Management website or, in generally the same manner as available today, the current EDGAR Filer or Online Forms websites, in all cases without filing a Form ID.

To access and file Forms ID through our EDGAR Filer Management website, each applicant must have available all the information Form ID requires when the applicant accesses the website because the system will not provide a way to save an incomplete form on-line from session to session. A time-out that ends the session will occur one hour following the user's last activity on the system. We expect that there will be more than enough time to prepare, review and submit a Form ID given the nature and quantity of information required. Unlike the current system, only one applicant per Form ID will be permitted. The system will validate for data type and required fields as many fields as possible during the submission process. Applicants will have the chance to correct errors and verify the accuracy of the information before submission. An on-line help function will be available. The applicant will be able to add attachments before submission and print the information submitted after submission.

Modifications to EDGAR in connection with establishing the EDGAR Filer Management website will require not only applicants who file Form ID, but also users who log onto EDGAR for filing for the first time on or after April 26, to choose a passphrase.[15] A passphrase will enable a user to change its access codes easily.[16]

II. The Amendments

A. Required Electronic Filing of Form ID

We are adopting with minor revisions the proposed amendments to Regulation

[1] The amendments were proposed in Release No. 33–8399 (Mar. 15, 2004) [69 FR 13426 (Mar. 22, 2004)] ("Proposing Release"). The Commission has posted comments on the Proposing Release on the Commission's Internet Web site (*http://www.sec.gov*). Comments also are available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

[2] 17 CFR 232.10.

[3] 17 CFR 232.101.

[4] 17 CFR 232.104.

[5] 17 CFR 232.201.

[6] 17 CFR 232.202.

[7] 17 CFR 232.10 *et seq.*

[8] 17 CFR 239.63, 249.446, 259.602, 269.7 and 274.402.

[9] Rule 10(b) of Regulation S–T [17 CFR 232.10(b)].

[10] Section 1.3.1 of EDGAR Release 8.6 EDGARLink Filer Manual (Volume I) and Onlineforms Filer Manual (Volume III). In some instances, applicants can acquire replacement codes through our EDGAR website without use of a Form ID. Applicants will be able to continue this practice under specified circumstances.

[11] The three categories of individuals or entities that apply for access codes are "filers", "filing agents" and "training agents" (collectively, "applicants"). A filer is an individual or entity on whose behalf an electronic filing is made. A filing agent is an individual or entity that uses access codes to send all or part of a filing on behalf of a filer. A training agent is an individual or entity that will be sending only test filings in connection with training others.

[12] The former requirement to file by mail still is reflected in Part V of the General Instructions to Form ID. This requirement, however, has been superseded by the fax requirement in the Filer Manual.

[13] An on-line filing system currently is available for Forms 3 [17 CFR 249.103 and 274.202), 4 [17 CFR 249.104 and 274.203) and 5 [249.105) filed under Section 16(a) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. 78p(a)].

[14] "New filers" fall within two categories. The first category contains applicants that have not previously filed with the Commission or have filed only paper Forms 3, 4 or 5 (all required to be filed electronically since June 30, 2003) or paper Forms 144 [17 CFR 239.144), under the Securities Act of 1933 ("Securities Act") [15 U.S.C. 77a *et seq.*), and, as a result, have not been assigned by the Commission a Central Index Key (CIK) code. The CIK code is a unique publicly available identifier and EDGAR access code. The second category consists of applicants that have received a CIK code for use in connection with their activities as one type of applicant (filer, filing agent or training agent) but wish to act as another type of applicant. A person or entity should have and use a separate CIK code as to each capacity (filer, filing agent or training agent) in which it acts.

[15] Because only users that log onto EDGAR are required to select a passphrase, a filing agent that logs onto EDGAR in order to file on behalf of a client would be required to select a passphrase only for itself. The filing agent could file on behalf of the client regardless of whether the client had a passphrase.

[16] The passphrase system will provide advantages over the current system for changing access codes. In the current system, users often forget the access code needed to change another access code and have greater difficulty changing a code that has expired. Under the new system, users should remember their passphrase more easily since they choose it. An access code's expiration will not affect the passphrase. A passphrase remains valid unless and until the user changes it. Further details about passphrases and access codes are being provided in revisions to the EDGAR Filer Manual.

S–T [17] to require applicants who are new filers to file Forms ID with us electronically. As noted above, Rule 10 of Regulation S–T currently requires Forms ID to be filed in paper.[18] The amendments revise subparagraph (b) of Rule 10 by replacing the paper filing requirement with an electronic filing requirement.[19] For clarity and ease of reference, the amendments also revise subparagraph (a)(1) of Rule 101 of Regulation S–T [20] to add a new subparagraph (ix) to add Form ID to the rule's list of documents required to be filed electronically.[21]

The commenters generally expressed support for requiring Forms ID to be filed electronically. Two commenters, however, expressed the view that not all persons and entities required to file have access to computers and the Internet and one commenter asserted that not all natural person filers have the computer skills to fill out on-line forms.[22]

We are adopting as proposed the amendments to Regulation S–T to make hardship exemptions unavailable to Forms ID. The amendments revise subparagraph (a) of Rules 201 [23] and 202 [24] by excluding Form ID from the filings for which hardship exemptions are available. Several commenters suggested that we retain a hardship exemption for circumstances in which a filer cannot immediately file electronically. They cited, among other circumstances, situations where Internet access is unavailable.

Having considered these comments, we continue to believe, however, that hardship exemptions should not be available to Forms ID because a filer unable to file electronically a Form ID also, presumably, would be unable to file on EDGAR even with the access codes obtained in response to a Form ID filing. Even if the EDGAR Filer Management website is unavailable but EDGAR itself is functioning, providing a hardship exemption would not speed up the receipt of codes because the new system will not enable the staff to generate EDGAR access codes manually.[25] Consequently it appears that there would be no practical need for a hardship exemption, and granting the exemption could undermine the purposes of mandated electronic filing of Forms ID.[26]

B. Required Faxing of Document Authenticating Form ID

In the Proposing Release, we stated that "[b]ecause only new filers will file the electronic Form ID, we believe the form should be supplemented with additional verification to help ensure the security of the system." Accordingly, we proposed an amendment to Regulation S–T to require these applicants to file in paper by fax within two business days before or after electronically filing Form ID a notarized document, manually signed by the applicant over its typed signature, that includes the information contained in the Form ID filed or to be filed and confirms the authenticity [27] of the Form ID.[28] We also stated that "[t]he purpose of this requirement is to help assure that the Form ID is authentic." Finally, we stated that "[w]e expect that eventually we will replace this procedure with a requirement that applicants use a certificate from a certification authority to authenticate their Form ID filings." [29]

The commenters opposed the requirement to fax a notarized authenticating document and urged us to streamline the process by eliminating this requirement. More than one commenter objected to the notarization requirement as inconsistent with past practice, ineffective and time-consuming. Several commenters claimed that the notarization requirement would be especially problematic for foreign applicants. One of these commenters suggested that if we keep the notarization requirement for foreign applicants we clarify that, as to those persons, notarization "is limited to verifying the signature and identity of the signatory and that any method sufficient to authenticate a signature in the home jurisdiction should be sufficient." The staff will apply this approach as an interpretive matter subject to adjustment in the future should our experience so require.

After considering these comments, we have nonetheless decided to amend Regulation S–T to require new filers to file an authenticating fax substantially as proposed.[30] While our rules do not currently require notarization, human intervention in the current non-

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[17] Regulation S–T is the general regulation governing electronic filing. In addition to complying with Regulation S–T, filers must submit electronic documents in accordance with the instructions in the EDGAR Filer Manual. We also are amending the EDGAR Filer Manual to reflect the new electronic filing system.

[18] As also noted above, currently, the EDGAR Filer Manual requires Form ID to be filed by fax and Form ID contains a superseded instruction to file Form ID by mail.

[19] We are adopting as proposed the amendment to Rule 104(a) of Regulation S–T that makes it clear that unofficial PDF copy submissions are unavailable to Form ID.

[20] 17 CFR 232.101(a)(1).

[21] Rule 101(a)(1) also requires the electronic submission of any related correspondence and supplemental information pertaining to a document that is the subject of mandated electronic filing "except as otherwise provided." As proposed, adopted Rule 101(a)(1)(ix) will prohibit electronic submission of the notarized authenticating document described in Section II.B of this release. As proposed, the rule also would have prohibited electronic submission of related correspondence and supplemental information submitted after electronic filing of Form ID and before the Commission assigns access codes to the applicant to file on EDGAR. As adopted, however, to facilitate Commission processing, the rule prohibits indefinitely electronic submission of related correspondence and supplemental information submitted after electronic filing of Form ID. This material should be provided by fax if submitted after electronic filing of Form ID. Otherwise, it should be submitted as an attachment to the electronically filed Form ID.

[22] All persons and entities required to file will need direct or indirect access to computers and the Internet regardless of whether Form ID must be filed electronically in order to file on EDGAR. Natural persons will, we expect, predominantly consist of filers of Forms 3, 4 and 5. As to those natural persons in particular, we believe many will have help from issuers, and those who do not will find it relatively easy and straightforward to fill in the few simple fields required to complete Form ID. *See* Section IV.B of this release for a discussion of expected costs.

[23] 17 CFR 232.201(a).

[24] 17 CFR 232.202(a).

[25] If a filer is unable to receive access codes timely because of technical difficulties with the EDGAR Filer Management website, and as a result the filing for which the access codes are needed is made late, generally a filing date adjustment would be available. *See* Rule 13 of Regulation S–T [17 CFR 232.13].

[26] *See* the note to Rule 10 of Regulation S–T [17 CFR 232.10] ("The Commission strongly urges any person or entity about to become subject to the disclosure and filing requirements of the federal securities laws to submit a Form ID well in advance of the first required filing, including a registration statement relating to an initial public offering, in order to facilitate electronic filing on a timely basis.").

[27] An applicant could confirm the authenticity of a Form ID by, for example, stating that "I [name of applicant] hereby confirm the authenticity of the Form ID [filed on] [to be filed on] [specify date] containing the information contained in this document."

[28] The proposed amendment also would revise subparagraph (b) of Rule 10 of Regulation S–T to add this requirement. One way to satisfy the authenticating document requirement, although only after electronic filing, would be to use a print-out of the Form ID application acknowledgment generated by the EDGAR Filer Management website. To use the print-out to satisfy the requirement, the applicant must notarize the print-out and add an authenticity confirming statement. Before faxing the print-out, the applicant also should make illegible the passphrase that appears on it. The passphrase should be made illegible because, as a code that enables the acquisition of new EDGAR access codes, it should be kept highly confidential.

[29] A certification authority issues a certificate that works like an electronic "pass card" that verifies the holder's identity when filing. The certification authority's digital signature would allow us to verify that the certificate is authentic. Certificates currently are optional for filing on EDGAR. They may be purchased from Verisign, the current certification authority for EDGAR.

[30] The adopted amendment, unlike the proposed, also includes a requirement to place in the notarized authenticating document the accession number of the related electronic Form ID filing when electronic filing occurs first.

automated process helps to assure authenticity. The degree and type of human intervention and the related procedures involved in the current process will change with electronic Form ID filing in a way that could offer less assurance of authenticity.[31] Based on our prior experience with the application of human intervention and verification procedures, we believe the fax filing requirement will provide a degree of assurance the benefits of which will justify the costs of a less streamlined process that requires applicants to spend the time needed to obtain notarization.

C. Form ID

We are adopting with minor revisions the proposed amendments to Form ID to facilitate the electronic filing provisions, as follows:

1. Amend the section immediately above the heading for Part I to delete the phrase "Applicant's CIK (if known)", the checkboxes and the checkboxes' related labels "Initial Application" and "Amendment." A new filer would not have a CIK or have filed a Form ID to amend. Information previously reported on Form ID will continue to be able to be corrected or updated through the EDGAR Filer or EDGAR Online Forms website. As a result, applicants will not need to amend Forms ID.

2. Amend Part I of Form ID to

- Refer consistently to "applicant" rather than "registrant";
- Clarify how to present an individual's name;
- Delete the subsection regarding former name as unnecessary;
- Clarify that a foreign address must include the name of the foreign country rather than the name of a state;
- Clarify that a foreign telephone number must include a country code in addition to an area code; [32]
- Add an applicant type checkbox for individual applicants that is to be marked by applicants, as applicable, in addition to one of the three types (filer, filing agent and training agent) currently on the form;[33] and
- Delete the last three subsections of the part relating to the superseded concepts of initial and amended applications.

3. Amend Part II of Form ID to

- Revise the heading of the part to clarify that it applies only to filers that are not individuals;
- Delete the subsection asking whether the applicant currently files with the Commission and, if so, what at least one of the applicant's Commission file numbers is (this information no longer is necessary);
- Refer consistently to "filer" rather than "registrant";
- Add subsections for the name under which the filer does business and, for foreign issuer [34] filers, the name of the filer in any language other than English, if applicable;[35] and
- Clarify that a Social Security number must not be entered as the filer's tax or federal identification number.

4. Amend Part III of Form ID to delete the subsection regarding the EDGAR Private Mail system that no longer exists.

5. Amend Part V of Form ID to add a warning regarding federal criminal liability for misstatements or omissions.

6. Amend the statutory authority section immediately below Part V of Form ID to make two authority citations more precise and to correct a typographical error in another citation.

7. Amend the introductory section of the General Instructions to Form ID to

- Delete the superseded reference to amendments;
- Delete the language cautioning that an incomplete form may delay codes because a complete form will be necessary to obtain codes;
- Add descriptions of the requirements to file Form ID electronically and fax to the Commission a notarized document, manually signed by the applicant over a typed signature, that confirms the authenticity of the Form ID;[36] and
- Add contact information for questions.

8. Amend Part I of the General Instructions to Form ID to

- Add and define the applicant type "Individual";
- Place the applicant type definitions in bullet format;
- Add the requirement that the applicant's individual status be indicated, as applicable; and
- Delete all the text after the applicant type definitions because that text addresses the superseded notions of initial and amended Form ID filings.

9. Amend Part II of the General Instructions to Form ID to

- Clarify in the parenthetical in the heading that Part II of Form ID only should be completed by filers that are not individuals;
- Refer consistently to "filer" rather than "registrant";
- Clarify in the text that Part II of Form ID does not apply to individuals and that, accordingly, a Social Security number must not be entered as a tax or federal identification number;
- Clarify that if an investment company filer is organized as a series company, the investment company may use the tax or federal identification number of any one of its constituent series;
- Clarify that issuers that have applied for but not yet received their tax or federal identification number must include all zeroes;
- Provide that foreign issuers that do not have a tax or federal identification number must include all zeroes;
- Define the term "foreign issuer";
- Provide that foreign issuers should include their country of organization;
- Provide that a foreign issuer must provide its "doing business as" name in the language of the name under which it does business and must provide its foreign language name, if any;
- Provide that if the filer's fiscal year does not end on the same date each year (*e.g.*, falls on the last Saturday in December), the filer must enter the date the current fiscal year will end; and
- Delete the sentence regarding individuals' providing state of incorporation or organization information or fiscal year end since

[31] Some of the commenters suggested that the authenticating document appear as a PDF (Portable Document Format) attachment to the electronic Form ID. We believe a PDF attachment approach would not provide a level of assurance materially greater than that provided with no authenticating document and would not provide a level of assurance as high as that provided by the fax requirement coupled with our planned related procedures. In addition, it will not be possible to upload a PDF attachment to a Form ID at the time the new on-line system becomes operative. Other authentication devices suggested involved e-mail or internet address tracing or verification, use of signature guarantees or certificates or identity vouching by regular participants in the filing process. As noted above, we plan to replace the fax procedure with a certificate requirement. We believe, however, that neither the certificate device, nor the other devices suggested are both effective and feasible at the present time.

[32] The described amendments to clarify what foreign addresses and telephone numbers must include also are proposed as to Parts II, III and IV of Form ID.

[33] Unlike the proposed amendments relating directly to applicant type, the adopted amendments to Part I of Form ID and Part I of the General Instructions do not include a checkbox for, or reference to, foreign private issuers, respectively. We believe that we do not currently need that type of information.

[34] The term "foreign issuer" as used in this release is defined in Securities Act Rule 405 [17 CFR 230.405] and Exchange Act Rule 3b–4(b) [17 CFR 240.3b–4(b)].

[35] Unlike the proposed amendments to Part II of Form ID and Part II of the General Instructions, the adopted amendments refer to foreign issuers rather than foreign private issuers to cover additional types of filers that may have foreign language names. Also unlike the proposed amendments, the adopted amendments clarify that a foreign name entry is required only where applicable.

[36] The adopted amendment, unlike the proposal, also includes in the description the requirement to place in the notarized authenticating document the accession number of the related electronic Form ID filing when electronic filing occurs first. This will assist in processing.

individuals no longer will be filling in Part II of Form ID.

10. Amend Part III of the General Instructions to Form ID to replace all the text, after the first sentence, regarding the EDGAR Private Mail system and Internet e-mail with text that omits reference to the now defunct EDGAR Private Mail system and instead provides guidance regarding default and additional per filing e-mail contact addresses.

11. Amend Part IV of the General Instructions to Form ID to add a sentence directing applicants to advise us through the EDGAR filing Web site of changed address information to help assure that account statements reach the specified contact person.

12. Amend Part V of the General Instructions to Form ID to add guidance on how to sign the form.

III. Paperwork Reduction Act

The amendments will affect one form, Form ID, that contains "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995.[37] We published a notice requesting comment on the collection of information requirements relating to the Proposing Release in general. We solicited comment on, in particular, the accuracy of our estimate that no additional burden would result from the proposed amendments. We did not receive any comments on the Paperwork Reduction Act analysis contained in the Proposing Release.[38]

Compliance with the adopted amendments will be mandatory. The information required by the amendments will be kept confidential by the Commission, subject to a request under the Freedom of Information Act.[39]

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The title of the affected information collection is the EDGAR Form ID. We expect that the adopted amendments will obligate applicants to disclose on Form ID essentially the same information they are required to disclose today.[40]

[37] 44 U.S.C. 3501 *et seq.*

[38] We estimate that a total of 196,800 respondents file Form ID (OMB Control Number 3235–0328) each year at an estimated .15 hours per response for a total annual burden of 29,520 hours.

[39] 5 U.S.C. 552. The Commission's regulations that implement the Act are at 17 CFR 200.80 *et seq.*

[40] The addition of a requirement to provide in an authenticating document the accession number of the related electronic Form ID filing, where applicable, creates an additional burden so small it is not quantifiable. The other changes related to Form ID are minor and do not add any collection of information burden.

IV. Cost-Benefit Analysis

We expect that the adopted amendments will benefit investors, applicants and the Commission.

A. Benefits

The adopted amendments should benefit investors, applicants and the Commission because the information contained in Form ID should be transmitted in a speedy, secure and reliable manner and would directly enter the Commission's records rather than be keyed in by Commission personnel, which currently must be done. This should improve the speed and accuracy of the process that leads to applicants' receipt of the codes needed to file on EDGAR. This improvement should enable applicants to disseminate information sooner to investors.

B. Expected Costs

We expect that the adopted amendments will result in some costs to applicants. However, we expect that many applicants will not bear the full range of costs resulting from the adoption of these amendments for the reasons described below.

As noted above, we expect that the adopted amendments will obligate applicants to disclose on Form ID essentially the same information that they are required to disclose today. We therefore believe that the overall information collection burden of Form ID will remain approximately the same. As a result, the cost of collecting the information will remain approximately the same.

The expected costs of mandated electronic filing of Form ID consist of both initial and ongoing costs. Initial costs include those associated with learning about the electronic filing system, obtaining access to a computer, placing the filing data in electronic format for the initial electronic filing and subscribing to an Internet service provider. Ongoing costs are those associated with maintaining the framework developed through the initial costs by updating information required by Form ID.

We expect that most applicants will need to incur few, if any, additional costs from electronic filing. Applicants who are new filers likely will be prepared to become electronic filers and, accordingly, will be prepared to access the EDGAR Filer Management Web site.

To the extent applicants who file Forms ID are officers or directors, we understand that many issuers will help them or make their filings for them. To the extent officers and directors do not receive this help, we believe many already will have the computer equipment and Internet access to enable them to file using the EDGAR Filer Management Web site.

Even issuers that file Form ID electronically on their own behalf or help their officers or directors, whether to a greater or lesser extent, to file electronically are not likely to incur additional costs. Issuers are required to file on EDGAR and generally have the needed computer equipment and Internet service provider access to enable them to file or facilitate filing using the EDGAR Filer Management Web site.

Finally, we believe that faxing a notarized authenticating document will result in negligible additional costs. An applicant currently must incur the cost of faxing a Form ID, and the information in the authenticating document would be no more extensive than would be needed for the Form ID itself.[41] Based on what appear to be common practices at Washington, DC area banks, we believe that banks generally will notarize customer documents for no additional fee and that those banks that notarize for non-customers generally will notarize a document for less than ten dollars.

As noted above, two commenters expressed the view that not all persons and entities required to file have access to computers and the Internet and one commenter asserted that not all natural person filers have the computer skills to fill out on-line forms. All persons and entities required to file will need direct or indirect access to computers and the Internet regardless whether Form ID must be filed electronically in order to file on EDGAR. As to natural persons in particular, we believe many will have help from issuers, and those who do not will find it relatively easy and straightforward to fill in the few simple fields required to complete Form ID.

Also as noted above, some commenters objected to the notarization requirement as time consuming and costly (at least insofar as the value of the time required) especially for foreign applicants. We acknowledge these objections but believe the vast majority of applicants will have ready access to a notary and will be able to make arrangements in advance of signing to minimize the time required for notarization.

[41] A minor exception is that the notarized authenticating document would need to include the accession number of the related electronic Form ID filing when electronic filing occurs first.

V. Effect on Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act[42] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Furthermore, Section 2(b) of the Securities Act[43] and Section 3(f) of the Exchange Act[44] require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

The adopted amendments regarding mandated electronic filing of Form ID are intended to facilitate the more efficient transmission and processing of the information that Form ID requires. This should improve the speed and accuracy of the process that leads to applicants' receipt of the codes needed to file on EDGAR. This improvement would enable applicants to disseminate information sooner to investors. As a result, the amendments should improve investors' ability to make informed investment and voting decisions. Informed investor decisions generally promote market efficiency and capital formation. We believe the adopted amendments will not impose a burden on competition.

In the Proposing Release, we considered the amendments in light of the standards set forth in the above statutory sections. We solicited comment on whether, if adopted, the proposed amendments would impose a burden on competition. We also requested comment on whether, if adopted, the proposed amendments would promote efficiency, competition and capital formation. Finally, we requested commenters to provide empirical data and other factual support for their views if possible. No commenter addressed anti-competitive effects.[45]

[42] 15 U.S.C. 78w(a)(2).

[43] 15 U.S.C. 77b(b).

[44] 15 U.S.C. 78c(f).

[45] We note and address comments regarding streamlining and the cost of the Form ID filing process in Sections II.B and IV.B of this release

VI. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis or FRFA has been prepared in accordance with the Regulatory Flexibility Act.[46] This FRFA relates to amendments regarding mandated electronic filing of Form ID.

A. Reasons for the Proposed Action

An applicant uses Form ID to apply for the access codes required to file electronically on EDGAR. We believe the adopted amendments will benefit investors, applicants and the Commission.

B. Significant Issues Raised by Public Comment

The Initial Regulatory Flexibility Analysis ("IRFA") appeared in the Proposing Release. We requested comment on any aspect of the IRFA, including the number of small entities that would be effected by the proposals, the nature of the impact, and how to quantify the impact of the proposals. We received no comment letters specifically responding to the request.

C. Small Entities Subject to the Proposed Revisions

The amendments will affect small entities that are applicants that are not natural persons. Exchange Act Rule 0–10(a)[47] defines an entity, other than an investment company, to be a "small business" or "small organization" if it had total assets of $5 million or less on the last day of its most recent fiscal year. For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year. The adopted amendments will apply to all small entities that are new issuers or other applicants.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

Before the effective date of the rule and form amendments adopted in this release, applicants must file Forms ID in paper by fax. The adopted amendments will require applicants to file these forms electronically and fax to the Commission a notarized authenticating document containing at least the information the Form ID contains. Because applicants already file Forms ID in paper by fax, the only additional professional skills applicants will need will be those required to file electronically. We expect that filing electronically will increase costs incurred by some small entities. However, we expect that many small entities will not bear the full range of costs resulting from the adoption of these amendments for the reasons described below.

The expected costs of mandated electronic filing consist of both initial and ongoing costs. Initial costs include those associated with learning about the electronic filing system, obtaining access to a computer, placing the filing data in electronic format for the initial electronic filing and subscribing to an Internet service provider. Ongoing costs are those associated with maintaining the framework developed through the initial costs by updating information required by Form ID.

We expect that many small entity applicants will need to incur few, if any, additional costs for electronic filing. Some issuers may help related small entity applicants (such as subsidiaries) or make the related small entity applicants' filings for them. To the extent small entity applicants do not receive this help, we believe many already will have the computer equipment and Internet access to enable them to file using the EDGAR Filer Management website.

Even small entity issuers that file Form ID electronically on their own behalf or help other small entity applicants, whether to a greater or lesser extent, to file electronically are not likely to incur additional costs. Small entity issuers are required to file on EDGAR and generally have the needed computer equipment and Internet service provider access to enable them to file or facilitate filing using the EDGAR Filer Management Web site.

Finally, we believe that faxing a notarized authenticating document will result in negligible additional costs. A small entity applicant currently must incur the cost of faxing a Form ID and the information in the authenticating document would be no more extensive than would be needed for the Form ID itself.[48] Based on what appear to be common practices at Washington, DC area banks, we believe that banks generally will notarize customer documents for no additional fee and that those banks that notarize for non-customers generally will notarize a document for less than ten dollars.[49]

[46] 5 U.S.C. 603.

[47] 17 CFR 240.0–10(a).

[48] A minor exception is that the notarized authenticating document would need to include the accession number of the related electronic Form ID filing when electronic filing occurs first.

[49] One commenter claimed that the time required for notarization would be especially burdensome for small businesses because they are less likely to

E. Agency Action to Minimize Effect on Small Entities

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. In connection with the amendments, we considered the following alternatives:

- The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
- The clarification, consolidation, or simplification of filing requirements;
- The use of performance rather than design standards; and
- An exemption from the electronic filing requirements, or any part of them, for small entities.

We believe that differing compliance or reporting requirements or timetables for small entities (or a partial or complete exemption) would be inconsistent with the more efficient transmission and processing of the information Form ID requires in a manner that will benefit investors, applicants and the Commission. We did not receive any response to our solicitation of comment on whether differing compliance or reporting requirements or timetables for small entities would be consistent with the described goals. We believe that the adopted electronic filing requirements are clear and straightforward. We have attempted to design an electronic filing system for Forms ID that will be simple for all filers to use. Therefore, it does not seem necessary to develop separate requirements for small entities. We have used design rather than performance standards in connection with the electronic filing requirements because we want the Commission to be able to process readily the information involved. We do not believe that performance standards for small entities would be consistent with the purpose of the amendments.

VII. Administrative Procedure Act

The Administrative Procedure Act generally requires that an agency publish an adopted rule in the **Federal Register** 30 days before it becomes effective.[50] This requirement, however, does not apply if the agency finds good cause for making the rule effective sooner.[51]

The Commission finds good cause to make the changes to Form ID effective on April 26, 2004.[52] The changes to Form ID are interrelated with other programming changes being made to EDGAR. These other programming changes must be implemented by April 26, 2004 to avoid significant system operating problems and cost overruns. Moreover, the Form ID changes are not voluminous or substantive and should not create any hardship for those who seek to access the new system.

Finally, we stated in the Proposing Release that the changes would likely be effective in late April possibly without much notice, and no commenter suggested there would be any hardship associated with this time frame. In the unlikely event that an applicant experiences any unanticipated hardship caused by the shortened notice period, the Commission staff will use reasonable efforts to assist the applicant to obtain access codes on a timely basis.

VIII. Statutory Basis

We are adopting the amendments to Regulation S–T and Form ID under the authority in Section 19(a)[53] of the Securities Act, Sections 3(b),[54] 13(a),[55] 23(a)[56] and 35A[57] of the Exchange Act, Section 20[58] of the Public Utility Holding Company Act, Section 319[59] of the Trust Indenture Act of 1939 and Sections 30[60] and 38[61] of the Investment Company Act of 1940.

Text of Rule Amendments

List of Subjects in 17 CFR Parts 232, 239, 249, 259, 269 and 274

Reporting and recordkeeping requirements, Securities.

■ For the reasons set forth above, we amend title 17, chapter II of the Code of Federal Regulations as follows.

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 1. The authority citation for part 232 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 80a–30 and 80a–37.

* * * * *

■ 2. Amend § 232.10 by revising paragraph (b) to read as follows:

§ 232.10 Application of part 232.

* * * * *

(b) Each registrant, third party filer, or agent to whom the Commission previously has not assigned a Central Index Key (CIK) code, must, before filing on EDGAR:

(1) File electronically a Form ID (§§ 239.63, 249.446, 259.602, 269.7 and 274.402 of this chapter), the uniform application for access codes to file on EDGAR, and

(2) File in paper by fax, within two business days before or after electronically filing the Form ID, a notarized document, manually signed by the applicant over the applicant's typed signature, that includes the information contained in the Form ID, confirms the authenticity of the Form ID and, if filed after electronically filing the Form ID, includes the accession number assigned to the electronically filed Form ID as a result of its filing.

* * * * *

■ 3. Amend § 232.101 by adding paragraph (a)(1)(ix) to read as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) * * *

(1) * * *

(ix) Form ID (§§ 239.63, 249.446, 259.602, 269.7 and 274.402 of this chapter), except that the authenticating document required by Rule 10(b) of Regulation S–T (§ 232.10(b)) shall not be filed in electronic format, and related correspondence and supplemental information submitted after filing Form ID shall not be submitted in electronic format.

* * * * *

■ 4. Amend § 232.104 by revising paragraph (a) to read as follows:

§ 232.104 Unofficial PDF copies included in an electronic submission.

(a) An electronic submission, other than a Form 3 (§ 249.103 of this chapter), a Form 4 (§ 249.104 of this chapter), a Form 5 (§ 249.105 of this chapter) or a Form ID (§§ 239.63, 249.446, 259.602, 269.7 and 274.402 of this chapter), may include one

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have a notary on the premises. We acknowledge this concern, but believe the vast majority of small business applicants will have reasonable access to a notary and will be able to make arrangements in advance of signing to minimize the time required for notarization.

[50] *See* U.S.C. 553(d).

[51] *See* U.S.C. 553(d).

[52] This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing rules to become effective "at such time as the Federal agency promulgating the rule determines" if the agency "for good cause" finds that notice is impractical, unnecessary, or contrary to the public interest.

[53] 15 U.S.C. 77s(a).

[54] 15 U.S.C. 78c(b).

[55] 15 U.S.C. 78m(a).

[56] 15 U.S.C. 78w(a).

[57] 15 U.S.C. 78ll.

[58] 15 U.S.C. 79t.

[59] 15 U.S.C. 77sss.

[60] 15 U.S.C. 80a–29.

[61] 15 U.S.C. 80a–37.

unofficial PDF copy of each electronic document contained within that submission, tagged in the format required by the EDGAR filer manual.

* * * * *

■ 5. Amend § 232.201 by revising paragraph (a) introductory text to read as follows:

§ 232.201 Temporary hardship exemption.

(a) If an electronic filer experiences unanticipated technical difficulties preventing the timely preparation and submission of an electronic filing, other than a Form 3 (§ 249.103 of this chapter), a Form 4 (§ 249.104 of this chapter), a Form 5 (§ 249.105 of this chapter) or a Form ID (§§ 239.63, 249.446, 259.602, 269.7 and 274.402 of this chapter), the electronic filer may file the subject filing, under cover of Form TH (§§ 239.65, 249.447, 259.604, 269.10 and 274.404 of this chapter), in paper format no later than one business day after the date on which the filing was to be made.

* * * * *

■ 6. Amend § 232.202 by revising paragraph (a) introductory text to read as follows:

§ 232.202 Continuing hardship exemption.

(a) An electronic filer may apply in writing for a continuing hardship exemption if all or part of a filing or group of filings, other than a Form ID (§§ 239.63, 249.446, 259.602, 269.7 and 274.402 of this chapter), otherwise to be filed in electronic format cannot be so filed without undue burden or expense. Such written application shall be made at least ten business days prior to the required due date of the filing(s) or the proposed filing date, as appropriate, or within such shorter period as may be permitted. The written application shall contain the information set forth in paragraph (b) of this section.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 7. The authority citation for Part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79(e), 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–24, 80a–26, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

■ 8. Revise § 239.63 to read as follows:

§ 239.63 Form ID, uniform application for access codes to file on EDGAR.

Form ID must be filed by registrants, third party filers, or their agents, to whom the Commission previously has not assigned a Central Index Key (CIK) code, to request the following access codes to permit filing on EDGAR:

(a) Central Index Key (CIK)—uniquely identifies each filer, filing agent, and training agent.

(b) CIK Confirmation Code (CCC)—used in the header of a filing in conjunction with the CIK of the filer to ensure that the filing has been authorized by the filer.

(c) Password (PW)—allows a filer, filing agent or training agent to log on to the EDGAR system, submit filings, and change its CCC.

(d) Password Modification Authorization Code (PMAC)—allows a filer, filing agent or training agent to change its Password.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 9. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

■ 10. Revise § 249.446 to read as follows:

§ 249.446 Form ID, uniform application for access codes to file on EDGAR.

Form ID must be filed by registrants, third party filers, or their agents, to whom the Commission previously has not assigned a Central Index Key (CIK) code, to request the following access codes to permit filing on EDGAR:

(a) Central Index Key (CIK)—uniquely identifies each filer, filing agent, and training agent.

(b) CIK Confirmation Code (CCC)—used in the header of a filing in conjunction with the CIK of the filer to ensure that the filing has been authorized by the filer.

(c) Password (PW)—allows a filer, filing agent or training agent to log on to the EDGAR system, submit filings, and change its CCC.

(d) Password Modification Authorization Code (PMAC)—allows a filer, filing agent or training agent to change its Password.

PART 259—FORMS PRESCRIBED UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

■ 11. The authority citation for Part 259 continues to read as follows:

Authority: 15 U.S.C. 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t.

■ 12. Revise § 259.602 to read as follows:

§ 259.602 Form ID, uniform application for access codes to file on EDGAR.

Form ID must be filed by registrants, third party filers, or their agents, to whom the Commission previously has not assigned a Central Index Key (CIK) code, to request the following access codes to permit filing on EDGAR:

(a) Central Index Key (CIK)—uniquely identifies each filer, filing agent, and training agent.

(b) CIK Confirmation Code (CCC)—used in the header of a filing in conjunction with the CIK of the filer to ensure that the filing has been authorized by the filer.

(c) Password (PW)—allows a filer, filing agent or training agent to log on to the EDGAR system, submit filings, and change its CCC.

(d) Password Modification Authorization Code (PMAC)—allows a filer, filing agent or training agent to change its Password.

PART 269—FORMS PRESCRIBED UNDER THE TRUST INDENTURE ACT OF 1939

■ 13. The authority citation for Part 269 continues to read as follows:

Authority: 15 U.S.C. 77ddd(c), 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77sss, 78*ll*(d), unless otherwise noted.

■ 14. Revise § 269.7 to read as follows:

§ 269.7 Form ID, uniform application for access codes to file on EDGAR.

Form ID must be filed by registrants, third party filers, or their agents, to whom the Commission previously has not assigned a Central Index Key (CIK) code, to request the following access codes to permit filing on EDGAR:

(a) Central Index Key (CIK)—uniquely identifies each filer, filing agent, and training agent.

(b) CIK Confirmation Code (CCC)—used in the header of a filing in conjunction with the CIK of the filer to ensure that the filing has been authorized by the filer.

(c) Password (PW)—allows a filer, filing agent or training agent to log on to the EDGAR system, submit filings, and change its CCC.

(d) Password Modification Authorization Code (PMAC)—allows a filer, filing agent or training agent to change its Password.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 15. The authority citation for Part 274 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

* * * * *

■ 16. Revise § 274.402 to read as follows:

§ 274.402 Form ID, uniform application for access codes to file on EDGAR.

Form ID must be filed by registrants, third party filers, or their agents, to whom the Commission previously has not assigned a Central Index Key (CIK) code, to request the following access codes to permit filing on EDGAR:

(a) Central Index Key (CIK)—uniquely identifies each filer, filing agent, and training agent.

(b) CIK Confirmation Code (CCC)—used in the header of a filing in conjunction with the CIK of the filer to ensure that the filing has been authorized by the filer.

(c) Password (PW)—allows a filer, filing agent or training agent to log on to the EDGAR system, submit filings, and change its CCC.

(d) Password Modification Authorization Code (PMAC)—allows a filer, filing agent or training agent to change its Password.

■ 17. Revise Form ID (referenced in § 239.63, § 249.446, § 259.602, § 269.7 and § 274.402) to read as follows:

Note: The text of Form ID does not and this amendment will not appear in the Code of Federal Regulations.

Form ID Uniform Application for Access Codes to File on EDGAR

Form ID

BILLING CODE 8010–01–P

OMB APPROVAL
OMB Number: 3235-0328
Expires: January 31, 2005
Estimated average burden hours per response: . .0.15

United States
Securities and Exchange Commission
Washington, D.C. 20549

FORM ID
UNIFORM APPLICATION FOR ACCESS CODES TO FILE ON EDGAR

PART I — APPLICATION FOR ACCESS CODES TO FILE ON EDGAR

Name of applicant (applicant's name as specified in its charter, except, if individual, last name, first name, middle name, suffix (e.g., "Jr.")

Mailing Address or Post Office Box No.

City State or Country Zip

Telephone number (Include Area and, if Foreign, Country Code) ( )

Applicant is (*see* definitions in the General Instructions)

☐ Filer ☐ Filing Agent ☐ Training Agent ☐ Individual (if you check this box, you must also check either Filer, Filing Agent or Training Agent box)

PART II — FILER INFORMATION (To be completed only by filers that are not individuals)

Filer's Tax Number or Federal Identification Number (Do Not Enter a Social Security Number)

Doing Business As

Foreign Name (if Foreign Issuer Filer and applicable)

Primary Business Address or Post Office Box No. (if different from mailing address)

City State or Country Zip

State of Incorporation/Organization Fiscal Year End (mm/dd)

PART III — CONTACT INFORMATION (To be completed by all applicants)

Person to receive EDGAR Information, Inquiries and Access Codes

Telephone Number (Include Area and, if foreign, Country Code) ( )

Mailing Address or Post Office Box No. (if different from applicant's mailing address)

City State or Country Zip

E-Mail Address

PART IV — ACCOUNT INFORMATION (To be completed by filers and filing agents only)

Person to receive SEC Account Information and Billing Invoices

Telephone Number (Include Area and, if Foreign, Country Code)
( )

Mailing Address or Post Office Box No. (if different from applicant's mailing address)

City State or Country Zip

PART V — SIGNATURE (To be Completed by all Applicants)

Signature: Type or Print Name:

Position or Title: Date:

Intentional misstatements or omissions of facts constitute federal criminal violations. *See* 18 U.S.C. 1001.

Section 19(a) of the Securities Act of 1933 (15 U.S.C. 77s(a)), sections 13(a) and 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) and 78w(a)), section 319 of the Trust Indenture Act of 1939 (15 U.S.C. 77sss), section 20 of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79t) and sections 30 and 38 of the Investment Company Act of 1940 (15 U.S.C. 80a-29 and 80a-37) authorize solicitation of this information. We will use this information to assign system identification to filers, filing agents, and training agents. This will allow the

Commission to identify persons sending electronic submissions and grant secure access to the EDGAR system.

SEC 2084 (02-02) Previous form obsolete

Persons who potentially are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.

Form ID
GENERAL INSTRUCTIONS

USING AND PREPARING FORM ID

Form ID must be filed by registrants, third party filers, or their agents, to whom the Commission previously has not assigned a Central Index Key (CIK) code, to request the following access codes to permit filing on EDGAR:

- Central Index Key (CIK) - The CIK uniquely identifies each filer, filing agent, and training agent. We assign the CIK at the time you make an initial application. You may not change this code. The CIK is a public number.
- CIK Confirmation Code (CCC) - You will use the CCC in the header of your filings in conjunction with your CIK to ensure that you authorized the filing.
- Password (PW) - The PW allows you to log onto the EDGAR system, submit filings, and change your CCC.
- Password Modification Authorization Code (PMAC) - The PMAC allows you to change your password.

An applicant must file this Form in electronic format via the Commission's EDGAR Filer Management website. Please see Regulation S-T (17 CFR Part 232) and the EDGAR Filer Manual for instructions on how to file electronically, including how to use the access codes.

An applicant also must file in paper by fax within two business days before or after filing electronically Form ID the notarized document, manually signed by the applicant over the applicant's typed signature, required by Regulation S-T Rule 10(b)(2) that includes the information contained in the Form ID filed or to be filed, confirms the authenticity of the Form ID and, if filed after electronically filing the Form ID, includes the accession number assigned to the electronically filed Form ID as a result of its filing. The applicant must fax the authenticating document to the Branch of Filer Support of the Office of Filings and Information Services at (202) 504-2474 or (703) 914-4240. If the fax is not received timely, the application for access codes will not be processed. The applicant will receive an e-mail message at the contact's e-mail address informing the applicant of the staff's response to the application and providing further guidance. If the application is not processed, the message will state why. For assistance with technical questions about electronic filing, call the Branch of Filer Support at (202) 942-8900. For assistance with questions about the EDGAR rules, Division of Corporation Finance filers may call the Office of EDGAR and Information Analysis at (202) 942-2940; and Division of Investment Management filers may call the IM EDGAR Inquiry Line at (202) 942-0978.

You must complete all items in any parts that apply to you. If any item in any part does not apply to you, please leave it blank.

PART I - APPLICANT INFORMATION (to be completed by all applicants)

Provide the applicant's name in English.

Please check one of the boxes to indicate whether you will be sending electronic submissions as a filer, filing agent, or training agent. Mark only one of these boxes per application. If you are an individual, however, also mark the "Individual" box.

- "Filer" - Any individual or entity on whose behalf an electronic filing is made.
- "Filing Agent" - A financial printer, law firm, or other party, which will be using these access codes to send a filing or portion of a filing on behalf of a filer.
- "Training Agent" - Any individual or entity that will be sending only test filings in conjunction with training other persons.
- "Individual" – A natural person.

PART II - FILER INFORMATION (to be completed only by filers that are not individuals)

The filer's tax or federal identification number is the number issued by the Internal Revenue Service. This section does not apply to individuals. Accordingly, do not enter a Social Security number. If an investment company filer is organized as a series company, the investment company may use the tax or federal identification number of any one of its constituent series. Issuers that have applied for but not yet received their tax or federal identification number and foreign issuers that do not have a tax or federal identification number must include all zeroes. A "foreign issuer" is an entity so defined by Securities Act of 1933 (15 U.S.C. 77a et seq.) Rule 405 (17 CFR 230.405) and Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) Rule 3b-4(b) (17 CFR 240.3b-4(b)). Foreign issuers should include their country of organization.

A foreign issuer filer must provide its "doing business as" name in the language of the name under which it does business and must provide its foreign language name, if any, in the space so marked.

If the filer's fiscal year does not end on the same date each year (e.g., falls on the last Saturday in December), the filer must enter the date the current fiscal year will end.

PART III - CONTACT INFORMATION (to be completed by all applicants)

In this section, identify the individual who should receive the access codes and other EDGAR-related information. Please include an e-mail address that will become your default notification address for EDGAR filings; it will be stored in the Company Contact Information on the EDGAR Database. EDGAR will send all subsequent filing notifications automatically to that address. You can have one e-mail address in the EDGAR Company Contact Information. For information on including additional e-mail addresses on a per filing basis, refer to Chapter 1 of the EDGAR Filer Manual.

PART IV - ACCOUNT INFORMATION (to be completed by filers and filing agents only)

Identify in this section the individual who should receive account information and/or billing invoices from us. We will use this information to process electronically fee payments and billings. If the address changes, update it via the EDGAR filing website, or your account statements may be returned to us as undeliverable.

PART V - SIGNATURE (to be completed by all applicants)

If the applicant is a corporation, partnership, trust or other entity, state the capacity in which the representative individual, who must be duly authorized, signs the Form on behalf of the applicant.

If the applicant is an individual, the applicant must sign the form.

If another person signs on behalf of the representative individual or the individual applicant, confirm the authority of the other person to sign in writing in an electronic attachment to the Form. The confirming statement need only indicate that the representative individual or individual applicant authorizes and designates the named person or persons to file the Form on behalf of the applicant and state the duration of the authorization.

By the Commission.
Dated: April 21, 2004.
Jill M. Peterson,
Assistant Secretary.

[FR Doc. 04–9422 Filed 4–21–04; 2:31 pm]
BILLING CODE 8010–01–C

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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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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

S. 2057/P.L. 108–220

To require the Secretary of Defense to reimburse members of the United States Armed Forces for certain transportation expenses incurred by the members in connection with leave under the Central Command Rest and Recuperation Leave Program before the program was expanded to include domestic travel. (Apr. 22, 2004; 118 Stat. 618)

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CFR CHECKLIST

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3 (2003 Compilation and Parts 100 and 101)	(869–052–00002–7)	35.00	[1] Jan. 1, 2004
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2003, through January 1, 2004. The CFR volume issued as of January 1, 2002 should be retained.

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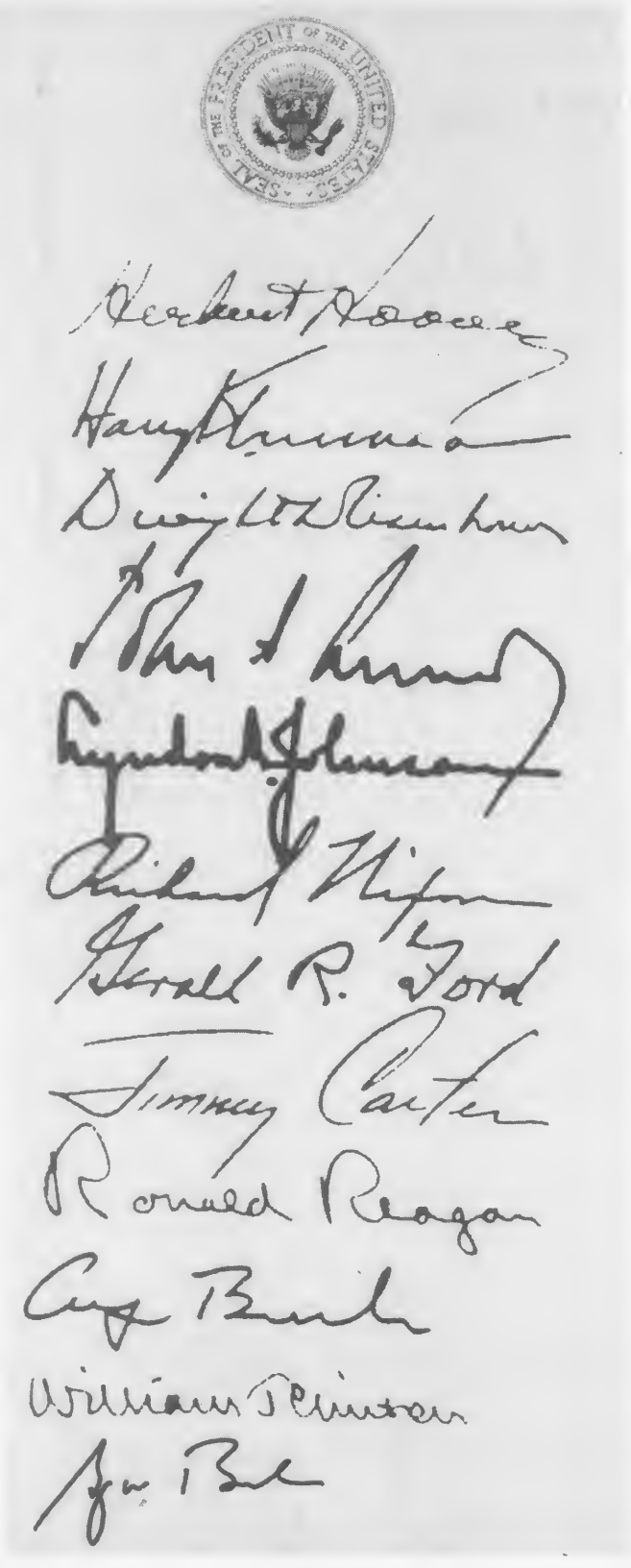

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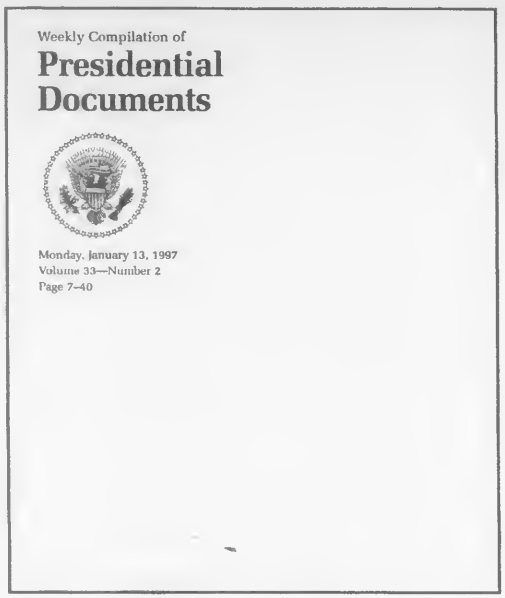

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