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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 217, 241, 291 and 298

[Docket No. OST 98–4043]

RIN 2139–AA08

Air Carrier Traffic and Capacity Data By Nonstop Segment and On-Flight Market

AGENCY: Office of Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Department of Transportation is modifying the T–100/T–100(f) Traffic Reporting System. For traffic reporting purposes, the distinction between large and small aircraft is removed. All U.S. certificated and commuter air carriers and all foreign air carriers that operate to the United States will report their traffic movements in the T–100/T–100(f) Traffic Reporting System regardless of the size of aircraft used. Joint-service operations will be reported by the operating carrier. This rule modifies the current T–100 Reporting System to require U.S. carriers to report the detailed market and segment information for all their military, domestic all-cargo, and domestic charter flights. The detailed statistics from military operations will be withheld from public disclosure. The submission of Form 41 Supplemental T–1, T–2, and T–3 schedules is eliminated. The Department is requiring U.S. carriers that submit Form 41 financial reports to submit for each reported aircraft type, total aircraft hours, fuel consumed, and aircraft days assigned to service. Currently, there is a lack of market and segment data for domestic all-cargo, domestic charter and small aircraft operations. These changes will eliminate the data gaps for these rapidly growing segments of the air transportation industry.

DATES: This rule will be effective on October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Bernard Stankus or Clay Moritz, Office of Airline Information, K–14, Room 4125, Bureau of Transportation Statistics, Department of Transportation, 400 Seventh Street, SW., Washington, DC, 20590–0001, (202) 366–4387 or 366–4385, respectively. They may also be contacted by e-mail at *clay.moritz@bts.gov* or *bernard.stankus@bts.gov* or by fax at (202) 366–3383.

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Background

This rule is part of a joint effort by the Bureau of Transportation Statistics (BTS) and the Office of the Secretary of Transportation (OST) to conduct a broad-based review of the requirements for aviation data and to modernize the way BTS collects, processes, and disseminates aviation data. This rule is being issued under the rulemaking authority delegated to BTS (*See* 49 CFR 1.71(a)(3)).

As the first step in this effort, BTS and OST's Office of the Assistant Secretary for Aviation and International Affairs jointly issued an advance notice of proposed rulemaking (ANPRM) (July 15, 1998, 63 FR 28128). The Department solicited comments on the nature, scope, source, and means for collecting, processing, and distributing airline information. The ANPRM covered BTS' major data systems, including those providing traffic, fare, and financial data. The Department invited comments about whether existing aviation data collections should be amended, supplemented, or replaced; whether selected forms and reports should be retained, modified, or eliminated; whether aviation data should be filed electronically; and how the aviation data systems should be re-engineered to enhance efficiency and reduce costs for both the Department and airline industry. The Department subsequently conducted additional outreach and research activities to further assess data requirements and how the data reporting and processing systems could be improved.

The ANPRM, outreach and program analysis took a very broad approach, examining not only the types of traffic, fare, and financial information that should be collected, but also the sources of the data and how the data should be collected and processed. BTS believes it is more practical and manageable to proceed with this rule to correct immediate deficiencies by addressing a distinct aspect of the overall Departmental review.

This final rule deals with the types of market and segment data BTS should collect and from what sources. BTS believes this is an appropriate topic because the reporting changes meet several of the Department's immediate data needs. Support for these changes has also been expressed by several commenters.

Public Comments

On August 28, 2001, BTS published the notice of proposed rulemaking on *Air Carrier Traffic and Capacity Data by Nonstop Segment and On-Flight Market* in the **Federal Register** (66 FR 45201).

Comments were received, from the Airports Council International—North America (ACI–NA), America West, Atlas Air, the City of Houston and the Greater Houston Partnership, Data Base Products, Federal Express, Mr. Daniel Kasper, Mr. Robert M. Pryor, Rickenbacker Port Authority, Southern Air, and United Air Lines. The substance of these comments is discussed below under a series of topical captions.

1. Reporting of Domestic All-Cargo, Domestic Charter, and Military Operations

The City of Houston and the Greater Houston Partnership (Houston), Federal Express, Data Base Products, Rickenbacker International Airport and ACI–NA all support reporting detailed nonstop segment and on-flight market information for domestic all-cargo, domestic charter, and military operations.

Houston believes the reporting of domestic all-cargo and charter services would improve the coverage and consistency of traffic reports.

Rickenbacker International Airport in Columbus, Ohio, is an airport that predominantly serves all-cargo air carriers, charter-passenger air carriers, and the military. The collection of detailed data from cargo and charter carriers would provide it with much needed planning and marketing information. More importantly, Rickenbacker International Airport believes the data would assist the FAA in further understanding airport traffic patterns enabling them to make better determinations on the allocation of Airport Improvement Program (AIP) funds.

ACI–NA states that ''the proposed changes would produce information regarding on-board traffic loads that is more useful to U.S. airports in understanding market developments including gaps in passenger and cargo service; marketing their airports and communities to U.S. and foreign combination and all-cargo carriers; planning and monitoring a wide-range of airport facilities and services; substantiating to the U.S. Government the need for airport and related facilities and the value of domestic and international air services; and participating in domestic and international policy deliberations and competitive proceedings.''

Federal Express supports BTS' goal to fill data gaps, but believes BTS did not go far enough. Federal Express believes that all carriers licensed under 49 U.S.C. 41103 should submit the financial reports required under 14 CFR part 241.

A further expansion of the financial reporting universe goes beyond the scope of this rulemaking. BTS does plan, however, to review air carrier financial reporting matters and address any proposed changes that may be identified in a separate rulemaking. Federal Express' comments will be addressed at that time.

Atlas Air is against reporting detailed segment and market data for military operations because the dissemination of such data could compromise national security.

We agree with Atlas Air that the dissemination of detailed segment or market data for military operations has the potential to compromise national security. The risk is lessened by the fact that the data are reported 30 days after the applicable month. Nevertheless, we believe the appropriate safeguard is to withhold the detailed segment or market data for military operations from public release. Military operations are identified by a separate service-class code that BTS is easily able to segregate from the carriers' other reported operations.

Previously, large certificated air carriers did not provide either market or segment data for domestic charter and domestic all-cargo services, nor did they provide detailed information for their military operations. Small certificated and commuter air carriers reported their traffic statistics under the less sophisticated Form 298–C reporting system. Part 291 all-cargo carriers did not report market or segment data. Foreign carriers did not report operations with small aircraft (60 seats or less or 18,000 pounds of payload capacity or less).

The detailed nonstop segment data include the following items:

Carrier entity code
Reporting period date
Origin airport code
Destination airport code
Service class code
Aircraft type code
Revenue passengers transported
Revenue freight transported
Revenue mail transported
Available capacity payload
Available seats, total
Revenue aircraft departures performed
Revenue aircraft departures scheduled
Revenue aircraft hours (airborne)
Aircraft hours (ramp-to-ramp)

The detailed on-flight market data include the following items:

Carrier entity code
Reporting period date
Origin airport code
Destination airport code
Service class code
Revenue passengers enplaned
Revenue freight enplaned
Revenue mail enplaned

Since the Department will be collecting detailed nonstop segment and on-flight market data for all types of flight operations, the Department will calculate from the segment and market records the following data items for all reporting air carriers, thus relieving the carriers of this task:

Revenue passenger-miles
Revenue cargo tons enplaned
Revenue tons transported
Revenue ton-miles
Revenue ton-miles, passenger
Revenue ton-miles, freight
Revenue ton-miles, mail
Available ton-miles
Available seat-miles
Revenue aircraft miles flown
Revenue aircraft miles scheduled
Inter-airport distance

2. Joint-service Operations To Be Reported by Operating Carrier

Atlas Air disagrees with the proposal that wet-lessor carriers should report detailed nonstop segment and on-flight market data for two reasons. Atlas states that the wet lessee is better able to collect and submit this information; and wet lessor reporting may be confusing to the investment community because it is the lessee that is bearing the financial risks of the operation.

ACI–NA agrees that it will be less confusing about which carrier should report the data if the operating carrier is required to file. However, it further maintains that the reporting carrier should also identify the marketing carrier so that interested parties are not required to reconcile multiple data bases. A similar comment was made by Rickenbacker International Airport.

Southern Air submitted to this docket and to the Docket OST–01–10885 comments stating that revenue ton-miles conducted under wet-lease operations should be recognized for the lessor under the Air Transportation Safety and System Stabilization Act.

We do not agree with Atlas Air's assertion that it is easier for the lessee to report T–100 data. In the past, we have received arguments from lessees that they do not have all the required aircraft operational data for T–100 reporting. Capacity, revenue ton-miles, flight hours, and block hours are statistics within the purview of the lessor. In a joint operation, there must be cooperation between the partners for accurate reporting.

We agree with Atlas that the majority of the economic risk for wet-lease service falls on the lessee; however, lessors also suffer a decline in service during economic downturns as exhibited by some carriers following the tragedy of September 11, 2001. Nonetheless, we believe the need for operational data by the FAA and the National Transportation Safety Board (NTSB) outweigh the needs of the investment community. Placing the reporting requirement on the operating carrier removes the confusion as to which carrier must report a joint operation. There were times when cargo

carriers were confused as to whether they were performing a wet-lease operation for a direct air carrier or performing a charter for an air freight forwarder. There are companies that have both direct air carrier and freight forwarder subsidiaries. Currently, wet-lease operations are reported by the lessee while charters for a freight forwarder are reported by the operating carrier.

In passenger service, a hybrid type of operation between code-share and wet-lease operations has developed. In these situations, the operating carrier receives a lower lease payment but receives a share of the passenger revenues. Thus, both parties share in the economic risk of the operation. Designating the operating carrier as the reporting carrier removes any confusion about which carrier is required to report the operation.

Regional carrier service is a growing segment of the air transportation industry. Major carriers are increasing the extent to which they hand over service to their code-share partners. The level of service to small communities can be positively or negatively affected by code-sharing. This creates an important need for DOT to monitor the impact of code-sharing on the affected communities. To effectively monitor these industry changes, the Department, the FAA, and NTSB require data on the air carriers actually operating the aircraft under joint-service agreements.

While we agree with ACI–NA that identifying the marketing carrier would be helpful information, neither the Office of the Secretary nor the FAA identified the data element as fundamental to their needs. The requirement to report marketing carriers would generally fall on the smaller code-share partners of major carriers. Some of these small operators have multiple code-share arrangements between the same city-pairs. While the total burden to report the marketing carrier may not be substantial to the industry as a whole, it may be an inordinate burden to several smaller carriers. Based on these factors, at this time, we have elected not to collect this data item.

Southern's comments have been addressed in Docket OST–01–10885, and are outside the scope of this rulemaking.

3. Citizenship Data

ACI–NA requests that BTS expand the T–100 System to collect citizenship data. ACI–NA recognizes that the Department of Commerce collects I–92 citizenship data, but argues that it is of limited use because it excludes Canada-U.S. traffic. Citizenship data would be helpful in calculating the economic benefits derived from foreign tourists and business travelers.

BTS agrees that citizenship data needs to be improved, especially the data gap for Canada-U.S. operations. At the same time, BTS believes that the data gap can best be filed by the Department of Commerce, which already has a system in place to collect citizenship data. BTS recommends that ACI–NA petition the Department of Commerce to expand I–92 citizenship data to include Canada-U.S. operations.

4. Traffic Reporting by Small Certificated and Commuter Air Carriers

The City of Houston strongly supports the proposal to require small certificated and commuter air carriers to report T–100 data. It believes that the Part 298 reporting rules are obsolete for the regional airline industry operations. It further states that: ''There is no reason to maintain separate reporting systems that complicate the ability to track the activity of both large and small aircraft at our nation's airports.''

United Air Lines supports the proposal to expand the T–100 collection to include data from all commuter carriers regardless of the type of aircraft used in the service.

America West supports the lowering of the reporting threshold to include aircraft with seating capacities of 50 seats or lower.

ACI–NA strongly supports T–100 traffic reporting by all carriers and states that: ''These changes will improve the allocation of Airport Improvement funds and make it easier to track Passenger Facility Charges.''

Mr. Robert M. Pryor states that the BTS proposal will provide a significant improvement to the nation's reporting system.

Mr. Daniel M. Kasper fully supports requiring small certificated and commuter air carriers to report T–100 data. However, he does express concerns about dropping the requirement to report Form 298–C, Schedule T–1, Report of Revenue Traffic by On-Line Origin and Destination, without imposing a corresponding requirement to submit the Passenger Origin-Destination Survey Report. Similar concerns were expressed by Mr. Earl Doolin of Data Base Products and ACI–NA.

For the purpose of reporting traffic statistics, BTS is removing distinction of large and small aircraft. All operations will be reported on Schedule T–100. While there is agreement that small certificated and commuter air carriers should report T–100 data, some parties believe that BTS should have gone further and required these carriers to report the Passenger Origin-Destination Survey data. As stated earlier, this rulemaking is the first step in modernizing aviation data. In the future, the Department will issue a rulemaking that addresses the Passenger Origin-Destination Survey Report. That rulemaking will address the reporting universe, the required data elements, and the technology to be used for submitting the Passenger Origin-Destination Survey Report. Given the future rulemaking, it would not be cost effective to require a segment of the industry to adopt a reporting system that may soon become obsolete.

As an alternative to the Passenger Origin-Destination Survey Report, the commenter proposed that the small certificated and commuter air carriers continue to file Form 298–C, Schedule T–1 *Report of Revenue Traffic by On-Line Origin and Destination.* Schedule T–1 provides for an air carrier's on-line origin and destination of its passengers. On-line origin is the airport where a passenger enters a carrier's system. On-line destination is the airport where a passenger exits that carrier's system. Intermediate points or connecting points are not reported under this system.

There are a number of advantages that will result from moving small certificated and commuter air carriers to the T–100 system. The reporting changes will result in: (1) A unified traffic reporting system for all types of operations; (2) small certificated and commuter air carriers reporting traffic movements for intermediate points; (3) the FAA having the airport enplanement data it needs for distributing Airport Improvement Program (AIP) funds, auditing the collection of Passenger Facilities Charges, and forecasting future traffic trends and movements; (4) airports having data that will facilitate their analysis of traffic flows and infrastructure needs; (5) the newly created Transportation Security Administration having the data it needs to review an air carrier's remittance of civil aviation security service fees; and (6) the Essential Air Service Program (EAS) having market data for hub airports for use in analyzing the service of small communities. The Department through the EAS program guarantees small communities access to the national aviation system; therefore, it is more important to know a small community's total traffic into a hub rather than its traffic into a number of spoke airports.

There are some disadvantages in that the on-line origin-destination passenger

data will not be available from small certificated and commuter air carriers. Schedule T–100 is designed to track aircraft movements. We will have information on where a passenger got on and off a particular flight rather than where the passenger got on and off a particular carrier's route network. As stated before, Form 298–C Schedule T–1 tracks where passengers enter and exit a carrier's route system. Under this rule, on-line origin-destination data are lost when a passenger changes flights within a small certificated or a commuter air carriers' route network. This is a problem that is generally associated with a hub-and-spoke network. Passengers traveling from spoke-to-spoke will be shown as two passenger enplanements under T–100. When there is a change in flight numbers, one enplanement is recorded for the flight into the hub and another enplanement is recorded for the flight to the destination spoke. There will not be market data for spoke-to-spoke passengers when there is a change in flight numbers and those passengers' itinerary did not involve passage on a carrier that submits the Passenger Origin-Destination Survey Report.

There are costs and benefits to the proposal to require small air carriers to report both T–100 and Form 298–C Schedule T–1 data until the Department implements changes to the current Passenger Origin-Destination Survey. The benefit is that we would retain the on-line market data for local spoke-to-spoke travelers. Under T–100, we still will have the enplanement data at the spoke airports, which is used to make EAS determinations and allocate AIP funds. Moreover, not all small carriers operate hub-and-spoke systems where there would be a loss of on-line market data. We believe that the costs of dual reporting exceed the benefits at this time.

Mr. Kasper identified a number of medium to large-size markets (40,000 to 275,000 quarterly passengers) that are substantially under-reported in the Passenger Origin-Destination Survey Report. These include:

Market	O&D passengers	Percent under reported
• SEA–PDX	273,550	25
• LGA–CMH	222,900	30
• SLC–BOI	182,720	25
• SAN–LAX	157,460	30
• IAD–EWR	116,230	66
• SAV–ORD	87,220	50
• RDU–IAD	86,700	73
• IND–IAD	65,180	83
• BTV–BOS	49,480	86
• PWM–IAD	43,040	93

The above list makes a strong argument for reviewing the threshold requirements for submitting the Passenger Origin-Destination Survey Report. Requiring small carriers to continue to report On-Line Passenger Origin-Destination data will not resolve or ease the problem. Each of the markets listed above is served on a nonstop basis by a small air carrier. These carriers will report the market data in their monthly T–100 on-flight market records.

BTS has not identified a regulatory need to require dual reporting of T–100 and Form 298–C Schedule T–1 reporting. The burden to the small carriers outweighs the Department's need for spoke-to-spoke market data.

5. Total Aircraft Hours, Aircraft Days Assigned to Service, and Fuel Issued

Ms. Lucretia Frederich, Mr. Robert Pryor, and Mr. Earl Doolin all proposed that carriers report total aircraft hours, aircraft days assigned to service, and aircraft fuels by aircraft type on Form 41 Schedules P–5.1 and P–5.2, *Aircraft Operating Expenses*, rather than on Schedule P–2, *Notes to BTS Form 41 Report*.

These data items are currently reported on the supplemental Schedule T–2 because these data elements cannot be calculated by BTS from the detailed Schedule T–100 reports. Based on the importance of these data elements and the fact we are eliminating Schedule T–2, we must find an appropriate reporting location. BTS agrees with the comments that locating them on the Schedules P–5.1 and P–5.2 is a better alternative than placing them in the free form Schedule P–2. By adding these items to the aircraft operating expense schedules, it will be easier for analysts to calculate expenses per hour, cost of fuel per gallon, and aircraft utilization.

Small certificated and commuter air carriers do not currently submit Form 41 financial reports, and we are not requiring them to do so now. Small certificated air carriers submit Form 298–C, Schedule F–2 *Report of Aircraft Operating Expenses and Related Statistics*, which already contains gallons of fuel issued. Commuter air carriers submit a basic quarterly income statement, with no detailed aircraft costing information. Since BTS will calculate revenue block hours and departures from the detailed T–100 data, we are eliminating these two elements from Form 298–C Schedule F–2.

6. Elimination of Supplemental Schedules T–1, T–2, and T–3

Mr. Robert Pryor expressed his concern about the public availability of the data elements that were reported on supplemental Schedules T–1, T–2, and T–3. In the NPRM, BTS stated that it would calculate the data elements eliminated on the supplemental schedules by using the detailed market and segment data reported on Schedule T–100. However, BTS did not specifically address the issue of public availability of the computed data. Mr. Pryor proposed that BTS amend Part 241 to state that BTS will construct Schedules T–1, T–2, and T–3 and that BTS will make these schedules publicly available after processing. Also, Mr. Pryor was concerned that restrictions on detailed international data may impact the release of supplemental data.

BTS will continue to make available to the public the data elements that were reported on supplemental Schedules T–1, T–2, and T–3. These data will be available after BTS completes its editing and processing. BTS' current information technology plans call for adding more data elements to the BTS web site to expand data availability to the public. BTS does not believe it is necessary to revise its regulations to include Mr. Pryor's proposal since it has been and will continue to be BTS policy to release Schedule T–1, T–2 and T–3 data.

BTS will use international segment and market data in its creation of supplemental T–1, T–2, and T–3 data. Nevertheless, the supplemental schedules do not include the detailed market information that is competitively sensitive. Consequently, the supplemental reports will not be withheld from public release.

7. Definition of Scheduled Service

Rickenbacker International Airport commented that part 291 should be clarified by defining *scheduled service*. It stated that the airport receives regular scheduled all-cargo flights. Some of these flights are operated daily, others are operated three times a week or weekly. While these flights are available to the public, they are not always published in the Official Airline Guide (OAG). Rickenbacker wants to be assured that these flights are considered to be scheduled flights.

We will add a definition of scheduled service to § 291.2. We agree with Rickenbacker's interpretation that a scheduled cargo flight does not have to operate daily or be published in the OAG to meet the definition of scheduled service. The definition will read:

Service, scheduled cargo means transport service operated pursuant to published flight schedules including extra sections. There is no requirement on the number of weekly flights nor is

there a requirement that the schedule must be published in the OAG.

8. Collecting Traffic Data From Foreign Air Carriers for Small Aircraft Operations

There were general comments from Data Base Products, Mr. Robert Pryor, the City of Houston, and ACI–NA in favor of the proposed changes. There were no comments opposing foreign air carriers being required to report small aircraft operations.

Given the proliferation of regional jet aircraft in trans-border service between the U.S. and Canada, the intense level of competition in the marketplace, the maturity of the industry, and the advances in information technology, the absence of data for this segment of the air transportation industry accounts for a significant adverse gap in the Department's ability to perform industry analyses. To close this gap, the Department is eliminating the provision that allows foreign air carriers to exclude segment and market data for aircraft operations conducted wholly with small aircraft. Currently, foreign air carriers are required to report only operations conducted with large aircraft, which are defined as aircraft with more than 60 seats or greater than 18,000 pounds of payload capacity.

Foreign air carriers have replaced large aircraft with regional jet aircraft. For many trans-border operations, regional jets account for a significant number of trans-border enplanements. Regional jets also replaced large aircraft on some longer haul routes, such as Ottawa-Washington. When regional jets were substituted for large jet aircraft, operations that were once included on Schedule T–100(f) were no longer reported, further widening the data gap. As the use of the regional jet becomes even more prevalent, the absence of data increases the volume of market traffic-flow information that is either incomplete or nonexistent.

It appears that the current small aircraft exclusion for foreign air carriers no longer serves a purpose. In fact, Air Canada, which may conduct the most small aircraft operations to the United States, communicated to the Department that it is cumbersome to identify and then exclude statistics for small aircraft in their T–100(f) submissions. Air Canada is, in fact, reporting detailed T–100 data for its small aircraft operations on a voluntary basis.

The FAA uses enplanement data for U.S. airports to distribute the annual AIP entitlement funds to eligible primary airports. U.S. airports receiving significant service from foreign air carriers operating small aircraft could thus be receiving less than their fair share of AIP entitlement funds. Collecting Schedule T–100(f) data for small aircraft operations will enable the FAA to more fairly distribute these funds.

9. Standardized Formats for Electronic Submissions

The BTS encourages carriers to use advanced information technologies to submit their reports to BTS. To avoid a multitude of file formats that could lead to inefficiencies in processing, we are adopting a standard length of fields for submission of personal computer (PC) generated reports. The field descriptions and field lengths are identical to the fields prescribed for magnetic tape/cartridge submissions. Submitters must separate fields by using commas or tabs (comma delimited ASCII or tab delimited ASCII format). The Department will accept alternative formats after prior approval by the Assistant Director—Airline Information, Bureau of Transportation Statistics.

NONSTOP SEGMENT LAYOUT

Field No.	Positions	Mode	Description
1	1	1T	S To identify Segment Record.
2	2–6	5T	Carrier Entity Code.
3	7–12	6T	Report Date (YYYYMM).
4	13–15	3T	Origin Airport Code.
5	16–18	3T	Destination Airport Code.
6	19	1T	Service Class (F, G, L, N, P or R).
7	20–23	4T	Aircraft Type Code.
8	24–28	5N	Revenue Departures Performed.
9	29–38	10N	Available Capacity Payload (lbs.).
10	39–45	7N	Available Seats.
11	46–52	7N	Revenue Passengers Transported.
12	53–62	10N	Revenue Freight Transported in lbs.
13	63–72	10N	Revenue Mail Transported in lbs.
14	73–77	5N	Revenue Aircraft Departures Scheduled.
15	78–87	10N	Revenue Hours (Block) in Minutes.
16	88–97	10N	Revenue Hours (Airborne) in Minutes.

ON-FLIGHT MARKET RECORD LAYOUT

Field No.	Positions	Mode	Description
1	1	1T	M To identify Market Record.
2	2–6	5T	Carrier Entity Code.
3	7–12	6T	Report Date (YYYYMM).
4	13–15	3T	Origin Airport Code.
5	16–18	3T	Destination Airport Code.
6	19	1T	Service Class (F,G,L,N,P or R).
7	20–26	7N	Total Revenue Passengers in Market.
8	27–36	10N	Revenue Freight in Market (in lbs.).
9	37–46	10N	Revenue Mail in Market (in lbs.).

T=Text.
N=Numeric.

10. Effective Date for Reporting

United Air Lines supports the changes to T–100 but requests at least 90 days implementation time.

We have set October 1, 2002 as the effective date. The first reports are due at BTS by November 30, 2002.

Cost/Benefit Analysis

Costs

A regulatory evaluation was placed in Docket OST 98–4043. We welcomed comments on the evaluation. BTS did not receive any comments addressing its evaluation.

The costs of this rule are the expenses incurred in making the necessary changes to air carrier information gathering systems. These include: (1) The expense for small certificated, commuter, and all-cargo air carriers to report their air traffic activity under the T–100 Traffic Reporting System; (2) the expense to modify U.S. carriers' reporting systems to provide the detailed market and segment information for all their military, domestic all-cargo, and domestic charter flights; (3) the expense to all-cargo air carriers to report monthly traffic and fuel consumption data; and (4) the expense to foreign air carriers to include small aircraft operations to/from the United States in their monthly submissions.

BTS believes the costs mentioned above are minor because all the information requested should be readily available to the affected air carriers (see regulatory evaluation). Mitigating the cost of compliance to the air carriers is the fact the Department will supply the carriers with T–100 reporting software that carriers may use at their discretion.

Benefits

U.S. carriers are relieved of the burden of submitting the supplemental Schedules T–1, T–2, and T–3. Small certificated and commuter air carriers are relieved of the burden of submitting Form 298–C Schedules A–1 and T–1. Small certificated air carriers are also relieved of the burden of submitting Form 298–C Schedule E–1.

The Department, other federal agencies, state and local governments, the airline industry, academia, and the public will benefit from the collection of improved aviation data such as: (1) Detailed segment and market data for domestic all-cargo operations, (2) enplanement statistics for intermediate points served by small certificated and commuter air carriers, (3) detailed segment and market data for small aircraft services operated by foreign air carriers, and (4) fuel consumption data collected from domestic all-cargo carriers.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, is not subject to review by the Office of Management and Budget.

This rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034). The purpose of the rule is to improve the accuracy and utility of reported traffic data. This objective is achieved by amending 14 CFR Parts 217, 241, 291, and 298 to require market and segment data for all operations and the collection of traffic statistics from operating air carriers.

Executive Order 13132

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism'') and 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. The rule does not impose substantial direct compliance costs on State and local governments or preempt state law. Thus, the BTS has determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act Analysis

I certify this rule will not have a significant economic impact on a substantial number of small entities. Approximately 100 small entities will be impacted by this final rule.

Although this final rule amends the reporting requirements for small air carriers, any increase in reporting burden should be minimal. To reduce the impact on small businesses, the BTS will supply affected carriers with software to facilitate their reporting of the required traffic data. In addition, BTS plans to conduct outreach efforts to inform small carriers of the changes in the reporting requirements. This rule also eases the reporting burden on small air carriers by eliminating the Form 298–C traffic schedules.

The Department recognizes that changes in reporting formats initially increase reporting burden due to a need to familiarize staff with a revised reporting system. After carrier staff becomes proficient with the new software, carrier reporting burden should be less under the T–100 System than if carriers continued to file Form 298–C traffic reports.

The Regional Airline Association (RAA), which represents small airline companies, had commented at the advance notice of proposed rulemaking stage that the current traffic reporting system for small operators is both inappropriate and inconsistent. We believe that this rule addresses RAA's concerns. The RAA did not comment on the NPRM.

National Environmental Protection Act

The BTS analyzed the amendments for the purpose of the National Environmental Protection Act. The amendments will not have any impact on the quality of the human environment.

Paperwork Reduction Act Analysis

The reporting and recordkeeping requirements associated with this rule were sent to the Office of Management and Budget in accordance with 44 U.S.C. chapter 35 under OMB NO: 2138–0040. ADMINISTRATION: Bureau of Transportation Statistics; TITLE: Report of Traffic and Capacity Statistics—The T–100 System; NEED FOR INFORMATION: Statistical information on airline passenger movements; PROPOSED USE OF INFORMATION: Balance of benefits analyses for international agreements, assignment of passenger enplanements to the proper airports and monitoring the adequacy of air service to small communities; FREQUENCY: Monthly; BURDEN ESTIMATE: 25,000 annual hours; AVERAGE ANNUAL BURDEN HOURS PER RESPONDENT AFTER REPROGRAMMING IS COMPLETED—70. For further information contact: The Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attention Desk Officer for the Department of Transportation or Bernie Stankus at the address listed under **FOR FURTHER INFORMATION CONTACT.**

Unfunded Mandates Reform Act

This final rule would not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It would not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector.

Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number 2139–AA08 contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

14 CFR Part 217

Air carriers, Reporting and recordkeeping requirements.

14 CFR Part 241

Air carriers, Reporting and recordkeeping requirements, Uniform System of Accounts.

14 CFR Part 291

Administrative practice and procedure, Air carriers, Freight, Reporting and recordkeeping requirements.

14 CFR Part 298

Air taxis, Reporting and recordkeeping requirements.

Final Rule

Accordingly, the Department amends chapter II of 14 CFR, as follows:

PART 217—[AMENDED]

1. The authority citation for part 217 continues to read as follows:

Authority: 49 U.S.C. 329 and chapters 401, 413, 417.

2. Section 217.1 is amended by removing the definitions for *Large Aircraft* and *Small Aircraft,* and by adding the new definitions in alphabetical order to read as follows:

§ 217.1 Definitions.

* * * * *

Reporting carrier for T–100(f) purposes means the air carrier in operational control of the flight, i.e., the carrier that uses its flight crews under its own operating authority.

* * * * *

Wet-Lease Agreement means an agreement under which one carrier leases an aircraft with flight crew to another air carrier.

3. Section 217.2 is revised to read as follows:

§ 217.2 Applicability.

This part applies to foreign air carriers that are authorized by the Department to provide civilian passenger and/or cargo service to or from the United States, whether performed pursuant to a permit or exemption authority.

4. Appendix to § 217.10 is amended as follows:

a. Revise paragraph (a)(2);
b. Revise paragraph (f)(1)(i);
c. Revise paragraph (g)(1)(ii); and
d. Revise paragraph (i)(2).

The revisions read as follows:

Appendix to Section 217.10 of 14 CFR Part 217—Instructions to Foreign Air Carriers for Reporting Traffic Data on Form 41 Schedule T–100(F)

(a) * * *

(2) Applicability. Each foreign air carrier holding a § 41302 permit or exemption authority shall file Schedule T–100(f).

* * * * *

(f) * * *

(1) * * *

(i) Reporting medium. ADP data submission must be on IBM compatible disks. Carriers using mainframe or minicomputers shall download (transcribe) to the required IBM compatible disk. Carriers wishing to use a different ADP procedure or e-mail must obtain written approval to do so from the BTS Assistant Director—Airline Information under the waiver provisions in § 217.9 of this part. Requests for approval to use alternative methods must disclose and describe in sufficient detail the proposed data transmission methodology.

* * * * *

(g) * * *

(1) * * *

(ii) Line A–2 Report date. This is the year and month to which the data are applicable. For example, 200009 indicates the year 2000, and the month of September.

* * * * *

(i) * * *

(2) Joint-service operations shall be reported on BTS Form 41 Schedules T–100 and T–100(f) by the air carrier in operational control of the flight, i.e., the air carrier that uses its flight crew to perform the operation. If there are questions about reporting a joint-service operation, contact the BTS Assistant Director—Airline Information at the address in paragraph (a)(3) of this appendix.

* * * * *

5. Section 217.11 is amended by revising paragraph (a) to read as follows:

§ 217.11 Reporting compliance.

(a) Failure to file reports required by this part will subject an air carrier to civil penalties prescribed in Title 49 United States Code section 46301.

* * * * *

PART 241—[AMENDED]

6. The authority citation for part 241 continues to read as follows:

Authority: 49 U.S.C. 329 and chapters 401, 411, 417.

7. Part 241 Section 03 is amended by revising the definition for *Aircraft days assigned to service-carrier's equipment* and adding in alphabetical order the definitions for *Reporting carrier* and *Wet-lease Agreement* to read as follows:

Section 03—Definitions for Purposes of This System of Accounts and Reports

* * * * *

Aircraft days assigned to service-carrier's equipment means the number of days that aircraft owned or acquired through rental or lease are in the possession of the reporting air carrier and are available for service on the reporting carrier's routes plus the number of days such aircraft are in service on routes of others under wet-lease agreements. Includes days in overhaul, or temporarily out of service due to schedule cancellations. Excludes days that newly acquired aircraft are on hand but not available for productive use, days dry-leased or rented to others, and days in possession but formally withdrawn from air transportation service.

* * * * *

Reporting carrier for T–100 purposes means the air carrier in operational control of the flight, i.e., the carrier that uses its flight crew under its own FAA operating authority.

* * * * *

Wet-Lease Agreement means an agreement under which one carrier leases an aircraft with flight crew to another air carrier.

8. Part 241 Sec. 19–1 is amended by revising paragraphs (a) and (c) to read as follows:

Section 19—Uniform Classification of Operating Statistics

Sec. 19–1 Applicability.

(a) *United States air carrier.* Each large certificated U.S. air carrier shall file with the Department, on a monthly basis, Form 41 Schedule T–100 ''U.S. Air Carrier Traffic and Capacity Data By Nonstop Segment and On-flight Market,'' and summary data as prescribed in this section and in sections 22 and 25 of this part.

* * * * *

(c) Each U.S. air carrier shall use magnetic computer tape or IBM compatible disk for transmitting the prescribed data to the Department. Upon good cause shown, OAI may approve the request of a U.S. air carrier, under section 1–2 of this part, to use hardcopy data input forms or submit data via e-mail.

* * * * *

9. Part 241 Sec. 19–3 is amended by removing and reserving paragraph (b).

10. Part 241 Sec. 19–5 is amended by revising paragraph (b) to read as follows:

Sec. 19–5 Air transport traffic and capacity elements.

* * * * *

(b) These reported items are as follows:

Code	Description	Segment	Market	Computed by DOT
	Carrier, carrier entity code	S	M	
	Reporting period date	S	M	
	Origin airport code	S	M	
	Destination airport code	S	M	
	Service class code	S	M	
	Aircraft type code	S		
110	Revenue passengers enplaned		M	
130	Revenue passengers transported	S		
140	Revenue passenger-miles			CFD*
210	Revenue cargo tons enplaned			CFD*
217	Enplaned freight		M	
219	Enplaned mail		M	
230	Revenue tons transported			CFD*
237	Transported freight	S		
239	Transported mail	S		
240	Revenue ton-miles			CFD*
241	Revenue ton-miles passenger			CFD*
247	Revenue ton-miles freight			CFD*
249	Revenue ton-miles mail			CFD*
270	Available capacity payload	S		
280	Available ton-miles			CFD*
310	Available seats, total	S		
320	Available seat-miles			CFD*
410	Revenue aircraft miles flown			CFD*
430	Revenue aircraft miles scheduled			CFD*
501	Inter-airport distance			CFD*
510	Revenue aircraft departures performed	S		
520	Revenue aircraft departures scheduled	S		
610	Revenue aircraft hours (airborne)	S		
630	Aircraft hours (ramp-to-ramp)	S		
650	Total aircraft hours (airborne)	S		

*CFD = Computed by DOT from detail Schedule T–100 and T–100(f) data.

* * * * *

11. Part 241 Section 19–6 is amended by revising paragraphs (a) and (b) introductory text to read as follows:

Section 19–6 Public disclosure of traffic data.

(a) Detailed domestic on-flight market data and nonstop segment data except military data shall be made publicly available after processing. Domestic data are defined as data from air transportation operations from a place in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands, or a U.S. territory or possession to a place in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands, or a U.S. territory or possession. Domestic military operations are reported under service codes N or R.

(b) Detailed international on-flight market and nonstop segment data in Schedule T–100 and Schedule T–100(f) reports, except military data, shall be publicly available immediately following the Department's determination that the database is complete, but no earlier than six months after the date of the data. Military operations are reported under service codes N or R. Data for on-flight markets and nonstop segments involving no U.S. point shall not be made publicly available for three years. Industry and carrier summary data may be made public before the end of six months or the end of three years, as applicable, provided there are three or more carriers in the summary data disclosed. The Department may, at any time, publish international summary statistics without carrier detail. Further, the Department may release nonstop segment and on-flight market detail data by carrier before the end of the confidentiality period as follows:

* * * * *

12. In Part 241 Section 22:

a. The List of Schedules in BTS Form 41 Report is amended by removing the entries for Schedules T–1, T–2, and T–3.

b. The chart of DUE DATES OF SCHEDULES IN BTS FORM 41 REPORT is amended in the last column by removing Schedules T–1, T–2, and T–3, wherever they appear.

13. Part 241 Section 24 is amended as follows:

a. By revising the first sentence of Schedule P–5.1(e);

b. By adding Schedule P–5.1 (j), (k) and (l); and

c. By revising the title of Schedule P–5.2.

The revisions and addition are as follows:

Section 24—Profit and Loss Elements

* * * * *

Schedule P–5.1 * * *

(e) This schedule shall show the direct and indirect expenses incurred in aircraft operations plus total aircraft hours, gallons of fuel issued, and aircraft days assigned to service. * * *

* * * * *

(j) Line 17 ''Total Aircraft Hours'' shall equal the sum of revenue and nonrevenue aircraft hours.

(k) Line 18 ''Gallons of Fuel Issued'' shall equal the aircraft fuels issued (account Z921).

(l) Line 19 ''Aircraft Days Assigned to Service'' equals the number of days that aircraft owned or acquired through rental or lease are in the possession of the reporting air carrier and are available for service on the reporting carrier's routes plus the number of days such aircraft are in service on routes of others under wet-lease agreements. Includes days in overhaul, or temporarily out of service due to schedule cancellations. Excludes days that newly acquired aircraft are on hand but not available for productive use, days dry-leased or rented to others, and days in possession but formally withdrawn from air transportation service.

Schedule P–5.2—Aircraft Operating Expenses and Related Statistics

* * * * *

14. Part 241 Section 25 is amended as follows:

a. By revising paragraph (b);

b. By removing Schedule T–1 U.S. Air Carrier Traffic and Capacity Summary-By Service Class, Schedule T–2 U.S. Air Carrier Traffic and Capacity Statistics-By Aircraft Type, and Schedule T–3 U.S. Air Carrier Airport Activity Statistics; and

c. By revising paragraph (a) in Schedule T–100 U.S. Air Carrier Traffic and Capacity Data By Nonstop Segment and On-Flight Market paragraph and adding a new paragraph (d).

The revisions and additions read as follows:

Section 25—Traffic and Capacity Elements

* * * * *

(b) Carriers submitting Schedule T–100 shall use magnetic computer tape or IBM compatible disk for transmitting the prescribed data to the Department. Upon good cause shown, OAI may approve the request of a U.S. air carrier, under section 1–2 of this part, to use hardcopy data input forms or submit data via e-mail.

* * * * *

Schedule T–100 U.S. Air Carrier Traffic and Capacity Data by Nonstop Segment and On-Flight Market

(a) Schedule T–100 collects detailed on-flight market and nonstop segment data on all revenue flights flown by U.S. certificated air carriers. This schedule is filed monthly. Separate data shall be reported for each operating entity (Latin America, Atlantic, Pacific; International, or Domestic) of the air carrier. Data for each operating entity shall be reported using the five digit entity code prescribed under section 19–5(c) of this part.

* * * * *

(d) *Joint-service operations.* The air carrier in operational control of the aircraft (the carrier that uses its flight crews under its own FAA operating authority) must report joint-service operations.

15. The appendix to Part 241 Section 25 is revised to read as follows:

Appendix to Section 241.25 of 14 CFR Part 241-Instructions to U.S. Air Carriers for Reporting Traffic and Capacity Data on Form 41 Schedule T–100

(a) *Applicability.* Each large U.S. air carrier that holds a 49 U.S.C. ''41102 certificate must file the monthly Schedule T–100.

(b) Schedules, Frequency, and entity: (1) Schedule T–100 collects summarized flight stage data by reporting entity for scheduled and nonscheduled passenger, and cargo operations. The term entity refers to the geographic location designator prescribed by the Department in ''241.19–5(c)(2). Thus, domestic entity operations are distinguished from international entity operations.

(2) [Reserved]

(c) *Format of reports:*

(1) *Automatic Data Processing (ADP) magnetic tape.* Refer to paragraph (f) of this appendix for instructions pertaining to mainframe and minicomputer reporting. The Department will issue ''Accounting and Reporting Directives'' to make necessary technical changes to these T–100 instructions. Technical changes which are minor in nature do not require public notice and comment.

(2) *Microcomputer diskette.*

(i) *Optional specification.* If an air carrier desires to use its personal computers (PC's), rather than mainframe or minicomputers to prepare its data submissions, the following specifications for filing data on diskette media apply:

(ii) *Reporting medium.* Microcomputer ADP data submission of T–100 information must be on IBM compatible disks. Carriers wishing to use a different ADP procedure must obtain written approval to do so from the BTS Assistant Director—Airline Information. Requests for approval to use alternate methods must disclose and describe the proposed data transmission methodology. Refer to paragraph (k) of this appendix for microcomputer record layouts.

(iii) Microcomputer file characteristics. The files will be created in ASCII delimited format, sometimes called Data Interchange Format (DIF). This form of recording data provides for variable length fields (data elements) which, in the case of alphabetic data, are enclosed by quotation marks (‘‘) and separated by a comma (,) or tab. Numeric data elements that are recorded without editing symbols are also separated by a comma (,) or tab. The data are identified by its juxtaposition within a given record. Therefore, each record must contain the exact number of data elements, all of which must be juxtapositionally correct. Personal computer software including most spreadsheets, data base management programs, and BASIC are capable of producing files in this format.

(d) *Filing date for reports.* The reports must be received at BTS within 30 days following the end of each reporting period.

(e) Address for filing: Data Administration Division, K–14, Room 4125, Office of Airline Information, Bureau of Transportation Statistics, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.

(f) *ADP format for magnetic tape:* (1) *Magnetic tape specifications.* IBM compatible 9-track EBCDIC recording. Recording density of 6250 or 1600 bpi. The order of recorded information is:

Volume label
Header label
Data records
Trailer label

(2) [Reserved]

(g) External tape label information:

Carrier name
Report date
File identification
Carrier address for return of tape reel

(h) *Standards.* It is the policy of the Department to be consistent with the American National Standards Institute and the Federal Standards Activity in all data processing and telecommunications matters. It is our intention that all specifications in this application be in compliance with standards promulgated by these organizations.

(i) *Volume, header, and trailer label formats:*

(1) Use standard IBM label formats. The file identifier field of the header labels should be ''T–100.SYSTEM''.

(2) [Reserved]

(j) *Magnetic tape record layouts for T–100.*

(1) *Nonstop segment record layout:*

Field No.	Positions	Mode	Description
1	1	1T	Record type code (S = nonstop segment).
2	2–6	5T	Carrier entity code.
3	7–12	6T	Report date (YYYYMM).
4	13–15	3T	Origin airport code.
5	16–18	3T	Destination airport code.
6	19	1T	Service class code (F, G, L, N, P or R).
7	20–23	4T	Aircraft type code.
8	24–28	5N	Revenue departures performed (F, G, L, N, P, R510).
9	29–38	10N	Available capacity payload (lbs) (F, G, L, N, P, R270).
10	39–45	7N	Available seats (F, L, N310).
11	46–52	7N	Passengers transported (F, L, N130).

Field No.	Positions	Mode	Description
12	53–62	10N	Rev freight transported (F, G, L, N, P, R237)(in lbs).
13	63–72	10N	Revenue mail transported (F, G, L, N, P, R239) (in lbs).
14	73–77	5N	Revenue aircraft departures scheduled (F, G520).
15	78–87	10N	Rev hrs, ramp-to-ramp (F, G, L, N, P, R630) (in minutes).
16	88–97	10N	Rev hrs, airborne (F, G, L, N, P, R610) (in minutes).

T= Text.
N= Numeric.

(2) On-flight market record layout:

Field No.	Positions	Mode	Description
1	1	1T	Record type: M = on-flight market record.
2	2–6	5T	Carrier entity code.
3	7–12	6T	Report date (YYYYMM).
4	13–15	3T	Origin airport code.
5	16–18	3T	Destination airport code.
6	19	1T	Service class code (F, G, L, N, P or R).
7	20–26	7N	Total passengers in market (F, L, N110).
8	27–36	10N	Rev freight in market (F, G, L, N, P, R217) (in lbs).
9	37–46	10N	Revenue mail in market (F, G, L, N, P, R219) (in lbs).

T=Text.
N-Numeric.

(k) *Record layouts for microcomputer diskettes.* The record layouts for diskettes are generally identical to those shown for magnetic tape, with the exception that delimiters (quotation marks, tabs and commas) are used to separate fields. It is necessary that the order of fields be maintained in all records.

(1) *File characteristics.* The files will be created in ASCII delimited format, sometimes called Data Interchange Format (DIF). This form of recording data provides for variable length fields (data elements) which, in the case of alphabetic data, are enclosed by quotation marks (‘‘) and separated by a comma (,) or tab. Numeric data elements that are recorded without editing symbols are also separated by a comma (,) or tab. The data are identified by their juxtaposition within a given record. Therefore, it is critical that each record contain the exact number of data elements, all of which must be juxtapositionally correct. PC software including most spreadsheets, data base management programs, and BASIC produce minidisk files in this format.

(2) *File naming conventions for diskettes.* For microcomputer reports, each record type shall be contained in a separate DOS file on the same physical diskette. The following DOS naming conventions should be followed:

Record type S = SEGMENT.DAT
Record type M = MARKET.DAT

(l) Discussion of Reporting Concept. (1) Schedule T–100 collects summarized flight stage data and on-flight market data. All traffic statistics shall be compiled in terms of each revenue flight stage as actually performed. The detail T–100 data shall be maintained in such a manner as to permit monthly summarization and organization into two basic groupings. The first grouping, the nonstop segment information, is to be summarized by equipment type, within class of service, within pair-of-points, without regard to individual flight number. The second grouping requires that the enplanement/deplanement information be broken out into separate units called on-flight market records, which shall be summarized by class of service, within pair-of-points, without regard for equipment type or flight number.

(2) [Reserved]

(m) *Joint Service.* (1) *Joint-service operations.* The Department may authorize joint-service operations between two direct air carriers. Examples of these joint-service operations are: Blocked-space agreements; part-charter agreements; code-sharing agreements; wet-lease agreements, and other similar arrangements.

(i) Joint-service operations are reported by the carrier in operational control of the flight, i.e., the carrier that uses its flight crews under its own FAA operating authority. The traffic moving under these agreements is reported on Schedule T–100 the same way as any other traffic on the aircraft.

(ii) If there are questions about reporting a joint-service operation, contact the BTS Assistant Director—Airline Information (fax no. 202 366–3383, telephone no. 202 366–4373).

(iii) *Operational control.* The air carrier in operational control of the aircraft (the carrier that uses its flight crew under its own FAA operating authority) must report joint-service operations.

(2) [Reserved]

(n) Glossary of data elements. § 241.19–5 and § 241.03.

PART 291—[AMENDED]

16. The authority citation for part 291 is revised to read as follows:

Authority: 49 U.S.C. 329 and chapters 411 and 417.

17. Section 291.2 is amended by adding the new definitions in alphabetical order to read as follows:

§ 291.2 Definitions.

* * * * *

Reporting carrier for Schedule T–100 purposes means the air carrier in operational control of the aircraft, i.e., the carrier that uses its flight crew under its own FAA operating authority.

* * * * *

Service, scheduled cargo means transport service operated pursuant to published flight schedules including extra sections. There is no requirement on the number of weekly flights nor is there a requirement that the schedule be published in the Official Airline Guide.

Wet-Lease Agreement means an agreement under which one carrier leases an aircraft with flight crew to another air carrier.

18. Section 291.42 is amended by revising the section heading and paragraph (a) to read as follows:

§ 291.42 Section 41103 financial and traffic reporting.

(a) *General instructions.* Carriers operating under section 41103 certificates that are not subject to part 241 of this chapter shall file Form 291–A, ‘‘Statement of Operations for Section 41103 Operations’’, Schedule T–100, ‘‘U.S. Air Carrier Traffic and Capacity Data by Nonstop Segment and On-Flight Market’’, and Schedule P–12(a), ‘‘Fuel Consumption by Type of Service and Entity’’ with the Department’s Bureau of Transportation Statistics (BTS).

(1) A single copy of the BTS Form 291–A report shall be filed annually with the Office of Airline Information (OAI) for the year ended December 31, to be received on or before February 10

of the immediately following year. A single copy of the monthly BTS Schedule P–12(a) is due at OAI within 20 days after the end of each month. An electronic filing of the monthly Schedule T–100 is due at OAI within 30 days after the end of each month. Due dates falling on a Saturday, Sunday or Federal holiday will become effective on the next work day.

(2) Reports required by this section shall be filed at the Office Airline Information, K–14, Room 4125, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

* * * * *

19. A new § 291.43 is added to Subpart E to read as follows:

§ 291.43 Statement of operation for section 41103 operations.

Form 291–A contains the following data elements:

(a) Total operating revenue, categorized as follows:

(1) Transport revenues from the carriage of property in scheduled and nonscheduled service;

(2) Transport revenues from the carriage of mail in scheduled and nonscheduled service; and

(3) Transport-related revenues;

(b) Total operating expenses;

(c) Operating profit or loss, computed by subtracting the total operating expenses from the total operating revenues; and

(d) Net income, computed by subtracting the total operating and nonoperating expenses, including interest expenses and income taxes, from the total operating and nonoperating revenues.

20. A new § 291.44 is added to Subpart E to read as follows:

§ 291.44 BTS Schedule P–12(a), Fuel Consumption by Type of Service and Entity.

(a) For the purposes of BTS schedule P–12(a), type of service shall be either scheduled service or nonscheduled service as those terms are defined in § 291.45(c)(2) and (3).

(b) For the purpose of this schedule, scheduled service shall be reported separately for:

(1) Intra-Alaskan operations;

(2) Domestic operations, which shall include all operations within and between the 50 States of the United States (except Intra-Alaska), the District of Columbia, the Commonwealth of Puerto Rico and the United States Virgin Islands, or a U.S. territory or possession to a place in any State of the United States the District of Columbia, the Commonwealth of Puerto Rico and the United States Virgin Islands, or a U.S. territory or possession;

(3) International operations are flight stages with one or both terminals outside the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the United States Virgin Islands, or a U.S. territory or possession.

(c) For the purpose of this schedule, nonscheduled service shall be reported separately for domestic operations and international operations as defined in paragraphs (b)(2) and (b)(3) of this section, except that domestic and international Military Airlift Command (MAC) operations shall be reported on separate lines.

(d) The cost data reported on each line shall represent the average cost of fuel, as determined at the station level, consumed in that geographic entity.

(e)(1) The cost of fuel shall include shrinkage, but excludes:

(i) ''Throughput'' and ''in to plane'' fees, i.e., service charges or gallonage levies assessed by or against the fuel vendor or concessionaire and passed on to the carrier in a separately identifiable form; and

(ii) Nonrefundable Federal and State excise taxes.

(2) However, ''through-put'' and ''in to plane'' charges that cannot be identified or segregated from the cost of fuel shall remain a part of the cost of fuel as reported on this schedule.

(f) Each air carrier shall maintain records for each station showing the computation of fuel inventories and consumption for each fuel type. The periodic average cost method shall be used in computing fuel inventories and consumption. Under this method, an average unit cost for each fuel type shall be computed by dividing the total cost of fuel available (Beginning Inventory plus Purchases) by the total gallons available. The resulting unit cost shall then be used to determine the ending inventory and the total consumption costs to be reported on this schedule.

(g) Where amounts reported for a specific entity include other than Jet A fuel, a footnote shall be added indicating the number of gallons and applicable costs of such other fuel included in amounts reported for that entity.

(h) Where any adjustment(s) recorded on the books of the carrier results in a material distortion of the current month's schedule, carriers shall file a revised Schedule P–12(a) for the month(s) affected.

21. A new § 291.45 is added to Subpart E to read as follows:

§ 291.45 BTS Schedule T–100, U.S. Air Carrier Traffic and Capacity Data by Nonstop Segment and On-Flight Market.

(a) Each section 41103 all-cargo air carrier shall file Schedule T–100, ''U.S. Air Carrier Traffic and Capacity Data by Nonstop Segment and On-Flight Market''.

(b) Schedule T–100 shall be filed monthly.

(1) Schedule T–100 collects summarized flight stage data and on-flight market data for revenue flights. All traffic statistics shall be compiled in terms of each flight stage as actually performed. The detail T–100 data shall be maintained in such a manner as to permit monthly summarization and organization into two basic groupings. First, the nonstop segment information which is to be summarized by equipment type, within class of service, within pair-of-points, without regard to individual flight number. The second grouping requires that the enplanement/deplanement information be broken out into separate units called on-flight market records, which shall be summarized by class of service, within pair-of-points, without regard for equipment type or flight number.

(2) *Joint-service operations.* The Department may authorize joint-service operations between two direct air carriers. Examples of these joint-service operations are: blocked-space agreements; part-charter agreements; code-sharing agreements; wet-lease agreements, and similar arrangements.

(i) Joint-service operations are reported by the carrier in operational control of the flight, i.e., the carrier that uses its flight crews under its own FAA operating authority. The traffic moving under these agreements is reported on Schedule T–100 the same way as any other traffic on the aircraft.

(ii) If there are questions about reporting a joint-service operation, contact the BTS Assistant Director—Airline Information (fax no. 202 366–3383, telephone no. 202 366–4373). Joint-service operations are reported in Schedule T–100 in accordance with this paragraph (b).

(iii) *Operational control.* The air carrier in operational control of the aircraft (the carrier that uses its flight crews under its own FAA operating authority) must report joint services.

(c) *Service classes.*

(1) The statistical classifications are designed to reflect the operating characteristics attributable to each distinctive type of service offered. The combination of scheduled and nonscheduled operations with passenger, all-cargo, and military

services are placed into service classes as follows:

Code	Type of service
F	Scheduled Passenger/Cargo.
G	Scheduled All-Cargo.
L	Nonscheduled Civilian Passenger/Cargo/
P	Nonscheduled Civilian Cargo.
N	Nonscheduled Military Passenger/Cargo.
R	Nonscheduled Military Cargo.

(2) Scheduled services include traffic and capacity elements applicable to air transportation provided pursuant to published schedules and extra sections of scheduled flights. Scheduled Passenger/Cargo (Service Class F) is a composite of first-class, coach, and mixed passenger/cargo service.

(3) Nonscheduled services include all traffic and capacity elements applicable to the performance of nonscheduled aircraft charters, and other air transportation services not constituting an integral part of services performed pursuant to published flight schedules.

(d) *Air transport traffic and capacity elements.* Within each of the service classifications, carriers shall report air transport traffic and capacity elements. The elements are reported on segment and/or market records as follows:

Code	Description	Segment	Market	Computed by DOT
	Carrier, carrier entity code	S	M	
	Reporting period date	S	M	
	Origin airport code	S	M	
	Destination airport code	S	M	
	Service class code	S	M	
	Aircraft type code	S		
110	Revenue passengers enplaned		M	
130	Revenue passengers transported	S		
140	Revenue passenger-miles			CFD*
210	Revenue cargo tons enplaned			CFD*
217	Enplaned freight		M	
219	Enplaned mail		M	
230	Revenue tons transported			CFD*
237	Transported freight	S		
239	Transported mail	S		
240	Revenue ton-miles			CFD*
241	Revenue ton-miles passenger			CFD*
247	Revenue ton-miles freight			CFD*
249	Revenue ton-miles mail			CFD*
270	Available capacity payload	S		
280	Available ton-miles			CFD*
310	Available seats, total	S		
320	Available seat-miles			CFD*
410	Revenue aircraft miles flown			CFD*
430	Revenue aircraft miles scheduled			CFD*
501	Inter-airport distance			CFD*
510	Revenue aircraft departures performed	S		
520	Revenue aircraft departures scheduled	S		
610	Revenue aircraft hours (airborne)	S		
630	Aircraft hours (ramp-to-ramp)	S		
650	Total aircraft hours (airborne)	S		

*CFD = Computed by DOT from detail Schedule T–100 and T–100(f) data.

(e) These reported items are further described as follows:

(1) *Reporting period date.* The year and month to which the reported data are applicable.

(2) *Carrier, Carrier entity code.* Each air carrier shall report its name and entity code (a five digit code assigned by BTS that identifies both the carrier and its entity) for its particular operations. The Office of Airline Information (OAI) will assign or confirm codes upon request. OAI's address is Office of Airline Information, Bureau of Transportation Statistics, DOT, Room 4125, K–14, 400 Seventh Street, SW., Washington, DC 20590–0001.

(3) *Service class code.* The service class codes are prescribed in section 298.45(c). In general, classes are divided into two broad categories, either scheduled or nonscheduled, where scheduled = F + G and nonscheduled = L + N + P + R.

(4) *Record type code.* This code indicates whether the data pertain to non-stop segment (record type S) or on-flight market (record type M).

(5) *Aircraft type code.* This code represents the aircraft types, as described in the BTS' Accounting and Reporting Directives.

(6) *Origin, Destination airport code(s).* These codes represent the industry designators. An industry source of these industry designator codes is the Official Airline Guide (OAG). OAI assigns codes, upon request, if not listed in the OAG.

(7) *110 Revenue passengers enplaned.* The total number of revenue passengers enplaned at the origin point of a flight, boarding the flight for the first time; an unduplicated count of passengers in a market.

(8) *130 Revenue passengers transported.* The total number of revenue passengers transported over a single flight stage, including those already on the aircraft from a previous flight stage.

(9) *140 Revenue passenger-miles.* Computed by multiplying the inter-airport distance of each flight stage by the number of passengers transported on that flight stage.

(10) *210 Revenue cargo tons enplaned.* The total number of cargo tons enplaned. This data element is a sum of the individual on-flight market figures for each of the following categories: 217 Freight and 219 Mail. This element represents an

unduplicated count of the revenue traffic in a market.

(11) *217 Enplaned freight.* The total weight of revenue freight enplaned at the origin point of a flight, loaded onto the flight for the first time; an unduplicated count of freight in a market.

(12) *219 Enplaned mail.* The total weight of mail enplaned at the origin point of a flight, loaded onto the flight for the first time; an unduplicated count of mail in a market.

(13) *230 Revenue tons transported.* The number of tons of revenue traffic transported. This element is the sum of the following elements: 231 Passengers transported-total, 237 Freight, and 239 Mail.

(14) *237 Transported freight.* The total weight of freight transported over a single flight stage, including freight already on the aircraft from a previous flight stage.

(15) *239 Transported mail.* The total weight of mail transported over a single flight stage, including mail already on the aircraft from a previous flight stage.

(16) *240 Revenue ton-miles—total.* Ton-miles are computed by multiplying the revenue aircraft miles flown (410) on each flight stage by the number of tons transported on that stage. This element is the sum of 241 through 249.

(17) *241 Revenue ton-miles—passenger.* Equals the number of passengers times 200, times inter-airport distance, divided by 2000. A standard weight of 200 pounds per passenger, including baggage, is used for all operations and service classes.

(18) *247 Revenue ton-miles—freight.* Equals the volume of freight in whole tons times the inter-airport distance.

(19) *249 Revenue ton-miles—mail.* Equals the volume of mail in whole tons times the inter-airport distance.

(20) *270 Available capacity-payload.* The available capacity is collected in pounds. This figure shall reflect the payload or total available capacity for passengers, mail and freight applicable to the aircraft with which each flight stage is performed.

(21) *280 Available ton-miles.* The aircraft miles flown on each flight stage multiplied by the available capacity on the aircraft in tons.

(22) *310 Available seats.* The number of seats available for sale. This figure reflects the actual number of seats available, excluding those blocked for safety or operational reasons. In the domestic entity, report the total available seats in item 130. Scheduled and nonscheduled available seats are reported in item 130.

(23) *320 Available seat-miles.* The aircraft miles flown on each flight stage multiplied by the seat capacity available for sale.

(24) *410 Revenue aircraft miles flown.* Revenue aircraft miles flown are computed based on the airport pairs between which service is actually performed; miles are generated from the data for scheduled aircraft departures (Code 520) times the inter-airport distances (Code 501).

(25) *430 Revenue aircraft miles scheduled.* The number of revenue aircraft miles scheduled. All such data shall be maintained in conformity with the airport pairs between which service is scheduled, whether or not in accordance with actual performance.

(26) *501 Inter-airport distance.* The great circle distance, in official statute miles as prescribed in part 247 of this chapter, between airports served by each flight stage. Official inter-airport mileage may be obtained from the Office of Airline Information.

(27) *510 Revenue aircraft departures performed.* The number of revenue aircraft departures performed.

(28) *520 Revenue aircraft departures scheduled.* The number of revenue aircraft departures scheduled, whether or not actually performed.

(29) *610 Revenue aircraft hours (airborne).* The elapsed time, computed from the moment the aircraft leaves the ground until its next landing.

(30) *630 Aircraft hours (ramp-to-ramp).* The elapsed time, computed from the moment the aircraft first moves under its own power from the boarding ramp at one airport to the time it comes to rest at the ramp for the next point of landing. This data element is also referred to as 'block' and 'block-to-block' aircraft hours.

(31) *650 Total aircraft hours (airborne).* The elapsed time, computed from the moment the aircraft leaves the ground until it touches down at the next landing. This includes flight training, testing, and ferry flights.

(f) *Public availability of Schedule T–100 data.* Detailed domestic on-flight market and nonstop segment data in Schedule T–100, except military data, shall be publicly available after processing. Domestic data are defined as data from air transportation operations from a place in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands, or a U.S. territory or possession to a place in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands, or a U.S. territory or possession.

Appendix to § 291.45—Instructions to U.S. Air Carriers for Reporting Traffic and Capacity Data on Schedule T–100

(a) *Format of reports.* (1) *Automatic Data Processing (ADP) magnetic tape.* Refer to paragraph (d) of this appendix for instructions pertaining to mainframe and minicomputer reporting. The Department will issue ''Accounting and Reporting Directives'' to make necessary technical changes to these T–100 instructions. Technical changes which are minor in nature do not require public notice and comment.

(2) *Microcomputer diskette.* (i) *Optional specification.* If an air carrier desires to use its personal computers (PC's), rather than mainframe or minicomputers to prepare its data submissions, the following specifications for filing data on diskette media apply.

(ii) *Reporting medium.* Microcomputer ADP data submission of T–100 information must be on IBM compatible disks. Carriers wishing to use a different ADP procedure must obtain written approval to do so from the BTS Assistant Director—Airline Information. Requests for approval to use alternate methods must disclose and describe the proposed data transmission methodology. Refer to paragraph (i) of this appendix for microcomputer record layouts.

(iii) *Microcomputer file characteristics.* The files will be created in ASCII delimited format, sometimes called Data Interchange Format (DIF). This form of recording data provides for variable length fields (data elements) which, in the case of alphabetic data, are enclosed by quotation marks ('') and separated by a comma (,) or tab. Numeric data elements that are recorded without editing symbols are also separated by a comma (,) or tab. The data are identified by their juxtaposition within a given record. Therefore, each record must contain the exact number of data elements, all of which must be juxtapositionally correct. Personal computer software including most spreadsheets, data base management programs, and BASIC are capable of producing files in this format.

(b) *Filing date for reports.* The reports must be received at BTS within 30 days following the end of each reporting period.

(c) *Address for filing.* Data Administration Division, K–14, Room 4125, Office of Airline Information, Bureau of Transportation Statistics, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.

(d) *ADP format for magnetic tape.*

(1) *Magnetic tape specifications.* IBM compatible 9-track EBCDIC recording. Recording density of 6250 or 1600 bpi. The order of recorded information is:

(i) Volume label.

(ii) Header label.

(iii) Data records.

(iv) Trailer label.

(2) [Reserved]

(e) *External tape label information.*

(1) Carrier name.

(2) Report date.

(3) File identification.

(4) Carrier address for return of tape reel.

(f) *Standards.* It is the policy of the Department to be consistent with the

American National Standards Institute and the Federal Standards Activity in all data processing and telecommunications matters. It is our intention that all specifications in this application are in compliance with standards promulgated by these organizations.

(g) *Volume, header, and trailer label formats.*

(1) *Use standard IBM label formats.* The file identifier field of the header labels should be ''T–100.SYSTEM''.

(h) *Magnetic tape record layouts for T–100.*

(1) *Nonstop segment record layout.*

Field No.	Positions	Mode	Description
1	1	1T	Record type code (S = nonstop segment).
2	2–6	5T	Carrier entity code.
3	7–12	6T	Report date (YYYYMM).
4	13–15	3T	Origin airport code.
5	16–18	3T	Destination airport code.
6	19	1T	Service class code (F, G, L, N, P or R).
7	20–23	4T	Aircraft type code.
8	24–28	5N	Revenue departures performed (F, G, L, N, P, R510).
9	29–38	10N	Available capacity payload (lbs) (F, G, L, N, P, R270).
10	39–45	7N	Available seats (F, L, N310).
11	46–52	7N	Passengers transported (F, L, N130).
12	53–62	10N	Rev freight transported (F, G, L, N, P, R237) (in lbs).
13	63–72	10N	Revenue mail transported (F, G, L, N, P, R239) (in lbs).
14	73–77	5N	Revenue aircraft departures scheduled (F, G520).
15	78–87	10N	Rev hrs, ramp-to-ramp (F, G, L, N, P, R630) (in minutes).
16	88–97	10N	Rev hrs, airborne (F, G, L, N, P, R610) (in minutes).

T=Text.
N=Numeric.

(2) *On-flight market record layout.*

Field No.	Positions	Mode	Description
1	1	1T	Record type: M = on-flight market record.
2	2–6	5T	Carrier entity code.
3	7–12	4T	Report date (YYYYMM).
4	13–15	3T	Origin airport code.
5	16–18	3T	Destination airport code.
6	19	1T	Service class code (F, G, L, N, P or R).
7	20–26	7N	Total passengers in market (F, L, N110).
8	27–36	10N	Rev freight in market (F, G, L, N, P, R217) (in lbs).
9	37–46	10N	Revenue mail in market (F, G, L, N, P, R219) (in lbs).

T=Text.
N=numeric.

(i) *Record layouts for microcomputer diskettes.* The record layouts for diskette are generally identical to those shown for magnetic tape, with the exception that delimiters (quotation marks, tabs and commas) are used to separate fields. It is necessary that the order of fields be maintained in all records.

(1) *File characteristics.* The files will be created in ASCII delimited format, sometimes called Data Interchange Format (DIF). This form of recording data provides for variable length fields (data elements) which, in the case of alphabetic data, are enclosed by quotation marks (‘‘) and separated by a comma (,) or tab. Numeric data elements that are recorded without editing symbols are also separated by a comma (,) or tab. The data are identified by their juxtaposition within a given record. Therefore, it is critical that each record contain the exact number of data elements, all of which must be juxtapositionally correct. PC software including most spreadsheets, data base management programs, and BASIC produce minidisk files in this format.

(2) *File naming conventions for diskettes.* For microcomputer reports, each record type should be contained in a separate DOS file on the same physical diskette. The following DOS naming conventions should be followed:

(i) Record type S = SEGMENT.DAT
(ii) Record type M = MARKET.DAT

22. Add a new subpart G to part 291 as follows:

Subpart G—Public Disclosure of Data

§ 291.60 Public disclosure of data.

(a) Detailed domestic on-flight market data and nonstop segment data, except military data, shall be made publicly available after processing. Domestic data are defined as data from air transportation operations from a place in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands, or a U.S. territory or possession to a place in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands, or a U.S. territory or possession. Domestic military operations are reported under service codes N or R.

(b) Detailed international on-flight market and nonstop segment data in Schedule T–100 and Schedule T–100(f) reports, except military data, shall be publicly available immediately following the Department's determination that the database is complete, but no earlier than six months after the date of the data. Military operations are reported under service codes N or R. Data for on-flight markets and nonstop segments involving no U.S. points shall not be made publicly available for three years. Industry and carrier summary data may be made public before the end of six months or the end of three years, as applicable, provided there are three or more carriers in the summary data disclosed. The Department may, at any time, publish international summary statistics without carrier detail. Further, the Department may release nonstop segment and on-flight market detail data by carrier before the end of the confidentiality period as follows:

(1) To foreign governments as provided in reciprocal arrangements between the foreign country and the U.S. Government for exchange of on-flight market and/or nonstop segment data submitted by air carriers of that foreign country and U.S. carriers serving that foreign country.

(2) To parties to any proceeding before the Department under Title IV of the Federal Aviation Act of 1958, as amended, as required by an Administrative Law Judge or other decision-maker of the Department. Parties may designate agents or consultants to receive the data in their behalf, provided the agents or consultants agree to abide by the disclosure restrictions. Any data to which access is granted pursuant to this provision may be introduced into evidence, subject to the normal rules of admissibility.

(3) To agencies or other components of the U.S. Government for their internal use only.

PART 298—[AMENDED]

23. The authority citation for part 298 is revised to read as follows:

Authority: 49 U.S.C. 329 and chapters 411 and 417.

24. Section 298.2 is amended by removing paragraph (m), by removing the alphabetic paragraph designations and placing the definitions in alphabetic order, and by adding the following new definitions in alphabetical order to read as follows:

§ 298.2 Definitions.

* * * * *

Reporting carrier for Schedule T–100 purposes means the air carrier in operational control of the flight, i.e., the carrier that uses its flight crews under its own FAA operating authority.

* * * * *

Wet-Lease Agreement means an agreement under which one carrier leases an aircraft with flight crew to another air carrier.

25. Section 298.60 is amended by revising paragraphs (a) and (b) to read as follows:

§ 298.60 General reporting instructions.

(a) Each commuter air carrier and each small certificated air carrier shall file with the Department's Bureau of Transportation Statistics (BTS) the applicable schedules of BTS Form 298-C, AReport of Financial and Operating Statistics for Small Aircraft Operators' and Schedule T–100, AU.S. Air Carrier Traffic and Capacity Data by Nonstop Segment and On-Flight Market'' as required by this section.

(b) A single copy of the BTS Form 298-C report shall be filed quarterly with the Office of Airline Information (OAI) for the periods ended March 31, June 30, September 30 and December 31 of each year to be received on or before May 10, August 10, November 10, and February 10, respectively. An electronic filing of the monthly Schedule T–100 is due at OAI within 30 days after the end of each month. Due dates falling on a Saturday, Sunday or Federal holiday will become effective on the next work day.

* * * * *

26. Section 298.61 is revised to read as follows:

§ 298.61 Reporting of traffic statistics.

(a) Each commuter air carrier and small certificated air carrier shall file Schedule T–100, AU.S. Air Carrier Traffic and Capacity Data by Nonstop Segment and On-Flight Market.''

(b) Schedule T–100 shall be filed monthly as set forth in ''298.60.

(1) Schedule T–100 collects summarized flight stage data and on-flight market data from revenue flights. All traffic statistics shall be compiled in terms of each flight stage as actually performed. The detail T–100 data shall be maintained in such a manner as to permit monthly summarization and organization into two basic groupings. The first grouping, the nonstop segment information, is to be summarized by equipment type, within class of service, within pair-of-points, without regard to individual flight number. The second grouping requires that the enplanement/deplanement information be broken out into separate units called on-flight market records, which shall be summarized by class of service, within pair-of-points, without regard for equipment type or flight number.

(2) *Joint-service operations.* The Department may authorize joint service operations between two direct air carriers. Examples of these joint-service operations are: blocked-space agreements; part-charter agreements; code-sharing agreements; wet-lease agreements, and similar arrangements.

(i) Joint-service operations are reported by the carrier in operational control of the flight, i.e., the carrier that uses its flight crews under its own FAA operating authority. The traffic moving under these agreements is reported on Schedule T–100 the same way as any other traffic on the aircraft.

(ii) If there are questions about reporting a joint-service operation, contact the BTS Assistant Director—Airline Information (fax no. 202 366–3383, telephone no. 202 366–4373). Joint-service operations are reported in Schedule T–100 in accordance with this paragraph (b).

(iii) *Operational control.* The air carrier in operational control of the aircraft (the carrier that uses its flight crews under its own FAA operating authority) must report joint-service operations.

(c) *Service classes.* (1) The statistical classifications are designed to reflect the operating characteristics attributable to each distinctive type of service offered. The combination of scheduled and nonscheduled operations with passenger, all-cargo, and military services are placed into service classes as follows:

Code	Type of Service
F	Scheduled Passenger/Cargo
G	Scheduled All-Cargo
L	Nonscheduled Civilian Passenger/Cargo
P	Nonscheduled Civilian Cargo
N	Nonscheduled Military Passenger/Cargo
R	Nonscheduled Military Cargo

(2) Scheduled services include traffic and capacity elements applicable to air transportation provided pursuant to published schedules and extra sections of scheduled flights. Scheduled Passenger/Cargo (Service Class F) is a composite of first class, coach, and mixed passenger/cargo service.

(3) Nonscheduled services include all traffic and capacity elements applicable to the performance of nonscheduled aircraft charters, and other air transportation services not constituting an integral part of services performed pursuant to published flight schedules.

(d) *Air transport traffic and capacity elements.* (1) Within each of the service classifications, carriers shall report air transport traffic and capacity elements. The elements are reported on segment or market records as follows:

Code	Description	Segment	Market	Computed by DOT
	Carrier, carrier entity code	S	M	
	Reporting period date	S	M	

Code	Description	Segment	Market	Computed by DOT
	Origin airport code	S	M	
	Destination airport code	S	M	
	Service class code	S	M	
	Aircraft type code	S		
110	Revenue passengers enplaned		M	
130	Revenue passengers transported	S		
140	Revenue passenger-miles			CFD*
210	Revenue cargo tons enplaned			CFD*
217	Enplaned freight		M	
219	Enplaned mail		M	
230	Revenue tons transported			CFD*
237	Transported freight	S		
239	Transported mail	S		
240	Revenue ton-miles			CFD*
241	Revenue ton-miles passenger			CFD*
247	Revenue ton-miles freight			CFD*
249	Revenue ton-miles mail			CFD*
270	Available capacity payload	S		
280	Available ton-miles			CFD*
310	Available seats, total	S		
320	Available seat-miles			CFD*
410	Revenue aircraft miles flown			CFD*
430	Revenue aircraft miles scheduled			CFD*
501	Inter-airport distance			CFD*
510	Revenue aircraft departures performed	S		
520	Revenue aircraft departures scheduled	S		
610	Revenue aircraft hours (airborne)	S		
630	Aircraft hours (ramp-to-ramp)	S		
650	Total aircraft hours (airborne)	S		

*CFD = Computed by DOT from detail Schedule T–100 and T–100(f) data.

(2) [Reserved]

(e) These reported items are further described as follows:

(1) *Reporting period date.* The year and month to which the reported data are applicable.

(2) Carrier, Carrier entity code. Each air carrier shall report its name and entity code (a five digit code assigned by BTS that identifies both the carrier and its entity) for its particular operations. The Office of Airline Information (OAI) will assign or confirm codes upon request; OAI's address is Office of Airline Information, BTS, DOT Room 4125, K–14, 400 Seventh Street, SW., Washington, DC 20590–0001.

(3) *Service class code.* The service class codes are prescribed in section 298.61(c). In general, classes are divided into two broad categories, either scheduled or nonscheduled, where scheduled = F + G and nonscheduled = L + N + P + R.

(4) *Record type code.* This code indicates whether the data pertain to non-stop segment (record type S) or on-flight market (record type M).

(5) *Aircraft type code.* This code represents the aircraft types, as described in the BTS' Accounting and Reporting Directives.

(6) *Origin, Destination airport code(s).* These codes represent the industry designators. An industry source of these industry designator codes is the Official Airline Guide (OAG). OAI assigns codes upon request if not listed in the OAG.

(7) *110 Revenue passengers enplaned.* The total number of revenue passengers enplaned at the origin point of a flight, boarding the flight for the first time; an unduplicated count of passengers in a market. Under the T–100 system of reporting, these enplaned passengers are the sum of the passengers in the individual on-flight markets. In the domestic entity, report only the total revenue passengers enplaned in item 110.

(8) *130 Revenue passengers transported.* The total number of revenue passengers transported over a single flight stage, including those already on the aircraft from a previous flight stage. In the domestic entity, report only the total revenue passengers transported in item 130.

(9) *140 Revenue passenger-miles.* Computed by multiplying the inter-airport distance of each flight stage by the number of passengers transported on that flight stage.

(10) *210 Revenue cargo tons enplaned.* The total number of cargo tons enplaned. This data element is a sum of the individual on-flight market figures for each of the following categories: 217 Freight and 219 Mail. This element represents an unduplicated count of the revenue traffic in a market.

(11) *217 Enplaned freight.* The total weight of revenue freight enplaned at the origin point of a flight, loaded onto the flight for the first time; an unduplicated count of freight in a market.

(12) *219 Enplaned mail.* The total weight of mail enplaned at the origin point of a flight, loaded onto the flight for the first time; an unduplicated count of mail in a market.

(13) *230 Revenue tons transported.* The number of tons of revenue traffic transported. This element is the sum of the following elements: 231 Passengers transported-total, 237 Freight, and 239 Mail.

(14) *237 Transported freight.* The total weight of freight transported over a single flight stage, including freight already on the aircraft from a previous flight stage.

(15) *239 Transported mail.* The total weight of mail transported over a single flight stage, including mail already on the aircraft from a previous flight stage.

(16) *240 Revenue ton-miles—total.* Ton-miles are computed by multiplying the revenue aircraft miles flown (410) on each flight stage by the number of tons transported on that stage. This element is the sum of 241 through 249.

(17) *241 Revenue ton-miles—passenger.* Equals the number of passengers times 200, times inter-airport distance, divided by 2000. A standard

weight of 200 pounds per passenger, including baggage, is used for all operations and service classes.

(18) *247 Revenue ton-miles—freight.* Equals the volume of freight in whole tons times the inter-airport distance.

(19) *249 Revenue ton-miles—mail.* Equals the volume of mail in whole tons times the inter-airport distance.

(20) *270 Available capacity-payload.* The available capacity is collected in pounds. This figure shall reflect the payload or total available capacity for passengers, mail, and freight applicable to the aircraft with which each flight stage is performed.

(21) *280 Available ton-miles.* The aircraft miles flown on each flight stage multiplied by the available capacity on the aircraft in tons.

(22) *310 Available seats.* The number of seats available for sale. This figure reflects the actual number of seats available, excluding those blocked for safety or operational reasons. In the domestic entity, report the total available seats in item 130. Scheduled and nonscheduled available seats are reported in item 130.

(23) *320 Available seat-miles.* The aircraft miles flown on each flight stage multiplied by the seat capacity available for sale.

(24) *410 Revenue aircraft miles flown.* Revenue aircraft miles flown are computed based on the airport pairs between which service is actually performed; miles are generated from the data for scheduled aircraft departures (Code 520) times the inter-airport distances (Code 501).

(25) *430 Revenue aircraft miles scheduled.* The number of revenue aircraft miles scheduled. All such data shall be maintained in conformity with the airport pairs between which service is scheduled, whether or not in accordance with actual performance.

(26) *501 Inter-airport distance.* The great circle distance, in official statute miles as prescribed in part 247 of this chapter, between airports served by each flight stage. Official inter-airport mileage may be obtained from the Office of Airline Information.

(27) *510 Revenue aircraft departures performed.* The number of revenue aircraft departures performed.

(28) *520 Revenue aircraft departures scheduled.* The number of revenue aircraft departures scheduled, whether or not actually performed.

(29) *610 Revenue aircraft hours (airborne).* The elapsed time, computed from the moment the aircraft leaves the ground until its next landing.

(30) *630 Aircraft hours (ramp-to-ramp).* The elapsed time, computed from the moment the aircraft first moves under its own power from the boarding ramp at one airport to the time it comes to rest at the ramp for the next point of landing. This data element is also referred to as 'block' and 'block-to-block' aircraft hours.

(31) *650 Total aircraft hours (airborne).* The elapsed time, computed from the moment the aircraft leaves the ground until it touches down at the next landing. This includes flight training, testing, and ferry flights.

(f) *Public availability of Schedule T–100 data.* Detailed domestic on-flight market and nonstop segment data in Schedule T–100, except military data, shall be publicly available after processing. Domestic data are defined as data from air transportation operations from a place in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands, or a U.S. territory or possession to a place in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands, or a U.S. territory or possession.

Appendix to § 298.61—Instructions to U.S. Air Carriers for Reporting Traffic and Capacity Data on Schedule T–100

(a) *Format of reports.*

(1) *Automatic Data Processing (ADP) magnetic tape.* Refer to paragraph (f) of this appendix for instructions pertaining to mainframe and minicomputer reporting. The Department will issue ''Accounting and Reporting Directives'' to make necessary technical changes to these T–100 instructions. Technical changes which are minor in nature do not require public notice and comment.

(2) *Microcomputer diskette.*

(i) *Optional specification.* If an air carrier desires to use its personal computers (PC's), rather than mainframe or minicomputers to prepare its data submissions, the following specifications for filing data on diskette media apply.

(ii) *Reporting medium.* Microcomputer ADP data submission of T–100 information must be on IBM compatible disks. Carriers wishing to use a different ADP procedure must obtain written approval to do so from the BTS Assistant Director—Airline Information. Requests for approval to use alternate methods must disclose and describe the proposed data transmission methodology. Refer to paragraph (k) of this appendix for microcomputer record layouts.

(iii) *Microcomputer file characteristics.* The files will be created in ASCII delimited format, sometimes called Data Interchange Format (DIF). This form of recording data provides for variable length fields (data elements) which, in the case of alphabetic data, are enclosed by quotation marks ('') and separated by a comma (,) or tab. Numeric data elements that are recorded without editing symbols are also separated by a comma (,) or tab. The data are identified by their juxtaposition within a given record. Therefore, each record must contain the exact number of data elements, all of which must be juxtapositionally correct. Personal computer software including most spreadsheets, data base management programs, and BASIC are capable of producing files in this format.

(b) [Reserved]

(c) [Reserved]

(d) *Filing date for reports.* The reports must be received at BTS within 30 days following the end of each reporting period.

(e) *Address for filing.* Data Administration Division, K–14, Room 4125, Office of Airline Information, Bureau of Transportation Statistics, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.

(f) *ADP format for magnetic tape.*

(1) *Magnetic tape specifications.* IBM compatible 9-track EBCDIC recording. Recording density of 6250 or 1600 bpi. The order of recorded information is:

(i) Volume label.

(ii) Header label.

(iii) Data records.

(iv) Trailer label.

(g) External tape label information.

(1) Carrier name.

(2) Report date.

(3) File identification.

(4) Carrier address for return of tape reel.

(h) *Standards.* It is the policy of the Department to be consistent with the American National Standards Institute and the Federal Standards Activity in all data processing and telecommunications matters. It is our intention that all specifications in this application are in compliance with standards promulgated by these organizations.

(i) *Volume, header, and trailer label formats.*

(1) *Use standard IBM label formats.* The file identifier field of the header labels should be ''T–100.SYSTEM''.

(2) [Reserved]

(j) *Magnetic tape record layouts for T–100.*

(1) *Nonstop segment record layout.*

Field No.	Positions	Mode	Description
1	1	1T	Record type code (S = nonstop segment).
2	2–6	5T	Carrier entity code.
3	7–12	6T	Report date (YYYYMM).
4	13–15	3T	Origin airport code.
5	16–18	3T	Destination airport code.

Field No.	Positions	Mode	Description
6	19	1T	Service class code (F, G, L, N, P or R).
7	20–23	4T	Aircraft type code.
8	24–28	5N	Revenue departures performed (F, G, L, N, P, R510).
9	29–38	10N	Available capacity payload (lbs) (F, G, L, N, P, R270).
10	39–45	7N	Available seats (F, L, N310).
11	46–52	7N	Passengers transported (F, L, N130).
12	53–62	10N	Rev freight transported (F, G, L, N, P, R237)(in lbs).
13	63–72	10N	Revenue mail transported (F, G, L, N, P, R239) (in lbs).
14	73–77	5N	Revenue aircraft departures scheduled (F, G520).
15	78–87	10N	Rev hrs, ramp-to-ramp (F, G, L, N, P, R630) (in minutes).
16	88–97	10N	Rev hrs, airborne (F, G, L, N, P, R610) (in minutes).

T=Text.
N=Numeric.

(2) *On-flight market record layout.*

Field No.	Positions	Mode	Description
1	1	1T	Record type: M = on-flight market record.
2	2–6	5T	Carrier entity code.
3	7–12	6T	Report date (YYYYMM).
4	13–15	3T	Origin airport code.
5	16–18	3T	Destination airport code.
6	19	1T	Service class code (F, G, L, N, P or R).
7	20–26	7N	Total passengers in market (F, L, N110).
8	27–36	10N	Rev freight in market (F, G, L, N, P, R217) (in lbs).
9	37–46	10N	Revenue mail in market (F, G, L, N, P, R219) (in lbs).

T=Text.
N=Numeric.

(k) *Record layouts for microcomputer diskettes.* The record layouts for diskette are generally identical to those shown for magnetic tape, with the exception that delimiters (quotation marks and commas) are used to separate fields. It is necessary that the order of fields be maintained in all records.

(1) *File characteristics.* The files will be created in ASCII delimited format, sometimes called Data Interchange Format (DIF). This form of recording data provides for variable length fields (data elements) which, in the case of alphabetic data, are enclosed by quotation marks (‘‘) and separated by a comma (,) or tab. Numeric data elements that are recorded without editing symbols are also separated by a comma (,) or tab. The data are identified by their juxtaposition within a given record. Therefore, it is critical that each record contain the exact number of data elements, all of which must be juxtapositionally correct. PC software including most spreadsheets, data base management programs, and BASIC produce minidisks files in this format.

(2) *File naming conventions for diskettes.* For microcomputer reports, each record type should be contained in a separate DOS file on the same physical diskette. The following DOS naming conventions shall be followed:

(i) Record type S = SEGMENT.DAT
(ii) Record type M = MARKET.DAT

27. Section 298.62 is amended by revising paragraph (d) to read as follows:

§ 298.62 Reporting of financial data.

* * * * *

(d) Data reported on this schedule shall be withheld from public release for a period of 3 years after the close of the calendar quarter to which the report relates.

28. Section 298.63 is amended by removing paragraphs (h) and (i) and redesignating paragraph (j) as paragraph (h) and revising it to read as follows:

§ 298.63 Reporting of aircraft operating expenses and related statistics by small certificated air carriers.

* * * * *

(h) Line 17 ‘‘Total Gallons of Fuel Issued’’ shall include the gallons of fuel used in flight operations related to fuel cost reported in total and by aircraft type on Line 4.

§ 298.64 [Removed]

29. Section 298.64 is removed.

30. Add a new subpart G consisting of § 298.70 to part 298 to read as follows:

Subpart G—Public Disclosure of Data

§ 298.70 Public disclosure of data.

(a) Detailed domestic on-flight market data and nonstop segment data except military data shall be made publicly available after processing. Domestic data are defined as data from air transportation operations from a place in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands, or a U.S. territory or possession to a place in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands, or a U.S. territory or possession. Domestic military operations are reported under service codes N or R.

(b) Detailed international on-flight market and nonstop segment data in Schedule T–100 and Schedule T–100(f) reports, except military data, shall be publicly available immediately following the Department’s determination that the database is complete, but no earlier than six months after the date of the data. Military operations are reported under service codes N or R. Data for on-flight markets and nonstop segments involving no U.S. points shall not be made publicly available for three years. Industry and carrier summary data may be made public before the end of six months or the end of three years, as applicable, provided there are three or more carriers in the summary data disclosed. The Department may, at any time, publish international summary statistics without carrier detail.

(c) Schedule F–1 ''Report of Financial Data'' shall be withheld from public release for a period of 3 years after the close of the calendar quarter to which the report relates.

(d) The Department may release nonstop segment and on-flight market detail data by carrier or individual Schedule F–1 ''Report of Financial Data'' before the end of the confidentiality period as follows:

(1) To foreign governments as provided in reciprocal arrangements between the foreign country and the U.S. Government for exchange of on-flight market and/or nonstop segment data submitted by air carriers of that foreign country and U.S. carriers serving that foreign country.

(2) To parties to any proceeding before the Department under Title IV of the Federal Aviation Act of 1958, as amended, as required by an Administrative Law Judge or other decision-maker of the Department. Parties may designate agents or consultants to receive the data in their behalf, provided the agents or consultants agree to abide by the disclosure restrictions. Any data to which access is granted pursuant to this provision may be introduced into evidence, subject to the normal rules of admissibility.

(3) To agencies or other components of the U.S. Government for their internal use only.

Issued in Washington, DC, on June 19, 2002.

Ashish Sen,

Director, Bureau of Transportation Statistics.

[FR Doc. 02–15978 Filed 7–29–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. FHWA–2001–8846]

RIN 2125–AE83

Revision of the Manual on Uniform Traffic Control Devices; Accessible Pedestrian Signals

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is adopting as final an interim rule that amends the 2000 Millennium Edition of the Manual on Uniform Traffic Control Devices (MUTCD) to revise the guidance and supporting information relating to the decisionmaking process concerning accessible pedestrian signals in Parts 1 and 4 of the MUTCD. The MUTCD is incorporated by reference in 23 CFR part 655, subpart F, and recognized as the national standard for traffic control devices used on all public roads.

EFFECTIVE DATE: August 29, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. W. Scott Wainwright, Office of Transportation Operations, Room 3408, (202) 366–0857, or Mr. Raymond Cuprill, Office of the Chief Counsel, Room 4230, (202) 366–0791, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Docket Facility, Room PL–401, by using the universal resource locator (URL) *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may also be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may also reach the Office of the Federal Register's home page at *http://www.nara.gov/fedreg* and the Government Printing Office's web page at *http:///access.gpo.gov/nara.*

Background

The FHWA published an interim final rule of Revision No. 1 on February 15, 2002, at 67 FR 7073. This interim final rule revised the guidance and supporting information relating to the decisionmaking process concerning accessible pedestrian signals in Parts 1 and 4 of the MUTCD. Additionally, in the interim final rule, the FHWA provided a 60-day comment period for the public to review and make comment on the necessary changes to the pertinent electronic files on the FHWA's MUTCD Internet site (*http://mutcd.fhwa.dot.gov*) to comply with section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).

The text of this Revision No. 1 and the text of the 2000 Millennium Edition of the MUTCD with Revision No. 1 text incorporated are available for inspection and copying as prescribed in 49 CFR part 7 at the FHWA Office of Transportation Operations. Furthermore, Revision No. 1 changes are available on the MUTCD Internet site (*http://mutcd.fhwa.dot.gov*). The entire MUTCD text with Revision No. 1 text incorporated is also available on this Internet site.

Summary of Comments

The FHWA received no comments to the docket in response to the interim final rule, concerning either the text of the Revision No. 1 or the changes made to electronic files to comply with Section 508 of the Rehabilitation Act of 1973. Therefore, this final rule adopts the interim final rule without change as an amendment to the 2000 Millennium Edition of the MUTCD as Revision No. 1. This final rule revises the guidance and supporting information relating to the decisionmaking process concerning accessible pedestrian signals in Parts 1 and 4 of the MUTCD.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and U.S. DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of the U.S. Department of Transportation regulatory policies and procedures. The economic impact of this rulemaking will be minimal. The changes in this final rule provide additional guidance and support information relating to the decisionmaking process concerning whether or not to install accessible pedestrian signals. The FHWA believes that the uniform application of traffic control devices will greatly improve the traffic operations efficiency and roadway safety. The standards, guidance, and support are also used to create uniformity and to enhance safety and mobility at little additional expense to public agencies or the motoring public. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612) the FHWA has evaluated the effects of this action on small entities. This final rule only revises guidance and support information related to the decisionmaking process concerning accessible pedestrian signals in the MUTCD. The changes are intended to improve traffic operations and safety, to expand guidance, and to clarify the application of traffic control devices as related to accessible pedestrian signals. For these reasons, the FHWA certifies that this action will not have a

significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1531 *et seq.*)

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the FHWA has determined that this action does not have a substantial direct effect or sufficient federalism implications on States and local governments that would limit the policymaking discretion of the States and local governments. This action merely adds guidance and supporting information for the decisionmaking process concerning whether or not to install accessible pedestrian signals. The FHWA has also determined that this action does not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that it will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. This action merely adds guidance and supporting information for the decisionmaking process concerning whether or not to install accessible pedestrian signals. Therefore, a tribal summary impact statement is not required.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this action does not contain a collection of information requirement for the purposes of PRA.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

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

Executive Order 12630 (Taking of Private Property)

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

Executive Order 13211 (Energy Effects)

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

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that it will not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 655

Design standards, Grant programs—Transportation, Highways and roads, Incorporation by reference, Signs, Traffic regulations.

PART 655—TRAFFIC OPERATIONS

Subpart F—Traffic Control Devices on Federal-Aid and Other Streets and Highways

In consideration of the foregoing and under the authority of 23 U.S.C. 101(a), 104, 109(d), 114(a), 217, 315, and 402(a); 23 CFR 1.32; and 49 CFR 1.48(b), the interim final rule amending 23 CFR Part 655, Subpart F which was published at 67 FR 7073 on February 15, 2002, is adopted as a final rule without change.

Issued on: July 24, 2002.

Mary E. Peters,

Federal Highway Administrator.

[FR Doc. 02–19142 Filed 7–29–02; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100, 117 and 165

[USCG–2002–11544]

Safety Zones, Security Zones, Drawbridge Operation Regulations and Special Local Regulations

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued.

SUMMARY: This document provides required notice of substantive rules issued by the Coast Guard and temporarily effective between April 1, 2002 and June 30, 2002, which were not published in the **Federal Register**. This quarterly notice lists temporary local regulations, drawbridge operation regulations, security zones, and safety zones of limited duration and for which timely publication in the **Federal Register** was not possible.

DATES: This notice lists temporary Coast Guard rules that became effective and were terminated between April 1, 2002 and June 30, 2002.

ADDRESSES: The Docket Management Facility maintains the public docket for this notice. Documents indicated in this notice will be available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street SW., Washington, DC 20593–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal

Holidays. You may electronically access the public docket for this notice on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact LTJG Sean Fahey, Office of Regulations and Administrative Law, at telephone number (202) 267–2830. For questions on viewing, or on submitting material to the docket, contact Dorothy Beard, Chief, Dockets, Department of Transportation at (202) 366–5149.

SUPPLEMENTARY INFORMATION: Coast Guard District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety and security needs of the waters within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. Safety zones may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. Security zones limit access to prevent injury or damage to vessels, ports, or waterfront facilities. Drawbridge operation regulations authorize changes to drawbridge schedules to accommodate bridge repairs, seasonal vessel traffic, and local public events. Special local regulations are issued to enhance the safety of participants and spectators at regattas and other marine events.

Timely publication of these rules in the **Federal Register** is often precluded when a rule responds to an emergency, or when an event occurs without sufficient advance notice. The affected public is, however, informed of these rules through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the rule. Because **Federal Register** publication was not possible before the beginning of the effective period, mariners were personally notified of the contents of these special local regulations, drawbridge operation regulations, security zones, or safety zones by Coast Guard officials on-scene prior to any enforcement action. However, the Coast Guard, by law, must publish in the **Federal Register** notice of all substantive rules adopted. To meet this obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary special local regulations, drawbridge operation regulations, security zones, and safety zones.

Permanent rules are not included in this list because they are published in their entirety in the **Federal Register**. Temporary rules may also be published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. The safety zones, special local regulations, drawbridge operation regulations, and security zones listed in this notice have been exempted from review under Executive Order 12866, Regulatory Planning and Review, because of their emergency nature, or limited scope and temporary effectiveness.

The following rules were place in effect temporarily during the period from April 1, 2002, through June 30, 2002, unless otherwise indicated. This notice also includes rules that were not received in time to be included on the quarterly notice for the second, third and fourth quarters of 2001 and the first quarter of 2002.

Dated: July 23, 2002.

S.G. Venckus,

Chief, Office of Regulations and Administrative Law.

COTP QUARTERLY REPORT—2ND QUARTER 2002

COTP docket	Location	Type	Effective date
Baltimore 02–004	Annapolis, Maryland	Security Zone	05/24/2002
Charleston 02–039	Myrtle Beach, SC	Safety Zone	04/29/2002
Guam 02–009	Outer Apra Harbor, Guam	Safety Zone	04/16/2002
Guam 02–010	North of Glass Breakwater, Guam	Safety Zone	04/18/2002
Houston-Galveston 02–005	Galveston, Texas	Security Zone	04/05/2002
Houston-Galveston 02–008	COPT Houston-Galveston Zone	Security Zone	04/15/2002
Houston-Galveston 02–013	Dredge Operation, Channel Closure	Safety Zone	04/22/2002
Houston-Galveston 02–014	Dredge Operation, Channel Closure	Safety Zone	05/21/2002
Houston-Galveston 02–015	Dredge Operation, Channel Closure	Safety Zone	06/08/2002
Huntington 02–002	Kanawha River, M. 57.5 to 62	Safety Zone	04/27/2002
Jacksonville 02–076	Indian River, New Smyrna Beach, FL	Safety Zone	06/29/2002
LA/Long Beach 02–008	Flight Demonstration, Long Beach, CA	Safety Zone	04/13/2002
Louisville 02–001	Ohio River, M. 470 to 471.5	Security Zone	06/17/2002
Miami 02–029	Palm Beach County, FL	Safety Zone	05/03/2002
Miami 02–031	Air Sea Show, Fort Lauderdale, FL	Safety Zone	05/01/2002
Miami 02–040	M/V Conti Seattle, Miami, FL	Safety Zone	05/02/2002
Miami 02–043	FL Keys National Marine Sanctuary	Safety Zone	05/12/2002
Miami 02–071	FL Keys National Marine Sanctuary	Safety Zone	05/20/2002
Morgan 02–003	Little Lake, Louisiana	Safety Zone	04/10/2002
New Orleans 02–007	LWR Mississippi River, M. 94 to 96	Safety Zone	04/13/2002
New Orleans 02–009	LWR Mississippi River, M. 94 to 96	Safety Zone	05/15/2002
Pittsburgh 02–008	Allegheny River, M. 3 to 6	Safety Zone	04/12/2002
Pittsburgh 02–009	Monongahela River, M. 14.1 to 11.2	Safety Zone	06/17/2002
San Diego 02–003	Lake Moovalya, Colorado River, AZ	Safety Zone	04/06/2002
San Diego 02–005	Colorado River, Davis Dam	Safety Zone	06/01/2002
San Diego 02–006	San Diego Bay, CA	Safety Zone	04/26/2002
San Diego 02–007	Oceanside, California	Safety Zone	05/05/2002
San Diego 02–011	Colorado River	Safety Zone	05/11/2002
San Diego 02–012	San Diego, CA	Safety Zone	05/23/2002
San Francisco 02–004	Suisun Bay, Concord, CA	Security Zone	04/15/2002
San Francisco 02–005	Suisun Bay, Concord, CA	Security Zone	04/24/2002
San Francisco 02–006	San Francisco Bay, San Francisco, CA	Safety Zone	05/01/2002
San Francisco 02–007	San Francisco Bay, San Francisco, CA	Safety Zone	05/11/2002
San Francisco Bay 02–009	Oakland Inner Harbor, Oakland, CA	Safety Zone	05/18/2002
San Francisco Bay 02–012	San Francisco Bay, San Francisco, CA	Safety Zone	06/14/2002
San Francisco Bay 02–013	Oakland Estuary, Alameda, CA	Security Zone	06/14/2002

COTP QUARTERLY REPORT—2ND QUARTER 2002—Continued

COTP docket	Location	Type	Effective date
San Juan 02–072	San Juan Harbor, San Juan, PR	Safety Zone	06/20/2002
Savannah 02–027	Atlantic Intercoastal Waterway, GA	Safety Zone	04/04/2002
Savannah 02–028	Memorial Park, Savannah, GA	Safety Zone	04/06/2002
St. Louis 02–006	Illinois River, M. 0 to 187	Safety Zone	05/16/2002

DISTRICT QUARTERLY REPORT—2ND QUARTER 2002

District docket	Location	Type	Effective date
01–02–006	Mystic Offshore Gran Prix, New London, CT	Safety Zone	05/03/2002
01–02–065	Yarmouth, Nantucket Sound, MA	Safety Zone	06/07/2002
01–02–073	Hingham, Massachusetts	Safety Zone	06/29/2002
05–02–018	Washington Channel, Washington DC	Security Zone	05/31/2002
05–02–023	James River, Williamsburg, VA	Safety Zone	05/05/2002
05–02–024	Elizabeth River, Portsmouth, Virginia	Safety Zone	05/26/2002
05–02–026	Severn River, Annapolis, MD	Special Local	05/21/2002
05–02–027	Pea Patch Island to Delaware City, Delaware	Special Local	06/08/2002
05–02–030	Willoughby Bay, Norfolk, Virginia	Safety Zone	06/04/2002
05–02–035	Hampton Roads, Elizabeth River, VA	Security Zone	06/04/2002
05–02–036	Thimble Shoals Channel, Hampton Roads, VA	Safety Zone	06/04/2002
05–02–037	Hampton Roads, Virginia	Safety Zone	06/13/2002
05–02–038	Hampton Roads, Elizabeth River, VA	Security Zone	06/11/2002
07–02–023	Fort Lauderdale, Broward County, FL	Drawbridge Operation	05/05/2002
07–02–045	Cooper River, North Charleston, SC	Special Local	06/15/2002
07–02–068	San Juan Harbor, San Juan, PR	Safety Zone	06/17/2002
09–02–014	Cleveland Harbor, Cleveland, OH	Safety Zone	05/03/2002
09–02–016	Lake Ontario, Youngstown, NY	Safety Zone	05/18/2002
09–02–019	Lake Michigan	Security Zone	05/05/2002
09–02–022	Buffalo River, Buffalo, NY	Safety Zone	05/28/2002
09–02–023	Pridefest 2002, Milwaukee, Wisconsin	Safety Zone	06/07/2002
09–02–025	River Splash 2002, Milwaukee, Wisconsin	Safety Zone	05/31/2002
09–02–030	U.S. Aerospace Challenge, Holland, MI	Safety Zone	05/18/2002
09–02–043	Ottawa River, Toledo, OH	Safety Zone	06/29/2002
09–02–045	Summerfest Big Bang, 2002, Milwaukee, WI	Safety Zone	06/27/2002
09–02–047	Betsie Bay, Frankfort, MI	Safety Zone	06/29/2002
09–02–054	Detroit River, Detroit, MI	Safety Zone	06/27/2002
09–02–056	Milwaukee, Wisconsin	Safety Zone	06/27/2002

REGULATIONS NOT ON PREVIOUS QUARTERLY REPORTS

COPT docket/district	Location	Type	Effective date
COPT Regulation for 2nd Quarter 2001			
Guam 01–010	Outer Apra Harbor, Guam	Safety Zone	06/06/01
COPT Regulation for 3rd Quarter 2001			
Louisiana 01–023	LMR from the seabuoys at SW Pass and South Pass to M 233, Highway 190 Bridge, AHP and the Mississippi River Gulf Outlet.	Security Zone	09/12/01
New Orleans 01–025	Lower Mississippi River M 106.1 to M 92.7.	Safety Zone	09/13/01
COPT Regulations for 4th Quarter 2001			
Houston-Galveston 01–011	Houston-Galveston	Security Zones	12/07/01
Tampa 01–148	Tampa Bay, Florida	Safety Zone	12/20/01
District Docket for 4th Quarter 2001			
08–01–040	Mississippi River, Iowa and Illinois	Drawbridge Operation Regulations	12/17/01
COPT Regulations for 1st Quarter 2002			
Houston 02–007	Houston, Texas	Safety Zone	03/24/02
Houston-Galveston 02–002	Port of Galveston, Galveston, TX	Security Zone	03/01/02
Mobile 02–005	Mobile, Alabama	Security Zone	03/20/02
Mobile 02–006	Tyndall AFB, East Bay, Panama City, FL.	Security Zone	03/23/02

REGULATIONS NOT ON PREVIOUS QUARTERLY REPORTS—Continued

COPT docket/district	Location	Type	Effective date
Pittsburgh 02–007	Ohio River M 67.5 to 68.5, Steubenville, Ohio.	Safety Zone	03/30/02
San Francisco Bay 02–002	Suisun Bay, Concord, CA	Security Zone	03/25/02
Tampa 02–018	St. Pete Beach, Florida	Security Zone	03/08/02
Tampa 02–019	Old Tampa Bay, Clearwater, Florida	Security Zone	03/08/02

[FR Doc. 02–19135 Filed 7–29–02; 8:45 am]
BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD09–02–017]

RIN–2115–AE47

Drawbridge Operation Regulations; Saginaw River, MI

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the operating regulation governing drawbridges over Saginaw River in Bay City, Michigan. This rule updates current owners of railroad bridges, adds Liberty Street bridge to the list of drawbridges with regulated hours, removes Sixth Street bridge from the list of drawbridges with regulated hours, and assigns standardized mile marker designations.

DATES: This rule is effective August 29, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket [CGD09–02–017] are available for inspection or copying at Commander (obr), Ninth Coast Guard District, 1240 East Ninth Street, Room 2019, Cleveland, OH, 44199–2060.

FOR FURTHER INFORMATION CONTACT: Mr. Scot M. Striffler, Project Manager, Ninth Coast Guard District Bridge Branch, at (216) 902–6084.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard published a notice of proposed rulemaking (NPRM) on May 10, 2002, entitled Drawbridge Operations Regulations, Saginaw River, Michigan, in the **Federal Register** (67 FR 31745). No letters or comments were received in response to the NPRM. No public hearing was requested, and none was held.

Background and Purpose

The current bridge operating regulations for drawbridges over Saginaw River are found in 33 CFR § 117.647. The current regulation does not contain an operating schedule for the Liberty Street bridge, which was constructed in 1987, and is located between the Independence and Veterans Memorial bridges. The new rule establishes drawbridge regulations for Liberty Street drawbridge. The former Sixth Avenue bridge at mile 17.1 was removed in 1985 and is still listed as a regulated drawbridge. The new rule removes the bridge from the regulation.

The railroad bridges listed at miles 2.5 and 4.4, respectively, have changed ownership and are updated through this final rule.

The mile marker designations for the bridges listed in this rulemaking have been revised to reflect the mile markers used in the United States Coast Pilot for proper cross-reference.

Discussion of Comments and Changes

No comments were received from the public in response to the NPRM. The Coast Guard did receive a correction from the City of Bay City. The NPRM incorrectly stated that the City of Bay City operated all highway drawbridges over Saginaw River. The City of Bay City operates the Liberty Street and Independence drawbridges, and the Michigan Department of Transportation operates the Lafayette and Veterans Memorial drawbridges. This information does not affect the operating schedule of the drawbridges, nor does it alter or affect the purpose of this rulemaking.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary due to the relatively minor adjustments to the current regulation. There are no additional limitations placed on navigation, and the proper sequencing of bridge openings is expected to improve service to navigation and vehicular traffic.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard must consider whether this rule will have a significant impact on a substantial number of small entities. ''Small entities'' may include small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000 people.

This rule is not expected to place any additional limitations on passing vessel traffic. No identified entities would be unable to pass the bridges, as needed. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

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

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

employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibility between the Federal Government and Indian tribes.

Energy Effects

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

Environment

The Coast Guard has considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph 32(e) of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 117

Bridges.

For reasons set out in the preamble, the Coast Guard amends Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In § 117.647, revise paragraph (a), and paragraphs (b), introductory text, (b)(3), and (b)(4); remove paragraph (c); and redesignate paragraphs (d) and (e) as paragraphs (c) and (d), to read as follows:

§ 117.647 Saginaw River.

(a) The draws of the Lake State Railways railroad bridge, mile 3.10 at Bay City, and the Central Michigan railroad bridge, mile 4.94 at Bay City, shall open on signal; except that, from December 16 through March 15, the draws shall open on signal if at least 12 hours advance notice is provided.

(b) The draws of the Independence bridge, mile 3.88, Liberty Street bridge, mile 4.99, Veterans Memorial bridge, mile 5.60, and Lafayette Street bridge, mile 6.78, all in Bay City, shall open on signal from March 16 through December 15, except as follows:

* * * * *

(3) From 8 a.m. to 8 p.m. on Saturdays, Sundays, and Federal holidays, the draws of the Independence and Veterans Memorial bridges need not be opened for the passage of pleasure craft except from three minutes before to three minutes after the hour and half-hour.

(4) From 8 a.m. to 8 p.m. on Saturdays, Sundays, and Federal holidays, the draws of the Liberty Street and Lafayette Street bridges need not be opened for the passage of pleasure craft, except from three minutes before to three minutes after the quarter hour and three-quarter hour.

* * * * *

Dated: July 16, 2002.

Ronald F. Silva,

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

[FR Doc. 02–19136 Filed 7–29–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–096]

RIN 2115–AA97

Safety Zone; Chelsea River Safety Zone for McArdle Bridge Repairs, Chelsea River, East Boston, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Chelsea River to aid completion of the McArdle Bridge repairs in East Boston, MA. The safety zone will temporarily close all waters 100-yards upstream and downstream of the McArdle Bridge. The safety zone prohibits entry into or movement within this portion of the Chelsea River and is needed to facilitate repair efforts and protect the maritime public from the hazards posed.

DATES: This rule is effective from July 18 until August 16, 2002.

ADDRESSES: Documents indicated in this preamble are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT David M. Sherry, Marine Safety Office Boston, Waterways Safety and Response Division, at (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Regulatory Information

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this rule. On May 15, 2002, we published in the **Federal Register** a temporary final rule entitled ''Safety Zone; Chelsea River Safety Zone for McArdle Bridge Repairs, Chelsea River, East Boston, Massachusetts'' (67 FR 34612). That rule expired on July 13, 2002. This rule establishes a safety zone in the same location as the expired safety zone established by the previous rule, to ensure the safety of mariners and vessels in the vicinity of the bridge during repairs. Good cause exists for not publishing an NPRM and for making this rule effective in less than 30 days after **Federal Register** publication. The bridge repairs are taking longer than originally anticipated, and repairs are currently ongoing, making it impossible to draft or publish an NPRM or a final rule 30 days in advance of its effective date. In order to protect the safety of mariners and vessels in the vicinity of the bridge during repairs, this rule is immediately necessary.

The McArdle Bridge repairs were determined necessary as a result of recent inspections by the Massachusetts Highway Department, during which steel grating and support failures on the McArdle Bridge were discovered. Waterway closures in the vicinity of and beneath the bridge are needed because repair equipment and portions of the bridge deck are extending over the waterway, and hotwork (welding and grinding) that shoots sparks over the waterway in the vicinity of the bridge is being conducted. Delaying this work for sufficient time to conduct a public notice rulemaking and advanced publication would be contrary to the public interest for the reasons outlined below.

Preventing the repair work from proceeding places the future operability of the bridge for waterway and roadway use at risk. It would also place at risk the ability of the marine terminals on the Chelsea River to continue to receive vessels. Also, the Massachusetts Highway Department will need to restrict road traffic over the bridge to a certain tonnage if the all repairs are not completed. If the repairs are not completed, road traffic may be completely restricted from the bridge, causing unmanageable traffic situations in Chelsea and East Boston, MA. Thus, it is in the best interest of maintaining safe marine commerce and avoiding significant road traffic problems that the safety zone be enacted to allow for the work to be completed. For these same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

This temporary safety zone is only effective for evening periods and will have a minimal impact on vessel transits due to the fact that the zone will be in effect only during night time when recreational boaters do not typically use the waterway, night time commercial vessel transits are already limited by the constraints of the Chelsea Street Bridge under 33 CFR 165, and the commercial users of the Chelsea River have stated that restricting night time use of the waterway during this time of the year will place the least burden on their operations.

Discussion of Rule

This rule establishes a safety zone on all waters of the Chelsea River 100-yards upstream and downstream of the McArdle Bridge. The safety zone is in effect from July 18, until August 16, 2002, and will be enforced from sunset until sunrise each day during this period. This safety zone prohibits entry into or movement within this portion of the Chelsea River and is needed to provide the Middlesex Corporation sufficient time to safely complete the necessary repairs, painting, steel support, and grating work. The work is needed to ensure the continued safe operability of the McArdle Bridge. The Captain of the Port does anticipate minimal negative impact on vessel traffic due to this repair work. Public notifications will be made prior to the effective period via local notice to mariners and marine information broadcasts.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this rule to be minimal enough that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this rule prevents traffic from transiting a portion of the Chelsea River during the prescribed periods, the effect of this rule will not be significant for several reasons: the channel will be closed during night time when recreational boaters do not typically use the waterway; many of the commercial vessels are already limited by size to daylight only transits due to the regulations governing the Chelsea Street Bridge under 33 CFR 165.120; and the commercial users of the Chelsea River have stated that restricting night time use of the waterway during this time of the year will not burden their operations.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit a portion of the Chelsea River from July 18 until August 16, 2002, during sunset to sunrise each day of this period. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The bridge will be closed during night time when recreational boaters do not typically use the waterway; most night time commercial traffic is already limited by the constraints of the regulations governing the Chelsea Street Bridge under 33 CFR 165.120; the commercial users of the Chelsea River have stated that restricting night time use of the waterway during this time of the year will not burden their operations; and the Coast Guard will issue maritime advisories widely available to users of Boston Harbor and the Chelsea River, before the effective period, via marine information broadcasts.

Assistance for Small Entities

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture

Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

The Coast Guard analyzed this rule under Executive Order 13132, Federalism, and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

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

Energy Effects

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

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. From July 18 until August 16, 2002 add temporary § 165.T01–096 to read as follows:

§ 165.T01–096 Safety Zone: Chelsea River Safety Zone for McArdle Bridge Repairs, Chelsea River, East Boston, Massachusetts.

(a) *Location.* The following area is a safety zone: All waters of the Chelsea River 100-yards upstream and downstream of the McArdle Bridge, East Boston, MA.

(b) *Effective Date.* This section is effective from July 18 until August 16, 2002, and will be enforced from sunset until sunrise each day during this period.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port Boston.

(2) All vessel operators shall comply with the instructions of the Captain of the Port (COTP) or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

Dated: July 18, 2002.

C.M. DeLeo,

Commander, U. S. Coast Guard, Acting Captain of the Port, Boston, Massachusetts.

[FR Doc. 02–19241 Filed 7–25–02; 3:11 pm]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 01–316; FCC 02–203]

Petitions of Sprint PCS and AT&T for Declaratory Ruling Regarding CMRS Access Charges

AGENCY: Federal Communications Commission.

ACTION: Final rule; interpretation.

SUMMARY: In this document, the Commission responds to a primary jurisdiction referral from the U.S. District Court for the Western District of Missouri in an action styled *Sprint Spectrum L.P.* v. *AT&T Corp.* In its referral order, the court asked the Commission to decide two questions: whether Sprint may charge AT&T access fees for use of the Sprint PCS network, and if so, what rate may reasonably charged for such services. Based on the rules in effect during the period in dispute—from 1998 to the present—the Commission finds that Sprint PCS was not prohibited from charging AT&T access charges, but that AT&T was not required to pay such charges absent a contractual obligation to do so.

FOR FURTHER INFORMATION CONTACT: Steven Morris, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1530, or via the Internet at *sfmorris@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Declaratory Ruling in WT Docket No.

01–316 released on July 3, 2002. The full text of this document is available on the Commission's website in the Electronic Comment Filing System and for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554.

Background

In 1998, Sprint PCS, a CMRS provider, began sending invoices to AT&T, an IXC, asking that AT&T compensate Sprint PCS for the costs of terminating interexchange traffic bound for Sprint PCS's CMRS customers. Sprint PCS charged AT&T 2.8 cents per minute, the rate in the NECA tariff. AT&T refused to pay. As of September 1, 2001, the amount in dispute exceeded $60 million. In August 2000, Sprint PCS filed suit in state court in Missouri seeking recovery of the amount allegedly owed by AT&T. AT&T removed the case to the federal district court for the Western District of Missouri, and then requested that the court refer the issues to this Commission under the doctrine of primary jurisdiction. The court granted AT&T's request.

Both parties filed petitions for declaratory ruling on October 22, 2001, and the Commission sought comment on the petitions. In its petition, Sprint PCS asked the Commission to find that there is no federal law or Commission policy that bars Sprint PCS from recovering its call termination costs from AT&T. Sprint PCS also asked the Commission to find that AT&T's refusal to pay access charges to Sprint PCS is unreasonably discriminatory under section 202(a) of the Communications Act of 1934, as amended (the Act), and unjust and unreasonable under section 201(b) of the Act. In its petition, AT&T asked the Commission to find that CMRS carriers should continue to recover their costs from their end users, not by imposing access charges on IXCs. If CMRS carriers are permitted to impose access charges, AT&T asked that those charges be capped at the reciprocal compensation rate for local traffic and assessed only prospectively.

Discussion

Sprint PCS is correct that neither the Communications Act nor any Commission rule prohibits a CMRS carrier from attempting to collect access charges from an interexchange carrier. In 1994, in the *CMRS Second Report and Order,* the Commission addressed the question of which Title II requirements it should impose on CMRS carriers. The Commission decided that the market for retail CMRS services was sufficiently competitive that it was not necessary to regulate the retail rates of CMRS carriers, or to require (or permit) CMRS carriers to file tariffs for retail services. The Commission also decided temporarily to forbear from requiring or permitting the filing of tariffs for interstate access services offered by CMRS carriers. In a detariffed, deregulated environment such as this one, carriers are free to arrange whatever compensation arrangement they like for the exchange of traffic. Thus, for example, Sprint PCS and AT&T could agree that AT&T would pay Sprint PCS for the traffic exchange, that Sprint PCS would pay AT&T for the exchange, or that neither party would pay anything.

That Sprint PCS may seek to collect access charges from AT&T does not, however, resolve the question whether Sprint PCS may *unilaterally impose* such charges on AT&T. There are three ways in which a carrier seeking to impose charges on another carrier can establish a duty to pay such charges: pursuant to (1) Commission rule; (2) tariff; or (3) contract. As noted above, CMRS access services are subject to mandatory detariffing, and it is therefore undisputed that Sprint PCS could not have imposed access charges on AT&T pursuant to any tariff. Consequently, we need only consider whether Sprint PCS can impose access charges on AT&T pursuant to Commission rules or a contract between the parties.

We find that there is no Commission rule that enables Sprint PCS unilaterally to impose access charges on AT&T. In the *LEC–CMRS Interconnection NPRM,* the Commission specifically addressed the question whether CMRS carriers should be able to impose access charges on IXCs for calls that are exchanged through LEC facilities. The Commission tentatively concluded that CMRS carriers should be able to recover access charges from IXCs for the completion of interexchange calls in the same manner as LECs and competitive access providers (*i.e.,* by setting a rate to be paid by the IXC). The Commission noted, however, that some form of price regulation might be necessary if it adopted this tentative conclusion because CMRS carriers ''may have some market power over IXCs that need to terminate calls to a particular CMRS provider's customer.'' The Commission has never adopted a final decision adopting or implementing this tentative conclusion, nor has it resolved the question of the appropriate form of price regulation for CMRS access charges. Accordingly, our rules do not enable Sprint PCS unilaterally to impose access charges on AT&T.

We disagree with Sprint PCS that the forbearance policy adopted in the *CMRS Second Report and Order* enables Sprint PCS to impose unilaterally whatever rate it wishes, subject only to AT&T's right to file a complaint under section 208 of the Act. Our policy of forbearing from regulating CMRS access rates means that we will not regulate rates pursuant to the tariffing process set forth in sections 203, 204, and 205 of the Act. Our forbearance policy does not, however, mean that a detariffed carrier unilaterally can impose a charge merely by billing an IXC, as Sprint PCS has attempted to do here. This interpretation of the *CMRS Second Report and Order* is consistent with our general policies on detariffing, which are premised on the expectation that carriers will establish a contractual relationship with customers to whom they sell service. Even in a competitive situation, where the customer has a choice of carriers, a contract is beneficial to both the carrier and the customer because it makes clear the rights and obligations of both parties. A contract is particularly important in the case of terminating access services because, as Sprint PCS acknowledges, CMRS carriers possess market power with respect to termination of calls to their subscribers.

We also do not agree with Sprint PCS's argument that the 1987 *Cellular Interconnection Order* entitles it to collect access charges in the absence of an agreement with AT&T. The *Cellular Interconnection Order* established a principle of ''mutual switching compensation'' between CMRS carriers and LECs. The Commission stated that ''the principle of mutual switching compensation should apply to Type 2 but not Type 1 service. Cellular carriers and telephone companies are equally entitled to just and reasonable compensation for their provision of access, whether through tariff or by a division of revenues agreement.'' This statement regarding compensation for the ''provision of access'' clarified how the mutual switching compensation principle would apply to Type 1 and Type 2 interconnection, and the mechanism for compensation when it does apply (tariff or agreement). Following the *CMRS Second Report and Order,* tariffs no longer were available to CMRS carriers; therefore compensation is available only through an agreement.

There being no authority under the Commission's rules or a tariff for Sprint PCS unilaterally to impose access charges on AT&T, Sprint PCS is entitled to collect access charges in this case only to the extent that a contract imposes a payment obligation on AT&T.

While it is preferable for carriers to memorialize such contracts in a written agreement, the parties here agree that there is no written agreement or any express contract between AT&T and Sprint PCS. Nevertheless, the law recognizes—as has the Commission—that an agreement may exist even absent an express contract. Turning to the question whether there was such an agreement here, we believe that it is an issue that should be resolved by the Court. We interpret the Court's primary jurisdiction referral as seeking our input on the federal communications law questions related to this dispute. Because the existence of a contract is a matter to be decided under state law, we defer to the court to answer this question.

We offer the court two important observations regarding the regulatory regimes applicable to both IXCs and CMRS carriers during the period in dispute. First, CMRS carriers have never operated under the same calling party's network pays (CPNP) compensation regime as wireline LECs. Under a CPNP regime, LECs are compensated for terminating calls by the carrier of the customer that originates the call, not by the customer receiving the call. In contrast, since the advent of commercial wireless service, and continuing today, CMRS carriers have charged their end users both to make and to receive calls. Until 1998, when Sprint PCS first approached AT&T and other IXCs about payment for terminating access service, all CMRS carriers recovered the cost of terminating long distance calls from their end users, and not from interexchange carriers.

Second, there is a benefit to customers of both IXCs and CMRS carriers when CMRS carriers terminate IXC traffic. Because both carriers charge their customers for the service they provide, it does not necessarily follow that IXCs receive a windfall in situations where no compensation is paid for access service provided by a CMRS carrier. Nor do we believe that terminating access charges to CMRS carriers are necessarily imputed in IXCs' retail rates. The fact that the industry practice for 15 years has been for CMRS carriers to recover costs from their end users, together with the highly competitive nature of the interexchange market, makes it unlikely that an IXC that does not pay access charges to CMRS carriers somehow ''overcharges'' its customers.

We need not address Sprint PCS's claims under sections 201(b) or 202(a) at this time. Until the court determines the respective obligations of the parties, in particular whether AT&T has any obligation to pay Sprint PCS under a contract, the Commission has no basis on which to assess whether AT&T is subject to sections 201(b) or 202(a) in these circumstances and, if so, whether its actions violate those statutory provisions.

In addition to questions presented by the district court regarding our present policy on CMRS access charges, the pleadings filed in response to the declaratory ruling petitions raise a number of issues that relate either to the prospective treatment of CMRS–IXC interconnection or to issues beyond the scope of those presented for Commission resolution in the primary jurisdiction referral. Our order today clarifies requirements under our *existing* rules. Suggestions for changes to those rules will be addressed in our pending *Intercarrier Compensation* proceeding. Our goal in the *Intercarrier Compensation* proceeding is to move toward a unified compensation regime that eliminates the opportunity for arbitrage due to different regulatory treatment of different types of traffic. At that time we will address CMRS carriers' requests to be placed on equal footing with wireline carriers, whether through bill-and-keep or some other compensation mechanism.

In the interim, IXCs and CMRS carriers remain free to negotiate the rates, terms and conditions under which they will exchange traffic. Given the mutual benefit that CMRS and IXC customers realize when CMRS carriers terminate calls from IXCs, we anticipate that these negotiations will be conducted in good faith and prove fruitful for both sets of carriers. To the extent that carriers encounter problems with this regime, we encourage them to raise any concerns in the pending *Intercarrier Compensation* proceeding so that we may consider those concerns in any future compensation regime we may adopt.

Accordingly, *it is ordered* that, pursuant to the authority contained in sections 4(i), 201, and 332 of the Communications Act, as amended, 47 U.S.C. 154(i), 201, and 332, and section 1.2 of the Commission's rules, 47 CFR 1.2, the Petitions for Declaratory Ruling filed by AT&T and Sprint PCS are *denied* to the extent set forth herein.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–19180 Filed 7–29–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[WT Docket No. 99–168; FCC 02–204]

Service Rules for the 746–764 and 776–794 MHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule, petitions for reconsideration.

SUMMARY: This document responds to public safety concerns, in resolving two petitions for reconsideration filed in this proceeding. The document establishes mandatory coordination zones near public safety base stations, within which commercial base station operators will be required to coordinate their operations with public safety licensees. In adopting this document, the Commission intends to establish an anticipatory, rather than reactive, process for controlling interference to public safety operators in the upper 700 MHz band.

DATES: Effective July 30, 2002.

FOR FURTHER INFORMATION CONTACT: Stanley Wiggins, Attorney Advisor, 202–418–1310.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Memorandum Opinion and Order (MO&O) in WT Docket No. 99–168; FCC 02–204, adopted July 2, 2002, and released July 12, 2002. The complete text of this M O&O is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail at *qualexint@aol.com.* Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities by contacting Brian Millin at 202–418–7426, TTY 202–418–7365, or at *bmillin@fcc.gov.*

Synopsis of the Third Memorandum Opinion and Order

1. The Commission, in this Third Memorandum Opinion and Order (MO&O) continues its efforts to ensure the capabilities and responsiveness of both public safety and commercial wireless services in emergency situations. The MO&O responds to two petitions for reconsideration of the Second Memorandum Opinion and

Order (66 FR 4035, February 6, 2001) filed by the National Public Safety Telecommunications Council (NPSTC) and the Public Safety Wireless Network.

2. Specifically, the MO&O establishes ''mandatory coordination zones'' near public safety base stations, within which commercial base station operators will be required to coordinate their facility decisions with public safety licensees. This will establish an anticipatory, rather than reactive process for controlling interference to public safety operators in the upper 700 MHz band. The MO&O also reflects the Commission's interest in exploring measures that would approach the other side of the interference issue, providing for more robust public safety signals rather than simply constraining Commercial Mobile Radio Service (CMRS) signals.

3. NTPSC requests that the Commission restore the original 700 MHz band plan's limitation of commercial base stations to the lower band, and argues in favor of substantially more stringent out-of-band emission (OOBE) limits. The MO&O concludes that commercial base station transmitters should continue to be permitted in the upper band and that more stringent OOBE limits are not required to protect public safety operations. This discussion may be found in paragraphs 10 through 23 of the full text of the MO&O.

4. The Commission does, however, recognize the public safety community's concern over the substantially greater burdens of resolving, rather than preventing, instances of problematic interference. The Commission determines, therefore, that additional anticipatory protections should be adopted to minimize the possibility for base-to-base interference. The Commission, in the MO&O, thus establishes a ''mandatory coordination zone'' surrounding 700 MHz public safety base stations, and will require any commercial 700 MHz carrier to coordinate with the public safety community any base stations planned within that zone. If a commercial carrier has already begun operating a base station within the ''mandatory coordination zone'' of a future public safety base station, the carrier must coordinate the operation of its base station with the licensee of any such public safety base station and relocate or modify the CMRS base station if necessary. Details of the ''mandatory coordination zone'' may be found in paragraphs 17 through 19 of the MO&O and in the ''Rule Changes'' section of this summary.

5. NPTSC also recommends that the Commission adopt a position of ''zero tolerance of interference to public safety.'' The Commission, as discussed in paragraphs 24 through 27 of the MO&O, declines to revise the 700 MHz service rules to adopt a ''zero tolerance'' approach as a means for limiting the effects of out-of-band interference, because the present 700 MHz band service rules establish a much more stringently protected environment for public safety operations than the service rules applicable to other bands. The ''zero tolerance'' approach would replace the Commission's traditional reliance on actual interference as a basis for mitigation measures with an anticipatory standard that would be both overbroad in concept and imprecise in application.

6. Finally, the MO&O expresses the Commission's interest in exploring proposals to increase public safety signal strength levels in the upper 700 MHz band. As indicated in paragraph 30 of the MO&O, should the public safety community wish to consider revising public safety signal strength standards governing public safety operators in the Upper 700 MHz band, the Commission would be receptive to considering such proposals.

Administrative Matters

7. The MO&O adopts a coordination regulation which constitutes a ''third party contact'' burden as defined by the Paperwork Reduction Act of 1995. Section 213 of the Consolidated Appropriation Act, 2000 states that the Regulatory Flexibility Act (as well as certain provisions of the Contract with America Advancement Act of 1996 and the Paperwork Reduction Act of 1995) shall not apply to the rules and competitive bidding procedures governing the frequencies in the 746–806 MHz band (currently used for television broadcasts on channels 60–69). In particular, this exemption extends to the requirements imposed by Chapter 6 of Title 5, United States Code, Section 3 of the Small Business Act (15 U.S.C. 632) and section 3507 and 3512 of Title 44 United States Code. Consolidated Appropriations Act, 2000. Public Law 106–113, 113 Stat. 2502, Appendix E, section 213(a)(4)(A)–(B); *See* 145 Cong. Rec. H12493–94 (November 17, 1999); 47 U.S.C.A section 337, note at section 213(a)(4)(A)–(B).

8. *Authority.* This action is taken pursuant to Sections 1, 4(i), 7, 10, 201, 202, 208, 214, 301, 303, 307, 308, 309(j), 309(k), 310, 311, 315, 316, 317, 319, 324, 331, 332, 336, 337 and 614 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157, 160, 201, 202, 208, 214, 301, 303, 307, 308, 309(j), 309(k), 310, 311, 315, 316, 317, 319, 324, 331, 332, 336, 337, and 534, and the Consolidated Appropriations Act, 2000, Public Law 106–113, 113 Stat. 1501, Section 213.

Ordering Clauses

9. Part 27 of the Commission's Rules is revised as set forth in the Rule Changes section of this summary, and, in accordance with Section 213 of the Consolidated Appropriations Act, 2000, Public Law 106–113, 113 Stat. 1501 (1999), these rules shall be effective July 30, 2002.

10. The Petitions for Reconsideration filed by the National Public Safety Telecommunications Council and the Public Safety Wireless Network are denied as indicated in this summary.

11. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this MO&O, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 27

Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed in the preamble, 47 CFR part 27 is amended to read as follows:

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

1. The authority citation for part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

2. Section 27.303 is added to read as follows:

§ 27.303 Upper 700 MHz commercial and public safety coordination zone.

(a) *General.* CMRS operators are required, prior to commencing operations on fixed or base station transmitters on the 777–792 MHz band that are located within 500 meters of existing or planned public safety base station receivers, to submit a description of their proposed facility to a Commission-approved public safety coordinator.

(1) The description must include, at a minimum;

(i) The frequency or frequencies on which the facility will operate;

(ii) Antenna location and height;
(iii) Type of emission;
(iv) Effective radiated power;
(v) A description of the area served and the operator's name.

(2) It is the CMRS operator's responsibility to determine whether referral is required for stations constructed in its area of license. Public safety base stations are considered ''planned'' when public safety operators have notified, or initiated coordination with, a Commission-approved public safety coordinator.

(b) CMRS operators must wait at least 10 business days after submission of the required description before commencing operations on the referenced facility, or implementing modifications to an existing facility.

(c) The potential for harmful interference between the CMRS and public safety facilities will be evaluated by the public safety coordinator.

(1) With regard to existing public safety facilities, the coordinator's determination to disapprove a proposed CMRS facility (or modification) to be located within 500 meters of the public safety facilities will be presumed correct, but the CMRS operator may seek Commission review of such determinations. Pending Commission review, the CMRS operator will not activate the facility or implement proposed modifications.

(2) With regard to proposed public safety facilities, the coordinator's determination to disapprove a proposed CMRS facility (or modification) to be located within 500 meters of the public safety facilities will be presumed correct, but the CMRS operator may seek Commission review and, pending completion of review, operate the facility during construction of the public safety facilities. If coordination or Commission review has not been completed when the public safety facilities are ready to operate, the CMRS operator must cease operations pending completion of coordination or Commission review. Such interim operation of the CMRS facility within the coordination zone (or implementation of modifications) will not be relied on by the Commission in its subsequent review and determination of measures necessary to control interference, including relocation or modification of the CMRS facility.

(d) If, in the event of harmful interference between facilities located within 500 meters proximity, the parties are unable, with the involvement of the coordinator, to resolve the problem by mutually satisfactory arrangements, the Commission may impose restrictions on the operations of any of the parties involved.

[FR Doc. 02–19179 Filed 7–29–02; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MM Docket No. 95–31; FCC 02–192]

Reexamination of Comparative Standards for Noncommercial Educational Applicants

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial of petitions for further reconsideration.

SUMMARY: In this document the Commission denies petitions for further reconsideration of the rules and procedures used to compare reserved channel noncommercial educational (''NCE'') broadcast applicants. The Commission rejects suggestions that it adopt relatively small alterations to, or exemptions from, the current standards, finding that such changes are unwarranted. The effect of this document is to affirm the standards for comparing mutually exclusive NCE applicants on reserved channels.

FOR FURTHER INFORMATION CONTACT: Irene Bleiweiss, Media Bureau, (202) 418–2700, Internet address: *ibleiwei@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a synopsis of a Memorandum Opinion and Second Order on Reconsideration adopted on June 27, 2002 and released on July 5, 2002. The Memorandum Opinion and Second Order is also available during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Washington, DC 20554, Room CY–B402. It also appears on the internet at www.fcc.gov/mb in the headlines section.

Synopsis

In February 2000 and April 2001 the Commission adopted new procedures for comparing mutually exclusive applications to construct noncommercial educational broadcast stations on channels reserved for such use. For FM and FM translator applications the procedures begin with a preliminary analysis of fair distribution of service (FM) or fill-in service (FM translator). If the preliminary analysis is not determinative, the applicants are compared using a point system, which selects the applicant receiving the highest score. The point system also is used to compare applicants for noncommercial educational television stations. The reserved channel selection rules are published at 47 CFR 73.7000 through 47 CFR 73.7005. The Memorandum Opinion and Second Order denies petitions for further reconsideration, leaving unchanged the reserved channel selection rules, related rules and procedures announced earlier in this proceeding. Specifically, the Commission declined to adopt a suggestion to count, in the reserved channel fair distribution of service analysis, certain longstanding NCE stations operating on nonreserved channels. Also unchanged is use of a June 4, 2001 ''look back'' date for all pending applicants in closed groups to establish their non-technical qualifications for the point system. The Commission rejected a suggestion that, without a change in the look back date, older organizations might qualify for points as ''established local applicants'' even if the organization existed only on paper. It has never been the Commission's intent to award such points to organizations engaged in virtually no activities in the community of interest. The Commission also affirmed its requirement that the organization itself, not only its governing board, must be local for two years to be considered ''established.'' Finally, the Commission declined to modify its rules concerning the applicability of attribution standards in NCE contexts.

Procedural Matters

This Memorandum Opinion and Second Order on Reconsideration promulgates no additional final rules, and we received no petitions for reconsideration of the Final Regulatory Flexibility Certification. Therefore, no additional Regulatory Flexibility Analysis is required by the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The previous final certification made in this proceeding remains unchanged. The actions taken in this Memorandum Opinion and Second Order on Reconsideration have been analyzed with respect to the Paperwork Reduction Act of 1995, and found to impose no new or modified reporting and recordkeeping requirements or burdens on the public.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–19181 Filed 7–29–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 01–290; FCC 02–176]

Implementation of the Cable Television Consumer Protection and Competition Act of 1992 and the Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act—Sunset of Exclusive Contract Prohibition

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, through this document, retains for five years, until October 5, 2007, the prohibition on exclusive contracts contained in section 628(c)(2)(D) of the Communications Act of 1934, as amended. Section 628(c)(2)(D) generally prohibits, in areas served by a cable operator, exclusive contracts for satellite cable programming or satellite broadcast programming between vertically integrated programming vendors and cable operators. Under section 628(c)(5), the prohibition on exclusive programming contracts contained in section 628(c)(2)(D) would cease to be effective on October 5, 2002, ten years after its enactment through the 1992 Cable Act, unless the Commission found that such prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming. To comply with section 628, the Commission conducted a proceeding in order to determine whether the exclusive contract prohibition should sunset. As a result of conducting its proceeding, the Commission found in this document that while the landscape of the market for the distribution of multichannel video programming changed for the better since 1992, the prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming.

DATES: Effective August 14, 2002.

FOR FURTHER INFORMATION CONTACT: Karen A. Kosar, Media Bureau at 202–418–1053 or via the Internet at *kkosar@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in Docket No. 01–290, FCC 02–176. The complete text of this Report and Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, Courtyard Level, 445 12th Street, SW., Washington, DC, 20554. This document may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.* It is also available on the Commission's website at *http://www.fcc.gov.*

Synopsis of the Report and Order

1. The Report and Order is issued in accordance with section 628(c)(5) of the Communications Act of 1934, as amended. Section 628(c)(2)(D), enacted through the 1992 Cable Act, generally prohibits, in areas served by a cable operator, exclusive contracts for satellite cable programming or satellite broadcast programming between vertically integrated programming vendors and cable operators. Section 628(c)(5) directs that the prohibition on exclusive contracts contained in section 628(c)(2)(D) shall cease to be effective on October 5, 2002, ten years after its enactment, unless the Commission finds that such prohibition ''continues to be necessary to preserve and protect competition and diversity in the distribution of video programming.'' The Commission issued a Notice of Proposed Rulemaking, 66 FR 54972, October 31, 2001, seeking comment on the possible sunset of Section 628(c)(2)(D). The Report and Order finds that the exclusivity prohibition should be retained for five years, until October 5, 2007.

2. In examining whether the exclusivity prohibition ''continues to be necessary,'' the Commission sought guidance in the concerns Congress expressed in 1992, however, the Commission's analysis places substantial weight on whether, in the absence of the exclusivity prohibition, vertically integrated programmers would currently have the incentive and ability to favor their affiliated cable operators over nonaffiliated cable operators and program distributors using other technologies and, if they would, whether such behavior would result in a failure to protect and preserve competition and diversity in the distribution of video programming. The Report and Order recognizes that enforcement of the exclusivity prohibition against all vertically integrated programmers may not always serve the public interest and notes that retention of the prohibition does not foreclose all exclusive arrangements between vertically integrated programmers and cable operators. The Report and Order finds that Congress explicitly recognized the existence of such programming by creating a public interest exception to the prohibition. The Report and Order acknowledges that significant changes have taken place in the multichannel video programming distribution (''MVPD'') market over the past ten years, and yet finds that vertically integrated programmers generally retain the incentive and ability to favor their cable affiliates over nonaffiliated cable operators and other competitive MVPDs to such a degree that, in the absence of the prohibition, competition and diversity in the distribution of video programming would not be preserved and protected.

3. In addressing the ability of programmers to favor their cable affiliates over other MVPDs, the Report and Order finds that access to vertically integrated programming continues to be necessary in order for competitive MVPDs to remain viable in the marketplace. In that regard, an MVPD's ability to provide service that is competitive with an incumbent cable operator is significantly harmed if denied access to ''must have'' vertically integrated programming for which there are no good substitutes. The Report and Order also finds that vertically integrated programmers retain the incentive to favor their affiliated cable operators over competitive MVPDs such that competition and diversity in the distribution of video programming would not be preserved and protected. In that regard, the Report and Order finds that cable operators today continue to dominate the MVPD marketplace and that horizontal consolidation and clustering combined with affiliation with regional programming, have contributed to cable's overall market dominance. In addition, the Report and Order determines that an economic basis for denial of access to vertically integrated programming to competitive MVPDs continues, and that such denial would harm such competitors' ability to compete for subscribers. The Report and Order further finds that a partial sunset of the exclusivity prohibition is not warranted at this time.

4. The Report and Order also finds that the scope of the exclusivity prohibition should not be narrowed to apply to particular types of programming or specified geographic

areas. The Report and Order also rejects expanding the prohibition to terrestrially delivered programming or non-vertically integrated programming. Finally, during the year before the expiration of the exclusivity prohibition on October 5, 2007, the Commission will undertake a review to again determine whether the prohibition continues to be necessary. During the five-year period, the Commission will continue to evaluate petitions for exclusivity, under the public interest factors established by Congress. If, however, a dramatic shift in the competitive landscape should occur before five years, the Commission may initiate its review earlier on its own motion or in response to a petition.

Paperwork Reduction Act Analysis

5. Although the Notice of Proposed Rulemaking (NPRM) indicated that some of the issues on which we sought comment might entail a modified information collection subject to the Paperwork Reduction Act of 1995 (''PRA''), Public Law 104–13, the rule change adopted herein does not affect the information collection previously approved by the Office of Management and Budget (''OMB'') under Control Number: 3060–0551.

Final Regulatory Flexibility Analysis

6. As required by the Regulatory Flexibility Act of 1980, as amended, (''RFA''), an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities was incorporated in the Notice of Proposed Rulemaking in CS Docket No. 01–290. The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. The comments received are discussed below. This present Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Report and Order

7. The purpose of section 628 of the Communications Act is to promote the public interest, convenience, and necessity by increasing competition and diversity in the multichannel video market, to increase the availability of satellite cable programming and satellite broadcast programming to persons in rural and other areas not currently able to receive such programming, and to spur the development of communications technologies, for example new MVPDs. Specifically, this proceeding involves section 628(c)(2)(D), which prohibits, in areas served by a cable operator, exclusive contracts for satellite cable programming or satellite broadcast programming between vertically integrated programming vendors and cable operators unless the Commission determines that such exclusivity is in the public interest. The exclusivity prohibition set forth in section 628(c)(2)(D) ceases to be effective after a 10-year period ending October 5, 2002. Section 628(c)(5) of the Communications Act requires that restriction on exclusive contracts, within areas served by cable, are to sunset unless the Commission finds, in a proceeding conducted during the last year of such 10-year period, that such prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming. Pursuant to this statutory mandate, we have concluded that the exclusivity prohibition set forth in section 628(c)(2)(D) continues to be necessary to preserve and protect competition and diversity in the distribution of video programming because cable MSOs continue to possess significant market power and continue to control a significant proportion of programming, to the detriment of DBS and other competitive MVPDs, some of which are smaller entities. Retention of the exclusivity prohibition in this proceeding addresses the competitive imbalance that continues to exist in the marketplace by maintaining and securing the ability of competitive MVPDs to access vertically integrated programming.

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

8. The American Cable Association (''ACA'') filed comments and states that access to satellite programming is essential for smaller cable systems and a sunset of the prohibition could result in small cable companies losing access to over one-third of their satellite programming services. To remedy the situation, the ACA urges the Commission to extend the sunset of the prohibition on exclusive contracts, as the loss of access rights to particular programming would have a significant impact on the continuing viability of many small cable businesses. The Commission considered the potential economic impact on small entities because this issue was pertinent to our determination whether to retain or sunset the exclusivity prohibition and it was a central concern raised in some comments. Cable operators control a formidable share of the market with 78 percent of MVPD subscribers receiving their video programming from a cable operator. DBS has made competitive strides to the point where its share of total MVPD subscribers has grown to 18 percent. But other competitive MVPDs, such as SMATV providers, OVS operators, MMDS, and cable overbuilders, to name a few of the competitive alternatives to cable, have not made similar inroads into cable's market dominance. In general, comments filed by competitive MVPDs, many of which are smaller entities, assert that the market is dominated by cable and not fully competitive. In enacting the exclusivity prohibition in 1992, Congress concluded that because cable MSOs dominated the video environment vertically integrated program suppliers had the incentive and ability to favor their affiliated cable operators over other multichannel programming distributors. Competitive MVPDs assert that the market dominance of cable has not significantly changed in the years since the enactment of the provision. They contend that there is a likelihood that access to particular programming affiliated with cable operators will be threatened and compromised if the prohibition against exclusivity contracts were allowed to sunset. Individual proposals as to how to address this problem generally support the position that the exclusivity prohibition should be retained. If the prohibition were not retained, these entities will not have access to significant programming that is vital to their subscribers. Comments from competitive MVPDs regarding the importance of the prohibition to their economic viability and survival and the Commission's decision and justification to continue to retain the exclusivity prohibition are discussed in the Section entitled Incentive and Ability in this Report and Order.

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

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

10. Small MVPDs. The SBA has developed a small business size standard for cable and other program distribution services, ''which includes all such companies generating $11 million or less in revenue annually. This category includes, among other, cable operators, closed circuit television services, direct broadcast satellite services, multipoint distribution services, open video systems (''OVS''). Satellite master antenna television (''SMATV'') systems, and subscription television services. According to the Census Bureau data from 1992, there were 1,788 total cable and other pay television services and 1,423 had less than $11 million in revenue. We address below each service individually to provide a more precise estimate of small entities.

11. Cable Systems. The Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide. We last estimated that there were 1439 cable operators that qualified as small cable companies. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1439 small entity cable system operators that may be affected by the decisions and rules adopted in this Report and Order.

12. The Communications Act, as amended, also contains a size standard for a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that there are 67,700,000 subscribers in the United States. Therefore, an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 677,000 subscribers or less totals approximately 1450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

13. Open Video Systems. Because OVS operators provide subscription services OVS falls within the SBA-recognized definition of ''Cable and Other Pay Television Services. This definition provides that a small entity is one with $ 11 million or less in annual receipts. The Commission has certified 25 OVS operators with some now providing service. Affiliates of Residential Communications Network, Inc. (''RCN'') received approval to operate OVS systems in New York City, Boston, Washington, D.C. and other areas. RCN has sufficient revenues to assure us that they do not qualify as small business entities. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

14. Program Producers and Distributors. The Commission has not developed a definition of small entities applicable to producers or distributors of cable television programs. Therefore, we will use the SBA classifications of Motion Picture and Video Tape Production (NAICS Code 51211), Motion Picture and Video Tape Distribution (NAICS Code 42199), and Theatrical Producers (Except Motion Pictures) and Miscellaneous Theatrical Services (NAICS Codes 56131, 71111, 71141, 561599, 71151, 71112, 71132, 51229, 53249). These SBA definitions provide that a small entity in the cable television programming industry is an entity with $21.5 million or less in annual receipts for NAICS Codes 56131, 51211, 42199, and 51212, and $5 million or less in annual receipts for NAICS Codes 56131, 71111, 71141, 561599, 71151, 71112, 71131, 71132, 51229, and 53249. Census Bureau data indicate the following: (a) There were 7,265 firms in the United States classified as Motion Picture and Video Production (NAICS Code 51211), and that 6,987 of these firms had $16.999 million or less in annual receipts and 7,002 of these firms had $24.999 million or less in annual receipts; (b) there were 1,139 firms classified as Motion Picture and Video Tape Distribution (NAICS Codes 42199 and 51212), and 1007 of these firms had $16.999 million or less in annual receipts and 1013 of these firms had $24.999 million or less in annual receipts; and (c) there were 5,671 firms in the United States classified as Theatrical Producers and Services (NAICS Codes 56131, 71111, 71141, 561599, 71151, 51229, and 53249), and 5627 of these firms had $4.999 million or less in annual receipts.

15. Each of these NAICS categories is very broad and includes firms that may be engaged in various industries, including cable programming. Specific figures are not available regarding how many of these firms exclusively produce and/or distribute programming for cable television or how many are independently owned and operated. Thus, we estimate that our rules may affect approximately 6,987 small entities primarily engaged in the production and distribution of taped cable television programs and 5,627 small producers of live programs that may be affected by the rules adopted in this proceeding.

16. Direct Broadcast Satellite Service (''DBS''). Because DBS provides subscription services, DBS falls within the SBA-recognized definition of ''Cable and Other Pay Television Services.'' This definition provides that a small entity is one with $11 million or less in annual receipts. There are four licensees of DBS services under part 100 of the Commission's rules. Three of those licensees are currently operational. Two of the licensees that are operational have annual revenues that may be in excess of the threshold for a small business. The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. DBS service requires a great investment of capital for operation, and we acknowledge, despite the absence of specific data on this point, that there are entrants in this field that may not yet have generated $11 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

17. Home Satellite Dish Service (''HSD''). Because HSD provides subscription services, HSD falls within the SBA-recognized definition of ''Cable and Other Pay Television Services.'' This definition provides that a small entity is one with $11 million or less in annual receipts. The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled. HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase

an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming package. Thus, HSD users include: (1) Viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion.

18. According to the most recently available information, there are approximately four program packagers nationwide offering packages of scrambled programming to retail consumers. These program packagers provide subscriptions to approximately 1,476,700 subscribers nationwide. This is an average of about 370,000 subscribers per program package. This is smaller than the 400,000 subscribers used in the commission's definition of a small MSO. Furthermore, because this is an average, it is likely that some program packagers may be substantially smaller.

19. Multipoint Distribution Service (''MDS''), Multichannel Multipoint Distribution Service (''MMDS'') and Local Multipoint Distribution Service (''LMDS''). MMDS systems, often referred to as ''wireless cable,'' transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (''MDS'') and Instructional Television Fixed Service (''ITFS''). LMDS is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.

20. In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues of less than $40 million in the previous three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (''BTAs''). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. As noted, the SBA has developed a definition of small entities for pay television services, which includes all such companies generating $11 million or less in annual receipts. This definition includes multipoint distribution services, and thus applies to MDS licensees and wireless cable operators that did not participate in the MDS auction. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of $11 million annually. Therefore, for purposes of the IRFA, we find there are approximately 850 small MDS providers as defined by the SBA and the Commission's auction rules.

21. The SBA definition of small entities for pay television services, which includes such companies generating $11 million in annual receipts, seems reasonably applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business. However, we do not collect annual revenue data for ITFS licensees, and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

22. Additionally, the auction of the 1,030 LMDS licenses began on February 18, 1998 and closed on March 25, 1998. The Commission defined ''small entity'' for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding calendar years. These regulations defining ''small entity'' in the context of LMDS auctions have been approved by the SBA. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

23. In sum, there are approximately a total of 2,000 MDS/MMDS/LMDS stations currently licensed. Of the approximate total of 2,000 stations, we estimate that there are 1,595 MDS/MMDS/LMDS providers that are small businesses as deemed by the SBA and the Commission's auction rules.

24. Satellite Master Antenna Television (''SMATV'') Systems. The SBA definition of small entities for ''Cable and Other Pay Television Services'' specifically includes SMATV services and, thus, small entities are defined as all such companies generating $11 million or less in annual receipts. Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December 1995. Other estimates indicate that SMATV operators serve approximately 1.5 million residential subscribers as of June 2000. The best available estimates indicate that the largest SMATV operators serve between 15,000 and 55,000 subscribers each. Most SMATV operators serve approximately 3,000–4,000 customers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we believe that a substantial number of SMATV operators qualify as small entities.

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

25. In this Report and Order the Commission concludes that section 628(c)(2)(D) of the Communications Act continues to be necessary to preserve and protect competition and diversity in the video programming marketplace. The Report and Order does not present any specific reporting, recordkeeping or other compliance requirements adopted herein, other than complying with the prohibition against engaging in exclusive contracting between cable operators and vertically integrated program suppliers. Thus, the classes of small entities that potentially will be affected and required to comply with the continuing prohibition includes entities conducting business in these areas.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

26. The RFA requires an agency to describe any significant alternatives that it has considered in proposing regulatory approaches, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2)

the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

27. In the NPRM the Commission sought comment on whether section 628(c)(2)(D) should cease to be effective, pursuant to the sunset provision in section 628(c)(5), or whether section 628(c)(2)(D) should be retained. Thus, the NPRM invited comments on a number of issues that may significantly impact small entities. In this Report and Order, the Commission discusses the effect that section 628(c)(2)(D) has had on the video programming marketplace and provides justification for retention of the provision. In enacting the exclusivity prohibition contained in section 628(c)(2)(D), the underlying rationale was that vertically integrated programming suppliers had the incentive and ability to favor in an unfair manner, affiliated cable operators in programming arrangements. Thus, the prohibition served to guard against such a practice and helped to encourage competition and diversity. While the provision has succeeded to a certain extent in achieving its objectives, the video landscape has not changed markedly since the inception of the exclusivity protection provision. Cable MSOs continue to hold market power, and while DBS has increased its subscribership levels in recent years, the levels do not compare to cable. Other smaller video competitors, such as MMDS, OVS, SMATV and HDS, have not fared as well and represent a small percentage of MVPD subscribership. These competitive MVPDs argue that they continue to face hurdles in seeking access to critical programming because cable MSOs continue to control essential video programming services and are concerned about the potential loss of such programming absent the section 628(c)(2)(D) prohibition. In its Initial Regulatory Flexibility Analysis Comments, while it supports extending the exclusivity prohibition, ACA suggests that an additional alternative that would achieve the objective of the statute and minimize the impact on small entities is exemption from coverage of the rule, or any part thereof, for small entities.

28. In this Report and Order we discuss the present state of competition among MVPDs and the availability of vertically integrated programming in the section entitled Incentive and Ability. We conclude that while there is a wide variety of programming services available from non-vertically integrated providers in recent years, nevertheless the market dominance of cable remains a concern because of the threat that cable MSOs will engage in exclusive arrangements and deprive competitive MVPDs and their subscribers of ''must have,'' vertically integrated programming.

29. We considered the possibility of sunsetting section 628(c)(2)(D). However, we recognized that the marketplace had not progressed to the point where there were assurances that there is significant enough competition in the cable industry to forestall the domination by cable of ''must have'' programming. Therefore, we retain section 628(c)(2)(D) because it prohibits, in areas served by a cable operator, exclusive contracts for satellite cable programming or satellite broadcast programming between vertically integrated programming vendors and cable operators. The decision reached in this Report and Order to retain the prohibition against engaging in exclusive contracts allows for greater competition and diversity, which provides for increased participation by various competitive MVPDs and programming suppliers, a number of which are smaller entities. Therefore we conclude that our decision to retain section 628(c)(2)(D) benefits smaller entities as well as larger entities.

Report to Congress

30. The Commission will send a copy of the Report and Order, including this RFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the Report and Order, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

Ordering Clauses

31. Accordingly, *it is ordered* that, pursuant to authority found in sections 4(i), 303(r) and 628 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 548, the Commission's rules *are hereby amended* as set forth in the rule changes.

32. *It is further ordered* that the rule adopted herein *will become effective* August 14, 2002.

33. *It is further ordered* that the Commission's Consumer and Government Affairs Bureau *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel of the Small Business Administration.

List of Subjects in 47 CFR Part 76

Administrative practice and procedure and Cable television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 76 as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.1002 is amended by revising paragraph (c)(6) to read as follows:

§ 76.1002 Specific unfair practices prohibited.

* * * * *

(c) * * *

(6) *Sunset provision.* The prohibition of exclusive contracts set forth in paragraph (c)(2) of this section shall cease to be effective on October 5, 2007, unless the Commission finds, during a proceeding to be conducted during the year preceding such date, that said prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming.

* * * * *

[FR Doc. 02–19182 Filed 7–29–02; 8:45 am]

BILLING CODE 6712–02–P

DEPARTMENT OF DEFENSE

48 CFR Parts 204, 215, 219, 225, and 252 and Appendix G to Chapter 2

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement to update activity names and addresses, reference numbers, clause titles, and clause dates.

EFFECTIVE DATE: July 30, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations Council, OUSD (AT&L) DP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0311; facsimile (703) 602–0350.

List of Subjects in 48 CFR Parts 204, 215, 219, 225, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR parts 204, 215, 219, 225, and 252 and Appendix G to Chapter 2 are amended as follows:

1. The authority citation for 48 CFR Parts 204, 215, 219, 225, and 252 and Appendix G to subchapter I continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 204—ADMINISTRATIVE MATTERS

2. Section 204.7202–1 is amended in paragraph (a) by revising the last sentence to read as follows:

204.7202–1 CAGE codes.

(a) * * * DoD 4000.25–5–M, Military Standard Contract Administration Procedures (MILSCAP), and Volume 7 of DoD 4100.39–M, Federal Logistics Information System (FLIS) Procedures Manual, prescribe use of CAGE codes.

* * * * *

PART 215—CONTRACTING BY NEGOTIATION

215.407–4 [Amended]

3. Section 215.407–4 is amended as follows:

a. In paragraph (b)(2), in the first and last sentences, by removing ''5000.2R'' and adding in its place ''5000.2''; and

b. In paragraph (c)(2)(A) introductory text, in the second parenthetical, by removing ''31.001'' and adding in its place ''2.101''.

215.407–5–70 [Amended]

4. Section 215.407–5–70 is amended in paragraph (a)(2) by removing ''31.001'' and adding in its place ''2.101''.

PART 219—SMALL BUSINESS PROGRAMS

219.708 [Amended]

5. Section 219.708 is amended in paragraphs (b)(1)(A) and (B) by removing ''FAR 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan'' and adding in its place ''FAR 52.219–9, Small Business Subcontracting Plan''.

PART 225—FOREIGN ACQUISITION

225.103 [Amended]

6. Section 225.103 is amended in paragraph (b)(iii)(C) by removing ''Chief of the Technical Operations Division'' and adding in its place ''Director, Pharmaceuticals Group''.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212–7001 [Amended]

7. Section 252.212–7001 is amended as follows:

a. By revising the clause date to read ''(JUL 2002)''; and

b. In paragraph (c), in entry ''252.247–7023'' by removing ''(MAR 2000)'' and adding in its place ''(MAY 2002)''.

8. Appendix G to Chapter 2 is amended in Part 3 by removing entry ''N68558'' and adding, in alpha-numerical order, entries ''N62558'' and ''N65886'' to read as follows:

Appendix G—Activity Address Numbers

* * * * *

Part 3—Navy Activity Address Numbers

* * * * *

N62558, 3H Officer-in-Charge, Naval Regional Contracting Center, Detachment London, PSC 821, Box 45, FPO AE 09421–1300

* * * * *

N65886, (MAJ00019), GV Commanding Officer, Naval Air Depot, Naval Air Station, Contracts Management Office, Building 101, Wasp Street, Jacksonville, FL 32212–0016

* * * * *

9. Appendix G to Chapter 2 is amended in Part 5 by revising entry ''F29650'' to read as follows:

Part 5—Air Force Activity Address Numbers

* * * * *

F29650, R3 377 CONS, 2000 Wyoming Boulevard SE, Kirtland AFB, NM 87117–5606

* * * * *

10. Appendix G to Chapter 2 is amended by revising Parts 7 through 13 to read as follows:

Part 7—Defense Information Systems Agency Activity Address Numbers

DCA100, VC DITCO–NCR, ATTN: DTN, 701 South Courthouse Road, Arlington, VA 22204–2199 (ZD10)

DCA200, VP Defense Information Technology Contracting Organization, Contracting Directorate, ATTN: AQSS, 2300 East Drive, Scott AFB, IL 62225–5406 (ZD11)

DCA300, 1F DITCO-Pacific, ATTN: AQP, 1080 Vincennes Avenue, Suite 100, Pearl Harbor, HI 96860–4535 (ZD13)

DCA400, WK DITCO-Europe, ATTN: AQE, Unit 4235, Box 375, APO AE 09136–5375 (ZD14)

DCA500, KH DITCO-Alaska, ATTN: AQA, 10441 Kuter Avenue, Suite 209 Elmendorf AFB, AK 99506–2615 (ZD15)

Part 8—National Imagery and Mapping Agency Activity Address Numbers

NMA100, BQ National Imagery and Mapping Agency, Contracting Support for Information Services, ATTN: ACI/D–88, 4600 Sangamore Road, Bethesda, MD 20816–5003 (ZM10)

NMA201, Y2 National Imagery and Mapping Agency, Contracting Support for Acquisition Directorate, ATTN: ACA/N–43, 4600 Sangamore Road, Bethesda, MD 20816–5003 (ZM21)

MA301, V2 National Imagery and Mapping Agency, Contracting Support for Directorate of Operations, ATTN: ACME/D–5, 4600 Sangamore Road, Bethesda, MD 20816–5003 (ZM31)

NMA302, YQ National Imagery and Mapping Agency, Contracting Support for Directorate of Operations, ATTN: ACMW/L–13, 3200 South Second Street, St. Louis, MO 63118–3399 (ZM32)

NMA401, 8Y National Imagery and Mapping Agency, Washington Contracting Center, ATTN: ACW/D–6, 4600 Sangamore Road, Bethesda, MD 20816–5003 (ZM41)

NMA402, YZ National Imagery and Mapping Agency, St. Louis Contracting Center, ATTN: ACS/L–13, 3200 South Second Street, St. Louis, MO 63118–3399 (ZM42)

Part 9—Defense Threat Reduction Agency Activity Address Numbers

DTRA01, 8Z Defense Threat Reduction Agency (AL), DTRA Annex, 8725 John J. Kingman Road, MSC 6201, Fort Belvoir, VA 22060–6201 (ZT01)

DTRA02, 0N Defense Threat Reduction Agency, Albuquerque Support Office (ALTK), 1680 Texas Street SE, Kirtland AFB, NM 87117–5669 (ZT02)

Part 10—Miscellaneous Defense Activities Activity Address Numbers

MDA112, E0 T–ASA, Sacramento Contracting Office, 3230 Peacekeeper Way, Building 209, McClellan, CA 95652–2600 (ZP12)

MDA113, VE T–ASA, March Contracting Office, 1363 Z Street, Building 2730, March ARB, CA 92518–2017 (ZP13)

MDA220, BC Defense Finance and Accounting Service, Acquisition Services Directorate—Arlington, 1931 Jefferson Davis Highway, Room 905, Arlington, VA 22240–5291 (ZF22)

MDA230, SU Defense Finance and Accounting Service, Acquisition Services Directorate—Cleveland, 1240 East 9th Street, Cleveland, OH 44199–2055 (ZF23)

MDA240, 9R Defense Finance and Accounting Service, Acquisition Services Directorate—Columbus, 3990 East Broad Street, Building 21, Columbus, OH 43215–1152 (ZF24)

MDA250, SV Defense Finance and Accounting Service, Acquisition Services Directorate—Denver, 6760 East Irvington Place, Denver, CO 80279–8000 (ZF25)
MDA260, ST Defense Finance and Accounting Service, Acquisition Services Directorate—Indianapolis, 8899 East 56th Street, Building 1, Room 216, Indianapolis, IN 46249–0240 (ZF26)
MDA280, SY Defense Finance and Accounting Service, Acquisition Services Directorate—Kansas City, 1500 East 95th Street, Kansas City, MO 64197–0001 (ZF28)
MDA410, DR DoD Education Activity, ATTN: Procurement Division, 4040 North Fairfax Drive, 4th Floor, Arlington, VA 22203–1635 (ZK10)
MDA412, 9Y DoD Education Activity, European Procurement Office, CMR 443, Box 6000, APO AE 09096–9649 (ZK12)
MDA414, Y4 DoD Education Activity, Education Supplies Procurement Office, 101 Buford Road, Richmond, VA 23235–5292 (ZK14)
MDA416, YT DoD Education Activity, Pacific Procurement Division, Unit 35007, APO AP 96376 (ZK16)
MDA904 Maryland Procurement Office, ATTN: N363, 9800 Savage Road, Fort George G. Meade, MD 20755–6000 (ZD04)
MDA905, B4 Uniformed Services University of the Health Sciences, ATTN: Directorate of Contracting, 4301 Jones Bridge Road, Bethesda, MD 20814–4799 (ZD05)
MDA906, U5 TRICARE Management Activity, Contract Management Directorate, 16401 East Centretech Parkway, Aurora, CO 80011–9043 (ZD06)
MDA907 Purchasing and Contracting Office, Menwith Hill Station, APO AE 09210 (ZD07)
MDA908, 2X Virginia Contracting Activity, ATTN: DAP, PO Box 46563, Washington, DC 20050–6563 (ZD50)
MDA928 Armed Forces Radiobiology Research Institute, ATTN: Directorate of Contracting, USUHS, 4301 Jones Bridge Road, Bethesda, MD 20814–4799 (ZD28)
MDA946 Washington Headquarters Services, Real Estate and Facilities Directorate, ATTN: REFCO, The Pentagon—Butler Building, 1155 Defense Pentagon, Washington, DC 20301–1155 (ZD46)
MDA947, DP Pentagon Renovation Office, 100 Boundary Channel Drive, Arlington, VA 22202–3712 (ZD47)
MDA972, WS DARPA, Contracts Management Office, 3701 North Fairfax Drive, Arlington, VA 22203–1714 (ZD72)

Part 11—Defense Microelectronics Activity Address Number

DMEA90, 2P Defense Microelectronics Activity, ATTN: Contracting Office, 4234–54th Street, McClellan, CA 95652–2100 (ZD90)

Part 12—Missile Defense Agency Activity Address Numbers

HQ0006, SS Missile Defense Agency, Contracts Directorate, ATTN: CT, 7100 Defense Pentagon, Washington, DC 20301–7100 (ZD60)
H95001, VV Joint National Integration Center, Contract Management, 730 Irwin Avenue, Schriever Air Force Base, CO 80912–7300 (ZD61)

Part 13—Defense Commissary Agency Activity Address Numbers

DECA01, ZG Defense Commissary Agency, Resale Contracting Division, ATTN: DeCA/PSMC, 1300 E Avenue, Fort Lee, VA 23801–1800 (ZD81)
DECA02, ZT Defense Commissary Agency, Resale Contracting Division, ATTN: DeCA/PSMC, 1300 E Avenue, Fort Lee, VA 23801–1800 (ZD82)
DECA03, 0H Defense Commissary Agency, Eastern Region, CIBA Contracting Division, 5151 Bonney Road, Suite 201, Virginia Beach, VA 23462–4314 (ZD83)
DECA04, BE Defense Commissary Agency, Contracting Business Unit, Equip/Supply & Revenue, ATTN: DeCA/CICE, 1300 E Avenue, Fort Lee, VA 23801–1800 (ZD84)
DECA06, 0J Defense Commissary Agency, Midwest Region, ATTN: DeCA/MW/RDCC, 300 AFCOMS Way, Building 3030, San Antonio, TX 78226–1330 (ZD86)
DECA07, 0Z Defense Commissary Agency, Western/Pacific Region, ATTN: DeCA/WP/RDCC, 3401 Acacia Street, Suite 115, McClellan, CA 95652–1002 (ZD87)
DECA08, 0K Defense Commissary Agency, Contracting Business Unit, Services Division, ATTN: DeCA/CICS, 1300 E Avenue, Fort Lee, VA 23801–1800 (ZD88)
DECA09, 0U Defense Commissary Agency, European Region, ATTN: DeCA/EU/AM, Unit 3060, APO AE 09094–3060 (ZD89)

Part 14—[Amended]

11. Appendix G to Chapter 2 is amended in Part 14 by removing entries USZA24, USZA25, USZA90, USZA91, USZA93, and USZA98.

[FR Doc. 02–19084 Filed 7–29–02; 8:45 am]
BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Parts 209, 243, and 252

[DFARS Case 99–D303]

Defense Federal Acquisition Regulation Supplement; Institutions of Higher Education

AGENCY: Department of Defense (DoD).
ACTION: Final rule.

SUMMARY: DoD has adopted as final, with minor changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 549 of the National Defense Authorization Act for Fiscal Year 2000. Section 549 amends statutory provisions pertaining to the denial of Federal contracts and grants to institutions of higher education that prevent Senior Reserve Officer Training Corps (ROTC) access or military recruiting on campus.

EFFECTIVE DATE: July 30, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Schneider, Defense Acquisition Regulations Council, OUSD (AT&L) DP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0326; facsimile (703) 602–0350. Please cite DFARS Case 99—D303.

SUPPLEMENTARY INFORMATION:

A. Background

This rule implements Section 549 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65). Section 549 amends 10 U.S.C. 983 to prohibit DoD from providing funds by contract or grant to an institution of higher education (including any subelement of that institution) if the Secretary of Defense determines that the institution (or any subelement of the institution) has a policy or practice that prohibits, or in effect prevents, Senior ROTC units or military recruiting on campus.

DoD published an interim rule at 65 FR 2056 on January 13, 2000. Sixty-one sources submitted comments on the interim rule. After evaluating all comments, DoD converted the interim rule to a final rule with minor editorial changes. A summary of the comments and the DoD response is provided below:

Comment: The greatest concern expressed by respondents pertained to the extension of the prohibition to subelements of educational institutions. The respondents stated that Section 549 of Public Law 106–65 was intended to recodify prior legislation, which did not require extension of the prohibition to subelements; prior legislative history did not support extension to subelements; and the fact that the subelement language was contained in the Senate report but not in the House report, and that the Senate had receded to the House version of the bill, meant that DoD could not rely upon the Senate report as a basis for extending the rule to subelements of an institution.

DoD Response: Senate and House Committee reports generally are taken into consideration to determine legislative intent only when the statutory language is unclear. The final language of Section 549 of Public Law 106–65 clearly states that the policy applies to any subelement of an institution. A comparison of the previous and current legislation shows that the subelement language was a new addition to the statute resulting from the enactment of Section 549.

Comment: Several respondents believed that DoD did not have

sufficient cause to issue an interim rule without prior opportunity for public comment. *DoD Response:* Section 549 of Public Law 106–65 became effective upon enactment, on October 5, 1999. DoD issued a rule before receipt of public comments to promptly comply with the new statutory requirement.

Comment: One respondent stated that the rule calls for suspension and debarment without due process and asked what procedure exists for an educational institution to challenge a determination. *DoD Response:* This DFARS rule merely prescribes the action to be taken after an institution is determined to be ineligible for DoD contract awards. The procedures used to make that determination are addressed separately in the regulations at 32 CFR part 216.

Comment: One respondent stated that the requirements for stopping payments and terminating existing contracts go far beyond traditional suspension and debarment. *DoD Response:* These requirements are not new. They were added to the DFARS in 1995 to comply with Section 558 of Public Law 103–337, which prohibited DoD from providing funds to educational institutions that prevented military recruiting on campus. The current legislation contains a similar prohibition.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule applies only to institutions of higher education that do not permit Senior ROTC units or military recruiting on campus.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 209, 243, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR Parts 209, 243, and 252, which was published at 65 FR 2056 on January 13, 2000, is adopted as a final rule with the following changes:

1. The authority citation for 48 CFR parts 209, 243, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 209—CONTRACTOR QUALIFICATIONS

209.470–3 [Amended]

2. Section 209.470–3 is amended in paragraphs (b)(1), (2), and (3) by removing ''Must'' and adding in its place ''Shall''.

[FR Doc. 02–19081 Filed 7–29–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Parts 215 and 253

[DFARS Case 2002–D012]

Defense Federal Acquisition Regulation Supplement; Weighted Guidelines Form

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to revise the information on DD Form 1547, Record of Weighted Guidelines Application. The revisions correspond to changes to DoD profit policy published in the **Federal Register** on April 26, 2002.

EFFECTIVE DATE: July 30, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Haberlin, OUSD (AT&L) DP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0289; facsimile (703) 602–0350. Please cite DFARS Case 2002–D012.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published a final rule in the **Federal Register** on April 26, 2002 (67 FR 20688), under DFARS Case 2000–D018. That rule amended policy for computation of profit objectives by reducing the value assigned to facilities capital employed for equipment, eliminating the values assigned to facilities capital employed for buildings, increasing the values for performance risk, and adding a special factor for cost efficiency.

This final rule amends DD Form 1547, Record of Weighted Guidelines Application, and corresponding completion instructions, to reflect the changes to profit policy published on April 26, 2002.

DD Form 1547, and other forms prescribed by the DFARS, are not included in the Code of Federal Regulations. The forms are available electronically via the Internet at *http://web1.whs.osd.mil/icdhome/ddeforms.htm.*

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2002–D012.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 215 and 253

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 215 and 253 are amended as follows:

1. The authority citation for 48 CFR Parts 215 and 253 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 215—CONTRACTING BY NEGOTIATION

2. Section 215.404–71–2 is amended in paragraph (b) introductory text by revising the table to read as follows:

215.404–71–2 Performance risk.

* * * * *

(b) * * *

Item	Contractor risk factors	Assigned weighting	Assigned value	Base (item 20)	Profit objective
21	Technical	(1)	(2)	N/A	N/A
22	Management/Cost Control	(1)	(2)	N/A	N/A
23	Performance Risk (Composite)	N/A	(3)	(4)	(5)

* * * * *

215.404–71–3 [Amended]

3. Section 215.404–71–3 is amended as follows:

a. In paragraph (b) introductory text, in the table, by redesignating Items 25 and 26 as Items 24 and 25, respectively;

b. In paragraph (c)(2) by removing ''(Block 26)'' and adding in its place ''(Block 25)''; and

c. In paragraph (c)(5), in the second sentence, by removing ''Block 26'' and adding in its place ''Block 25''.

4. Section 215.404–71–4 is amended in paragraph (b) introductory text by revising the table to read as follows:

215.404–71–4 Facilities capital employed.

* * * * *

(b) * * *

Item	Contractor facilities capital employed	Assigned value	Amount employed	Profit objective
26	Land	N/A	(2)	N/A
27	Buildings	N/A	(2)	N/A
28	Equipment	(1)	(2)	(3)

* * * * *

215.404–71–5 [Amended]

5. Section 215.404–71–5 is amended in paragraph (a), in the last sentence, by adding, before the period, ''(Block 29)''.

215.404–72 [Amended]

6. Section 215.404–72 is amended as follows:

a. In the heading of paragraph (b)(1), in the parenthetical, by removing ''*Blocks 21–24*'' and adding in its place ''*Blocks 21–23*''; and

b. In the heading of paragraph (b)(2), in the parenthetical, by removing ''*Block 25*'' and adding in its place ''*Block 24*''.

215.407–4 [Amended]

7. Section 215.407–4 is amended in paragraph (c)(1) by revising the second parenthetical to read ''(*http://www.dcma.hq.dla.mil/*)''.

PART 253—FORMS

8. Section 253.215–70 is amended by revising paragraphs (c)(12) and (c)(15) to read as follows:

253.215–70 DD Form 1547, Record of Weighted Guidelines Application.

* * * * *

(c) * * *

(12) *Block 12—use code.* Enter the appropriate code for use of the weighted guidelines method—

Description	Code
Standard weighted guidelines method (215.404–71–2(c)(1)) ...	2
Alternate structured approach (215.404–73)	4
Modified weighted guidelines approach (215.404–72)	5
Technology incentive (215.404–71–2(c)(2))	6

* * * * *

(15) *Block 30—total profit objective.* Enter the total of Blocks 23, 24, 25, 27, 28, and 29. This section is not required to be completed when using an alternate structured approach (215.404–73).

* * * * *

[FR Doc. 02–19083 Filed 7–29–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Parts 219 and 252

[DFARS Case 2001–D016]

Defense Federal Acquisition Regulation Supplement; Partnership Agreement Between DoD and the Small Business Administration

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, with minor changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a partnership agreement between DoD and the Small Business Administration (SBA). The partnership agreement streamlines procedures for contract awards under SBA's 8(a) Program.

EFFECTIVE DATE: July 30, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena Moy, Defense Acquisition Regulations Council, OUSD (AT&L) DP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–1302; facsimile (703) 602–0350. Please cite DFARS Case 2001–D016.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 67 FR 11435 on March 14, 2002, to implement a partnership agreement between DoD and SBA. The partnership agreement permits DoD to award 8(a) contracts directly to 8(a) concerns, on behalf of SBA. DoD received one comment on the interim rule, and that comment was in support of the rule. Therefore, DoD is adopting the interim rule as a final rule with only minor editorial changes.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule affects only the administrative procedures used for award of contracts under the 8(a) Program.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not

impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 219 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR Parts 219 and 252, which was published at 67 FR 11435 on March 14, 2002, is adopted as a final rule with the following changes:

1. The authority citation for 48 CFR Parts 219 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 219—SMALL BUSINESS PROGRAMS

219.804–2 [Amended]

2. Section 219.804–2 is amended by removing ''must'' and adding, in its place, ''shall'' in the following places:

a. Paragraph (1) introductory text, in the first and last sentences;

b. Paragraph (1)(ii)(A);

c. Paragraph (2) introductory text, twice in the second sentence and once in the last sentence;

d. Paragraph (2)(ii), in the last sentence; and

e. Paragraph (3), in the first and last sentences.

219.806 [Amended]

3. Section 219.806 is amended in paragraph (1) and in the last sentence of paragraph (2) by removing ''must'' and adding in its place ''shall''.

219.811–1 [Amended]

4. Section 219.811–1 is amended in paragraph (a), in the first, second, and last sentences, by removing ''must'' and adding in its place ''shall''.

219.811–2 [Amended]

5. Section 219.811–2 is amended by removing ''must'' and adding in its place ''shall''.

[FR Doc. 02–19082 Filed 7–29–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 225

[DFARS Case 2002–D011]

Defense Federal Acquisition Regulation Supplement; Trade Agreements Thresholds—Construction

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS). The rule implements the determination of the U.S. Trade Representative to revise the dollar thresholds for application of the Trade Agreements Act and the North American Free Trade Agreement (NAFTA) to construction contracts.

EFFECTIVE DATE: July 30, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD (AT&L) DP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0328; facsimile (703) 602–0350. Please cite DFARS Case 2002–D011.

SUPPLEMENTARY INFORMATION:

A. Background

On March 27, 2002 (67 FR 14763), the U.S. Trade Representative published a determination that decreased the threshold for application of the Trade Agreements Act to construction contracts from $6,806,000 to $6,481,000; and increased the threshold for application of NAFTA to construction contracts from $7,068,419 to $7,304,733. This final rule amends the prescriptions for use of the clauses at DFARS 252.225–7044, Balance of Payments Program—Construction Material, and 252.225–7045, Balance of Payments Program—Construction Material Under Trade Agreements, to reflect the new dollar thresholds.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2002–D011.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 225

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 225 is amended as follows:

1. The authority citation for 48 CFR Part 225 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

225.7503 [Amended]

2. Section 225.7503 is amended as follows:

a. In paragraph (a), and in paragraph (b) in the first and last sentences, by removing ''$6,806,000'' and adding in its place ''$6,481,000''; and

b. In paragraph (b), in the last sentence, by removing ''$7,068,419'' and adding in its place ''$7,304,733''.

[FR Doc. 02–19080 Filed 7–29–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 253

[DFARS Case 2002–D010]

Defense Federal Acquisition Regulation Supplement; Reporting Requirements Update; Correction

AGENCY: Department of Defense (DoD).

ACTION: Correction to final rule.

SUMMARY: DoD is issuing a correction to the final rule published at 67 FR 46112–46123 on July 12, 2002, pertaining to contract action reporting requirements for Fiscal Year 2003. The correction adds a reporting agency code.

EFFECTIVE DATE: October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Schneider, Defense Acquisition Regulations Council, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0326; facsimile (703) 602–0350.

Correction

In the issue of Friday, July 12, 2002, on page 46113, in the third column, section 253.204–70, paragraph (a)(3)(i)

is corrected by adding, after the last semicolon, ''97AB (NIMA);''.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 02–19079 Filed 7–29–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 801, 825, 832, 836, 846, and 852

RIN 2900–AJ56

VA Acquisition Regulation: Construction and Architect-Engineer Contracts

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs Acquisition Regulation (VAAR). This document updates position titles, makes minor grammatical corrections and revisions, revises and updates section numbers and titles, relocates material to correspond to the Federal Acquisition Regulation (FAR), and delegates authority. In addition, the document updates regulations and adds coverage regarding the authority of the National Cemetery Administration to award architect-engineer contracts. Also, it replaces a general prescription directing the use of all VAAR clauses relating to construction contracts with specific prescriptions for each clause, removes obsolete or duplicative material, updates the VAAR regarding the requirement for certificates of current cost or pricing data, and provides agency procedures regarding disclosure of the Government cost estimate on construction contracts. This document also removes a ''guaranty'' clause from the VAAR and provides agency procedures for VA contracting officers to use the FAR ''warranty'' clause for construction contracts exceeding the micro-purchase threshold in order to protect the best interests of the Government. In addition, this document revises provisions regarding the acceptance of foreign construction materials to correspond to changes made in the FAR and to comply with the Trade Agreements Act and the North American Free Trade Agreement.

DATES: *Effective Date:* August 29, 2002.

FOR FURTHER INFORMATION CONTACT: Don Kaliher, Acquisition Program Management Team (0495A), Office of Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC 20420, telephone (202) 273–8819.

SUPPLEMENTARY INFORMATION: On September 27, 2001, we published in the **Federal Register** (66 FR 49331) a proposed rule to amend the Department of Veterans Affairs Acquisition Regulation to make changes to part 836, Construction and Architect-Engineer Contracts, and related parts. Comments were solicited concerning the proposed rule for 60 days, ending November 26, 2001. We did not receive any comments.

Based on the rationale set forth in the proposed rule, we are adopting the provision of the proposed rule as a final rule with nonsubstantive changes discussed below.

The proposed rule included collections of information regarding clauses and provisions for use in both commercial and non-commercial item, service, and construction solicitations and contracts. The Office of Management and Budget (OMB) has approved the information collections under OMB Control Numbers 2900–0622 and 2900–0623.

The intent of the proposed rule was to update the VAAR to match the FAR regarding the requirement for submission of certificates of current cost or pricing data, but the proposed rule referenced an incorrect dollar threshold of $500,000. The FAR threshold for submission of certificates of current cost or pricing data has been revised to $550,000 and will be adjusted in the future to account for inflation. Therefore, to match the FAR, § 836.578(b) has been revised to clarify when cost or pricing data is required and § 836.578(c) has been revised to reference the FAR threshold for submission of cost of pricing data rather than a specific dollar amount and for clarity. In addition, the FAR requires the approval of the head of the contracting activity prior to requiring submission of cost or pricing data for pricing actions below this threshold, so a reference to this approval requirement has been added to § 836.578(c).

The intent of the proposed rule was to update the VAAR to correspond to the FAR regarding the acceptance of foreign construction materials and to comply with the Trade Agreements Act (TAA) and the North American Free Trade Agreement (NAFTA). The proposed rule designated Alternate I to the clause at 852.236–89 for use when NAFTA applied to a solicitation. This was incorrect. Under the current dollar thresholds in the FAR, Alternate I should reference the TAA rather than NAFTA, since the dollar threshold for application of the TAA is less than the dollar threshold for the application of NAFTA. Therefore, Alternate I has been revised to apply to the TAA to correspond with the FAR.

Also, we revised § 832.111 for purposes of clarity and §§ 836.209, 836.602–2, 836.602–4, and 836.603 to update titles and/or for purposes of clarity.

Paperwork Reduction Act

This document contains provisions constituting a collection of information that have been approved by the Office of Management and Budget (OMB) under OMB Control Numbers 2900–0622 and 2900–0623.

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The changes are small-business neutral and will not have a significant economic impact on a substantial number of small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

List of Subjects

48 CFR Part 825

Foreign currencies, Foreign trade, Government procurement.

48 CFR Parts 832 and 846

Government procurement.

48 CFR Parts 801, 836 and 852

Government procurement, Reporting and recordkeeping requirements.

Approved: May 1, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 48 CFR Chapter 8 is amended as follows:

PART 801—VETERANS AFFAIRS ACQUISITION REGULATIONS SYSTEM

1. The authority citation for part 801 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

801.103–70 [Redesignated as 801.104–70]

2. Section 801.103–70 is redesignated as section 801.104–70.

3. In section 801.301–70, paragraph (b) introductory text is added; paragraph (b)(1) is revised; and the table in paragraph (c) is amended by removing ''852.236–81'', and adding in its place ''852.236–82'', and by adding in numerical order the following section and OMB control numbers to read as follows:

801.301–70 Paperwork Reduction Act requirements.

* * * * *

(b) Contractors will not be requested to maintain systems of records unless prescribed in FAR or VAAR.

(1) A deviation to this prohibition may be processed in accordance with 801.403 in order to allow the contracting officer to require contractor reporting or recordkeeping beyond that prescribed in the FAR and VAAR. The request for deviation will clearly specify what information or recordkeeping will be required and why it is required. The request will be signed by the head of the contracting activity.

* * * * *

(c) * * *

48 CFR part or section where identified and described	Current OMB control No.
* * * * *	
852.236–80 (Alt. I)	2900–0422
* * * * *	
852.236–89	2900–0622
852.236–91	2900–0623
* * * * *	

PART 825—FOREIGN ACQUISITION

4. The authority citation for part 825 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

5. Subpart 825.9 is amended by:

A. Redesignating subpart 825.9 as 825.10 and revising the subpart heading.

B. Redesignating section 825.901 as 825.1001 and revising the section heading.

The redesignations and revisions read as follows:

Subpart 825.10—Additional Foreign Acquisition Regulations

825.1001 Waiver of right to examination of records.

6. Subpart 825.11 and section 825.1102 are added to read as follows:

Subpart 825.11—Solicitation Provisions and Contract Clauses

825.1102 Solicitation provisions and contract clauses.

(a) The Buy American Act (41 U.S.C. 10a–d), except as modified by the Trade Agreements Act (TAA) and the North American Free Trade Agreement (NAFTA)), requires that only domestic construction material shall be used in the performance of contracts for construction. To clarify VA's position on foreign material, the contracting officer shall insert the clause at 852.236–89, Buy American Act, in solicitations and contracts for construction that contain the FAR clause at 52.225–9, Buy American Act'Balance of Payments Program'Construction Materials.

(b) For solicitations and contracts for construction that include the FAR clause at 52.225–11, Buy American Act'Balance of Payment Program'Construction Materials Under Trade Agreements, with its Alternate I (i.e., subject only to the TAA), insert the clause at 852.236–89, Buy American Act, with its Alternate I.

(c) For solicitations and contracts that include the FAR clause at 52.225–11 without its Alternate I (i.e., subject to both the TAA and NAFTA), insert the clause at 852.236–89, Buy American Act, with its Alternate II.

PART 832—CONTRACT FINANCING

7. The authority citation for part 832 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

8. Subpart 832.1, consisting of section 832.111, is added to read as follows:

Subpart 832.1—Non-Commercial Item Purchase Financing

832.111 Contract clauses for non-commercial purchases.

(a) In solicitations and contracts for construction that include the FAR clause at 52.232–5, Payments Under Fixed-Price Construction Contracts, but that do not contain a section entitled ''Network Analysis System (NAS),'' the contracting officer shall insert the clause at 852.236–82, Payments under fixed-price construction contracts (without NAS). When the solicitations or contracts include guarantee period services, the contracting officer shall use the clause with its Alternate I.

(b) In solicitations and contracts for construction that include the FAR clause at 52.232–5, Payments Under Fixed-Price Construction Contracts, and that also contain a section entitled ''Network Analysis System (NAS),'' the contracting officer shall insert the clause at 852.236–83, Payments under fixed-price construction contracts (including NAS). When the solicitations or contracts include guarantee period services, the contracting officer shall use the clause with its Alternate I.

PART 836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

9. The authority citation for part 836 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

836.202 [Amended]

10. Section 836.202 is amended by:

A. In paragraph (b), removing ''of contract'' and adding, in its place, ''of a contract''.

B. In paragraph (c), adding a comma immediately after ''FAR 52.236–5''; removing ''the clause'' and adding, in its place, ''the contracting officer shall include the clause'; and removing ''shall be included''.

11. Section 836.203 is added to read as follows:

836.203 Government estimate of construction costs.

The overall amount of the Government estimate shall not be disclosed until after award of the contract. After award, the overall amount may then be disclosed upon request.

836.208 [Removed]

12. Section 836.208 is removed.

13. Section 836.209 is revised to read as follows:

836.209 Construction contracts with architect-engineer firms.

When it is considered necessary or advantageous to award a contract for construction of a design-bid-build project, as defined at FAR 36.102, to the firm or person that designed the project, prior approval will be requested from the facility director or manager or, for National Cemetery Administration contracts, the Director, Office of Construction Management, for contracts involving nonrecurring maintenance (NRM) funds or from the Chief Facilities Management Officer, Office of Facilities Management, for contracts involving construction funds. Complete justification will be furnished in the request. This section does not apply to design-build contracts, as defined at FAR 36.102.

836.211 [Removed]

14. Section 836.211 is removed.

15. Section 836.213–4 is added to read as follows:

836.213–4 Notice of award.

The contracting officer shall provide the contractor a notice of award (letter of acceptance) for any contract award in excess of $25,000.

836.371 [Redesignated as 836.213–70]

16. Section 836.371 is amended by:

A. Redesignating section 836.371 as 836.213–70.

B. In paragraph (b), removing ''requested. It will'' and adding, in its place, ''requested, or any other method that provides signed evidence of receipt. The notice to proceed will''; and removing ''post office.'' and adding, in its place, ''post office or on the proof of delivery provided by the delivery service.''

C. In paragraph (d), removing ''mail is used, the certified mail receipt card returned by the post office will'' and adding, in its place, ''mail or other method of delivery is used, the certified mail receipt card returned by the post office or the proof of delivery provided by the delivery service will''.

836.3 [Removed]

17. Subpart 836.3 is removed.

18. Section 836.501 is added to read as follows:

836.501 Performance of work by the contractor.

The contracting officer shall insert the clause at 852.236–72, Performance of work by the contractor, in solicitations and contracts for construction that contain the FAR clause at 52.236–1, Performance of Work by the Contractor. When the solicitations and contracts include a section entitled ''Network Analysis System (NAS),'' the contracting officer shall use the clause with its Alternate I.

19. Section 836.521 is added to read as follows:

836.521 Specifications and drawings for construction.

The contracting officer shall insert the clause at 852.236–71, Specifications and drawings for construction, in solicitations and contracts for construction that contain the FAR clause at 52.236–21, Specifications and Drawings for Construction.

20. Sections 836.570 through 836.579 are added to read as follows:

836.570 Correspondence.

The contracting officer shall insert the clause at 852.236–76, Correspondence, in solicitations and contracts for construction expected to exceed the micro-purchase threshold.

836.571 Reference to ''standards.''

The contracting officer shall insert the clause at 852.236–77, Reference to ''standards,'' in solicitations and contracts for construction expected to exceed the micro-purchase threshold.

836.572 Government supervision.

The contracting officer shall insert the clause at 852.236–78, Government supervision, in solicitations and contracts for construction expected to exceed the micro-purchase threshold.

836.573 Daily report of workers and materials.

The contracting officer shall insert the clause at 852.236–79, Daily report of workers and materials, in solicitations and contracts for construction expected to exceed the simplified acquisition threshold. The contracting officer may, when in the best interest of the Government, insert the clause in solicitations and contracts for construction when the contract amount is expected to be at or below the simplified acquisition threshold.

836.574 Subcontractors and work coordination.

The contracting officer shall insert the clause at 852.236–80, Subcontracts and work coordination, in solicitations and contracts for construction expected to exceed the micro-purchase threshold. When the solicitations or contracts are for new construction work with complex mechanical-electrical work, the contracting officer may use the clause with its Alternate I.

836.575 Schedule of work progress.

The contracting officer shall insert the clause at 852.236–84, Schedule of work progress, in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold and that do not contain a section entitled ''Network Analysis System (NAS).''

836.576 Supplementary labor standards provisions.

The contracting officer shall insert the clause at 852.236–85, Supplementary labor standards provisions, in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold.

836.577 Worker's compensation.

The contracting officer shall insert the clause at 852.236–86, Worker's compensation, in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold.

836.578 Contract changes—supplement.

(a) The contracting officer shall insert the clause at 852.236–88, Contract changes—supplement, in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold.

(b) When negotiated changes exceed $500,000, paragraph (a) of the clause at 852.236–88 will apply. Because paragraph (a) does not provide ceiling rates for indirect expenses, the contractor must supply cost breakdowns and other supporting data on its rates for indirect expenses as part of its price proposal. The contracting officer must negotiate the rates for indirect expenses with the contractor and may request an audit in accordance with FAR 15.404–2. When the negotiated change will be $500,000 or less, paragraph (b) of the clause at 852.236–88 will apply.

(c) As provided in FAR 15.403–4, proposals exceeding the cost or pricing data threshold shall be accompanied by certificates of current cost or pricing data. The contracting officer, if authorized by the head of the contracting activity, may require the submission of cost or pricing data for proposals valued at less than the cost or pricing data threshold specified in FAR 15.403–4(a)(1) and may require that the data be certified in accordance with FAR 15.403–4(a)(2).

(d) It is emphasized that the indirect cost rates in paragraph (b) of the clause at 852.236–88, for changes costing $500,000 or less, are ceiling rates only and the contracting officer must negotiate the indirect expense rates within the ceiling limitations. The clause is a result of an approved FAR deviation pursuant to subpart 801.4.

836.579 Special notes.

The contracting officer shall insert the clause at 852.236–91, Special notes, in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold.

836.602–1 [Amended]

21. Section 836.602–1, paragraph (c) is amended by removing ''project, and'' and adding, in its place, ''project and their''.

22. Section 836.602–2 is amended by:

A. In paragraph (a), removing ''board will be chaired by the Director of the Architect-Engineer Evaluation Staff, or the Area Project Manager (or Deputy Area Project Manager) will be designated to act when'' and adding, in its place, ''board for the Office of Facilities Management will be chaired by the Director, A/E Evaluation and Program Support Service. The Project Director or Project Manager will be

designated to act as Chair when'' removing ''appropriate Area'' and adding, in its place, ''appropriate'' and by adding a comma immediately after ''board's members.''

B. In paragraph (b), removing ''activity and'' and adding, in its place, ''activity (HCA) (or the senior contracting officer at the facility if there is no HCA on site) and''.

C. Paragraph (c) is added.

The addition reads as follows:

836.602–2 Evaluation boards.

* * * * *

(c) The evaluation board for National Cemetery Administration (NCA) contracts will be appointed by the Director, Office of Construction Management, and will consist of no less than three members, one of whom will serve as the board's Chair, and one of whom will be an NCA senior level contracting officer.

836.602–4 [Amended]

23. Section 836.602–4 is amended by removing ''Central Office contracts) and'' and adding, in its place, ''Central Office contracts), the Director, Office of Construction Management (for National Cemetery Administration contracts), and''.

24. Section 836.602–5 is revised to read as follows:

836.602–5 Short selection process for contracts not to exceed the simplified acquisition threshold.

Either of the procedures provided in FAR 36.602–5 may be used to select firms for architect-engineer contracts not expected to exceed the simplified acquisition threshold.

25. Section 836.603 is added to read as follows:

836.603 Collecting data on and appraising firms' qualifications.

The Chief Facilities Management Officer, Office of Facilities Management, for Central Office; the Director, Office of Construction Management, for National Cemetery Administration acquisitions; and the Chief, Engineering Service, for field facilities, are responsible for collecting Standard Forms 254 and 255 and for maintaining a data file on architect-engineer qualifications.

26. Section 836.606 heading is added immediately preceding 836.606–70, to read as follows:

836.606 Negotiations.

836.606–73 [Amended]

27. Section 836.606–73, paragraph (a)(3)(iii) is amended by adding a ''comma'' immediately after ''samples''.

PART 846—QUALITY ASSURANCE

28. The authority citation for part 846 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

846.302–70 [Amended]

29. Section 846.302–70 is amended by removing ''852.210–72(a)'' and adding, in its place, ''852.211–72(a)'', and by removing ''852.210–72(b)'' and adding, in its place, ''852.211–72(b)''.

30. Section 846.312 is added to read as follows:

846.312 Construction contacts.

The contracting officer shall insert the clause at 852.236–74, Inspection of construction, in solicitations and contracts for construction that contain the FAR clause at 52.246–12, Inspection of Construction.

31. Subpart 846.7, consisting of sections 846.710, 846.710–70, and 846.710–71, is added to read as follows:

Subpart 846.7—Warranties

Sec.

846.710 Construction contracts.
846.710–70 Special warranties.
846.710–71 Warranty for construction—guarantee period services.

Subpart 846.7—Warranties

846.710 Construction contracts.

Contracting officers shall insert the FAR clause at 52.246–21, Warranty of Construction, in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold.

846.710–70 Special warranties.

The contracting officer shall insert the clause at 852.246–1, Special warranties, in solicitations and contracts for construction that include the FAR clause at 52.246–21, Warranty for Construction.

846.710–71 Warranty for construction—guarantee period services.

The contracting office shall insert the clause at 852.246–2, Warranty for construction'guarantee period services, in solicitations and contracts for construction that include the FAR clause at 52.246–21, Warranty for Construction, and also include guarantee period services.

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

32. The authority citation for part 852 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

852.236–70 [Redesignated as 836.500]

33. Section 852.236–70 is amended by:

A. Redesignating section 852.236–70 as section 836.500 and transferring newly designated section 836.500 to subpart 836.5.

B. In paragraph (a) of new section 836.500, removing ''section'' and adding, in its place, ''subpart''.

C. Revising the new section heading.

The revision reads as follows:

836.500 Scope of subpart.

34. Section 852.236–71 is amended by:

A. Revising the section introductory text.

B. Revising the date in the undesignated center heading clause.

C. In paragraph (d) of the clause, removing the comma immediately after ''work''.

D. Adding introductory text to the clause.

The revisions and addition read as follows:

852.236–71 Specifications and drawings for construction.

As prescribed in 836.521, insert the following clause:

SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (JUL 2002)

The clause entitled ''Specifications and Drawings for Construction'' in FAR 52.236–21 is supplemented as follows:

* * * * *

35. Section 852.236–72 is amended by:

A. Revising the section introductory text.

B. Revising the date in the undesignated center heading clause.

C. Adding introductory text to the clause.

D. Revising paragraphs (b) and (d).

E. Revising the introductory Alternate I paragraph and paragraph (c) of Alternate I.

The revisions and addition read as follows:

852.236–72 Performance of work by the contractor.

As prescribed in 836.501, insert the following clause:

PERFORMANCE OF WORK BY THE CONTRACTOR (JUL 2002)

The clause entitled ''Performance of Work by the Contractor'' in FAR 52.236–1 is supplemented as follows:

* * * * *

(b) The contractor shall submit, simultaneously with the schedule of costs

required by the Payments Under Fixed-Price Construction Contracts clause of the contract, a statement designating the branch or branches of contract work to be performed with his/her forces. The approved schedule of costs will be used in determining the value of a branch or branches, or portions thereof, of the work for the purpose of this article.

* * * * *

(d) In the event the contractor fails or refuses to meet the requirement of the FAR clause at 52.236–1, it is expressly agreed that the contract price will be reduced by 15 percent of the value of that portion of the percentage requirement that is accomplished by others. For the purpose of this clause, it is agreed that 15 percent is an acceptable estimate of the contractor's overhead and profit, or mark-up, on that portion of the work which the contractor fails or refuses to perform, with his/her own forces, in accordance with the FAR clause at 52.236–1.

* * * * *

(End of clause)

Alternate I (Jul 2002)

For requirements which include Network Analysis System (NAS), substitute the following paragraphs (b) and (c) for paragraphs (b) and (c) of the basic clause:

* * * * *

(c) If, during progress of work hereunder, the contractor requests a change in activities of work to be performed by the contractor's forces and the contracting officer determines it to be in the best interest of the Government, the contracting officer may, at his or her discretion, authorize a change in such activities of said work.

36. Section 852.236–74 is amended by:

A. Revising the section introductory text.

B. Revising the date in the undesignated center heading clause.

C. Adding introductory text to the clause.

The revisions and addition read as follows:

852.236–74 Inspection of construction.

As prescribed in 846.312, insert the following clause:

INSPECTION OF CONSTRUCTION (JUL 2002)

The clause entitled ''Inspection of Construction'' in FAR 52.246–12 is supplemented as follows:

* * * * *

852.236–75 (Redesignated as 852.246–2)

37. Section 852.236–75 is redesignated as 852.246–2, and is revised to read as follows:

852.246–2 Warranty for construction—guarantee period services.

As prescribed in 846.710–71, insert the following clause:

WARRANTY FOR CONSTRUCTION—GUARANTEE PERIOD SERVICES (JUL 2002)

The clause entitled ''Warranty of Construction'' in FAR 52.246–21 is supplemented as follows:

Should the contractor fail to prosecute the work or fail to proceed promptly to provide guarantee period services after notification by the contracting officer, the Government may, subject to the default clause contained at FAR Section 52.249–10, Default (Fixed-Price Construction), and after allowing the contractor 10 days to correct and comply with the contract, terminate the right to proceed with the work (or the separable part of the work) that has been delayed or unsatisfactorily performed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliance, and plant on the work site necessary for completing the work. The contractor and its sureties shall be liable for any damages to the Government resulting from the contractor's refusal or failure to complete the work within this specified time, whether or not the contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(End of clause)

38. In section 852.236–76, introductory text is added to read as follows:

852.236–76 Correspondence.

As prescribed in 836.570, insert the following clause:

* * * * *

39. Section 852.236–77 is amended by:

A. Adding introductory text.

B. Revising the undesignated center heading clause and its date.

The addition and revision read as follows:

852.236–77 Reference to ''standards.''

As prescribed in 836.571, insert the following clause:

REFERENCE TO ''STANDARDS'' (JUL 2002)

40. In section 852.236–78, paragraph (c) is amended by removing ''may by written direction make'' and adding, in its place ''may, by written direction, make''; and a section introductory text is added to read as follows:

852.236–78 Government supervision.

As prescribed in 836.572, insert the following clause:

* * * * *

41. In section 852.236–79, section introductory text is added to read as follows:

852.236–79 Daily report of workers and materials.

As prescribed in 836.573, insert the following clause:

* * * * *

42. Section 852.236–80 is amended by:

A. Revising the introductory text.

B. Adding a new paragraph immediately following the phrase ''(End of clause)''.

The revision and addition read as follows:

852.236–80 Subcontracts and work coordination.

As prescribed in 836.574, insert the following clause:

* * * * *

(End of clause)

Alternate I (Jul 2002)

For new construction work with complex mechanical-electrical work, the following paragraph relating to work coordination may be substituted for paragraph (b) of the basic clause:

* * * * *

43. Section 852.236–81 is amended by:

A. Removing the section introductory text.

B. Removing the undesignated center clause heading.

C. Adding a paragraph ''(b)'' designation to the undesignated clause paragraph.

D. Removing the phrase ''(End of clause)'' at the end of the newly designated paragraph (b).

E. Transferring the newly designated paragraph (b) to section 852.236.80 immediately following the ''Alternate I'' paragraph.

F. Removing section 852.236–81 section heading.

44. In section 852.236–82, the introductory text and paragraphs (b)(2) and (b)(3) are revised; the ''Supplement I (JAN 1988)'' clause is removed and an Alternate I clause is inserted in its place to read as follows:

852.236.82 Payments under fixed-price construction contracts (without NAS).

As prescribed in 832.111, insert the following clause in contracts that do not contain a section entitled ''Network Analysis System (NAS)'':

* * * * *

(b) * * *

(2) Costs as shown on this schedule must be true costs and, should the resident engineer so desire, he/she may require the contractor to submit the original estimate sheets or other information to substantiate the detailed makeup of the schedule.

(3) The sum of the subbranches, as applied to each branch, shall equal the total cost of

such branch. The total cost of all branches shall equal the contract price.

* * * * *

Alternate I (Jul 2002)

If the specifications include guarantee period services, the contracting officer shall include the following paragraphs as additions to paragraph (b) of the basic clause:

(6)(i) The contractor shall at the time of contract award furnish the total cost of the guarantee period services in accordance with specification section(s) covering guarantee period services. The contractor shall submit, within 15 calendar days of receipt of the notice to proceed, a guarantee period performance program which shall include an itemized accounting of the number of work-hours required to perform the guarantee period service on each piece of equipment. The contractor shall also submit the established salary costs, including employee fringe benefits, and what the contractor reasonably expects to pay over the guarantee period, all of which will be subject to the contracting officer's approval.

(ii) The cost of the guarantee period service shall be prorated on an annual basis and paid in equal monthly payments by VA during the period of guarantee. In the event the installer does not perform satisfactorily during this period, all payments may be withheld, and the contracting officer shall inform the contractor of the unsatisfactory performance, allowing the contractor 10 days to correct deficiencies and comply with the contract. The guarantee period service is subject to those provisions as set forth in the Payments and Default clauses.

45. Section 852.236–83 is amended by:

A. Revising the section introductory text.

B. Revising the date in the undesignated center heading clause.

C. Revising the clause introductory text.

D. Removing the ''Supplement I (JAN 1988)'' introductory text and inserting in its place an Alternate I paragraph, and revising paragraphs (6)(ii) and (iii).

The revisions read as follows:

852.236.83 Payments under fixed-price construction contracts (including NAS).

As prescribed in 832.111, insert the following clause in contracts that contain a section entitled ''Network Analysis System (NAS)'':

* * * * *

PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (JUL 2002)

The clause entitled ''Payments Under Fixed-Price Construction Contracts'' in FAR 52.232–5 is implemented as follows:

* * * * *

(End of clause)

Alternate I (Jul 2002)

If the specifications include guarantee period services, the contracting officer shall include the following paragraphs as additions to paragraph (b) of the basic clause:

(6)(i) * * *

(ii) The contractor shall submit with the CPM a guarantee period performance program which shall include an itemized accounting of the number of work-hours required to perform the guarantee period service on each piece of equipment. The contractor shall also submit the established salary costs, including employee fringe benefits, and what the contractor reasonably expects to pay over the guarantee period, all of which will be subject to the contracting officer's approval.

(iii) The cost of the guarantee period service shall be prorated on an annual basis and paid in equal monthly payments by VA during the period of guarantee. In the event the installer does not perform satisfactorily during this period, all payments may be withheld and the contracting officer shall inform the contractor of the unsatisfactory performance, allowing the contractor 10 days to correct and comply with the contract. The guarantee period service is subject to those provisions as set forth in the Payments and Default clauses.

852.236–84 [Amended]

46. In section 852.236–84, the introductory text is revised to read as follows:

852.236–84 Schedule of work progress.

As prescribed in 836.575, insert the following clause:

* * * * *

47. In section 852.236–85, introductory text is added to read as follows:

852.236.85 Supplementary labor standards provisions.

As prescribed in 836.576, insert the following clause:

* * * * *

48. Section 852.236–86 is revised to read as follows:

852.236–86 Worker's compensation.

As prescribed in 836.577, insert the following clause:

WORKER'S COMPENSATION (JUL 2002)

The Act of June 25, 1936, 49 Stat. 1938 (40 U.S.C. 290) authorizes the constituted authority of States to apply their worker's compensation laws to all lands and premises owned or held by the United States.

(End of clause)

49. Section 852.236–88 is amended by:

A. Revising the section heading and introductory text.

B. Removing paragraph (a) of the section.

C. Revising the first clause undesignated center heading.

D. Redesignating paragraphs (a) through (d) of the first clause as paragraphs (a)(1) through (a)(4), respectively.

E. Adding a new paragraph (a) introductory text to the first clause.

F. Removing from newly designated paragraph (a)(1) ''to be submitted'' and adding, in its place, ''to be submitted as expeditiously as possible but''.

G. Removing from newly designated paragraph (a)(2) ''submit a proposal'' and adding, in its place, ''submit a proposal, which includes the information required by paragraph (a)(1),''.

H. Removing from newly designated paragraph (a)(3) the comma immediately following the phrase ''the contract'', and the comma immediately following the phrase ''calendar days''.

I. Removing at end of the first clause the parenthetical ''(End of clause)''.

J. Removing paragraph (b) of the section.

K. Removing the second clause introductory text immediately following the second undesignated center clause heading.

L. Redesignating paragraphs (a) through (k) of the second clause as paragraphs (b)(1) through (b)(11), respectively.

M. Adding a new clause paragraph (b) introductory text.

N. Removing from newly designated paragraph (b)(1) ''to be submitted'' and adding, in its place, ''to be submitted as expeditiously as possible but''; and removing ''data are required under FAR 15.403 for proposals over $100,000, the cost of pricing'' and adding, in its place, ''data or information other than cost or pricing data are required under FAR 15.403, the''.

O. Removing from newly designated paragraph (b)(2) ''submit a proposal for cost of changes in work within 30 calendar days.'' and adding, in its place, ''submit with 30 calendar days a proposal, which includes the information required by paragraph (b)(1), for the cost of the changes in work.''

P. Removing from newly designated paragraph (b)(3) the comma immediately following the phrase ''the contract'', and the comma immediately following the phrase ''calendar days'.

Q. Removing from newly designated paragraph (b)(9) ''Workmen's'' and adding, in its place, ''Worker's''.

R. Removing the second clause undesignated center heading.

The revisions and additions read as follows:

852.236–88 Contract changes—supplement.

As prescribed in 836.578, insert the following clause:

CONTRACT CHANGES—SUPPLEMENT (JUL 2002)

* * * * *

(a) Paragraphs (a)(1) through (a)(4) apply to proposed contract changes costing over $500,000:

* * * * *

(b) Paragraphs (b)(1) through (b)(11) apply to proposed contract changes costing $500,000 or less:

* * * * *

852.236–89 [Amended]

50. Section 852.236–89 is revised to read as follows:

852.236–89 Buy American Act.

As prescribed in 825.1102, insert the following clause:

BUY AMERICAN ACT (JUL 2002)

(a) Reference is made to the clause entitled ''Buy American Act—Balance of Payments Program—Construction Materials,'' FAR 52.225–9.

(b) Notwithstanding a bidder's right to offer identifiable foreign construction material in its bid pursuant to FAR 52.225–9, VA does not anticipate accepting an offer that includes foreign construction material.

(c) If a bidder chooses to submit a bid that includes foreign construction material, that bidder must provide a listing of the specific foreign construction material he/she intends to use and a price for said material. Bidders must include bid prices for comparable domestic construction material. If VA determines not to accept foreign construction material and no comparable domestic construction material is provided, the entire bid will be rejected.

(d) Any foreign construction material proposed after award will be rejected unless the bidder proves to VA's satisfaction: (1) It was impossible to request the exemption prior to award, and (2) said domestic construction material is no longer available, or (3) where the price has escalated so dramatically after the contract has been awarded that it would be unconscionable to require performance at that price. The determinations required by (1), (2), and (3) of this paragraph shall be made in accordance with subpart 825.2 and FAR 25.2.

(e) By signing this bid, the bidder declares that all articles, materials and supplies for use on the project shall be domestic unless specifically set forth on the Bid Form or addendum thereto.

(End of Cause)

Alternate I (JUL 2002)

As prescribed in 825.1102(b), substitute the following paragraphs for paragraphs (a) and (b) of the basic clause:

(a) Reference is made to the clause entitled ''Buy American Act—Balance of Payment Program—Construction Materials Under Trade Agreements,'' FAR 52.225–11.

(b) The restrictions contained in this clause 852.236–89 are waived for Trade Agreements Act (TAA) designated country construction material, as defined in FAR 52.225–11. Notwithstanding a bidder's right to offer identifiable foreign construction material in its bid pursuant to FAR 52.225–11, VA does not anticipate accepting an offer that includes foreign construction material, other than TAA designated country construction material.

Alternate II (JUL 2002)

As prescribed in 825.1102(c), substitute the following paragraphs for paragraphs (a) and (b) of the basic clause:

(a) Reference is made to the clause entitled ''Buy American Act—Balance of Payment Program—Construction Materials Under Trade Agreements,'' FAR 52.225–11.

(b) The restrictions contained in this clause 852.236–89 are waived for Trade Agreements Act (TAA) designated country construction material and North American Free Trade Agreement (NAFTA) country construction material, as defined in FAR 52.225–11. Notwithstanding a bidder's right to offer identifiable foreign construction material in its bid pursuant to FAR 52.225–11, VA does not anticipate accepting an offer that includes foreign construction material, other than TAA designated country construction material or NAFTA country construction material.

51. Section 852.236–91 is amended by:

A. Adding an introductory text to the section.

B. Revising the undesignated center clause heading and its date.

C. Revising paragraph (a) introductory text.

D. In paragraph (b), adding a comma immediately following the phrase ''is permitted''.

The additions and revisions read as follows:

852.236–91 Special notes.

As prescribed in 836.579, insert the following clause:

SPECIAL NOTES (JUL 2002)

(a) Signing of the bid shall be deemed to be a representation by the bidder that:

* * * * *

52. Section 852.246–1 is added to read as follows:

852.246–1 Special warranties.

As prescribed in 846.710–70, insert the following clause:

SPECIAL WARRANTIES (JUL 2002)

The clause entitled ''Warranty of Construction'' in FAR 52.246–21 is supplemented as follows:

Any special warranties that may be required under the contract shall be subject to the elections set forth in the FAR clause at 52.246–21, Warranty of Construction, unless otherwise provided for in such special warranties.

[FR Doc. 02–18966 Filed 7–29–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 573, 574, 576, 579

[Docket No. NHTSA 2001–8677; Notice 4]

RIN 2127–AI25

Reporting of Information and Documents About Potential Defects Retention of Records That Could Indicate Defects

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Correction to final rule.

SUMMARY: This document is the assessment of the National Highway Traffic Safety Administration (NHTSA) of the applicability of the Unfunded Mandates Reform Act which was inadvertently omitted from the preamble of the final rule adopting the early warning reporting provisions of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act and amending other associated agency regulations.

DATES: The effective date of the final rule remains August 9, 2002.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA (phone: 202–366–5263).

SUPPLEMENTARY INFORMATION: In FR Doc. 02–17103, 67 FR 45822, July 10, 2002, the National Highway Traffic Safety Administration (NHTSA) inadvertently omitted its assessment of the applicability of the Unfunded Mandates Reform Act from Section X of the preamble, titled ''Regulatory Analyses.'' This document provides that assessment.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditures by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted annually for inflation with base year of 1995). Adjusting this amount by the implicit gross domestic product price deflator for the year 2000 results in $109 million (106.99/98.11 = 1.09). The assessment may be included in conjunction with other assessments.

The final rule (67 FR 45822 at 45872–45883) is not estimated to result in expenditures by State, local or tribal governments of more than $109 million

annually. It is not estimated to result in the expenditure by motor vehicle and motor vehicle equipment manufacturers, child restraint system manufacturers, and tire manufacturers of more than $109 million annually.

Authority: Sec. 3, Pub. L. 106–414, 114 Stat. 1800 (49 U.S.C. 30102–103, 30112, 30117–121, 30166–167); delegation of authority at 49 CFR 1.50.

Issued on: July 24, 2002.

Jeffrey W. Runge,

Administrator.

[FR Doc. 02–19200 Filed 7–29–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 84

RIN 1018–AF51

National Coastal Wetlands Conservation Grant Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule establishes the requirements for participation in the National Coastal Wetlands Conservation Grant Program authorized by the Coastal Wetlands Planning, Protection and Restoration Act (Act) and provides guidance for the Program's administration by the U.S. Fish and Wildlife Service (referred to as ''Service,'' ''we,'' and ''us'' within this rule). It replaces interim procedures and clarifies guidance for preparation, submission, and evaluation of proposed projects and administration of funded projects.

DATES: This rule is effective July 30, 2002.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Division of Fish and Wildlife Management and Habitat Restoration, Fish and Wildlife Service, U.S. Department of the Interior, Room 840, 4401 North Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Sally Valdes-Cogliano, Division of Fish and Wildlife Management and Habitat Restoration, by telephone (703) 358–2201; fax (703) 358–2232; *e-mail<sally_valdescogliano@fws.gov>* or Gary Reinitz, Division of Federal Aid, by telephone (703) 358–2159; fax (703) 358–1837; *e-mail:gary_reinitz@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

What Is the National Coastal Wetlands Conservation Grant Program?

The Coastal Wetlands Planning, Protection and Restoration Act (16 U.S.C. 3951–3956) authorizes the Director of the Service to make matching grants to coastal States for acquisition, restoration, enhancement, management, and preservation of coastal wetlands. Grants are available annually on a competitive basis to coastal States. Funding for this Program comes from the Sport Fish Restoration Account, which is supported by excise taxes on fishing equipment, and motorboat and small engine fuels.

The primary goal of the National Coastal Wetlands Conservation Grant Program is the long-term conservation of coastal wetland ecosystems. It accomplishes this goal by helping States in their efforts to protect, restore, and enhance their coastal habitats. The Program's accomplishments are primarily on-the-ground and measured in acres.

Why Protect Coastal Wetlands?

Coastal wetlands provide essential fish and wildlife habitat. Coastal ecosystems comprise less than 10 percent of the Nation's land area, but support a much higher proportion of our living resources. Specifically, coastal areas support a high percentage of our threatened and endangered species, fishery resources, migratory songbirds, and migrating and wintering waterfowl.

In addition to wildlife benefits, wetlands provide substantial flood and storm control values and can reduce the need to construct expensive flood control structures. They make an important contribution to water quality by recharging groundwater, filtering surface runoff, and treating waste, and they provide natural areas important for recreational and aesthetic purposes. Uplands associated with wetlands provide food and cover to wildlife and buffer wetlands from soil erosion and contaminants. In the coterminous United States, more than half of the estimated original 221 million acres of American wetlands have been destroyed since European settlement. The concentration of the U.S. population in coastal areas is a continuing source of development pressure on the remaining coastal wetlands.

What Has the Program Accomplished?

Since the Service began awarding grants in 1992, we have awarded about $105 million to 25 States and 1 U.S. territory to protect and/or restore about 130,000 acres of coastal wetland ecosystems. The Program's emphasis on encouraging partnerships, supporting watershed planning, and leveraging ongoing projects has helped stretch program funds. The resource benefits of this Program have included habitat protection and restoration for migratory birds, shorebirds, waterfowl, endangered and threatened species, and fish and shellfish.

Why Do We Need This Rule?

The National Coastal Wetlands Conservation Grant Program is currently being administered using internal interim program guidance and the standard grant administration policies of our Federal Aid Program. We believe administration of the Program could be improved through regulations specifically tailored to meet the needs of the Program. Accordingly, the rule uses a plain English style, provides examples to illustrate concepts, and combines current guidance in one place. It should result in a streamlined proposal preparation, review and grant administration process.

Currently, we evaluate grant requests received from the State agencies on an annual schedule. In the last few years, the number of proposals received annually by the Service National Office has ranged from 29 to 36. A review panel consisting of Service personnel representing the coastal Regions of the Service and specific program areas (for example, the Fisheries and Habitat Conservation, Endangered Species, and Refuges Programs) reviews and ranks all proposals. Based on the rankings of the panel, recommendations are sent to the Director of the Service, who makes the final determination of which projects will receive grants. The basic schedule and procedures will not change significantly with this rule.

The criteria for selecting proposals in this final rule have been modified from the interim guidance. For example, a new criterion has been added to give credit to projects that provide benefits to migratory birds. Also, we have expanded the discussion of each criterion to clarify project scoring. The changes were based on comments provided by Service personnel who have reviewed National Coastal Wetlands Conservation Grant proposals. These criteria can be found in the rule portion of this document.

Summary of Comments and Recommendations

In the proposed rule that was published August 20, 2001 (66 FR 43555), we requested that interested parties submit any comments they might have. We particularly sought

comments from the affected State agencies. The comment period was from August 20, 2001, to October 4, 2001.

We received comments from nine State government agencies. These comment letters provided suggestions and comments on a wide range of topics. We have considered all the comment letters received during the comment period and have made minor changes to improve and clarify the rule in response. Summaries of the major comments or issues follow.

Issue 1: Do we need to extend the period for the development of the grant agreement?

Response: We agree that a longer period for development of the grant agreement is appropriate. Resolving all the compliance issues that need to be addressed before a grant agreement is signed can be difficult. We are revising § 84.42 so that funds allocated for a grant will be held until December 31 of the following year.

Issue 2: What is the relationship between the goals of the National Coastal Wetlands Conservation Grant program and the Long-term and Annual Performance Goals of the Service?

Response: Long-term conservation of coastal wetlands is the primary goal of the Program. The results can be quantified in terms of acres enhanced, protected, and/or restored. (See § 84.10 for the goal statement.) When States conserve their wetlands resources using this program we all achieve benefits to habitat and wildlife. The discussion of performance measures in the rule in § 84.30(a)(2)(v) has been clarified to explain where to find the Service's Long-term and Annual Performance Goals and the relationship of these goals to the Grants Program.

Issue 3: Should the annual grant schedule be changed?

Response: The schedule in the rule reflects the current operating schedule for the Grants Program. We examined the effects of moving deadlines but have decided to maintain the current schedule.

Issue 4: Is the definition of ineligible activities too restrictive? Do we need to distinguish between planning activities for stand-alone grants, and planning as a minimal part of a grant objective?

Response: The focus of this Grant Program has always been on-the-ground accomplishments—through land acquisitions, easements, restoration and enhancement activities—and its accomplishments are measured in acres. We have modified the description of ineligible activities in § 84.20(b) to clarify that planning activities of a minimal nature and necessary to complete the project could be allowable.

Issue 5: The definition of a ''substantial proposal'' should include that it is consistent with State and Regional watershed plans. Consistency should be encouraged and rewarded in the grant scoring process.

Response: We agree that project proposals should take into account watershed plans. One of the ranking criteria in § 84.32 is specifically designed to give credit to proposals that demonstrate the value of the proposal in connection with wider planning efforts.

Issue 6: For the purposes of this rule, how should we define maritime forests?

Response: The current definition is not intended to include all kinds of maritime forests that might be included from a strictly biological perspective. It is, instead, focused on protection of the maritime forests characteristic of the southeastern United States. This area was considered to be, when the Coastal Wetlands Planning, Protection and Restoration Act was passed, extremely beneficial in protecting the coast and also under severe development pressure.

Issue 7: Should regionally threatened wetland types be given the same priority as nationally decreasing wetland types?

Response: The Coastal Wetlands Planning, Protection and Restoration Act states that the Director of the Service should give priority to coastal wetlands conservation projects that are consistent with the National Wetlands Priority Conservation Plan developed under Section 301 of the Emergency Wetlands Resources Act (16 U.S.C. 3921). This Conservation Plan, which was published in 1991, categorized wetland types into declining, stable, and increasing. Types that were declining nationally do need to receive priority under the National Coastal Wetlands Conservation Grant Program scoring system.

We recognize that certain important wetland types can be declining regionally even if they are not declining nationally. For this reason, we included in this rule the possibility of regionally decreasing types receiving credit in the scoring system if the case for regionally declining types is well-documented (see § 84.32(a)(1)(i)).

Issue 8: How should we define long-term conservation? Should we handle restoration and acquisition differently?

Response: Long-term conservation is a requirement established by the Act for this program. This rule requires that projects provide conservation for at least 20 years. In selecting this number we looked at the requirements of other programs. For this one criterion, acquisition projects may have some advantage over restoration projects, but this is one criterion among many and we do not want to establish separate ranking criteria for acquisition and restoration.

Effective Date

This rule is effective upon publication. In accordance with 5 U.S.C. 553(d)(3), we believe that we have good cause for making this rule effective upon publication to ensure that the rule is in effect during the next funding cycle for the National Coastal Wetlands Conservation Grant Program. This rule will benefit those entities seeking grants under this Program. This rule provides helpful information to grant applicants in preparing their applications and will help ensure that the Service applies fair and consistent standards in reviewing the grant applications.

What Are the Environmental Effects of This Regulation?

This final rule is a regulation of an administrative and financial nature. Therefore, the action is categorically excluded under 516 DM 2, Appendix 1.10 from any environmental documentation pursuant to the National Environmental Policy Act (NEPA). However, subsequent actions involved with acquisition, restoration, or enhancement will require further compliance with NEPA on a case-by-case basis.

Compliance with NEPA and other environmental laws and Executive Orders such as the Endangered Species Act, Coastal Barrier Resources Act, Coastal Barrier Improvement Act, Coastal Zone Management Act, Executive Orders on Floodplains (E.O. 11988) and Wetlands (E.O. 11990), other applicable executive orders on historic/cultural resources, prime and unique farmlands, and the Clean Water Act will be satisfied before we approve grant agreements for any project.

Does This Rule Have Any Information Collection Requirements?

This rule's information collection requirements include those necessary to fulfill applicable requirements of 43 CFR part 12, and these have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et. seq.*). This section of the Code of Federal Regulations provides the uniform administrative requirements for grants and cooperative agreements to States and local governments. The required forms include a grant agreement form, USFWS Form 3–1552 (OMB control number 1018–0049); an amendment to the grant agreement form, USFWS Form 3–1591 (OMB control

number 1018–0049); the Federal Aid Grant Application Booklet, which was approved by OMB on January 18, 2001, (OMB control number 1018–0109); the NEPA Compliance Checklist, USFWS Form 3–2185 (OMB control number 1018–0110); and the Summary Information for Ranking National Coastal Wetlands Grant Program Proposals, USFWS Form 3–2179 (OMB Control Number 1018–0111). 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.

Required Determinations

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this rule is a significant regulatory action. OMB makes the final determination of significance under Executive Order 12866.

This rule will not have an annual effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. The entities affected by this final rule are State natural resource agencies. The primary intended effect is to augment State efforts to conserve their coastal wetland resources. The program is completely voluntary; States choose whether to submit proposals for matching grants. New funds available each year are determined as a percentage of monies received by the Sport Fish Restoration Fund. However, the total receipts for a given year for this program are limited by the Coastal Wetlands Planning, Protection and Restoration Act to $15 million. Receipts for the last few years have been in the $10 million to $13 million range. This last grant cycle included $13 million in new money and $1.5 million available as carryover from previous years.

This rule will not create inconsistencies with other agencies' actions. The Service is charged with administering the National Coastal Wetlands Conservation Program by the Coastal Wetlands Planning, Protection and Restoration Act. This Program supports and augments State efforts to conserve their resources. States voluntarily choose to participate, and no other Federal agencies have responsibilities associated with this Grant Program. Some Federal agencies have participated voluntarily on specific projects as cooperators with the State agencies.

This rule will not affect entitlements, user fees, loan programs, or the rights and obligations of their recipients. It will affect this specific grant program. The Service has been giving out matching grants to States under the National Coastal Wetlands Conservation Grant Program since 1992. If we continue to operate with interim procedures and general Federal Aid grant administration, the same amount of grant assistance will be given to coastal States. The main effect that we expect from this rulemaking is a streamlined proposal preparation and review and grant administration process.

This rule will not raise novel legal or policy issues. As stated above, the Service has been awarding grants to States and administering this Program under the authority of the Coastal Wetlands Planning, Protection and Restoration Act since 1992. However, the purpose of this new rule is to improve the process.

Regulatory Flexibility Act

This final rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). By law, the only eligible recipients of this grant program are coastal State and territory government agencies. Operating with interim guidance, we have given out grants since 1992. This rule should not result in a major change to the Program. The Coastal Wetlands Planning, Protection and Restoration Act specifies an annual cap of $15 million that can be allocated to this program. An initial Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is also not required.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This final rule will not have an annual effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

As stated above, the maximum amount, by law, that can be directed to this Grant Program is $15 million per year. This Program is directed exclusively at State governments. This rule might provide some contracting work at a local level for restoration projects, creating a minor positive effect on the local economy. All land purchased under this Program is paid at fair market value from willing sellers. The land involved is a relatively small amount spread over the 10 to 15 States and territories that typically receive grants in a given year. All lands acquired will be put under long-term conservation protection by the States. Some of the grants are for restoration work on lands already owned by the States.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), this final rule will not significantly or uniquely affect small governments and will not produce a Federal mandate of $100 million or greater in any year, i.e., it is not a ''significant regulatory action'' under the Act. A Small Government Agency Plan is not required. As stated above, this rule pertains to a grant program directed at State governments. In a few cases, local governments have chosen to partner in a grant project proposed by the State. Participation in the Program is entirely voluntary. The Program income is limited to $15 million per year by the Coastal Wetlands Planning, Protection and Restoration Act.

Takings

In accordance with Executive Order 12630, this final rule does not have significant takings implications. A takings implication assessment is not required. The rule specifies that all acquisitions under this Program are from willing sellers. No private property will be taken from unwilling owners for the furtherance of this Program, and just compensation will be provided to willing owners.

Federalism

In accordance with Executive Order 13132, the final rule does not have significant Federalism effects. The rule allows eligible coastal States to make decisions regarding the selection of properties for acquisition, plan restoration projects, and take protective measures.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. To the extent of our knowledge, no legal cases have ever been associated with this grant

program. The rule should actually serve to reduce the possibility of litigation by establishing specific requirements for participation in the National Coastal Wetlands Conservation Grant Program and guidance for its administration by the Service. The rule will establish a clear legal standard for affected conduct.

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and part 512, chapter 2 of the Department of the Interior Manual, we have evaluated potential effects on federally recognized Indian tribes and have determined that the effects are minimal. The Coastal Wetlands Planning, Protection and Restoration Act specifies the States that can participate in this Grant Program. The Act does not provide for grants directly to Indian tribes. Tribes have, in a few cases, participated as cooperators on projects.

Energy Supply, Distribution or Use (Executive Order 13211)

On May 18, 2001, the President issues Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

How Does the Intergovernmental Review of Federal Programs Work?

This National Coastal Wetlands Conservation Grant Program is covered under Executive Order (Order) 12372 ''Intergovernmental Review of Federal Programs'' and 43 CFR Part 9 ''Intergovernmental Review of Department of the Interior Programs and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

Coastal States and territories that have chosen to participate in the Executive Order process have established Single Points of Contact (SPOCs). Applicants from jurisdictions that do not participate do not need to take any action regarding E.O. 12372. All other applicants should alert their SPOCs early in the application process. This step will insure that applicants find out about any SPOC requirements. If you as an applicant are required to submit materials to the SPOC, indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424.

List of Subjects in 50 CFR Part 84

Coastal zone-wetlands, Environmental protection-natural resources, Fisheries, Grant administration, Grant programs-natural resources, Intergovernmental relations, Marine resources, Natural resources, Reporting and recordkeeping requirements, and Wildlife.

For the reasons discussed in the supplementary information, we are amending subchapter F of chapter I, title 50 of the Code of Federal Regulations, by adding a new part 84, to read as follows:

PART 84—NATIONAL COASTAL WETLANDS CONSERVATION GRANT PROGRAM

Subpart A—General Background

Sec.

84.10 What is the purpose and scope of this rule?
84.11 How does the Service define the terms used in this rule?
84.12 What are the information collection, record keeping, and reporting requirements?

Subpart B—Applying for Grants

84.20 What are the grant eligibility requirements?
84.21 How do I apply for a National Coastal Wetlands Conservation Grant?
84.22 What needs to be included in grant proposals?

Subpart C—Project Selection

84.30 How are projects selected for grants?
84.31 An overview of the ranking criteria.
84.32 What are the ranking criteria?

Subpart D—Conditions on Acceptance/Use of Federal Money

84.40 What conditions must I follow to accept Federal money?
84.41 Who prepares a grant agreement? What needs to be included?
84.42 What if a grant agreement is not signed?
84.43 How do States get the grant monies?
84.44 What is the timetable for use of grant funds?
84.45 How do I amend a proposal?
84.46 What are the cost-sharing requirements?
84.47 What are allowable costs?
84.48 What are the procedures for acquiring, maintaining, and disposing of real property?
84.49 What if the project costs more or less than originally expected?
84.50 How does a State certify compliance with Federal laws, regulations, and policies?

Authority: 16 U.S.C. 3951–3956.

Subpart A—General Background

§ 84.10 What is the purpose and scope of this rule?

The regulations in this part establish the requirements for coastal State participation in the National Coastal Wetlands Conservation Grant Program authorized by Section 305 of the Coastal Wetlands Planning, Protection and Restoration Act (Pub L. 101–646, title III; 16 U.S.C. 3954). The primary goal of the National Coastal Wetlands Conservation Grant Program is the long-term conservation of coastal wetlands ecosystems. It accomplishes this by helping States protect, restore, and enhance their coastal habitats through a competitive grants program. Results are measured in acres protected, restored, and enhanced.

§ 84.11 How does the Service define the terms used in this rule?

Terms used have the following meaning in this part:

Coastal barrier. A depositional geologic feature that is subject to wave, tidal, and wind energies; protects landward aquatic habitats from direct wave attack; and includes all associated aquatic habitats such as adjacent wetlands, marshes, estuaries, inlets, and nearshore waters. These can include islands; spits of land connected to a mainland at one end; sand bars that connect two headlands and enclose aquatic habitat; broad, sandy, dune beaches; or fringing mangroves. Coastal barriers are found on coastlines including major embayments and the Great Lakes of the United States and its territories.

Coastal Barrier Resources System. A defined set of undeveloped coastal areas, designated by the Coastal Barrier Resources Act of 1982 (Pub. L. 97–348) and the Coastal Barrier Improvement Act of 1990 (Pub. L. 101–591). Within these defined units of the System, Federal expenditures are restricted to discourage development of coastal barriers.

Coastal States. States bordering the Great Lakes (Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin); States bordering the Atlantic, Gulf (except Louisiana), and Pacific coasts (Alabama, Alaska, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Oregon, Rhode Island, South Carolina, Texas, Virginia, and Washington); and American Samoa, Commonwealth of the Northern Mariana Islands, Guam, Puerto

Rico, and the Virgin Islands. (Louisiana is not included because it has its own wetlands conservation program authorized by the Coastal Wetlands Planning, Protection and Restoration Act and implemented by the Corps of Engineers with assistance from the State of Louisiana, the Environmental Protection Agency, and the Departments of the Interior, Agriculture, and Commerce.)

Coastal wetland ecosystems. Ecosystems that consist of multiple, interrelated coastal land features. They include wetlands in drainage basins of estuaries or coastal waters that contain saline, brackish, and nearshore waters; coastlines and adjacent lands; adjacent freshwater and intermediate wetlands that interact as an ecological unit; and river mouths and those portions of major river systems affected by tidal influence—all of which interact as an integrated ecological unit. Shorelands, dunes, nearshore islands, barrier islands and associated headlands, and freshwater wetlands within estuarine drainages are included in the definition since these interrelated features are critical to coastal fish, wildlife, and their habitats.

The definition of a coastal wetland ecosystem also applies to the Great Lakes and their watersheds, where freshwater plays a similar hydrologic role. The Great Lakes coastal wetland ecosystem is made up of multiple interrelated coastal landscape features along the Great Lakes. The Great Lakes coastal wetland ecosystem includes wetlands located adjacent to any of the Great Lakes including Lake St. Clair and connecting waters, and mouths of river or stream systems draining directly into the Great Lakes. Shorelands, dunes, offshore islands, and barrier islands and associated headlands are included in the definition since these interrelated features are critical to Great Lakes fish, wildlife, and their habitats.

Coastal Wetlands Act or Act. The Coastal Wetlands Planning, Protection and Restoration Act of 1990 (16 U.S.C. 3951–3956).

Eligible applicant. Any agency or agencies of a coastal State designated by the Governor. It is usually a State natural resource or fish and wildlife agency.

Enhancement. The manipulation of the physical, chemical, or biological characteristics of a wetland (undisturbed or degraded) site to heighten, intensify, or improve specific function(s) or to change the growth stage or composition of the vegetation present.

Fund. A fund established and used by a coastal State for acquiring coastal wetlands, other natural areas, or open spaces. The fund can be a trust fund from which the principal is not spent, or a fund derived from a dedicated recurring source of monies including, but not limited to, real estate transfer fees or taxes, cigarette taxes, tax checkoffs, or motor vehicle license plate fees.

Grant. An award of financial assistance by the Federal Government to an eligible applicant.

Long-term conservation. Protecting and restoring terrestrial and aquatic environments for at least 20 years. This includes the hydrology, water quality, and fish and wildlife that depend on these environments.

Maintenance. (These activities are ineligible under the program; the definition is included to distinguish these activities from acquisition, restoration, enhancement, and management.) Maintenance includes those activities necessary for upkeep of a facility or habitat. These activities include routine, recurring custodial maintenance such as housekeeping and minor repairs as well as the supplies, materials, and tools necessary to carry out the work. Also included is nonroutine cyclical maintenance to keep facilities or habitat improvements fully functional. Cyclical maintenance is major maintenance or renovation activities conducted at intervals normally greater than 1 year.

Management. (Includes habitat management only.) Habitat management includes vegetation manipulation and restoration of habitat to support fish and wildlife populations. Creation of wetlands where they did not previously exist is not included in the definition of management.

Maritime forest. Maritime forests are defined, for the purposes of this regulation, as broad-leaved forests that occur on barrier islands and along the mainland coast from Delaware to Texas. Examples are primarily characterized by a closed canopy of various combinations of live oak (*Quercus virginiana*), upland laurel oak (*Quercus hemisphaerica*), pignut hickory (*Carya glabra*), southern magnolia (*Magnolia grandiflora*), sugarberry (*Celtis laevigata*), and cabbage palm (*Sabal palmetto*). Shrubs and smaller trees typical of the understory include live oak, upland laurel oak, pignut hickory, red mulberry (*Morus rubra*), wild olive (*Osmanthus americanus*), American holly (*Ilex opaca*), yaupon (*Ilex vomitoria*), beautyberry (*Callicarpa americana*), bumelia (*Sideraxylon* spp.), and small-flowered pawpaw (*Asimina parviflora*). The herb layer is generally rich and diverse, typically including partridgeberry (*Mitchella repens*), coralbean (*Erythrina herbacea*), small-leaved milk pea (*Galactia microphylla*), tick trefoils (*Desmodium* spp.), and spikegrass (*Chasmanthium sessiliflorum*). Vines are represented by muscadine grape (*Vitis rotundifolia*), Virginia creeper (*Parrhenocissus quinquefolia*), and various briers (*Smilax* spp.).

This natural community type becomes established on old coastal dunes that have been stabilized long enough to sustain forests. In time, the accumulation of humus contributes to moisture retention of soils, while the canopy minimizes temperature fluctuations by reducing soil warming during the day and heat loss at night. Because of the underlying deep sands, maritime forests are generally well-drained.

Maritime forests have become prime resort and residential property because of their relatively protected locations along the coast. Although this community type originally occurred in virtually continuous strips along the Atlantic and Gulf Coasts, residential developments and infrastructure encroachments have severely fragmented most occurrences.

National Wetlands Inventory. A Service program that produces information on the characteristics, extent, and status of the Nation's wetlands and deepwater habitat. The program's strongest mandates come from the Emergency Wetlands Resources Act of 1986 (16 U.S.C. 3901), which directs the Service to map wetlands, conduct wetlands status and trends studies, and disseminate the information produced.

National Wetlands Priority Conservation Plan. A plan developed by the Service for the U.S. Department of the Interior at the direction of Congress through the Emergency Wetlands Resources Act of 1986 (16 U.S.C. 3901). The plan provides the criteria and guidance for identifying wetlands that warrant attention for Federal and State acquisition using Land and Water Conservation Fund appropriations.

Operations. (These activities are ineligible under the program; the definition is included to distinguish these activities from acquisition, restoration, enhancement, and management.) Operations include activities necessary for the functioning of a facility or habitat to produce desired results. These include public use management and facility management.

Program. The National Coastal Wetlands Conservation Grant Program. A program administered by the Service

that awards Federal grants through a competitive process to State agencies for projects to acquire, restore, manage, or enhance coastal wetlands.

Project. One or more related activities necessary to fulfill a stated objective to provide for the long-term conservation of coastal wetlands including the lands and waters, hydrology, water quality, and wetland-dependent wildlife. These activities can include acquisition, restoration, enhancement, or management of coastal wetlands.

Restoration. The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded wetland.

§ 84.12 What are the information collection, record keeping, and reporting requirements?

(a) Information collection requirements include:

(1) An Application for Federal Assistance (Standard Form 424);

(2) A proposal, following the guidance of OMB Circular A–102 and the Federal Aid Grant Application Booklet (OMB Control Number 1018–0109), that includes statements of need and objective(s); a description of expected results or benefits; the approach to be used, such as procedures, schedules, key personnel and cooperators, location of the proposed action, and estimated costs to accomplish the objective(s); identification of any other actions that may relate to the grant; and a description of public involvement and interagency coordination;

(3) Discussion of ranking criteria, including a completed summary information form (USFWS Form 3–2179);

(4) Assurances of compliance with all applicable Federal laws, regulations, and policies (SF 424B or SF 424D); and

(5) Documents, as appropriate, supporting the proposal; for example, environmental assessments (including the NEPA compliance checklist, USFWS Form 3–2185) and evaluations of effects on threatened and endangered species.

(6) A grant agreement form if the proposal is selected for an award (USFWS Form 3–1552); and

(7) A grant amendment form if the agreement is modified (USFWS Form 3–1591).

(b) Record-keeping requirements include the tracking of costs and accomplishments related to the grant as required by 43 CFR 12.60, monitoring and reporting program performance (43 CFR 12.80), and financial reporting (43 CFR 12.81). The project report should include information about the acres conserved, with a breakdown by conservation method (for example, acquired, restored, or both) and type of habitat (list habitat types and include the acreage of each). Are the results of the project being monitored? Is there evidence that the resources targeted in the proposal (for example, anadromous fish, threatened and endangered species, and migratory birds) have benefited?

(c) Reporting requirements include retention and access requirements as specified in 43 CFR 12.82 and authorized by OMB through the Federal Aid Grant Application Booklet (OMB Control Number 1018–0109).

Subpart B—Applying for Grants

§ 84.20 What are the grant eligibility requirements?

(a) Eligible grant activities include:

(1) Acquisition of a real property interest in coastal lands or waters from willing sellers or partners (coastal wetlands ecosystems), providing that the terms and conditions will ensure the real property will be administered for long-term conservation.

(2) The restoration, enhancement, or management of coastal wetlands ecosystems, providing restoration, enhancement, or management will be administered for long-term conservation.

(b) Ineligible activities include but are not limited to:

(1) Projects that primarily benefit navigation, irrigation, flood control, or mariculture;

(2) Acquisition, restoration, enhancement, or management of lands to mitigate recent or pending habitat losses resulting from the actions of agencies, organizations, companies, or individuals;

(3) Creation of wetlands by humans where wetlands did not previously exist;

(4) Enforcement of fish and wildlife laws and regulations, except when necessary for the accomplishment of approved project purposes;

(5) Research;

(6) Planning as a primary project focus (planning is allowable as a minimal component of project plan development);

(7) Operations and maintenance;

(8) Acquiring and/or restoring upper portions of watersheds where benefits to the coastal wetlands ecosystem are not significant and direct; and

(9) Projects providing less than 20 years of conservation benefits.

§ 84.21 How Do I Apply for a National Coastal Wetlands Conservation Grant?

(a) Eligible applicants should submit their proposals to the appropriate Regional Director of the U.S. Fish and Wildlife Service. Proposals must be complete upon submission, and must include the information outlined in § 84.22 to be complete.

(1) Service Regional Federal Aid Offices' responsibilities for administration of this grant program include: Notifying the States of the program, its requirements, and any changes that occur; determining the State agencies designated by the Governor as eligible applicants; ensuring that only eligible applicants apply for grants; coordinating with various Service programs to ensure that sound and consistent guidance is communicated to the States; determining proposal eligibility and substantiality; and determining 75 percent match eligibility and notifying the States of approved and disapproved proposals.

(2) Service Divisions of Ecological Services in the regions and field and Fisheries and Habitat Conservation in the national office provide technical assistance and work with Federal Aid to encourage State participation in this process.

(3) Send your proposals to the appropriate Regional Offices, as follows:

Coastal states by service regions	Regional contact information
American Samoa, California, Commonwealth of the Northern Mariana Islands, Guam, Hawaii, Oregon, and Washington (Region 1).	Regional Director (Attention: Federal Aid), U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 NE 11th Avenue, Portland, Oregon 97232–4181, (503) 231–6128.
Texas (Region 2)	Regional Director (Attention: Federal Aid), U.S. Fish and Wildlife Service, P.O. Box 1306, 500 Gold Avenue, SW, Albuquerque, New Mexico 87103, (505) 248–7450.
Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin (Region 3)	Regional Director (Attention: Federal Aid), U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, (612) 713–5130.

Coastal states by service regions	Regional contact information
Alabama, Florida, Georgia, Mississippi, North Carolina, Puerto Rico, South Carolina, and the Virgin Islands. Louisiana is not eligible to participate under Section 305 of 16 U.S.C. 3954, because Louisiana has its own separate program. (Region 4).	Regional Director (Attention: Federal Aid), U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 324, Atlanta, Georgia 30345, (404) 679–4159.
Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Virginia (Region 5).	Regional Director (Attention: Federal Aid), U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589, (413) 253–8508.
Alaska (Region 7)	Regional Director (Attention: Federal Aid), U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503, (907) 786–3435.

(b) The Program operates on an annual cycle. Regional Federal Aid Offices request proposals from the States in early April. Proposals must be received by the Regional Director on or before a due date set in early June in order to be considered for funding in the following fiscal year. Check with your Regional Office each year for the exact due dates. Regions review proposals for eligibility and substantiality. Regions may rank eligible and substantial proposals and submit them to the national office of the Service in Washington, DC, by a date set in late June. A Review Panel coordinated by the Service's National Office of Fisheries and Habitat Conservation reviews and ranks proposals in early August using the criteria established in this rule. The Director selects the proposals and announces the grant recipients at the beginning of the new fiscal year (October 1).

(c) More than one agency in a State may submit proposals to the Service if the Governor determines that more than one agency has responsibility for coastal wetlands.

(d) A project proposal that includes several separate and distinct phases may be submitted in phases, but any succeeding phases must compete against other proposals in the year submitted. Obtaining money for one phase of a project will not be contingent upon acquiring money for another phase of that same project.

(e) The Federal (Program) share will not exceed $1 million per project.

(f) The percentage of non-Federal match (cash or in-kind) must not be less than 25 percent of the total costs if the State has a designated fund or not less than 50 percent without a fund.

§ 84.22 What needs to be included in grant proposals?

Proposals must include the following:

(a) Application for Federal Assistance (Standard Form 424);

(b) A Statement of Assurances of compliance with applicable Federal laws, regulations, and policies (either Standard Form 424B or 424D); and

(c) A project statement that identifies and describes:

(1) The need within the purposes of the Act;

(2) Discrete, quantifiable, and verifiable objective(s) to be accomplished during a specified time period;

(3) Expected results or benefits, in terms of coastal lands and waters, the hydrology, water quality, or fish and wildlife dependent on the wetlands;

(4) The approach to be used in meeting the objectives, including specific procedures, schedules, key personnel, and cooperators;

(5) A project location, including two maps: A map of the State showing the general location of the proposal, and a map of the project site;

(6) Estimated costs to attain the objective(s) (the various activities or components of each project should be broken down by cost and by cooperator);

(7) If the request is more than $100,000 (Federal share), the applicant must submit a Form DI–2010, certifying that the grant money will not be used for lobbying activities;

(8) A concise statement, with documentation, of how the proposal addresses each of the 13 numeric criteria including a summary using FWS Form No. 3–2179 (see § 84.32);

(9) A description of the State trust fund that supports a request for a 75 percent Federal share in sufficient detail for the Service to make an eligibility determination, or a statement that eligibility has been previously approved and no change has occurred in the fund;

(10) A list of other current coastal acquisition, restoration, enhancement, and management actions; agency(ies) involved; relationship to the proposed grant; and how the proposal fits into comprehensive natural resource plans for the area, if any; and

(11) Public involvement or interagency coordination on coastal wetlands conservation projects that has occurred or is planned that relates to this proposal (Specify the organizations or agencies involved and dates of involvement.).

Subpart C—Project Selection

§ 84.30 How are projects selected for grants?

Project selection is a three-step process: proposal acceptance, proposal ranking, and proposal selection.

(a) *Proposal acceptance.* (1) The Regional Federal Aid Offices decide whether a proposal should be accepted for consideration by determining if the proposal is complete, substantial, and contains activities that are eligible. Proposals that do not qualify are immediately returned to the State. Revision and resubmission of returned proposals is allowable during this period, which is in June (check with your Regional Office for the exact dates each year). If any of the factors of completeness, substantiality, or eligibility are not met, the Regions should not forward the proposal to the Washington Office.

(2) To be considered for acceptance, the proposal must be substantial in character and design. A substantial proposal is one that:

(i) Identifies and describes a need within the purposes of the Act;

(ii) Identifies the objective to be accomplished based on the stated need;

(iii) Uses accepted principles, sound design, and appropriate procedures;

(iv) Provides public conservation benefits that are cost effective and long-term, i.e., at least 20 years; and

(v) Identifies obtainable, quantified performance measures (acres enhanced, restored, or protected) that help achieve the management goals and objectives of the National Coastal Wetlands Conservation Grant Program. Through this program, the States' efforts and leadership will help the Service meet its Long-Term and Annual Performance Goals as expressed in the Service's Annual Performance Plan.[1]

(3) The grant limit is $1 million. Proposals requesting Program awards

[1] The Service's Annual Performance Plan can be found on the Service's homepage at *http://www//.fws.gov/r9gpra.* For more information you might also contact the Budget Office at 202–208–4596 or the Planning and Evaluation Staff at 202–208–2549.

that exceed $1 million will be returned to the appropriate State. Similarly, individual projects that have clearly been divided into multiple proposals for submission in one grant cycle to avoid this limit will be returned to the appropriate State. The State can revise and resubmit the proposal so that the request does not exceed the $1 million limit.

(b) *Proposal ranking.* Once a proposal is accepted by the Region, the Regional Federal Aid Office sends the proposal to the National Federal Aid Office, which works with the National Office of the Fish and Wildlife Management and Habitat Restoration Program for distribution to a Review Panel. The Review Panel includes representation from our coastal Regions and from other Service Programs, for example, the Endangered Species Program. The Fisheries and Habitat Conservation Program is responsible for coordinating the review and ranking of proposals according to the established criteria, a process that usually involves a national meeting.

(c) *Proposal selection.* The Review Panel's recommendations are forwarded to the Director of the Service for a final review and project selection. The Director announces the selection by October 1.

§ 84.31 An overview of the ranking criteria.

(a) The primary objective of the proposal will be to acquire, restore, enhance, or manage coastal wetlands to benefit coastal wetlands and the hydrology, water quality, and fish and wildlife dependent upon them. The Program will not provide grants, for example, for construction or repair of boat ramps or docks for recreational purposes and construction or support of research facilities or activities. The purpose of the ranking criteria is to provide a means for selecting the best projects—those that produce the maximum benefits to coastal wetlands and the fish and wildlife that depend on them.

(b) *Proposal ranking factors.* (1) *Ranking criteria.* As explained in § 84.32, we will evaluate proposals according to 13 ranking criteria. These criteria have varying point values. Proposals must address each of these 13 criteria.

(2) *Additional considerations.* Even though the criteria provide the primary evaluation of proposals, we may factor additional considerations into the ranking decision at the national level. In case of a tie, we will use these additional considerations to rank proposals having identical scores.

(c) The criteria in § 84.32 are not listed in priority order.

(d) Points are assigned on the basis of a completed project, rather than current conditions, e.g., count 50 acres of estuarine emergent wetlands if 50 acres of that habitat type will be restored when the project is completed.

(e) A range of points rather than a set point value allows the reviewer to distinguish between, for example, a proposal that provides some foraging habitat for a threatened species versus one that provides critical nesting habitat of several endangered species. Scoring guidance is included with the individual criteria.

(f) A total of 64 points is possible under the scoring system.

(g) If a grant proposal is not selected, the State may resubmit it for reconsideration in subsequent fiscal years. Resubmission of a grant proposal is the responsibility of the applicant.

§ 84.32 What are the ranking criteria?

(a) The U.S. Fish and Wildlife Service will rank proposals using the 13 criteria listed below. In the following list, a description of each criterion is followed by examples and the points they would receive for that criterion.

(1) *Wetlands conservation.* Will the project reverse coastal wetland loss or habitat degradation in decreasing or stable coastal wetland types? Will it conserve wetlands to prevent losses of decreasing or stable wetland types? (Maximum: 7 points)

(i) The majority of the project area (over 50 percent) is nationally decreasing coastal wetland types,[2] or the majority is regionally decreasing wetlands types in which the case for regionally decreasing is well-documented (Up to 7 points). The nationally decreasing types are estuarine intertidal emergent; estuarine intertidal forested; estuarine intertidal scrub-shrub; marine intertidal; palustrine emergent; palustrine forested; and palustrine scrub-shrub. Describe the wetlands using terms listed above. Include a breakdown showing the percentage of the proposal's total and wetland acreage in decreasing types. Provide National Wetlands Inventory codes/information if available. Information about these can be found on the National Wetland Inventory's web site at *http://wetlands.fws.gov.*

(ii) The majority of the project area (over 50 percent) is nationally stable coastal wetlands types [2] (Up to 5 points). The nationally stable types are estuarine intertidal non-vegetated and estuarine subtidal. Describe the wetlands using the terms listed above. Include a breakdown showing the percentage of the proposal's total and wetland acreage in stable types. Provide National Wetlands Inventory codes/information if available.

(iii) Wetlands benefited are less than 50 percent of the project area. (Up to 3 points)

(iv) If the project would benefit wetlands in the upper portion of the coastal watershed, but does not demonstrate significant and direct benefits to coastal wetlands, the proposal will not receive any points. (0 points)

(v) We will award a full 7 points to proposals that document that over 50 percent of their project area would be, upon project completion, decreasing coastal wetland types. A combination of decreasing and stable types that is over 50 percent of the project area could receive an intermediate score of 4, 5, or 6 points, depending on the balance between decreasing and stable types. If wetlands are 50 percent or less of the project area, use the following guide for allocating points: 25 to 50 percent of the project area is decreasing or stable wetlands, 2, 3, or 4 points; 5 to 24 percent, 1 or 2 points; and less than 5 percent, 0 points.

(2) *Maritime forests on coastal barriers.* Will the proposal significantly benefit maritime forests on coastal barriers? The coastal barrier does not need to be a unit of the Coastal Barrier Resources System. (Maximum: 7 points)

(i) The proposal documents significant benefit to maritime forests on a coastal barrier. Describe the forest in sufficient detail so reviewers can determine whether it meets the definition of ''maritime forest.'' (Up to 7 points)

(ii) The proposal does not benefit maritime forests on a coastal barrier. (0 points)

(iii) For this criterion most scores should be either 0 or 7. If questions arise about the significance of the benefit or whether the forests meet the strict definition, an intermediate score could be given.

(3) *Long-term conservation.* Does the project ensure long-term conservation of coastal wetland functions? The project must provide at least 20 years of conservation benefits to be eligible. (Maximum: 7 points)

(i) Once the project is complete, the project will provide continuing coastal wetlands benefits in perpetuity (100 years or longer). (7 points)

[2] These designations are based on the National Wetlands Priority Conservation Plan. For more information about the plan, or to receive a copy of the document, refer to the contact information provided in § 84.21.

(ii) Once the project is complete, the project will provide continuing coastal wetland benefits for 50–99 years. (3 to 6 points)

(iii) Once the project is complete, the proposal will provide continuing coastal wetlands benefits for 20–49 years. (1 to 3 points)

(iv) The proposal should show how the project will be maintained and the benefits sustained over time. Proposals must include adequate documentation of long-term conservation of coastal wetland values, such as a 25-year easement, to receive points for this criterion. If part of the project's benefits will be perpetual (owned in fee title, for example) and part is estimated to last 20 years, reviewers should weigh the different elements of the project and give an intermediate score.

(4) *Coastal watershed management.* Would the completed project help accomplish the natural resource goals and objectives of one or more formal, ongoing coastal ecosystem or coastal watershed management plan(s) or effort(s)? Describe the management plan or effort(s). (Maximum: 3 points)

(i) The project supports the natural resource goals of identified formal, ongoing coastal ecosystem or coastal watershed management plans or efforts. Describe the management plan(s) and/or effort(s) and explain how this project relates to its objectives. A plan that very specifically identifies the site will receive more points than a plan containing many generic references. (Up to 3 points)

(ii) The project does not support the natural resource goals and objectives of a formal, ongoing coastal ecosystem or coastal watershed management effort. If the proposal benefits the upper portions of coastal watersheds, but provides no significant and direct benefits to the coastal wetlands ecosystems, the proposal will not receive points. (0 points)

(5) *Conservation of threatened and endangered species.* Will the project benefit any federally listed endangered or threatened species, species proposed for Federal listing, recently delisted species, or designated or proposed critical habitat in coastal wetlands? Will it benefit State-listed threatened and endangered species? (Maximum: 5 points)

(i) The project will provide, restore, or enhance important habitat (e.g., nesting, breeding, feeding, nursery areas) for federally listed or proposed endangered or threatened species that use the coastal area project site for at least part of their life cycle. The project will benefit recently delisted species and habitat conservation plans developed under the auspices of the Endangered Species Act. List the species and their status (e.g., threatened or endangered) and provide documentation (e.g., cite recovery plan, attach letter from species expert) of current or recent species occurrence in the coastal area project site. Describe the importance of the habitat. (Up to 5 points)

(ii) The project will provide, restore, or enhance important habitat for State-listed threatened and endangered species. (Up to 2 points)

(iii) The project will not provide, restore, or enhance important habitat for federally or State-listed or proposed endangered or threatened species in the coastal area project site for any part of their life cycle. If the proposal provides benefits to threatened and endangered species in the upper portion of the coastal watershed, but provides no significant and direct benefits to threatened and endangered species using coastal wetlands ecosystem habitat, the proposal will not receive any points. (0 points)

(iv) The combined scores of subparagraphs (a)(5)(i) and (a)(5)(ii) of this section cannot exceed the 5-point maximum.

(6) *Benefits to fish.* Will the project provide, restore, or enhance important fisheries habitat? (Maximum: 5 points)

(i) The project will provide, restore, or enhance important habitat (i.e., spawning, nursery, juvenile, or foraging habitat) for specific species that use the coastal area project site for at least part of their life cycle. These species may include anadromous, interjurisdictional, or other important species. List species, habitat types, and benefits to each species. (Up to 5 points)

(ii) The project does not document current or future benefits to fish species and their habitat. (0 points)

(iii) The more specific the information is on the use of the area and the importance of the habitat, the greater the points. An area specifically identified as critical for conservation in a fisheries management plan will, for example, receive more points than one which is not.

(7) *Benefits to coastal-dependent or migratory birds.* Will the project provide, restore, or enhance important habitat for coastal-dependent or migratory birds?

(i) The project will provide, restore, or enhance important habitat (i.e., breeding, staging, foraging, wintering/summering habitat) benefits for at least part of the life cycle of coastal dependent or migratory birds. List the species and habitat types, and describe the benefits to each. (Up to 5 points)

(ii) The project will not significantly benefit coastal-dependent or migratory birds. (0 points)

(iii) We will give maximum points to projects that benefit coastal-dependent species identified in the North American Waterfowl Plan or listed as species of management concern.[3] Proposals should also include information that demonstrates how the project will contribute to the regional goals developed under the U.S. Shorebird Conservation Plan, the North American Waterbird Conservation Plan, Partners in Flight, the North American Waterfowl Management Plan, or other bird conservation initiatives. Proposals that fail to do so will not receive maximum points. Indicate if the proposed area has been specifically identified by any program or agency for its migratory bird values.

(8) *Prevent or reduce contamination.* Will the project prevent or reduce input of contaminants to the coastal wetlands and associated coastal waters, or restore coastal wetlands and other associated coastal waters that are already contaminated? (Maximum: 5 points)

(i) The project will prevent significant inputs of contaminants or will provide significant improvements to the quality of the coastal wetland and associated waters through protection from contaminants or restoration, including assimilation of nutrients and nonpersistent toxic substances. Describe the types and sources of possible or current impairment to the coastal wetland and other associated coastal waters (e.g., to water quality, sediments, flora, or fauna). Describe how contaminant inputs or residues will be prevented, reduced, or eliminated. Preventing contaminants by precluding residential development through acquisition will not normally warrant full points unless the applicant can be shown that significant contamination would have occurred otherwise. (Up to 5 points)

(ii) The proposal will not significantly prevent impairment or improve the quality of the coastal wetland and associated coastal waters. If the proposal provides positive water quality benefits in the upper portions of watersheds, but provides no significant and direct positive water quality benefits to coastal wetland ecosystems, the proposal will not receive points. (0 points)

(iii) Show direct links between contamination and wildlife and aquatic habitats. To receive full points, you

[3] For more information about species of management concern, visit the website migratorybirds.fws.gov or contact the Division of Migratory Bird Management at 703–358–1714.

should provide documentation of the linkage. Reviewers may consider the extent of contaminants prevention/reduction when assigning points. Proposals having the potential to produce an attractive nuisance (e.g., acquiring and/or restoring a wetland that will be attractive to wildlife and that also has the potential to accumulate high levels of persistent toxic metals or hydrocarbon compounds) will not receive points.

(9) *Catalyst for future conservation.* Is the project proposal designed to leverage other ongoing coastal wetlands protection projects in the area, such as acquisition of areas to add to already acquired coastal lands, or provide impetus for additional restoration? (Maximum: 4 points)

(i) The project will be essential (e.g., key to completion or implementation of a greater conservation plan) to further advance or promote other coastal projects under way. Explain why. (Up to 4 points)

(ii) The project proposal does not demonstrate a positive impact on other coastal projects. (0 points)

(iii) To receive the maximum number of points, the proposal should be essential to the initiation or completion of a larger project. Examples may include acquisition of key in-holdings within a larger protected area, funds necessary to acquire fee simple interest in properties where a conservation easement has already been secured, and funds necessary to complete restoration activities to a protected area.

(10) *Partners in conservation.* Will the proposal receive financial support, including in-kind match, from private, local, or other Federal interests? (Maximum: 4 points)

(i) The proposal includes the State applicant plus one or more non-State financial partners. (Up to 4 points)

(ii) The proposal includes only financial support from the State applicant. (0 points)

(iii) A written description of commitment of funds or in-kind match from the partners must accompany the proposal. (This requirement is in addition to signing the Assurances Form.) The purpose of this criterion is to promote partnerships with private, local, or other Federal agencies rather than to increase the dollar amount of the matching share. Therefore, no specific minimum amount is indicated here. At least two partners, in addition to the State applicant, should have committed money to the project to receive maximum points.

(11) *Federal share reduced.* Does the proposal significantly reduce the Federal share by providing more than the required match amount? In the case of a Territory or Commonwealth that does not require match funds, does the proposal include financial support from sources other than the Territory or Commonwealth? (Maximum: 5 points)

(i) The State, territory, or commonwealth applicant must have a non-Federal funding source (in-kind match does not count for this criterion) that reduces the Federal share. (Up to 5 points)

(ii) The maximum Federal share is requested by the proposal. (0 points)

(iii) The purpose of this criterion is to increase the amount of money from non-Federal sources. This increase decreases the need for Federal match dollars, so that Federal dollars can help more projects. Documentation of each partner's financial commitment must accompany the proposal to receive points. If the State itself provides the excess match, the State should receive credit for reducing the Federal share. Each 5 percent above the required State match would be approximately equal to 1 point. The following two examples, using both a 50 and 75 percent Federal match share, define a 10 percent increase in a State's match amount.

(A) Example 1–50—Percent Federal Match

If the total project costs are $100,000, then the required State match share is $50,000.

If the State or a partner provides an additional cash contribution equal to 10 percent of the $50,000, $5,000. This is defined as a 10 percent increase in the State match.[4]

(B) Example 2–75—Percent Federal Match

If the total project costs are $100,000, then the required State match share is $25,000.

If the State or a partner provides an additional cash contribution equal to 10 percent of the $25,000, $2,500. This is defined as a 10 percent increase in the State match.[4]

(12) *Education/outreach program or wildlife-oriented recreation.* Is the project designed to increase environmental awareness and develop support for coastal wetlands conservation? Does it provide recreational opportunities that are consistent with the conservation goals of the site? (Maximum: 3 points)

(i) The proposal includes a site-specific, substantive education/outreach or wildlife-oriented recreation program. (Up to 3 points)

(ii) The proposal does not include a substantive education/outreach or wildlife-oriented recreation program. (0 points)

(iii) The proposal must describe what makes this program substantive and link it closely with the specific site to receive full points. Programs supported by activities or funds from partners should be encouraged over use of project dollars. Project proposals may include substantive education/outreach components necessary for the completion of the project. However, these should be activities that complement or support the primary goal of the project.

(13) *Other factors.* Do any other factors, not covered in the previous criteria, make this project or site particularly unique and valuable? Does the project offer important benefits that are not reflected in the other criteria? The following list includes examples of projects that provide benefits not reflected in other criteria. (Maximum: 4 points)

(i) The project might provide significant benefits to, for example: rare or threatened habitat types; biodiverse habitats; rare and declining species; and the local community.

(ii) The project would be particularly cost-effective, providing very significant resource benefits for the cost.

(iii) The project would assist in the prevention or control of invasive species.

(iv) The project would provide important cultural or historical resource benefits.

(v) The project would provide other benefits.

(vi) Reviewers should not assign points to resource values covered by other criteria. The proposal should provide a short narrative to support claims to *Other Factors* points.

(b) *Additional considerations.* We will factor the following considerations into the ranking process if two or more proposals have the same point totals. The tie-breaking factors are as follows:

(1) The project would prevent the destruction or degradation of habitat from pending sale of property, from adverse effects of current activities such as draining of wetlands, or from natural processes such as erosion at excessive rates;

(2) The project would protect unique and significant biological diversity;

(3) The project has lower costs per acre conserved; and

(4) In the project proposal the State or third party provides lands as opposed to using lands already owned by the State

[4] From sources other than Federal agencies. Natural Resource Damage Assessment funds may in some cases be defined as ''non-Federal.'' See discussion under § 84.46 on *What are the cost-sharing requirements?*

or third party as part of the State matching share.

(c) All proposals must include the information described in paragraphs (b)(1)–(4) of this section. If a tie occurs between two or more proposals, the reviewers need to have this information available immediately to decide which proposal or proposals should be recommended for selection.

Subpart D—Conditions on Acceptance/Use of Federal Money

§ 84.40 What conditions must I follow to accept Federal grant money?

(a) The audit requirements for State and local governments (43 CFR part 12), and

(b) The uniform administrative requirements for grants and cooperative agreements with State and local governments (43 CFR part 12).

§ 84.41 Who prepares a grant agreement? What needs to be included?

The coastal State and the Fish and Wildlife Service work together to develop a Grant Agreement (Form 3–1552) upon completion of the review by the Regional Director to determine compliance with applicable Federal laws and regulations. The Grant Agreement includes the grant title, the grant cost distribution, the agreement period, other grant provisions, and special grant conditions. If a Coastal Barrier Unit is affected, the Service must conduct internal consultations pursuant to Section 6 of the Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act, prior to providing any grant monies to that State.

§ 84.42 What if a grant agreement is not signed?

Monies that have been allocated for a grant will be held until December 31 of the following year. If a grant agreement has not been signed by the State and the Service and, therefore, the money has not been obligated for the approved grant by that date, the funds automatically are returned to the Program account in Washington.

§ 84.43 How do States get the grant monies?

Funding to States is provided on a reimbursable basis. See § 84.47 for information on what costs can be reimbursed. The Service may reimburse the State for projects completed, or make payments as the project progresses. For construction work and labor, the Service and the State may jointly determine, on a case-by-case basis, that payments may be made in advance. We will minimize the time elapsing between the transfer to the State and the State's need for the funds, and the time period will be subject to a specific determined need for the funds in advance. Except for extenuating circumstances, a reasonable time period to advance funds to a State is up to 3 days. OMB Circular A–102, Parts II and III, 43 CFR part 12, and 31 CFR part 205 provide specific information on methods and procedures for transferring funds.

§ 84.44 What is the timetable for the use of grant money?

Once money is granted to the coastal States, the money is available to those States for the time designated in the grant agreement. If a State needs more time, the State must apply for an extension of time by amending the grant agreement. If the Service does not extend the time, the unobligated monies return to the Service for expenditure on future grants. Also, if a State cannot spend the money on the approved project, the State must notify the appropriate Regional Director as soon as possible so that the money can revert back to the Service for future grants.

§ 84.45 How do I amend a proposal?

Following procedures in 43 CFR 12.70, you must submit a signed original and two copies of the revised SF 424, the revised portion of the project statement if appropriate, and an explanation of the reason for the revision to the Regional Director (Federal Aid).

§ 84.46 What are the cost-sharing requirements?

(a) Except for certain insular areas, the Federal share of an approved grant will not exceed 50 percent of approved costs incurred. However, the Federal share may be increased to 75 percent for coastal States that have established and are using a fund as defined in § 84.11. The Regions must certify the eligibility of the fund in order for the State to qualify for the 75 percent matching share.

(b) The following insular areas: American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands, have been exempted from the matching share, as provided in Pub. L. 95–134, amended by Pub. L. 95–348, Pub. L. 96–205, Pub. L. 98–213, and Pub. L. 98–454 (48 U.S.C. 1469a). Puerto Rico is not exempt from the match requirements of this Program.

(c) The State may provide materials (e.g., heavy equipment) or other services as a noncash match for portions of the State's matching share. The State may also provide the value of land, including the land proposed for restoration, enhancement, or management as a noncash match, provided that the land is necessary and reasonable for completing the project. For example, if a State proposes to manage a contiguous wetland of 100 acres, and already owns 10 of the 100 acres, the State can apply the current value of the 10 acres, provided that the 10 acres are necessary to manage the entire 100 acres. If the 10-acre wetland were not contiguous and no connection could be made that the 10 acres were needed to manage the proposed wetland, the State could not use the 10 acres as a noncash match. Review 43 CFR 12.64 for determining the value of in-kind contributions.

(d) The requirements in 43 CFR 12.64 and Service Manual Part 522 FW 1.13 [5] apply to in-kind matches or cost-sharing involving third parties. Third party in-kind contributions must represent the current market value of noncash contributions furnished as part of the grant by another public agency, private organization, or individual. In-kind matches must be necessary and reasonable to accomplish grant objectives.

(e) Coastal States must commit to their matching share of the total costs by signing the Application for Federal Assistance (SF 424), the Assurances (SF 424B or SF 424D), and the Grant Agreement (Form 3–1552).

(f) No Federal monies, non-Federal monies, in-kind contributions, or National Fish and Wildlife Foundation grant program monies that will be or have been previously used to satisfy the matching requirement of another Federal grant can be used as part of the coastal State's matching share.

(g) The coastal State is responsible for ensuring the full amount of that State's matching requirement, either with State funds or from contributions toward the proposal from other agencies, groups, or individuals. Sources other than State applicant funds must be documented and approved as eligible.

(h) Total Federal contributions (including all Federal sources outside of the Program) may not exceed the maximum eligible Federal share under the Program. This includes monies provided to the State by other Federal programs. If the amount of Federal money available to the project is more than the maximum allowed, we will reduce the Program contribution by the amount in excess.

[5] From the Fish and Wildlife Service Manual, available on-line at *http://www.fws.gov/directives/index.html.*

(i) Natural Resource Damage Assessment funds that are managed by a non-Federal trustee are considered to be non-Federal, even if these monies were once deposited in the Department of the Interior's Natural Resource Damage Assessment and Restoration Fund, provided the following criteria are met:

(1) The monies were deposited pursuant to a joint and indivisible recovery by the Department of the Interior and non-Federal trustees under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or the Oil Pollution Act (OPA);

(2) The non-Federal trustee has joint and binding control over the funds;

(3) The co-trustees agree that monies from the fund should be available to the non-Federal trustee and can be used as a non-Federal match to support a project consistent with the settlement agreement, CERCLA, and OPA; and

(4) The monies have been transferred to the non-Federal trustee.

§ 84.47 What are allowable costs?

(a) Allowable grant costs are limited to costs necessary and reasonable to achieve approved grant objectives and meet the applicable Federal cost principles in 43 CFR 12.62 (b).

(b) If a project or facility is designed to include purposes other than those eligible under the Act, the costs must be prorated among the various purposes.

(c) If you incur costs before the effective date of the grant, they cannot be reimbursed, with the exception that we can allow preliminary costs, but only with the approval of the appropriate Regional Director. Preliminary costs may include costs necessary for preparing the grant proposal, such as feasibility surveys, engineering design, biological reconnaissance, appraisals, or preparation of grant documents such as environmental assessments for compliance with the National Environmental Policy Act.

§ 84.48 What are the procedures for acquiring, maintaining, and disposing of real property?

(a) Acquisition, maintenance, and disposal of real property must follow the rules established in 43 CFR 12.71 and 50 CFR 80.14.

(1) Title to real property acquired under a grant or subgrant must be vested in the State or subgrantee, including local governments and nonprofit organizations. States must submit documentation (e.g., appraisals and appraisal reviews) to the Regional Director who must approve it before the State becomes legally obligated for the purchase. States will provide title vesting evidence and summary of land costs upon completion of the acquisition. The grant agreement and any deed to third parties (e.g., conservation easement or other lien on a third-party property) must include appropriate language to ensure that the lands and/or interests would revert back to the State or Federal Government if the conditions of the grant were no longer being implemented.

(2) In cases where the interest obtained is less than fee simple title, the interest must be sufficient for long-term conservation of the specified wetlands resources.

(3) Real property acquired with National Coastal Wetlands Conservation Grant funds must continue to serve the purpose for which it was acquired. If acquired property is used for reasons inconsistent with the purpose(s) for which acquired, such activities must cease and any adverse effects on the property must be corrected by the State or subgrantee with non-Federal monies in accordance with 50 CFR 80.14.

(4) The State or subgrantee may not dispose of or encumber its title or other interest in real property without prior approval of the appropriate Regional Director of the Service. Real property includes, but is not limited to, lands, buildings, minerals, energy resources, timber, grazing, and animal products. If real property is sold, the State or subgrantee must compensate the Service in accordance with 43 CFR 12.71(c)(2).

(5) If rights or interests obtained with the acquisition of coastal wetlands generate revenue during the Grant Agreement period, the State will treat the revenue as program income and use it to manage the acquired properties. If the State sells or leases real property, the State must treat the proceeds as program income and return the money to the Federal Aid program regardless of the grant period.

(6) Inconsistent use that is not corrected can be grounds for denying a State future grants under this Program.

(b) A coastal State is responsible for design, supervision, and inspection of all major construction projects in accordance with accepted engineering standards.

(1) The coastal State must have adequate rights to lands or waters where restoration or enhancement projects are planned to ensure protection and use of the facilities or structures throughout their useful life.

(2) The construction, enlargement, or rehabilitation of dams are subject to Federal standards for dam design. If requested, the State must provide to the Regional Office written certification that any proposed changes to a dam meet Federal standards.

(3) The coastal State must operate and maintain facilities, structures, or related assets to ensure their use for the stated project purpose and that they are adequately protected.

(c) Acquisition, property records, maintenance, and disposal of equipment must be made in accordance with 43 CFR 12.72.

§ 84.49 What if the project costs more or less than originally expected?

All requests for additional monies for approved coastal wetland grants will be subject to the entire review process along with new grants. Any monies left over after the project is complete, or if the project is not completed, should be returned to the Washington Office for use in following years. If a State has lands it wishes to acquire, restore, or enhance in close proximity to the original project, and the Region deems that spending project monies in these areas would provide similar benefits, the Region may use unspent balances to pay for these projects with prior approval from the Washington Office. States must provide adequate justification and documentation to the Regions that the lands acquired, restored, or enhanced are similar to those in the original proposal and provide similar benefits to fish and wildlife.

§ 84.50 How does a State certify compliance with Federal laws, regulations, and policies?

(a) In accepting Federal money, coastal State representatives must agree to and certify compliance with all applicable Federal laws, regulations, and policies. The applicant will need to submit a Statement of Assurances (either SF 424B or SF 424D) signed and dated by an authorized agency representative as part of the proposal.

(b) Compliance with environmental and other laws, as defined in the Service Manual 523 FW Chapter 1,[6] may require additional documentation. Consult with Regional Offices for how this applies to a specific project.

Dated: March 29, 2002.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–19065 Filed 7–29–02; 8:45 am]

BILLING CODE 4310–55–P

[6] The Fish and Wildlife Service Manual, see footnote 3 for availability.

Proposed Rules

Federal Register
Vol. 67, No. 146
Tuesday, July 30, 2002

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.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1611

Privacy Act Regulations

AGENCY: Equal Employment Opportunity Commission.

ACTION: Proposed rule.

SUMMARY: The Equal Employment Opportunity Commission is proposing to revise its regulations which implement the Privacy Act of 1974, to exempt two EEOC systems of records from some of the Act's requirements.

DATE: Written comments on the proposed rule must be received on or before September 30, 2002. The Commission proposes to consider any comments received and thereafter adopt final regulations.

ADDRESS: Comments should be addressed to the Office of Executive Secretariat, Equal Employment Opportunity Commission, Room 10402, 1801 L Street, NW., Washington, DC 20507. As a convenience to commenters, the Executive Secretariat will accept comments transmitted by facsimile (''FAX'') machine. The telephone number of the FAX receiver is (202) 663–4114. (This is not a toll-free number.) Only comments of six or fewer pages will be accepted via FAX transmittal. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4078 (voice) or (202) 663–4077 (TTY). (These are not toll-free numbers.) Copies of comments submitted by the public will be available for review at the Commission's library, Room 6502, 1801 L Street, NW., Washington, DC 20507, between the hours of 9:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Thomas J. Schlageter, Assistant Legal Counsel, or Kathleen Oram, Senior Attorney, Office of Legal Counsel, (202) 663–4669 (voice) or (202) 663–7026 (TDD). This notice is also available in the following formats: large print, braille, audio tape and electronic file on computer disk. Requests for this notice in an alternative format should be made to EEOC's Publication Center at 1–800–669–3362.

SUPPLEMENTARY INFORMATION: The Commission proposes to amend §1611.13 to exempt its system of records EEOC–15, Internal Harassment Inquiries, pursuant to section k(2) of the Privacy Act, from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) of the Privacy Act. In addition, the Commission proposes to add a new §1611.14, to exempt its system of records EEOC–16, Office of Inspector General Investigative Files, pursuant to section (j)(2) from sections (c)(3), (d)(1), (d)(2), (e)(1), (e)(2) and (e)(3) and pursuant to section (k)(2) from sections (c)(3), (d)(1), (d)(2) and (e)(1) of the Act.

Section (k) of the Privacy Act allows an agency to exempt any system of records from the above-referenced subsections of the Act if it consists of ''investigatory material compiled for law enforcement purposes.'' 5 U.S.C. 552(k)(2). Section (j) of the Privacy Act permits an agency to exempt a system of records from sections of the Act, including those noted above, if the system of records is ''maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws.'' 5 U.S.C. 552(j)(2). The files in the Internal Harassment Inquiries system of records contain information obtained by EEOC in its internal investigations of allegations of harassment filed by EEOC employees. The files in the Office of Inspector General Investigations Files system contain information obtained during investigations by the Office of Inspector General relating to programs and operations of the EEOC. It would impede the law enforcement activities of the Commission, and the Office of Inspector General to apply the disclosure and amendment provisions of the Privacy Act to the two systems of records. The regulation includes detailed reasons for the exemption of the two systems of records from the particular provisions of the Privacy Act.

Regulatory Procedures

List of Subjects in 29 CFR Part 1611

Privacy Act.

For the Commission.

Cari M. Dominguez,

Chair.

Accordingly, it is proposed to amend chapter XIV of title 29 of the Code of Federal Regulations as follows:

PART 1611—[AMENDED]

1. The authority citation for Part 1611 continues to read as follows:

Authority: 5 U.S.C. 552a.

2. Section 1611.13 is revised to read as follows:

§ 1611.13 Specific Exemptions—Charge and complaint files

Pursuant to subsection (k)(2) of the Act, 5 U.S.C. 552a(k)(2), systems EEOC–1 (Age and Equal Pay Act Discrimination Case Files), EEOC–3 (Title VII and Americans with Disabilities Act Discrimination Case Files), EEOC–15 (Internal Harassment Inquiries) and EEOC/GOVT–1 (Equal Employment Opportunity Complaint Records and Appeal Records) are exempt from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) of the Privacy Act. The Commission has determined to exempt these systems from the above named provisions of the Privacy Act for the following reasons:

(a) The files in these systems contain information obtained by the Commission and other Federal agencies in the course of harassment inquiries, and investigations of charges and complaints that violations of Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the Equal Pay Act, the Americans With Disabilities Act and the Rehabilitation Act have occurred. In some instances, EEOC and agencies obtain information regarding unlawful employment practices other than those complained of by the individual who is the subject of the file. It would impede the law enforcement activities of the Commission and other agencies if these provisions of the Act applied to such records.

(b) The subject individuals of the files in these systems know that the Commission or their employing agencies are maintaining a file on their charge, complaint, or inquiry, and the general nature of the information contained in it.

(c) Subject individuals of the files in EEOC–1 (Age and Equal Pay Act

Discrimination Case Files), EEOC–3 (Title VII and Americans with Disabilities Act Discrimination Case Files, and EEOC/GOVT–1 (Equal Employment Opportunity Complaint Records and Appeal Records) have been provided a means of access to their records by the Freedom of Information Act. Subject individuals of the charge files in system EEOC–3 have also been provided a means of access to their records by section 83 of the Commission's Compliance Manual. Subject individuals of the case files in system EEOC/GOVT–1 have also been provided a means of access to their records by the Commission's Equal Employment Opportunity in the Federal Government regulation, 29 CFR 1614.108(f).

(d) Many of the records contained in system EEOC/GOVT–1 are obtained from other systems of records. If such records are incorrect, it would be more appropriate for an individual to seek to amend or correct those records in their primary filing location so that notice of the correction can be given to all recipients of that information.

(e) Subject individuals of the files in each of these systems have access to relevant information provided by the allegedly discriminating employer, accuser or harasser as part of the investigatory process and are given the opportunity to explain or contradict such information and to submit any responsive evidence of their own. To allow such individuals the additional right to amend or correct the records submitted by the allegedly discriminatory employer, accuser or harasser would undermine the investigative process and destroy the integrity of the administrative record.

(f) The Commission has determined that the exemption of these four systems of records from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) of the Privacy Act is necessary for the agency's law enforcement efforts.

3. Section 1611.14 is added to read as follows:

§ 1611.14 Exemptions—Office of Inspector General Files

(a) *General.* The system of records entitled Office of Inspector General Investigative Files consists, in part, of information compiled by the OIG for the purpose of criminal law enforcement investigations. Therefore, to the extent that information in this system falls within the scope of Exemption (j)(2) of the Privacy Act, 5 U.S.C. 552a(j)(2), this system of records is exempt from the requirements of the following subsections of the Privacy Act, for the reasons stated below.

(1) From subsection (c)(3), because release of an accounting of disclosures to an individual who is the subject of an investigation could reveal the nature and scope of the investigation and could result in the altering or destruction of evidence, improper influencing of witnesses, and other evasive actions that could impede or compromise the investigation.

(2) From subsection (d)(1), because release of investigative records to an individual who is the subject of an investigation could interfere with pending or prospective law enforcement proceedings, constitute an unwarranted invasion of the personal privacy of third parties, reveal the identity of confidential sources, or reveal sensitive investigative techniques and procedures.

(3) From subsection (d)(2), because amendment or correction of investigative records could interfere with pending or prospective law enforcement proceedings, or could impose an impossible administrative and investigative burden by requiring the OIG to continuously retrograde its investigations attempting to resolve questions of accuracy, relevance, timeliness and completeness.

(4) From subsection (e)(1), because it is often impossible to determine relevance or necessity of information in the early stages of an investigation. The value of such information is a question of judgment and timing; what appears relevant and necessary when collected may ultimately be evaluated and viewed as irrelevant and unnecessary to an investigation. In addition, the OIG may obtain information concerning the violation of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, the OIG should retain this information because it may aid in establishing patterns of unlawful activity and provide leads for other law enforcement agencies. Further, in obtaining evidence during an investigation, information may be provided to the OIG which relates to matters incidental to the main purpose of the investigation but which may be pertinent to the investigative jurisdiction of another agency. Such information cannot readily be identified.

(5) From subsection (e)(2), because in a law enforcement investigation it is usually counterproductive to collect information to the greatest extent practicable from the subject thereof. It is not always feasible to rely upon the subject of an investigation as a source for information which may implicate him or her in illegal activities. In addition, collecting information directly from the subject could seriously compromise an investigation by prematurely revealing its nature and scope, or could provide the subject with an opportunity to conceal criminal activities, or intimidate potential sources, in order to avoid apprehension.

(6) From subsection (e)(3), because providing such notice to the subject of an investigation, or to other individual sources, could seriously compromise the investigation by prematurely revealing its nature and scope, or could inhibit cooperation, permit the subject to evade apprehension, or cause interference with undercover activities.

(b) *Specific.* The system of records entitled Office of Inspector General Investigative Files consists, in part, of investigatory material compiled by the OIG for law enforcement purposes. Therefore, to the extent that information in this system falls within the coverage of exemption (k)(2) of the Privacy Act, 5 U.S.C. 552a(k)(2), this system of records is exempt from the requirements of the following subsections of the Privacy Act, for the reasons stated below.

(1) From subsection (c)(3), because release of an accounting of disclosures to an individual who is the subject of an investigation could reveal the nature and scope of the investigation and could result in the altering or destruction of evidence, improper influencing of witnesses, and other evasive actions that could impede or compromise the investigation.

(2) From subsection (d)(1), because release of investigative records to an individual who is the subject of an investigation could interfere with pending or prospective law enforcement proceedings, constitute an unwarranted invasion of the personal privacy of third parties, reveal the identity of confidential sources, or reveal sensitive investigative techniques and procedures.

(3) From subsection (d)(2), because amendment or correction of investigative records could interfere with pending or prospective law enforcement proceedings, or could impose an impossible administrative and investigative burden by requiring the OIG to continuously retrograde its investigations attempting to resolve questions of accuracy, relevance, timeliness and completeness.

(4) From subsection (e)(1), because it is often impossible to determine relevance or necessity of information in the early stages of an investigation. The value of such information is a question of judgment and timing; what appears relevant and necessary when collected

may ultimately be evaluated and viewed as irrelevant and unnecessary to investigation. In addition, the OIG may obtain information concerning the violation of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, the OIG could retain this information because it may aid in establishing patterns of unlawful activity and provide leads for other law enforcement agencies. Further, in obtaining evidence during an investigation, information may be provided to the OIG which relates to matters incidental to the main purpose of the investigation but which may be pertinent to the investigative jurisdiction of another agency. Such information cannot readily be identified.

[FR Doc. 02–18894 Filed 7–29–02; 8:45 am]

BILLING CODE 6570–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AD48

Operation of Child Care Centers at VA Facilities

AGENCY: Department of Veterans Affairs.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Department of Veterans Affairs published a proposed rule to amend its regulations regarding the Operation of Child Care Centers at VA Facilities. The proposed rule and the comments we received have been superseded by events. Accordingly, this document hereby withdraws the proposed rule.

FOR FURTHER INFORMATION CONTACT: Renee Bruce, National Child Care Program Manager, telephone number 410–605–7388, VA Maryland Health Care System, 10 N. Greene Street, Baltimore, Maryland 21201.

SUPPLEMENTARY INFORMATION: In a proposed rule published in the **Federal Register** on December 27, 1989 (54 FR 53078), VA proposed to amend its regulations regarding the Operation of Child Care Centers at VA Facilities. The proposed rule and comments VA received have been superseded by events.

The child care needs of VA employees are being met through the provision of child care services by non-VA entities, at, or near VA facilities. While VA does not have any authority other than Veterans' Canteen Service (VCS) statute, to provide child care services directly, VA facilities can provide, free-of-charge, space and services to privately operated child care centers pursuant to the Trible Amendment and VA leasing authority. *See* 38 U.S.C. 7809, 8122(a), 40 U.S.C. 490b. Use of the Trible Amendment and VA leasing authority has resulted in the existence of dozens of child care centers serving VA employees.

Further, we understand that VCS does not, nor does it intend to, operate any child care centers, directly or by contract. Thus, VA is withdrawing the proposed rule.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contacts, Grants program-health, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and Transportation expenses, Veterans.

Approved: July 5, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 02–19175 Filed 7–29–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

[DFARS Case 2002–D008]

Defense Federal Acquisition Regulation Supplement; Trade Agreements Act—Exception for U.S.-Made End Products

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the determination of the Under Secretary of Defense (Acquisition, Technology, and Logistics) that, for procurements subject to the Trade Agreements Act, it would be inconsistent with the public interest to apply the Buy American Act to U.S.-made end products that are substantially transformed in the United States.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before September 30, 2002, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* As an alternative, respondents may e-mail comments to: *dfars@acq.osd.mil.* Please cite DFARS Case 2002-D008 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2002-D008.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf.*

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0328.

SUPPLEMENTARY INFORMATION:

A. Background

On March 14, 2002, the Under Secretary of Defense (Acquisition, Technology, and Logistics) (USD(AT&L)) determined that, for procurements subject to the Trade Agreements Act, it would be inconsistent with the public interest to apply the Buy American Act to U.S.-made end products that are substantially transformed in the United States. This determination expands the May 16, 1997, USD(AT&L) determination (presently implemented in DFARS Part 225) that it would be inconsistent with the public interest to apply the Buy American Act to U.S.-made information technology products in Federal Supply Group 70 or 74. The March 14, 2002, determination is consistent with Federal Acquisition Regulation policy applicable to civilian agencies with regard to the treatment of U.S.-made end products.

This proposed DFARS rule implements the March 14, 2002, USD(AT&L) determination. The rule will simplify evaluation of offers in acquisitions subject to the Trade Agreements Act, because it will no longer be necessary to determine if a U.S.-made end product is also a domestic end product, *i.e.,* the cost of domestic components exceeds the cost of all components by more than 50 percent. Additionally, the provision at DFARS 252.225–7006, Buy American Act—Trade Agreements—Balance of Payments Program Certificate, and the clause at DFARS 252.225–7007, Buy

American Act—Trade Agreements—Balance of Payments Program, will no longer be necessary, because the provision at DFARS 252.225–7020, Trade Agreements Certificate, and the clause at DFARS 252.225–7021, Trade Agreements, will be appropriate for all acquisitions subject to the Trade Agreements Act. This rule also applies the March 14, 2002, USD(AT&L) determination to acquisitions subject to the Balance of Payments Program, since the Balance of Payments Program is an extension of the Buy American Act restrictions to acquisitions of supplies for overseas use.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* An initial regulatory flexibility analysis has been prepared and is summarized as follows:

The objective of the rule is to avoid treating products substantially transformed in the United States less favorably than products substantially transformed in a designated, Caribbean Basin, or NAFTA country. Under existing DFARS policy, offers of domestic end products are given a 50 percent price evaluation preference over offers of U.S.-made end products for which the cost of foreign components exceeds the cost of domestic components by 50 percent or more. However, for acquisitions subject to the Trade Agreements Act, an end product of a designated, Caribbean Basin, or NAFTA country is exempt from application of the 50 percent evaluation factor, regardless of the source of the components. Therefore, a company might be encouraged to manufacture a product in a designated, Caribbean Basin, or NAFTA country rather than in the United States. This DFARS rule proposes to revise evaluation procedures for acquisitions subject to the Trade Agreements Act to eliminate the 50 percent price advantage that DoD presently gives to domestic end products over U.S.-made end products with foreign component content of 50 percent or more. Therefore, the cost incentive to manufacture components in the United States will be removed. However, for companies that provide U.S.-made end products containing foreign components, the incentive to move end product manufacturing facilities to a designated, Caribbean Basin, or NAFTA country will be reduced.

A copy of the analysis may be obtained from the point of contact specified herein. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2002–D008.

C. Paperwork Reduction Act

The rule will eliminate the requirement for offerors to track and document the origin of components of U.S.-made end products in acquisitions subject to the Trade Agreements Act. This will reduce by 960 hours the annual paperwork burden requirements previously approved by the Office of Management and Budget under Control Number 0704–0229.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR Parts 225 and 252 as follows:

1. The authority citation for 48 CFR Parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

225.001 [Amended]

2. Section 225.001 is amended by removing paragraph (3)(ii) and redesignating paragraph (3)(iii) as paragraph (3)(ii).

225.003 [Amended]

3. Section 225.003 is amended as follows:

a. In paragraph (4) by removing ''252.225–7007, Buy American Act—Trade Agreements—Balance of Payments Program;''; and

b. In paragraph (12), by removing ''252.225–7007. Buy Americn Act—Trade Agreements—Balance of Payments Program;''.

4. Section 225.103 is amended as follows:

a. By redesignating paragraph (a)(1) as paragraph (a)(i); and

b. By revising newly designated paragraph (a)(i)(B) to read as follows:

225.103 Exceptions.

(a)(i) * * *

(B) The Under Secretary of Defense (Acquisition, Technology, and Logistics) has determined that, for procurements subject to the Trade Agreements Act, it is inconsistent with the public interest to apply the Buy American Act to end products that are substantially transformed in the United States.

* * * * *

5. Section 225.402 is revised to read as follows:

225.402 General.

To estimate the value of the acquisition, use the total estimated value of end products subject to trade agreement acts (see 225.401–70).

6. Section 225.502 is revised to read as follows:

225.502 Application.

(b) Use the following procedures instead of the procedures in FAR 25.502(b) for acquisitions subject to the Trade Agreements Act:

(i) Consider only offers of U.S.—made, qualifying country, or eligible end products, except as permitted by 225.403.

(ii) If price is the determining factor, award on the low offer.

(c) Use the following procedures instead of those in FAR 25.502(c) for acquisitions subject to the Buy American Act or the Balance of Payments Program.

(i) Treat offers of eligible end products under acquisitions subject to NAFTA as if they were qualifying country offers. As used in this section, the term ''nonqualifying country offer'' may also apply to an offer that is not an eligible offer under NAFTA.

(ii) Except as provided in paragraph (c)(iii) of this section, evaluate offers by adding a 50 percent factor to the price (including duty) of each nonqualifying country offer (*see* 225.504(1)).

(A) Nonqualifying country offers include duty in the offered price. When applying the factor, evaluate based on the inclusion of duty, whether or not duty is to be exempted. If award is made on the nonqualifying country offer and duty is to be exempted through inclusion of the clause at FAR 52.225–8, Duty-Free Entry, award at the offered price minus the amount of duty identified in the provision at 252.225–7003, Information for Duty-Free Entry Evaluation (*see* 225.504(1)(ii)).

(B) When a nonqualifying country offer includes more than one line item, apply the 50 percent factor—

(1) On an item-by-item basis; or

(2) On a group of items, if the solicitation specifically provides for award on a group basis.

(iii) When application of the factor would not result in the award of a

domestic end product, *i.e.*, when no domestic offers are received (*see* 225.504(3)) or when a qualifying or NAFTA country offer is lower than the domestic offer (*see* 225.504(2)), evaluate nonqualifying country offers without the 50 percent factor.

(A) If duty is to be exempted through inclusion of the clause at FAR 52.225–8, Duty-Free Entry, evaluate the nonqualifying country offer exclusive of duty by reducing the offered price by the amount of duty identified in the clause at 252.225–7003, Information for Duty-Free Entry Evaluation (*see* 225.504(2)(ii) and (3)(ii)). If award is made on the nonqualifying country offer, award at the offered price minus duty.

(B) If duty is not to be exempted, evaluate the nonqualifying country offer inclusive of duty (*see* 225.504(2)(i) and (3)(i)).

(iv) If these evaluation procedures result in a tie between a nonqualifying country offer and a domestic offer, make award on the domestic offer.

(v)(A) There are two tests that must be met to determine whether a manufactured item is a domestic end product—

(1) The end product must have been manufactured in the United States; and

(2) The cost of its U.S. and qualifying country components must exceed 50 percent of the cost of all of its components. This test is applied to end products only, and not to individual components.

(B) Because of the component test, the definition of ''domestic end product'' is more restrictive than the definition for—

(1) ''U.S.-made end product'' under trade agreements;

(2) ''Domestically produced or manufactured products'' under small business set-asides or small business reservations; and

(3) Products of small businesses under FAR part 19.

225.504 [Amended]

7. Section 225.504 is amended by removing paragraph (4).

225.1101 [Amended]

8. Section 225.1101 is amended as follows:

a. In paragraph (2)(i) by removing ''252.225–7007, Buy American Act—Trade Agreements—Balance of Payments Program;'';

b. By removing paragraph (3)(ii) and redesignating paragraphs (3)(iii) and (3)(iv) as paragraphs (3)(ii) and (3)(iii), respectively;

c. By removing paragraphs (5) and (6) and redesignating paragraphs (7) through (14) as paragraphs (5) through (12), respectively;

d. In newly designated paragraph (9), by removing ''when acquiring information technology products in Federal Supply Group 70 or 74'' and adding in its place ''if the acquisition is subject to the Trade Agreements Act''; and

e. In newly designated paragraph (12), by removing ''252.225–7007, Buy American Act—Trade Agreements'Balance of Payments Program;''.

9. Section 225.7501 is amended by revising paragraph (b)(1)(iii) to read as follows:

225.7501 Policy.

* * * * *

(b) * * *

(1) * * *

(iii) For acquisitions subject to the Trade Agreements Act, is a U.S.-made end product; or

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225–7006 and 252.225–7007 [Removed and Reserved]

10. Sections 252.225–7006 and 252.225–7007 are removed and reserved.

252.225–7008 [Amended]

11. Section 252.225–7008 is amended in the introductory text by removing ''225.1101(7)'' and adding in its place ''225.1101(5)''.

252.225–7009 [Amended]

12. Section 252.225–7009 is amended in the introductory text by removing ''225.1101(8)'' and adding in its place ''225.1101(6)''.

252.225–7010 [Amended]

13. Section 252.225–7010 is amended in the introductory text by removing ''225.1101(9)'' and adding in its place ''225.1101(7)''.

252.225–7020 [Amended]

14. Section 252.225–7020 is amended in the introductory text by removing ''225.1101(10)'' and adding in its place ''225.1101(8)''.

252.225–7021 [Amended]

15. Section 252.225–7021 is amended in the introductory text by removing ''225.1101(11)'' and adding in its place ''225.1101(9)''.

252.225–7035 [Amended]

16. Section 252.225–7035 is amended in the introductory text and in Alternate I by removing ''225.1101(12)'' and adding in its place ''225.1101(10)''.

252.225–7036 [Amended]

17. Section 252.225–7036 is amended in the introductory text and in Alternate I introductory text by removing ''225.1101(13)'' and adding in its place ''225.1101(11)''.

252.225–7037 [Amended]

18. Section 252.225–7037 is amended in the introductory text by removing ''225.1101(14)'' and adding in its place ''225.1101(12)''.

[FR Doc. 02–19085 Filed 7–29–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 16

RIN 1018–AG70

Injurious Wildlife Species; Black Carp (*Mylopharyngodon piceus*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service proposes to amend its regulations to add black carp (*Mylopharyngodon piceus*) to the list of injurious fish, mollusks, and crustaceans. This listing would have the effect of prohibiting the importation of any live animal or viable egg of the black carp into the United States. The best available information indicates that this action is necessary to protect the interests of human beings, and wildlife and wildlife resources from the purposeful or accidental introduction and subsequent establishment of black carp populations into ecosystems of the United States. As proposed, live black carp or viable eggs could be imported only by permit for scientific, medical, educational, or zoological purposes, or without a permit by Federal agencies solely for their own use; permits would also be required for the interstate transportation of live black carp or viable eggs currently held in the United States for scientific, medical, educational, or zoological purposes. The proposal would prohibit interstate transportation of live black carp or viable eggs, currently held in the United States, for any other purpose.

DATES: Comments must be submitted on or before September 30, 2002.

ADDRESSES: Comments may be mailed or sent by fax to the Chief, Division of Environmental Quality, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 322, Arlington, VA 22203,

FAX (703) 358–1800. You may send comments by electronic mail (email) to: *BlackCarp@fws.gov.* See the Public Comments Solicited section below for file format and other information about electronic filing.

FOR FURTHER INFORMATION CONTACT: Kari Duncan, Division of Environmental Quality, Branch of Invasive Species at (703) 358–2464 or *kari_duncan@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

The purpose of this proposal is to prevent the accidental or intentional introduction of black carp and the possible subsequent establishment of populations of these fish in the wild.

In February 2000 the Fish and Wildlife Service received a petition from the Mississippi Interstate Cooperative Resources Association (MICRA) to list the black carp (*Mylopharyngodon piceus*) under the Injurious Wildlife Provision of the Lacey Act. The petition was based upon State concerns about the potential impacts of black carp on native freshwater mussels and snails in the Mississippi River basin.

Description of the Proposed Rule

The regulations contained in 50 CFR part 16 implement the Lacey Act (18 U.S.C. 42) as amended. Under the terms of the law, the Secretary of the Interior is authorized to prescribe by regulation those wild mammals, wild birds, fish (including mollusks and crustaceans), amphibians, reptiles, and the offspring or eggs of any of the foregoing, which are injurious to human beings, to the interests of agriculture, horticulture, or forestry, or to the wildlife or wildlife resources of the United States. The lists of injurious wildlife species are at 50 CFR 16.11–16.15. If black carp are determined to be injurious, then as with all listed injurious animals, their importation into, or transportation between, States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States by any means whatsoever is prohibited, except by permit for zoological, educational, medical, or scientific purposes (in accordance with permit regulations at 50 CFR 16.22), or by Federal agencies without a permit solely for their own use, upon filing a written declaration with the District Director of Customs and the U.S. Fish and Wildlife Service Inspector at the port of entry. In addition, no live black carp, progeny thereof, or viable eggs acquired under permit could be sold, donated, traded, loaned, or transferred to any other person or institution unless such person or institution has a permit issued by the Director of the U.S. Fish and Wildlife Service. The interstate transportation of any live black carp or viable eggs currently held in the United States for any purposes not permitted would be prohibited.

Biology

Black carp, also known as snail carp, Chinese black carp, black amur, Chinese roach, or black Chinese roach, is a freshwater fish that inhabits lakes and lower reaches of large, fast moving rivers. The species inhabits most major drainages of eastern Asia from about 22°N to about 51°N latitude. The natural range of black carp includes China, parts of far eastern Russia, and possibly northern Vietnam. Several published records of black carp from Taiwan and Japan likely represent introductions.

Black carp typically grow to more than 3 feet in length and weigh, on average, 33 pounds. They reportedly can reach 5 feet in length and weigh up to 150 pounds. Individuals of the species are known to live to at least 15 years of age.

Black carp reach maturity from 6 to 11 years of age. They reproduce annually. Spawning occurs in their natural range when water temperatures are at least 65.5°F, water levels are rising, and mollusks are available. They spawn upstream in rivers and their eggs drift downstream. The eggs are carried by currents into floodplain lakes, smaller streams, and channels with little to no current. Female black carp produce 129,000 to 1.18 million eggs each year, depending on body size.

Black carp feed on zooplankton and fingerlings when small. As adults, powerful crushing teeth permit the black carp to crush the thick shells of large mollusks. Reports indicate that the fish can usually handle any food item that it can get into its mouth. In some instances, the fish is able to crack the edge of a shell, extract soft parts, and then spit out shell fragments. A four year old black carp was shown to eat, on average, 3–4 pounds of mussels per day.

Young black carp are difficult to distinguish from young grass carp (*Ctenopharyngodon idella*). Adults may be distinguished externally by the color and the more cylindrical form of the body, and internally by the pharyngeal teeth.

Available information indicates that black carp are currently being maintained in research and fish production facilities in Arkansas, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, and Texas. This species originally entered the United States in the early 1970s as ''contaminant'' in imported grass carp stocks. The black carp were imported from Asia and were sent to a private fish farm in Arkansas. The second introduction of black carp into the United States occurred in the early 1980s for yellow grub control and as a food fish. The species was also imported by a Mississippi fish farmer during the early 1980s and by a fish farm operation in Missouri during the period 1986–1988.

Need for Proposed Rule—Environmental Consequences

Factors That Contribute to Injuriousness

The likelihood of release or escape of black carp is high. Currently, the predominant use of black carp in the United States is for biological control of snails that are an intermediate host in the life cycle of a trematode that affects catfish being farmed for human consumption. Ninety-five percent of the catfish farms in production are located in the Southeastern United States. Much of the Mississippi River delta region is at moderate to high risk of natural disaster including tornados, floods, and hurricanes. A natural disaster in the Southeast region is likely to result in the release of black carp from catfish farms. The first and only known introduction of black carp into a natural waterway occurred during a flood event. These fish were thought to be triploid (sterile through chromosome number manipulation) and the species has not been found in the wild. Additional risks of release associated with fish farming include movement of live carp from farm ponds to natural waterways via predatory birds and mammals, or escape from aquaculture facilities. Black carp are farm-raised in aquaculture facilities throughout Asia and Eastern Europe for human consumption. If black carp becomes popular for human consumption in the United States and farmed on a larger scale, the associated risks of release would be similar to that described above. However, the risks would be of greater magnitude, as the black carp would be stocked at the aquaculture facilities at a higher rate than they are currently stocked for biological control purposes.

If black carp escaped, or were released into the wild, they would likely survive and/or become established with or without reproduction. Moreover, released black carp would likely spread throughout the United States since no known limiting factors would preclude them from becoming established in U.S.

waters. The black carp, a native of most Pacific drainages in eastern Asia, inhabits large river and lake habitats at the same latitudes as the United States. This carp feeds on aquatic snails and mussels that are similar to those locally abundant in many of our rivers. The grass carp (*Ctenopharyngodon idella*), a close Asian relative with similar reproductive requirements, has expanded into all of the lower 48 States except Montana and Vermont since its introduction into Arkansas and Alabama in 1963.

At all life stages, black carp will compete for food with native species. As discussed above in the Biology section, the fish grow to lengths greater than 1 meter and can weigh up to 150 pounds. The literature indicates that 4-year-old black carp eat 3–4 pounds of mollusks per day. Within their native range, black carp feed on species that are similar to our native mollusk species. Black carp are also known to eat freshwater shrimp, crawfish, and insects. Based on their feeding habits, black carp, if introduced or established, are likely to have a considerable impact on native mussel and snail populations. Native fish (redear sunfish, pumpkinseed sunfish, freshwater drum, snail bullhead, copper redhorse, river redhorse, robust redhorse, and several catfish and sucker species); turtles (sawbacks and musk turtles); birds, including waterfowl (Everglades snail kite, scaup, and canvasback); and vertebrates, such as racoons, otters, and muskrats, are likely to be affected through competition for food.

Although their potential to cause habitat destruction, such as that associated with Cyprinid species, is low, black carp could impact stream communities where snails play an important role as grazers of attached algae. Algae mats could develop and upset the natural balance of wildlife habitats if snail populations become depressed.

Black carp host many parasites and flukes, as well as bacterial and viral diseases that are likely to infect sport, food, or threatened and endangered fish species. They may also be immune or serve as intermediate hosts to the many parasites that use mollusks as intermediate hosts (some of which are harmful to humans). Because black carp carry a diverse fauna of parasites, the potential for the transfer of pathogens is high.

The likelihood and magnitude of effect on threatened and endangered species is high. Black carp are molluscivores (mussel and snail feeders) and have the potential to negatively affect threatened and endangered mollusks, fish, turtles, and birds that rely on mollusks as a food source. The United States, particularly the Southeast, has one of the world's most diverse aquatic mollusk faunas. Currently, about 300 taxa of freshwater mussels are recognized nationwide and nearly 67 percent of this fauna (69 species are federally listed as threatened or endangered) are vulnerable to extinction or already extinct. Our Nation's freshwater snail diversity is about 600 species or about 15 percent of the world's diversity of this faunal group.

Based on the food habits and habitat preferences of the black carp, it is likely to invade the habitat, feed on, and further threaten most of the federally listed freshwater mussels and about one-third of the federally listed aquatic snails. Black carp are likely to also further threaten numerous other potential candidates for Federal protection. Since many freshwater mollusks require a fish as an intermediate host for reproduction, the mussels that require native fishes to reproduce are likely to rapidly decline if the fish are affected by black carp. The establishment of black carp populations in the Mississippi drainages has the potential to reduce mollusk populations to levels that would require listing of the mollusks and the other animals that depend on mollusks for food.

The introduction or establishment of black carp may have negative impacts on humans primarily from the loss of native aquatic mollusk biodiversity and bio-abundance. Freshwater mollusks play an important ecological role in maintaining the health of aquatic ecosystems. These losses would affect the aesthetic, recreational, and economic values currently provided by native mollusks and healthy ecosystems. Educational values would also be diminished through the loss of biodiversity and ecosystem health. Black carp also have the potential to negatively affect the cultured pearl industry through predation on commercial mussel species.

Factors That Reduce or Remove Injuriousness

The ability and effectiveness of measures to prevent escape or establishment are low. Most available protective measures available to prevent escape of black carp from aquaculture facilities are expected to be cost-prohibitive to initiate and maintain. Even with protective measures in place, it is unlikely they would eliminate risks of accidental escape from facilities. Those facilities that are located in floodplains and susceptible to natural storm events are particularly vulnerable. The ability to eradicate or control black carp populations depends on where they are found. If established in large lakes or river systems, eradication and/or control of black carp is expected to be nearly impossible and they would likely become permanent members of the fish community. Additionally, controlling the spread of pathogens once they have been introduced in the wild is practically impossible.

No good tools are currently available to manage established black carp populations. Chemicals are the best option, but their use on a large scale is prohibitively expensive, can cause mortality to non-target fish and aquatic species, are not accepted by the public, and must be repeatedly used. Chemicals rarely kill every fish, and not all life stages are equally susceptible to chemicals. Additionally, some areas cannot be effectively treated due the size of the area, the distribution of the target species, and the effects on the non-target species, for example.

Since effective measures to eradicate, manage, or control the spread of black carp once they are established are not currently available, the ability to rehabilitate or recover ecosystems disturbed by the species is low. Significant risks associated with black carp release relate to endangerment and extinction of native mussels and snails. Re-establishment of extirpated mussel and snail populations, if biologically possible, would be labor and cost intensive and would depend on eradication of black carp within the habitat of the mussels and snails.

While triploidy and sterility may impede breeding of black carp in the natural environment, non-breeding populations are likely to still have significant negative impacts on natural systems. While triploid black carp may not be able to reproduce, allowing black carp in commerce still presents problems. First and foremost, in order to have black carp for sale, someone must have reproducing pairs of the fish, which means that reproductively active fish could escape. Second, the current methods of producing triploidy fish do not ensure that all of the fish are triploid and testing each fish would be cost-prohibitive; therefore, reproductively active fish will be found in otherwise triploid lots of fish. Finally, black carp will feed on native mollusks regardless of their reproductive ability. As described above, black carp eat 3–4 pounds of mussels per day and can live in excess of 15 years. Therefore, non-breeding populations of black carp are likely to have significant negative

impacts on native snail and mussel populations.

Because black carp are likely to escape or be released into the wild; are likely to survive or become established if escaped or released; are likely to spread since there are no known limiting factors; are likely to compete with native species for food; may serve as intermediate hosts for and/or transmit parasites to native species; are likely to feed on native mollusks, which is likely to negatively affect native mollusks, as well as the native fish, turtles, and birds that rely on mollusks as a food source; and because it will be difficult to prevent, eradicate, manage, or control the spread of black carp; it will be difficult to rehabilitate or recover ecosystems disturbed by the species; and because non-breeding populations of black carp are likely to have significant negative impacts on native snail and mussel populations, the Service finds black carp to be injurious to the interests of human beings and the wildlife and wildlife resources of the United States.

Required Determinations

Currently we have approval from OMB to collect information under OMB control number 1018–0092. This approval expires July 31, 2004. We may not conduct or sponsor, and a person is not required to respond to, a collection of information unless we display a currently valid OMB control number.

In accordance with the criteria in Executive Order 12866, the Office of Management and Budget has determined that this rule is not a significant regulatory action.

(a) This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government. A cost-benefit and economic analysis is not required. Catfish producers are the entities most likely to be affected by this rule. However, catfish producers have alternative means of control for snail infestation of catfish ponds. Chemical control with such items as hydrated lime, copper sulfate, and aquatic herbicides greatly reduces the snail population and, in conjunction with biological control, can eliminate snail infestation during the production of catfish. The elimination of the use of black carp as the biological control agent will allow an increase in the non-marketability of some of the catfish. The estimated maximum loss is expected to be less than $9 million per year for the affected catfish producers.

(b) This rule will not create inconsistencies with other agencies. This rule pertains only to regulations promulgated by the Fish and Wildlife Service under the Lacey Act. No other agencies are involved in these regulations.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights or obligations of their recipients. This rule does not affect entitlement programs. This rule is aimed at regulating the importation and movement of a non-indigenous species that has the potential to cause significant economic and other impacts on natural resources that are the trust responsibility of the Federal Government.

(d) This rule does not raise novel legal or policy issues. No previous listings of wildlife as injurious in the past have caused legal or policy problems.

This rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. No individual small industry within the United States will be significantly affected if black carp importation and interstate transport is prohibited.

The rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule will not have an annual effect on the economy of $100 million or more. The black carp is not commercially traded in the United States. No recreational fishery exists for this species. Two firms currently produce and sell black carp, and the Fish and Wildlife Service believes that black carp production is a small part of these businesses so they should not be significantly affected by this rule. As a result, the regulation of this species will only affect catfish farmers that are infected with the yellow grub. Since about 1.5 percent of catfish farmers have permits to use the black carp as a biological control measure for snails in farm ponds, we do not expect that this rule will have a substantial impact on U.S. catfish producers. Alternative control measures for snail infestation are available, and more are being researched and developed. This rulemaking will have the effect of protecting commercial shellfish fisheries as well as endangered and threatened mollusks in the Mississippi watershed from the introduction of black carp. The black carp would devastate many shellfish resources if it escaped from catfish ponds and entered a waterway. This rulemaking, by protecting the environment from the spread of a non-native species that would likely devastate local mollusk populations, will indirectly work to sustain the economic benefits enjoyed by numerous small establishments.

This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Substitute control mechanisms for the control of yellow grubs are available, although they may not be as economical as the use of black carp. The six catfish farms using black carp for snail control account for approximately 1.5 percent of total U.S. catfish production. Under the worst case that all catfish produced at these farms was not marketable, the affected catfish would only amount to 1.5 percent of the annual U.S. production. This small impact would not appreciably affect costs or prices to consumers. Since alternative control methods are available, the economic effect is not expected to be significant. Six firms out of nearly 300 would have a slight increase in production cost.

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities, and does not have significant adverse effects on competition, employment, investment productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. This rule will not impose significant requirements or limitations on private property use.

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. This rule will not have substantial direct effects on States, in the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, we determine that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

In accordance with Executive Order 12988, the Office of the Solicitor has

determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order. The proposed rule has been reviewed to eliminate drafting errors and ambiguity, was written to minimize litigation, provides a clear legal standard for affected conduct rather than a general standard, and promotes simplification and burden reduction.

We have reviewed this rule in accordance with the criteria of the National Environmental Policy Act and our Departmental Manual in 516 DM. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/assessment is not required. The action is categorically excluded under the Department's NEPA procedures (516 DM 2, Appendix 1.10), which apply to policies, directives, regulations, and guidelines of an administrative, legal, technical, or procedural nature; or the environmental effects of which are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or case-by-case.

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated potential effects on Federally recognized Indian tribes and have determined that there are no potential effects.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this proposal is intended to prevent the accidental or intentional introduction of black carp and the possible subsequent establishment of populations of these fish in the wild, it is not a significant regulatory action under Executive Order 12866 and is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action and no Statement of Energy Effects is required.

This proposed rule solicits economic, biologic, or other information concerning black carp. The information will be used to determine if the species is a threat, or potential threat, to those interests of the United States delineated above, and thus warrants addition to the list of injurious fish in 50 CFR 16.13.

Public Comments Solicited

Please send comments to Chief, Division of Environmental Quality, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 322, Arlington, VA 22030. Comments may be hand delivered or faxed to (703) 358–1800. If you submit comments by e-mail, please submit comments as an ASCII file format and avoid the use of special characters and encryption. Please include ''Attn: [RIN 1018–AG70]'' and your name and return address in your e-mail message. Please note that this email address will be closed at the termination of this public comment period.

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 rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us for 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.

List of Subjects in 50 CFR Part 16

Fish, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Accordingly, we propose to amend part 16, subchapter B, of Chapter I, Title 50 of the Code of Federal Regulations as set forth below.

PART 16—[AMENDED]

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

Authority: 18 U.S.C. 42.

2. Amend § 16.13 by revising paragraph (a)(2) to read as follows:

§ 16.13 Importation of live or dead fish, mollusks, and crustaceans, or their eggs.

(a) * * *

(2) The importation, transportation, or acquisition of any live fish or viable eggs of the walking catfish, family Clariidae; live mitten crabs, genus *Eriochei,* or their viable eggs; live mollusks, veligers, or viable eggs of zebra mussels, genus *Dreissena;* and any live black carp (*Mylopharyngodon piceus*) or their viable eggs, is prohibited except as provided under the terms and conditions set forth in § 16.22.

* * * * *

Dated: July 18, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–19158 Filed 7–29–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 071802B]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Sustainable Fisheries Act (SFA) Requirements for Species in the U.S. Caribbean; Comprehensive Amendment Addressing SFA Definitions in Fishery Management Plans of Puerto Rico and the U.S. Virgin Islands; Scoping Meetings

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

ACTION: Notice of scoping meetings; request for comments.

SUMMARY: The Council will convene scoping meetings to solicit additional public comments on the scope of issues to be addressed in a draft supplemental environmental impact statement (DSEIS) that will assess the impacts on the natural and human environment of the various managed fisheries related to the management measures proposed under the draft Comprehensive Amendment Addressing SFA Definitions and Other Required Provisions of the Magnuson-Stevens Fishery Conservation and Management Act in the Fishery Management Plans (FMPs) of Puerto Rico and the U.S. Virgin Islands (Comprehensive SFA Amendment). The purpose of this document is to solicit additional public comments on the scope of the issues to be addressed in the DSEIS, which will be submitted to NMFS for filing with the Environmental Protection Agency (EPA) for publication of a Notice of Availability for public comment.

DATES: The scoping meetings will be held on August 6 and 7, 2002. See **SUPPLEMENTARY INFORMATION** for specific dates and times for the scoping meetings.

ADDRESSES: Scoping meetings will be held in Miami, FL. See **SUPPLEMENTARY INFORMATION** for specific meeting locations.

FOR FURTHER INFORMATION CONTACT: Graciela Garcia-Moliner; phone: 787–766–5926; e-mail: *Graciela.Garcia-Moliner@noaa.gov* or Michael C. Barnette; phone: 727–570–5305; fax: 727–570–5583; e-mail: *Michael.Barnette@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Council is preparing to amend the FMPs for Corals and Reef Associated Plants and Invertebrates, Queen Conch, Reef Fish Fishery, and Spiny Lobster to: (1) address the consistency with new definitions; (2) address bycatch management measures and bycatch reporting requirements; (3) provide descriptions of the commercial, recreational, and charter fisheries and quantify trends in landings and data specified for each sector; (4) address fishery impact statements to insure they incorporate the likely effects of management measures on fishing communities; and (5) address overfishing provisions specifying objective and measurable criteria for identifying whether a species is overfished, and provide subsequent measures to rebuild overfished stocks.

The DSEIS will describe the proposed management measures in the Comprehensive SFA Amendment and will assess the environmental impacts of these proposed and alternative measures. To ensure compliance with the requirements of the SFA in the various FMPs, the Council intends to evaluate numerous management measures such as permits; commercial reporting requirements, including species-specific and bycatch reporting; limited entry; time/area closures, including closures for spawning aggregations and habitat protection; size limits; trip limits; gear restrictions; and recreational possession limits. The Council originally published a notice of intent (NOI) to prepare a DSEIS, requested written comments, and notified the public of scoping meetings in the **Federal Register** on May 31, 2002 (67 FR 38060).

Once the Council completes the DSEIS, it will submit it to NMFS for filing with the EPA. The EPA will publish a notice of availability of the DSEIS for public comment in the **Federal Register**. The DSEIS will have a 45–day comment period. This procedure is pursuant to regulations issued by the Council on Environmental Quality (CEQ) for implementing the procedural provisions of the National Environmental Policy Act (NEPA; 40 CFR parts 1500-1508) and to NOAA's Administrative Order 216–6 regarding NOAA's compliance with NEPA and the CEQ regulations. The Council will consider public comments received on the DSEIS before adopting final management measures for the Comprehensive SFA Amendment. The Council intends to prepare a final supplemental environmental impact statement (FSEIS) in support of the final Comprehensive SFA Amendment. The Council would then submit the final Comprehensive SFA Amendment and supporting FSEIS to NMFS for Secretary of Commerce (Secretarial) review, approval, and implementation under the Magnuson-Stevens Act. NMFS will announce availability of the Comprehensive SFA Amendment for public review during the Secretarial review period through a notification published in the **Federal Register**. During Secretarial review, NMFS will also file the FSEIS with the EPA for a final 30–day public comment period. This comment period will be concurrent with the Secretarial review period and will end prior to final agency action to approve, disapprove, or partially approve the Comprehensive SFA Amendment. All public comment periods on the Comprehensive SFA Amendment, its proposed implementing regulations, and its associated FSEIS will be announced through a notice published in the **Federal Register**. NMFS will consider all public comments received during the 60–day Secretarial review period, whether they are on the Comprehensive SFA Amendment, the FSEIS, or the proposed regulations, prior to final agency action.

The scoping meetings will be held from 9 a.m. to 5 p.m. at the following location and dates:

1. *August 6, 2002:* National Marine Fisheries Service Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami , FL, telephone: 305–361–4285; and

2. *August 7, 2002:* National Marine Fisheries Service Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami , FL, telephone: 305–361–4285

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Graciela Garcia-Moliner at the Council (*see* **ADDRESSES**).

Dated: July 24, 2002.

John H. Dunnigan,

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

[FR Doc. 02–19232 Filed 7–29–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 67, No. 146
Tuesday, July 30, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation will meet on Friday, August 9, 2002. The meeting will be held in the Zuni Ballroom, Inn at Loretto, 211 Old Santa Fe Trail, Santa Fe, New Mexico, beginning at 9 a.m.

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

The agenda for the meeting includes the following:

I. Chairman's Welcome
II. Report of the Executive Committee
  A. FY 2004 Budget Strategy
  B. Committee Restructuring
III. Report on the Preservation Initiatives Committee
  A. Cooperative Agreement with Department of Agriculture
  B. Followup from Heritage Tourism Session
  C. Heritage Areas Legislation
IV. Report on the Federal Agency Programs Committee
  A. Federal Program Improvement Priorities and Initiatives
  B. Coordination between Section 4(f) of the Department of Transportation Act and Section 106
  C. Section 106 Cases
  D. Cooperative Agreement with the General Services Administration
V. Report of the Communications, Education, and Outreach Committee
  A. Historic Preservation Awards
  B. Council Publications Program
VI. Chairman's Report
  A. Historic Preservation Executive Order
  B. Preserve America Initiative
VII. Executive Director's Report
  A. Technical Amendments to Section 106 Regulations
  B. FY 2003 Appropriations Process
VIII. New Business
IX. Adjourn

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

For further information contact: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., #809, Washington, DC 20004.

Dated: July 24, 2002.

John M. Fowler,

Executive Director.

[FR Doc. 02–19128 Filed 7–29–02; 8:45 am]

BILLING CODE 4310–10–M

U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB to Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collections to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for USAID, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503. Copies of submission may be obtained by calling (202) 712–1365.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–0004.

Form Number: AID 11.

Title: Application for Approval of Commodity Eligibility.

Type of Submission: Renewal of Information Collection.

Purpose: USAID provides loans and grants to some developing countries in the form of Commodity Import Programs (CIPs). These funds are made available to host countries to be allocated to the public and private sectors for purchasing various commodities from the U.S., or in some cases, from other developing countries. In accordance with section 604(f) of the Foreign Assistance Act of 1961, as amended, USAID may finance only those commodities which are determined eligible and suitable in accordance with various statutory requirements and agency policies. Using the Application for Approval of Commodity Eligibility (Form AID 11), the supplier certifies to USAID information about the commodities being supplied, as required in section 604(f), so that USAID may determine eligibility.

Annual Reporting Burden:

Respondents: 260.

Total annual responses: 850.

Total annual hours requested: 425 hours.

Dated: July 24, 2002.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 02–19199 Filed 7–29–02; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Office of the Under Secretary, Research, Education, and Economics Forestry Research Advisory Council; meeting

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. app., the United States Department of Agriculture (USDA) announces a meeting of the Forestry Research Advisory Council.

SUPPLEMENTARY INFORMATION: Section 1441(c) of the Agriculture and Food Act of 1981 requires the establishment of the Forestry Research Advisory Council (FRAC) to provide advice to the Secretary of Agriculture on accomplishing efficiently the purposes of the Act of October 10, 1962 (16 U.S.C. 582a, *et seq.*), known as the McIntire-Stennis Act of 1962. FRAC also provides advice related to the Forest Service research program, authorized by the Forest and Rangeland Resources Research Act of 1978 (Pub. L. 95–307, 92 Stat. 353, as amended; 16 U.S.C. 1600 (note)). FRAC is composed of 18 voting members from Federal and state agencies, forest industries, forestry schools and state agricultural experiment stations, and volunteer public groups. FRAC will meet to (a) hear reports from the Forest Service (USDA), the Cooperative State Research, Education, and Extension Service (USDA), forest industries, and the National Association of Professional Forestry Schools and Colleges, and (b) to formulate advice on Federal and state forestry research for the Secretary of Agriculture.

DATES AND LOCATION: FRAC will meet on July 30, 2002, from 8:30 a.m. to 4:00 p.m., and on July 31, 2002, from 8:30 a.m. to 12:00 noon, in the Plant and Animal Systems conference from (room 3455) of the Waterfront Centre located at 800 9th Street SW., Washington, DC 20024. A complete agenda will be available prior to the meeting. To request a copy of the agenda contact Dr. Catalino A. Blanche, FRAC Coordinator, at (202) 401–4190, or fax your request to (202) 401–1706, or e-mail to *cblanche@reeusda.gov.*

Comments

The public may file written comments with the FRAC Coordinator before the meeting or by August 31, 2002. All statements will become a part of the official records of the Forestry Research Council and will be kept on file for public review in the FRAC Coordinator's office, Room 3413, Waterfront Center, 800 9th Street SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Catalino A. Blanche, FRAC Coordinator; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Mail Stop 2210; 1400 Independence Avenue SW., Washington, DC 20250–2210; telephone: (202) 401–4190; fax: (202) 401–1706; e-mail: *cblanche@reeusda.gov.*

Done at Washington, DC, this 20th day of July, 2002.

Joseph J. Jen,

Under Secretary, Research, Education, and Economics.

[FR Doc. 02–19258 Filed 7–29–02; 8:45 am]

BILLING CODE 3410–22–M

DEPARTMENT OF AGRICULTURE

Forest Service

Buckman Water Diversion Project; Meetings

AGENCY: Forest Service, Santa Fe National Forest, USDA.

ACTION: Notice of scoping meetings.

SUMMARY: The USDA Forest Service (FS)—in conjunction with the Department of Interior's Bureau of Land Management and Bureau of Reclamation—will hold public scoping meetings to discuss the Buckman Water Diversion Project. The Notice of Intent to prepare an environmental impact statement was published in the **Federal Register** (67 FR 47764, July 22, 2002).

The Notice of Intent provides specific information regarding the project. This public scoping meeting notice intends to inform interested and potentially affected parties of the meeting schedule to be conducted during the scoping phase of this environmental analysis.

DATES: Two scoping meetings will be held. The first will be held on Tuesday, August 20, 2002, from 3 to 5 p.m. The second meeting will be held on Thursday, August 29, 2002, from 7 to 9 p.m. Both meetings will be held in Santa Fe, New Mexico.

ADDRESSES: The two scoping meetings will be held at the Santa Fe Sweeney Center, 201 W. Marcy Street, Santa Fe, New Mexico, 87501 (505 955–6218).

FOR FURTHER INFORMATION CONTACT: Mr. Sandy Hurlocker, NEPA Coordinator, Española Ranger District, (505) 753–7331.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: July 22, 2002.

Gilbert Zepeda,

Acting Santa Fe Forest Supervisor.

[FR Doc. 02–19145 Filed 7–29–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Lassen Resource Advisory Committee, Susanville, California, and USDA Forest Service

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Lassen National Forest's Lassen County Resource Advisory Committee will meet Wednesday, September 11, 2002, in Susanville, California for a business meeting. The meetings are open to the public.

SUPPLEMENTARY INFORMATION: The business meeting September 11th begins at 9 a.m., at the Lassen National Forest Headquarters Office, Caribou Conference Room, 2550 Riverside Drive, Susanville, CA 96130. Agenda topics will include; orientation, roles and responsibilities, working guidelines and election of committee chairperson, to meet the intent of Pub. L. 106–393. Time will also be set aside for public comments at the beginning of the meeting.

FOR FURTHER INFORMATION CONTACT: Contact Robert Andrews, Eagle Lake District Ranger and Designated Federal Officer, at (530) 257–4188; or Assistant Public Affairs Officer, Leona Rodreick, at (530) 257–2151.

Dated: July 24, 2002.

Edward C. Cole,

Forest Supervisor.

[FR Doc. 02–19162 Filed 7–29–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Sunshine Act Meeting Notice

AGENCY: Rural Telephone Bank, USDA.

ACTION: Privatization committee meeting.

TIME AND DATE: 8:30 a.m., Thursday, August 15, 2002.

PLACE: Conference Room 5030–South Building, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED:

The business advisor will report on the status of current privatization projects.

ACTION: Staff Briefing for the Board of Directors.

TIME AND DATE: 2 p.m., Thursday, August 15, 2002.

PLACE: Conference Room 0204–South Building, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED:

1. Annual retirement of class A stock.
2. Annual class C stock dividend rate.
3. Loan loss reserve for FY 2002.
4. Contract for legal advisor.
5. Annual report for FY 2001.
6. Current telecommunications industry issues.
7. Administrative issues.

ACTION: Board of Directors Meeting.

TIME AND DATE: 9 a.m., Friday, August 16, 2002.

PLACE: Conference Room 104–A, Jamie L. Whitten Federal Building, U.S. Department of Agriculture, 12th & Jefferson Drive, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to order.
2. Oath of office for new board members.
3. Action on Minutes of the May 8, 2002, board meeting.
4. Secretary's Report on loans approved.
5. Treasurer's Report.
6. Report on the allowance for loan loss reserve for FY 2002.
7. Privatization Committee Report.
8. Consideration of resolution to retire class A stock in FY 2002.
9. Consideration of resolution to set annual class C stock dividend rate.
10. Consideration of resolution to approve the annual report for FY 2001.
11. Consideration of resolution to approve Curtis Anderson to serve as the Deputy Governor of the Bank.
12. Governor's Remarks.
13. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Roberta D. Purcell, Assistant Governor, Rural Telephone Bank, (202) 720–9554.

Dated: July 24, 2002.

Hilda Gay Legg,

Governor, Rural Telephone Bank.

[FR Doc. 02–19251 Filed 7–26–02; 11:34 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–806]

Notice of Extension of Time Limit of Preliminary Results of New Shipper Review: Silicon Metal from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The Department of Commerce is extending the time limit of the preliminary results of the new shipper review of the antidumping duty order on silicon metal from the People's Republic of China (PRC) until no later than November 20, 2002. The period of review is June 1, 2001 through November 30, 2001. This extension is made pursuant to section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended.

EFFECTIVE DATE: July 30, 2002.

FOR FURTHER INFORMATION CONTACT: Christian Hughes or Maureen Flannery, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–0648 or (202) 482–3020, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statutes and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the provisions codified at 19 CFR Part 351 (2001).

Statutory Time Limits

Section 751(a)(2)(B)(iv) of the Act requires the Department to issue the preliminary results of a new shipper review within 180 days from the date of initiation of the review. However, if the Department determines that the case is extraordinarily complicated, section 751(a)(2)(B)(iv) of the Act allows the Department to extend this deadline to a maximum of 300 days.

Background

On December 31, 2001, the Department received a timely request from China Shanxi Province Lin Fen Prefecture Foreign Trade Import and Export Corp. (Lin Fen), in accordance with section 751(a)(2)(ii) of the Act and 19 CFR 351.214(c), for a new shipper review of the antidumping duty order on silicon metal from the PRC. *See Antidumping Duty Order: Silicon Metal From the People's Republic of China*, 56 FR 26649 (June 10, 1991). Because the request met all of the requirements set forth in section 751(a)(2)(ii) of the Act and section 351.214(d) of the regulations, we initiated a new shipper review of the antidumping duty order on silicon metal from the PRC for the period June 1, 2001 to November 30, 2001. On January 31, 2002, the Department initiated this new shipper review (67 FR 5966).

Extension of Time Limits for Preliminary Results

Due to the extraordinarily complicated nature of this case, we are unable to complete this review within the time limits mandated by section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214 (i). In particular, the Department needs additional time in which to address the issues of Lin Fen's relationship with other companies, and whether Lin Fen should be given a separate rate. Furthermore, the Department requires additional time to gather surrogate value information. Therefore, in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214 (i) (2), the Department is extending the time limit for the completion of preliminary results. These preliminary results will now be due no later than November 20, 2002.

This notice is issued and published pursuant to sections 751(a)(1) and 777 (i) (1) of the Act.

Dated: July 23, 2002

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–19234 Filed 7–29–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Overseas Trade Missions

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce invites U.S. companies to participate in the below listed overseas trade missions. For a more complete description of each trade mission, obtain a copy of the mission statement from the Project Officer indicated for each mission below. Recruitment and selection of private sector participants for these missions will be conducted

according to the Statement of Policy Governing Department of Commerce Overseas Trade Missions dated March 3, 1997.

Textile Trade Mission to Mexico

Mexico City and Guadalajara, October 23–25, 2002, Recruitment closes on August 30, 2002

For further information contact: Ms. Rachel Alarid, U.S. Department of Commerce, telephone (202) 482–5154, e-mail *Rachel_Alarid@ita.doc.gov.* or Ms. Pamela Kirkland, U.S. Department of Commerce, telephone (202) 482–3587, e-mail *Pamela_Kirkland@ita.doc.gov.*

Medical Device Trade Mission to Vietnam, Thailand, Malaysia, and Singapore

Hanoi, Ho Chi Minh City, Bangkok, Kuala Lumpur, Singapore, March 23 to April 3, 2003, Recruitment closes on February 7, 2003

For further information contact: Ms. Lisa C. Huot, U.S. Department of Commerce, telephone 202–482–2796, e-mail *Lisa_Huot@ita.doc.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Nisbet, U.S. Department of Commerce, telephone 202–482–5657, or e-mail *Tom_Nisbet@ita.doc.gov.*

Dated: July 23, 2002.

Thomas H. Nisbet,

Director, Export Promotion Coordination, Office of Planning, Coordination and Management.

[FR Doc. 02–19147 Filed 7–29–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070102D]

Small Takes of Marine Mammals Incidental to Specified Activities; Building Demolition Activities at Mugu Lagoon, CA

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

ACTION: Notice of receipt of application and proposed authorization for a small take exemption; request for comments.

SUMMARY: NMFS has received a request from the Department of the Navy, Naval Base Ventura County (NBVC) for an authorization to take small numbers of marine mammals by harassment incidental to the demolition and removal of buildings located at the entrance of Mugu Lagoon in Point Mugu, CA. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize NBVC to incidentally take, by harassment, small numbers of harbor seals and other marine mammals in the above mentioned area from September 26, 2002 through September 26, 2003. This authorization proposal is identical to the authorization issued to NBVC on September 26, 2001.

DATES: Comments and information must be received no later than August 29, 2002.

ADDRESSES: Comments on the application should be addressed to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225. Comments cannot be accepted if submitted via e-mail or the Internet. A copy of the application and a list of references used in this document may be obtained by writing to this address or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, (301) 713–2322, or Christina Fahy, (562) 980–4023.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Subsection 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Pursuant to section 101(a)(5)(D), NMFS issued an Incidental Harassment Authorization (IHA) to NBVC on September 26, 2001, for the harassment of small numbers of marine mammals incidental to the demolition and removal of buildings located at the entrance of Mugu Lagoon in Point Mugu, CA during a 1–year period. On April 10, 2002, NMFS received a letter from NBVC requesting that the IHA be re-issued for an additional year to allow the completion of building demolition and removal activities at Mugu Lagoon. These activities are summarized below. A more complete description may be found in the original proposal of IHA issuance published on October 1, 2001 (66 FR 50416).

Description of Activities

This proposed authorization for the harassment of small numbers of marine mammals incidental to the demolition and removal of approximately 12 buildings and associated infrastructures is almost identical to that proposed in the October 1, 2001 **Federal Register** notice. The one difference is that the current proposal is only for phase two of the demolition activities. Phase one activities, involving cleanup and removal of contaminated building materials, sand, and soil were completed in 2001 and a satisfactory marine mammal monitoring report covering this phase of the work was submitted to NMFS on December 21, 2001.

The second phase of the project, scheduled to begin after August 1, 2002, will be the demolition and removal of the remaining structures using standard construction procedures and equipment.

NBVC has requested a new authorization to ensure that all phase two activities are in compliance with the MMPA in case work is not completed within the 1–year time period of the authorization ending September 26, 2002. Specific construction equipment to be used during phase two will include: a 973 loader; a 450 Hitachi excavator; a 320 loader; a Case 621 loader; a 710 4–wheel-drive backhoe; a 545D skip loader; a 1000–gallon water truck; a dump truck; and a Bobcat loader. A more detailed description of the work proposed for 2002 is contained in the application (The Environmental Company and LGL Ltd., 2001) which is available upon request (see **ADDRESSES**).

The demolition site encompasses a total area of approximately 8 acres (3.2 hectares (ha)) at the entrance of Mugu Lagoon in Point Mugu, CA. No explosives will be used during the project and demolition crews will work only during daylight periods.

Description of Habitat and Marine Mammals Affected by the Activity

Mugu Lagoon is one of the largest salt marshes in southern California, encompassing approximately 350 acres (142 ha) of water and tidal flats. The beaches around the Mugu Lagoon entrance are used year-round by harbor seals (*Phoca vitulina*) for resting, molting, and breeding. The Navy reported a peak count of 361 adults in the Mugu Lagoon on June 6, 2000 (The Environmental Company and LGL Ltd., 2001). Two other pinniped species are known to occur infrequently in the area of the proposed activity during certain times of the year: northern elephant seals (*Mirounga angustirostris*) and California sea lions (*Zalophus californianus*). When present, these latter species haul out at the mouth of the lagoon and on Family Beach, located south of the demolition project area on the ocean side. Descriptions of the biology and local distribution of these species can be found in the application as well as other sources such as Hanan (1996), Stewart and Yochem (1994, 1984), Forney et al. (2000), Koski et al. (1998), Barlow et al. (1993), Stewart and DeLong (1995), and Lowry et al. (1992). Please refer to those documents for information on these species.

Isolated observations of cetaceans have occurred in the Mugu Lagoon area. Two gray whale (*Eschrichtius robustus*) strandings have been recorded (one 20 years ago and one in the early 1980s). There is also one recorded observation of a gray whale moving in and out of the entrance to Mugu Lagoon (T. Keeney, NBVC Point Mugu Environmental Division, pers. comm., 2001). Sightings of Dall's porpoise (*Phocoenoides dalli*), bottlenose dolphin (*Tursiops truncatus*), common dolphin (*Delphinus delphis or D. capensis*), and pilot whale (*Globicephala macrorhynchus*) have been made within 3 nautical miles (nm) (5.6 kilometers (km)) of shore in the vicinity of Point Mugu (Koski et al., 1998); however, none of these species would be expected to occur within the lagoon.

Potential Effects of Demolition Activities on Marine Mammals

Acoustic and visual stimuli generated by the use of heavy equipment during the demolition and removal activities, as well as the increased presence of personnel, may cause short-term disturbance to pinnipeds hauled out closest to the work area. This disturbance from acoustic and visual stimuli is the principal means of marine mammal taking associated with these activities. Based on the measured sounds of construction equipment, such as might be used during the Point Mugu demolition project, sound levels from all equipment (except the concrete breaker to be used during the first phase) drops to below 100 decibels, A-weighted (dBA) within 50 feet (ft)(15.2 meters (m)) of the source (CALTRANS, 2001).

Pinnipeds sometimes show startle reactions when exposed to sudden brief sounds. An acoustic stimulus with sudden onset (such as a sonic boom) may be analogous to a ''looming'' visual stimulus (Hayes and Saif, 1967), which may elicit flight away from the source (Berrens et al., 1988). The onset of operations by a loud sound source, such as the concrete breaker during phase one, may elicit such a reaction. In addition, the movements of the large hydraulic arms of the backhoes or the Hitachi excavator may represent a ''looming'' visual stimulus to seals hauled out in close proximity. Seals exposed to such acoustic and visual stimuli may either exhibit a startle response or leave the haul-out site.

Harbor seals that haul out in Mugu Lagoon have clearly habituated to very loud airborne sounds at this location, as well as to the presence of humans and vehicle movement along the road that passes through the demolition area. For instance, biologists observed harbor seal haul-out sites in Mugu Lagoon during repeated overflights of a F–14a Tomcat jet aircraft in full afterburner as it performed touch-and-go maneuvers at nearby Mugu airfield. No more overt reactions than a momentary elevation of the hind flippers of a single juvenile seal were observed (The Environmental Company and LGL Ltd., 2001). Based on Air Force data, the received sound levels at the Mugu Lagoon haul-out sites under the jet's flight path could have reached a sound exposure level (SEL) of 117–121 dB re 20 micro-Pascal (Pa) during these maneuvers (from C. Malme, data in the USAF aircraft noise database). In areas where harbor seals are not exposed to regular aircraft noise or other acoustic stimuli, this type of reaction is not typical. For instance, Bowles and Stewart (1980) reported that harbor seals on San Miguel Island, CA reacted to low-altitude jet overflights with alert postures and often with rapid movement across the haul-out sites, especially when aircraft were visible.

For the purposes of their application, NBVC assumes that when behavioral patterns of pinnipeds are disrupted by the demolition activities, they will be taken by harassment. In general, if the received level of the noise stimulus exceeds both the background (ambient) noise level and the auditory threshold of the animals, and especially if the stimulus is novel to them, then there may be a behavioral response. The probability and degree of response will also depend on the season, the group composition of the pinnipeds, and the type of activity in which they are engaged. Startle and alert reactions accompanied by large-scale movements, such as stampedes into the water, may have adverse effects on individuals and are considered a ''take'' by NMFS because of the potential for injury or death. As described in this document, harbor seals in the Mugu Lagoon are exposed to noise levels far greater than those expected during the demolition activities described in NBVC's application, and there is no evidence that noise-induced injury or deaths have occurred. The effects of the demolition activities are expected to be limited to short-term and localized behavioral changes (The Environmental Group and LGL Ltd., 2001).

According to NBVC's 2001–2002 marine mammal monitoring report, seals present at the haul-out site responded to the front loader back-up alarm (measured at approximately 78 dBA) by raising their heads and looking toward the construction site. During sounding of the alarm, approximately 7 seals in the haul-out moved around the site, but did not enter the water. Shortly after the alarm stopped, the seals resumed their ''normal'' haul-out behavior. After this occurred, the back-up alarm was disengaged to minimize disturbance.

For a further discussion on the anticipated effects of the planned demolition activities on marine

mammals in the area and their food sources, please refer to the application (The Environmental Company and LGL Ltd., 2001). Information in the application and referenced sources is preliminarily adopted by NMFS as the best information available on this subject.

Numbers of Marine Mammals Expected to Be Taken

NBVC estimates that the following numbers of marine mammals may be subject to Level B harassment, as defined in 50 CFR 216.3:

Species	Potential Harassment Takes 2002
Harbor Seals*	288
Northern Elephant Seal*	8
California Sea Lion*	12

* Some individual seals may be harassed more than once

Possible Effects of Demolition Activities on Marine Mammal Habitat

NBVC anticipates no loss or modification to the habitat used by marine mammal populations that haul out within the Mugu Lagoon. Demolition activities will occur on shore above the highest tide mark, and the demolition contractor will ensure that building refuse will not enter the waters of the lagoon (New World Technology, 2001). The tidal patterns in the lagoon and structure of the nearby sandy haul-out areas will not be altered by these shore-based demolition activities.

The pinnipeds that may be present in Mugu Lagoon leave the lagoon area to feed in the open sea (T. Keeney, NBVC Point Mugu Environmental Division, pers. comm., 1998); therefore, it is not expected that the demolition activities will have any impact on the food or feeding success of these marine mammals.

Possible Effects of Demolition Activities on Subsistence Needs

There are no subsistence uses for these pinniped species in California waters; thus there are no anticipated effects on subsistence needs.

Mitigation

No pinniped mortality and no significant long-term effect on the stocks of pinnipeds hauled out in the Mugu Lagoon are expected based on the relatively low levels of sound generated by the demolition equipment (i.e., 100 dBA within 50 ft (15.2 m) from the source) and the relatively short time period over which the project will take place (approximately 8 weeks). However, NBVC does expect that the demolition activities may cause disturbance reactions by some of the pinnipeds on the beaches. To reduce the potential for disturbance from visual and acoustic stimuli associated with the demolition project, NBVC will undertake a variety of mitigation measures. In addition to these measures to be taken by NBVC, the construction contractor has developed detailed work plans for the project, which emphasize that special consideration is required to minimize disturbances to the resident harbor seal population (New World Technology, 2001). Mitigation measures will include:

(1) Prior to each day of demolition or removal activities, NBVC Point Mugu Environmental Division personnel will inspect the work site to ensure compliance with the construction contractor's work plan, and to assess the number and types of marine mammals that are occupying the lagoon. Depending on results of initial observations and subsequent planned activities, the NBVC personnel will decide each day whether marine mammal monitoring for the entire day is needed (see Monitoring section). Work will be suspended or conducted in another area in the event that a monitoring biologist or a member of the demolition crew sights a marine mammal hauled out in an area where there is a risk that the animal may come into physical contact with construction machinery or personnel.

(2) The demolition contractor will ensure that work areas are caution taped as a barricade against inadvertent entry of unauthorized personnel where physical barriers are not already present. Before start of the activities, demolition personnel will be advised of all marine mammal mitigation measures.

(3) Work outside of the fenced boundary on the lagoon side of the site will be minimized to the extent possible. Work within 100 feet (30.48 meters) of the lagoon will be done manually where possible (New World Technology, 2001).

(4) During excavations, tarps will be carefully placed over areas in such a way as to reduce ''flapping'' during installation by unfolding the tarps in sections as they are installed. The edges of the tarps will be held down and secured with sandbags and/or tent stakes to prevent movement of the tarp during windy conditions.

(5) To reduce sound levels in proximity to harbor seal haul-out sites, concrete slabs that form the bases of some buildings and the pools will be sectioned using concrete cutting saws, rather than the hydraulic concrete breaker, where possible.

Monitoring

As part of its application, NBVC provided a proposed monitoring plan for assessing impacts to marine mammals from demolition activities in Mugu Lagoon. This monitoring would be entirely land-based and is designed to determine if there are disturbance reactions, to determine the area over which reactions occur, and to characterize harbor seal reactions to demolition sounds.

The monitoring program would be via direct visual observation. NBVC proposes to conduct a minimum of twice-daily monitoring efforts during each day of demolition, and conduct all-day monitoring when marine mammals are present or when new procedures or equipment are employed relative to previous project activities. Marine mammal monitors would record a variety of information including: (1) date and time, (2) weather, (3) tide state, (4) composition and locations of the haul-out groups of pinnipeds within the lagoon, (5) horizontal visibility (estimated by determining what the furthest visible object is relative to the interacting seals using known positions of local objects and accounting for obstructing terrain), and (6) occurrence, or planned occurrence, of any other military aircraft activity or other anthropogenic activities in or around the lagoon.

Through direct visual observation the number of seals hauled out and haul-out locations would be documented during the demolition. After each day's demolition activities, the marine mammal monitor would again inspect the work site and record information about the marine mammals within the lagoon. This monitoring plan would also provide data required to characterize the extent and nature of ''taking''.

Reporting

NBVC will provide an initial report to NMFS within 90 days after the demolition and removal activities cease. This report will provide dates and locations of demolition activities, details of seal behavioral observations, and estimates of the amount and nature of all takes of seals by harassment or in other ways. In the unanticipated event that any cases of pinniped mortality are judged to result from demolition activities, this will be reported to NMFS immediately.

Endangered Species Act (ESA)

NBVC has not requested the take of any species listed under the ESA and the proposed authorization would not affect any such species. Therefore, NMFS has determined that a section 7 consultation under the ESA is not required at this time.

National Environmental Policy Act (NEPA)

The Department of the Navy, following Council on Environmental Quality regulations (40 CFR 1500), has found that demolition and disposal involving buildings or structures neither on, nor eligible for, listing on the National Register of Historic Places and requiring removal of hazardous materials, are categorically excluded from further documentation under NEPA (32 CFR 775, Department of Navy Procedures for Implementing the National Environmental Policy Act). NBVC has prepared a Record of Categorical Exclusion for all phases of this demolition project.

In accordance with section 6.01 of the National Oceanic and Atmospheric Administration (NOAA) Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act , May 20, 1999), NMFS has analyzed both the context and intensity of this action and determined, based on a programmatic NEPA assessment conducted on the impact of NMFS' rulemaking for the issuance of IHAs (61 FR 15884; April 10, 1996); the content and analysis of the NBVC's request for an IHA and its Site Work/Final Survey Plan, that the proposed issuance of this IHA to NBVC by NMFS will not individually or cumulatively result in a significant impact on the quality of the human environment as defined in 40 CFR 1508.27. Therefore, based on this analysis, the action of issuing an IHA for these activities meets the definition of a ''Categorical Exclusion'' as defined under NOAA Administrative Order 216–6 and is exempted from further environmental review.

Preliminary Conclusions

NMFS has preliminarily determined that the short-term impact of conducting demolition and removal activities in Mugu Lagoon will result, at worst, in a temporary modification in behavior by harbor seals, and potentially northern elephant seals and California sea lions. While behavioral modifications may be made by these species to avoid the resultant acoustic and visual stimuli, previous observations of the responses of pinnipeds to loud military overflights and regular human activities near the Mugu Lagoon haul-out sites have not shown injury, mortality, or extended disturbance. Therefore, NMFS preliminarily concludes that the effects of the planned demolition activities will have no more than a negligible impact on pinnipeds.

Due to the localized nature of these activities, the number of potential takings by harassment are estimated to be small. In addition, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment will be avoided through the incorporation of the mitigation measures mentioned in this document. No rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near Mugu Lagoon during the period of demolition activities.

Proposed Authorization

NMFS proposes to issue an IHA to NBVC for demolition activities to take place in Mugu Lagoon, CA during a 1–year period provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of only small numbers of harbor seals and potentially northern elephant seals and California sea lions; would have no more than a negligible impact on these marine mammal stocks; and would not have an unmitigable adverse impact on the availability of marine mammal stocks for subsistence uses.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this request to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225.

Dated: July 23, 2002.

David Cottingham,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–19233 Filed 7–29–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062102A]

Small Takes of Marine Mammals Incidental to Specified Activities; Taking of Marine Mammals Incidental to Power Plant Operations

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

ACTION: Notice of issuance of a Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that a 1–year Letter of Authorization (LOA) to take harbor, gray, harp and hooded seals incidental to intake cooling water operations at Seabrook Station nuclear power plant, Seabrook, NH has been issued to the North Atlantic Energy Service Corporation (North Atlantic).

DATES: Effective from June 26, 2002 through June 25, 2003.

ADDRESSES: A copy of the application is available by writing to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, or by telephoning one of the contact listed here.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055, ext 128 or Salvatore Testaverde, Northeast Regional Office, NMFS, (978) 281–9368.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for periods of 5 years or less if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means

effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking.

Regulations governing the taking of several species of seals incidental to intake cooling water operations at Seabrook Station nuclear power plant were published on May 25, 1999 (64 FR 28114), and remain in effect until June 30, 2004. These regulations include mitigation, monitoring, and reporting requirements for the incidental taking of harbor seals (Phoca vitulina), gray seals (*Halichoerus grypus*), harp seals (*Phoca groenlandica*), and hooded seals (*Cystophora cristata*) at Seabrook Station.

Summary of Request

NMFS received a request from North Atlantic on June 4, 2002, for renewal of their LOA, which expires on June 26, 2002, to lethally take 20 harbor seals and 4 of any combination of gray, harp, and hooded seals at Seabrook Station. However, North Atlantic noted in their annual report that no seals have been entrapped in Seabrook's offshore intake structures since the installation of the Seal Deterrent Barriers in August 1999.

Authorization

Based on the determinations made in 1999 (64 FR 28114, May 25, 1999) and that annual reports submitted by North Atlantic indicate that no seals have been killed incidental to operations at Seabrook Station, NMFS has issued an LOA to North Atlantic for the taking of harbor seals, gray seals, harp seals, and hooded seals incidental to operations of the Seabrook Station with the understanding that the mitigation, monitoring, and reporting requirements described in 50 CFR 216.134–135 and in the LOA are undertaken.

Dated: July 24, 2002.

Wanda Cain,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–19231 Filed 7–29–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–42]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–42 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 23, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

22 JUL 2002

In reply refer to:
I-02/008901

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 02-42 and under separate cover the classified offset certificate thereto. This Transmittal concerns the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to the Netherlands for defense articles and service estimated to cost $21 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended, requires a description of any offset agreement with respect to this proposed sale. Section 36(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale is described in the enclosed confidential attachment.

Sincerely,

Richard J. Millies
Acting Director

Attachment
As stated

Separate Cover:
Offset certificate

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-42

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser: Netherlands**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$15 million
Other	$ 6 million
TOTAL	$21 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 14 SM-2 Block IIIA Interrupted Continuous Wave Illumination STANDARD missiles (5 tactical missiles with warheads and 9 telemetry missiles), 14 MK 13 MOD 0 canisters, containers, spare and repair parts, supply support, U.S. Government and contractor technical assistance and other related elements of logistics support.**

(iv) **Military Department: Navy (AFU)**

(v) **Prior Related Cases, if any:**
FMS case AFN - $29 million – 29Nov99
FMS case AEY - $20 million – 28Sep90
FMS case AEM - $26 million – 30Oct85

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached**

(viii) **Date Report Delivered to Congress:** 22 JUL 2002

* **as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Netherlands – SM-2 Block IIIA Interrupted Continuous Wave Illumination STANDARD Missiles

The Government of the Netherlands has requested a possible sale of 14 SM-2 Block IIIA Interrupted Continuous Wave Illumination STANDARD missiles (5 tactical missiles with warheads and 9 telemetry missiles), 14 MK 13 MOD 0 canisters, containers, spare and repair parts, supply support, U.S. Government and contractor technical assistance and other related elements of logistics support. The estimated cost is $21 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by helping to improve the military capabilities of the Netherlands and furthering standardization and interoperability.

The Netherlands will install these missiles on its new frigates and operate the frigates in a manner similar to its current ship operations. The Netherlands, which already has STANDARD missiles in its inventory, will have no difficulty absorbing these additional missiles.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Raytheon Missile Systems Company of Tucson, Arizona. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to the Netherlands.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 02-42

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The SM-2 Block IIIA STANDARD missile is a U.S. Navy surface launched guided missile and is classified Secret. It is operationally deployed on cruisers, destroyers, and frigates for use against air and surface threats (aircraft, missiles, and ships). The guidance system employs a continuous-wave or interrupted continuous wave radar link for homing in a target. Steering and roll commands from the adaptive auto-pilot system provide flight stability via four aft mounted control surfaces. Propulsion is provided by a solid propellant, dual thrust rocket motor that is an integral part of the missile airframe. The target detecting device (TDD) is a complex fuze with dual radar systems to optimize warhead lethality against a spectrum of target sizes and speeds.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that the Netherlands can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 02–19148 Filed 7–29–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–43]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. this is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–43 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 23, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

22 JUL 2002

In reply refer to:
I-02/008931

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 02-43 and under separate cover the classified offset certificate thereto. This Transmittal concerns the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to The Republic of Korea for defense articles and service estimated to cost $66 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended, requires a description of any offset agreement with respect to this proposed sale. Section 36(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale is described in the enclosed confidential attachment.

Sincerely,

Richard J. Millies
Acting Director

Attachment
As stated

Separate Cover:
Offset certificate

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-43

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser: Republic of Korea**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$12 million
Other	$54 million
TOTAL	$66 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 9 excess P-3B aircraft; 16 T56-A-14 and 20 T56-A-10W engines, refurbishment and modification of T-56 engines, propellers, and landing gears; secure communications systems, missile warning systems, countermeasures dispensing systems, aircraft cockpit enhancements, acoustic receiver and processor system, missile warning and missile countermeasures dispensing systems, data management system, spare and repairs parts, support equipment, personnel training and training equipment, publications and technical data, system software development and installation, ground/flight testing of new systems and system modifications, U.S. Government and contractor engineering and logistics services and other related elements of program support.**

(iv) **Military Department: Navy (SDJ)**

(v) **Prior Related Cases, if any: FMS case SCG - $245 million – 28May91**

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached**

(viii) **Date Report Delivered to Congress:** 22 JUL 2002

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Republic of Korea – P-3B Aircraft

The Republic of Korea (ROK) Government has requested a possible sale of 9 excess P-3B aircraft; 16 T56-A-14 and 20 T56-A-10W engines, refurbishment and modification of T-56 engines, propellers, and landing gears; secure communications systems, missile warning systems, countermeasures dispensing systems, aircraft cockpit enhancements, acoustic receiver and processor system, missile warning and missile countermeasures dispensing systems, data management system, spare and repairs parts, support equipment, personnel training and training equipment, publications and technical data, system software development and installation, ground/flight testing of new systems and system modifications, U.S. Government and contractor engineering and logistics services and other related elements of program support. The estimated cost is $66 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in Northeast Asia.

The ROK Navy (ROKN) intends to use the P-3B aircraft to patrol its economic exclusion zone, including anti-submarine warfare, anti-surface warfare and search/rescue operation.

The principal contractors will be Rolls-Royce Engine Services of Oakland, California and Knight Aerospace Product, Incorporated of San Antonio, Texas. One or more proposed offset agreements may be related to this proposed sale.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

Implementation of this proposed sale will require the assignment of up to ten Contractor Engineering Technical Services for two years to the Republic of Korea.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 02-43

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The P-3B Maritime Surveillance Aircraft have been declared excess defense articles to the U.S. Navy inventory. There is currently no sensitive technology aboard these aircraft that are being provided "as is, where is." Upon delivery, the successful competitive contractor, to modernize the aircraft, will incorporate undetermined releasable technology equivalent to the U.S. Navy Anti-Surface Warfare Improvement Program (AIP)/Block Modification Upgrade Program (BMUP) aircraft and will include technology similar to the Republic of Korea Navy (ROKN) current P-3C Update III aircraft. Featured in the ROKN current aircraft are the AN/APS-137(V)(6 – 360 degree Inverse Synthetic Aperture Radar (ISAR), AN/ALR-66B(V)3 + ADACS Electronics Surveillance Measure (ESM) system, AN/UYS-1(V)10 acoustic processor, AN/ASQ-212/CP-2044 tactical computer and the AN/AWG-19C(V)1 Harpoon Missile/Control armament system.

2. A determination has been made that the Republic of Korea can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 02–19149 Filed 7–29–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–45]

36(b)(1) Arms Sales Notification

AGENCY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–45 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 23; 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

22 JUL 2002

In reply refer to:
I-02/009500

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 02-45 and under separate cover the classified offset certificate thereto. This Transmittal concerns the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Australia for defense articles and services estimated to cost $106 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended, requires a description of any offset agreement with respect to this proposed sale. Section 36(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale is described in the enclosed confidential attachment.

Sincerely,

Richard J. Millies
Acting Director

Attachments

Separate Cover:
Offset certificate

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-45

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser: Australia**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 85 million
Other	$ 21 million
TOTAL	$106 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: up to 92 JAVELIN anti-tank missile systems (consisting of up to 92 JAVELIN command launch units, up to 666 JAVELIN missile rounds, and 10 lot acceptance missiles), simulators, support equipment, spare and repair parts, publications and technical data, personnel training and equipment, U.S. Government and contractor engineering and logistics personnel services, a Quality Assurance Team, and other related elements of logistics support.**

(iv) **Military Department: Army (ZYH)**

(v) **Prior Related Cases, if any: none**

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached**

(viii) **Date Report Delivered to Congress:** 22 JUL 2002

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Australia – JAVELIN Anti-tank Missile Systems

In support of a proposed Australia open tender competition, the Government of Australia has requested a possible sale of up to 92 JAVELIN anti-tank missile systems (consisting of up to 92 JAVELIN command launch units, up to 666 JAVELIN missile rounds, and ten lot acceptance missiles), simulators, support equipment, spare and repair parts, publications and technical data, personnel training and equipment, U.S. Government and contractor engineering and logistics personnel services, a Quality Assurance Team, and other related elements of logistics support. The estimated cost is up to $106 million.

If down-selected by Australia, the proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of an ally which has been and continues to be an important force for political stability and economic progress in the Asia Pacific region.

If this system is down-selected, Australia will use these JAVELIN anti-tank missile systems to enhance their direct fire capability for infantry, cavalry and commando units against armored vehicles, buildings and field fortifications. This system will provide Australia with a strong man-portable direct fire capability and will increase interoperability with U.S. forces. Australia will have no difficulty absorbing these systems into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor, if selected, will be JAVELIN Joint Venture (Raytheon and Lockheed Martin) of Orlando, Florida. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this proposed sale will require the assignment of a U.S. Government Quality Assurance Team or two U.S. Government and one contractor representatives to Australia for one week to assist in the delivery and deployment of the missiles.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale if down-selected.

Transmittal No. 02-45

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The JAVELIN anti-tank missile system provides a man-portable, medium anti-tank capability to infantry, scouts, and combat engineers. JAVELIN is comprised of two major components; a reusable command launch unit (CLU) and a missile sealed in a disposable launch tube assembly. The CLU incorporates an integrated day/night sight and provides target engagement capability in adverse weather and countermeasure environments. The CLU may also be used in the stand-alone mode for battlefield surveillance and target detection. JAVELIN's key technical feature is the use of fire-and-forget technology that allows the gunner to fire and immediately take cover. Additional special features are the top attack and/or direct fire modes (for targets under cover), integrated day/night sight, advanced tandem warhead, imaging infrared seeker, target lock-on before launch, and soft launch from enclosures or covered fighting positions.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that Australia can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 02–19150 Filed 7–29–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–48]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Corporation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–48 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 23, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

22 JUL 2002

In reply refer to:
I-02/009672

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 02-48 and under separate cover the classified offset certificate thereto. This Transmittal concerns the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to the Czech Republic for defense articles and services estimated to cost $35 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended, requires a description of any offset agreement with respect to this proposed sale. Section 36(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale is described in the enclosed confidential attachment.

Sincerely,

Richard J. Millies
Acting Director

Attachments

Separate Cover:
Offset certificate

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-48

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser: Czech Republic**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$25 million
Other	$10 million
TOTAL	$35 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 150 AIM-9M-8/9 Sidewinder missiles, training missiles, All-Up-Round containers, test and tool sets, support equipment, maintenance facilities, spare and repair parts, personnel training and equipment, publications, U.S. Government and contractor engineering and personnel services, and other related elements of logistics support.**

(iv) **Military Department: Navy (AAB)**

(v) **Prior Related Cases, if any: none**

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached**

(viii) **Date Report Delivered to Congress:** 22 JUL 2002

* **as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Czech Republic – AIM-9M-8/9 Sidewinder Missiles

The Government of the Czech Republic has requested a possible sale of 150 AIM-9M-8/9 Sidewinder missiles, training missiles, All-Up-Round containers, test and tool sets, support equipment, maintenance facilities, spare and repair parts, personnel training and equipment, publications, U.S. Government and contractor engineering and personnel services, and other related elements of logistics support. The estimated cost is $35 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of the Czech Republic and further weapon system standardization and interoperability with U.S. forces.

The proposed sale of the AIM-9M missile system is being addressed in conjunction with the planned upgrade of Advance Light Attack Combat aircraft (L-159). These missiles will enhance the Czech Republic Armed Forces' current air-to-air intercept capability to equipment capabilities within their region of operations.

The prime contractor will be Raytheon Systems Corporation of Tucson, Arizona. One or more proposed offset agreements may be related to this proposed sale.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

Implementation of this proposed sale will require the assignment of several U.S. Government and contractor representatives for one week intervals to participate in program review and technical reviews to the Czech Republic.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 02-48

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The external view of the AIM-9M-8/9 Sidewinder missile is Unclassified and not sensitive. Advanced technology included in the missile: Active Optical Target Detector (AOTD), Gyro Optics Assembly within the Guidance Control Section (GCS), Infrared Countermeasures (IRCM) Detection and Rejection Circuitry, and a reduced smoke rocket motor. The equipment/hardware, software, and maintenance are classified Confidential. Pilot training is classified Secret. Manuals and technical documents are classified Secret. Performance and operating information are classified Secret.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that could reduce overall effectiveness.

3. A determination has been made that the Czech Republic can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 02–19151 Filed 7–29–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–49]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassfied text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Trasmittal 02–49 with attached transmittal and policy justification.

Dated: July 23, 2002.

Patricia L. Toppings,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

22 JUL 2002

In reply refer to:
I-02/009752

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith transmittal no. 02-49 and under separate cover, the classified documents thereto. This transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Poland for defense articles and services estimated to cost $1,049 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this transmittal.

Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended, requires a description of any offset agreement with respect to this proposed sale. Section 36(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale is described in the enclosed confidential attachment.

Sincerely,

Richard J. Millies
Acting Director

Attachments

Separate Cover:
Classified Annex
Offset certificate

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-49

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act (U)

(i) **Prospective Purchaser: Poland**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 957 million
Other	$ 92 million
TOTAL	$1,049 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 4 F-16C Block 50/52 aircraft with either the F100-PW-229 or F110-GE-129 engines and APG-68(V)9 FMS radars, 10 LAU-129 Launchers, 22 PANTERA weapon targeting systems, 6 reconnaissance pods, 48 conformal fuel tanks, 8 autonomous air combat maneuvering instruments, 48 Joint Helmet Mounted Cueing Systems, 48 Link 16 NATO Datalink Systems, 48 Advanced Integrated Defensive Electronic Warfare Suites, 20 Night Vision Goggles, 4 AN/APX-113 Identification Friend or Foe systems, 8 AN/ARC-210 SINCGAR radios with HAVE QUICK II, 1 Pratt and Whitney F-100-PW-229 or F-110-GE-129 spare engine, 1 spare APG-68(V)9 FMS radar set, 178 AIM-9X Sidewinder missiles, 24 AIM-9X Sidewinder training missiles, 280 AGM-154A/C Joint Stand-Off Weapons, 215 MK-82 500# general purpose bombs, 140 CBU-97 bombs with Wind Correct Munitions Dispenser, and 214 GBU-22/24 Paveway III guided bomb units, associated support equipment, software development/integration, Night Vision Goggle-compatible cockpits, practice bombs, training missiles, ammunition, spare and repair parts, flight test instrumentation, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel services, and other related elements of logistics support.**

(iv) **Military Department: Air Force (SAC)**

(v) **Prior Related Cases, if any:**
FMS case SAA - $245 million – pending
FMS case SAB - $4,300 million - pending

*** as defined in Section 47(6) of the Arms Export Control Act.**

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex under separate cover**

(viii) **Date Report Delivered to Congress:** 22 JUL 2002

POLICY JUSTIFICATION

Poland - F-16C Aircraft

The Government of Poland has requested a possible sale of 4 F-16C Block 50/52 aircraft with either the F100-PW-229 or F110-GE-129 engines and APG-68(V)9 FMS radars, 10 LAU-129 Launchers, 22 PANTERA weapon targeting systems, 6 reconnaissance pods, 48 conformal fuel tanks, 8 autonomous air combat maneuvering instruments, 48 Joint Helmet Mounted Cueing Systems, 48 Link 16 NATO Datalink Systems, 48 Advanced Integrated Defensive Electronic Warfare Suites, 20 Night Vision Goggles, 4 AN/APX-113 Identification Friend or Foe systems, 8 AN/ARC-210 SINCGAR radios with HAVE QUICK II, 1 Pratt and Whitney F-100-PW-229 or F-110-GE-129 spare engine, 1 spare APG-68(V)9 FMS radar set, 178 AIM-9X Sidewinder missiles, 24 AIM-9X Sidewinder training missiles, 280 AGM-154A/C Joint Stand-Off Weapons, 215 MK-82 500# general purpose bombs, 140 CBU-97 bombs with Wind Correct Munitions Dispenser, and 214 GBU-22/24 Paveway III guided bomb units, associated support equipment, software development/integration, Night Vision Goggle-compatible cockpits, practice bombs, training missiles, ammunition, spare and repair parts, flight test instrumentation, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel services, and other related elements of logistics support. The estimated cost is $1,049 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Poland while enhancing weapon system standardization and interoperability with U.S. forces.

This proposed sale of the F-16 aircraft would enhance NATO interoperability and simultaneously provide operational capabilities as Poland's inventory of Soviet-era aircraft is eventually retired. This proposed sale would not impact the regional military balance of power.

The principal contractors will be Lockheed Martin Aeronautics Company in Fort Worth, Texas; Pratt and Whitney in East Hartford, Connecticut; General Electric Aircraft Engines in Cincinnati, Ohio; Raytheon Corporation in Lexington, Massachusetts; and Boeing Company in Seattle, Washington. One or more proposed offset agreements may be related to this proposed sale.

Implementation will require the assignment of approximately 12 each U.S. Government and contractor representatives for a period of up to four years to provide program support commencing with delivery of the aircraft to Poland.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 02–19152 Filed 7–24–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–50]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–50 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 23, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

22 JUL 2002

In reply refer to:
I-02/009918

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 02-50 and, under separate cover, the classified offset certificate thereto. This Transmittal concerns the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Spain for defense articles and services estimated to cost $57 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended, requires a description of any offset agreement with respect to this proposed sale. Section 36(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale is described in the enclosed confidential attachment.

Sincerely,

Richard J. Millies
Acting Director

Attachments

Separate Cover:
Offset certificate

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-50

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act (U), as amended

(i) **Prospective Purchaser: Spain**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$45 million
Other	$12 million
TOTAL	$57 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 29 SM-2 Block IIIA Interrupted Continuous Wave Illumination STANDARD missiles (29 tactical missiles with warheads), 29 MK 13 MOD 0 canisters, containers, spare and repair parts, supply support, U.S. Government and contractor technical assistance and other related elements of logistics support.**

(iv) **Military Department: Navy (ANC)**

(v) **Prior Related Cases, if any:**
FMS case AMB - $33 million – 17Dec99
FMS case AKX - $93 million - cancelled

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached**

(viii) **Date Report Delivered to Congress:** 22 JUL 2002

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Spain – SM-2 Block IIIA Interrupted Continuous Wave Illumination STANDARD Missiles

The Government of Spain has requested a possible sale of 29 SM-2 Block IIIA Interrupted Continuous Wave Illumination STANDARD missiles (29 tactical missiles with warheads), 29 MK 13 MOD 0 canisters, containers, spare and repair parts, supply support, U.S. Government and contractor technical assistance and other related elements of logistics support. The estimated cost is $57 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by helping to improve the military capabilities of Spain and furthering standardization and interoperability.

The SM-2 Block IIIA missiles will replace Spain's expiring SM-1 inventory and increase their stock levels. The missiles will be used on AEGIS F100 Class ships being built in Spain. Spain, which already has STANDARD missiles in its inventory, will have no difficulty absorbing these additional missiles.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be: STANDARD Missile Company of McLean, Virginia, and Raytheon Missile Systems Company of Tucson, Arizona. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Spain.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 02-50

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The SM-2 Block IIIA STANDARD missile is a U.S. Navy surface-launched guided missile and is classified Secret. It is operationally deployed on cruisers, destroyers, and frigates for use against air and surface threats (aircraft, missiles, and ships). The guidance system employs a continuous wave or interrupted continuous wave radar link for homing in a target. Steering and roll commands from the adaptive auto-pilot system provide flight stability via four aft-mounted control surfaces. Propulsion is provided by a solid propellant, dual thrust rocket motor that is an integral part of the missile airframe. The target detecting device (TDD) is a complex fuze with dual radar systems to optimize warhead lethality against a spectrum of target sizes and speeds.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that Spain can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 02–19153 Filed 7–29–02; 8:45 am]
BILLING CODE 5001–08–C

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 September 30, 2002.

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: July 24, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Revision.
Title: William D. Ford Federal Direct Loan Program Repayment Plan Selection Form.
Frequency: On Occasion.
Affected Public: Individuals or household.
Reporting and Recordkeeping Hour Burden:
Responses: 1,927,000.
Burden Hours: 635,910.
Abstract: Borrowers who receive loans through the William D. Ford Federal Direct Loan Program will use this form to select a repayment plan for their loans.

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 2116. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address Vivian.Reese@ed.gov. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his email address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–19157 Filed 7–29–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Draft Environmental Assessment (EA) for Future Location of the Heat Source/ Radioisotope Power System Assembly and Test Operations Currently Located at the Mound Site—Issued for public comments

AGENCY: Department of Energy.

ACTION: Solicitation of public comments.

SUMMARY: In compliance with the requirements of the National Environmental Policy Act of 1969, the Department has prepared a draft EA for the future location of the Heat Source/ Radioisotope Power Systems (HS/RPS) assembly and test operations program currently located at the Mound site in Miamisburg, Ohio. After the events of September 11, 2001, a department-wide review of security identified the need for enhanced security measures at Mound to protect the materials associated with the program and the surrounding community. The Department analyzed a range of options including, upgrading the existing infrastructure at Mound site to enable the program to remain in that location as well as transferring the operations to more secure locations at the Pantex Site in Texas or the Argonne National Laboratory-West site in Idaho. The Department's highest priority is ensuring the health and safety of the workers at its sites and the communities surrounding them. With this responsibility at the forefront, the Department held four public meetings to discuss the future of this program. Information received from this public scoping process and preliminary assessments of the costs and schedules associated with the various alternatives, led to identification of DOE's Argonne National Laboratory-West site as the preferred site for the future location of the HS/RPS program. The Department is soliciting comments on the draft EA from the affected Federal, state, and local agencies and Tribal governments, and interested public.

DATES: Comments on the draft EA are due on August 20, 2002.

ADDRESSES: Copies of the EA are available from Mr. Timothy A. Frazier and comments should be transmitted to him in any of the following ways: U.S. mail to: Mr. Timothy A. Frazier, U.S. Department of Energy, PO Box 66, Miamisburg, OH 45343–0066 [Phone: (937) 865–3748]; Facsimile: (937) 865–4489; electronic mail: *Tim.Frazier@HQ.DOE.GOV.*

SUPPLEMENTARY INFORMATION: The Department issued a **Federal Register** notice on May 31, 2002, announcing the public scoping meetings for the subject EA. Public scoping meetings were held in Washington, DC metropolitan area, Miamisburg, Ohio, Amarillo, Texas, and Idaho Falls, Idaho. Comments received on the scope of the EA were considered in preparation of the draft of the EA which is now being made available to the public and affected government agencies and Tribes. For consideration in preparation of the final EA, comments should be transmitted to Mr. Timothy A. Frazier, as specified above,

no later than August 20, 2002. Comments received after that date will be considered to the extent practicable. The Department has now identified the Argonne National Laboratory-West site as the preferred site for the future location of the HS/RPS program. On the basis of the significance of environmental impacts evaluated in the EA, the Department will issue a Finding of No Significant Impact or proceed with the preparation of an Environmental Impact Statement.

Issued in Washington, DC, July 23, 2002.

William D. Magwood, IV,

Director, Office of Nuclear Energy, Science and Technology.

[FR Doc. 02–19220 Filed 7–29–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–389–000]

ANR Pipeline Company; Notice of Proposed Change to FERC Gas Tariff

July 24, 2002.

Take notice that on July 15, 2002, ANR Pipeline Company (ANR), tendered for filing, as part of its FERC Gas Tariff, Second Revised Volume No. 1, Eighth Revised Sheet No. 45E.01 to be effective August 15, 2002.

ANR states that the purpose of this filing is to designate in its tariff a new point eligible for service under its existing Rate Schedule IPLS.

ANR states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19216 Filed 7–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. P–4021]

Buck Creek Corporation; Notice of Site Visit

July 24, 2002.

Buck Creek Corporation, licensee for the Lake Tahoma Hydroelectric Project (Project), is requesting to surrender its license. On August 14, 2002, the staff of the Office of Energy Projects (OEP) will conduct a site visit of the Project. Representatives of Buck Creek Corporation will accompany the OEP staff. All interested parties may meet at 10:00 a.m. at the Project powerhouse located at the Lake Tahoma dam. Attendees must provide their own transportation.

For further information, please contact Shannon Dunn at (202) 208–0853 or the Commission's Office of External Affairs at (866) 208–FERC.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19205 Filed 7–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–058]

Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

July 24, 2002.

Take notice that on July 18, 2002, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing the following contract for disclosure of a negotiated rate transaction: FTS–1 Service Agreement No. 73130 between Columbia Gulf Transmission Company and Conoco, Inc., dated July 1, 2002.

Transportation service is to commence July 1, 2002 under the agreement.

Columbia Gulf states that copies of the filing has served copies of the filing on all parties identified on the official service list in Docket No. RP96–389.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19211 Filed 7–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–403–000]

Dominion Transmission, Inc.; Notice of Application

July 24, 2002.

Take notice that on July 10, 2002, Dominion Transmission, Inc. (Dominion), 445 West Main Street, Clarksburg, West Virginia, 26301, filed in Docket No. CP02–403–000 an application pursuant to Section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon its Storage Wells Nos. RN–2178 and RN–2189 of the Racket Newberne Storage Complex in Gilmer County, West Virginia, all as more fully set forth in the application.

All as more thoroughly described in the application on file with the Commission and open to public inspection. Copies of this application are on file with the Commission and are

available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''Rims'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance).

Dominion states that the physical condition of the facilities proposed for abandonment have deteriorated to the extent that an expensive repair or abandonment is required. Dominion further states that it has determined that repairs would be uneconomic due to the poor performance of the wells and the use of the wells is unnecessary for the continued operation of the Racket Newberne Storage Complex.

Any questions regarding the application should be directed to Sean R. Sleigh, Certificates Manager, Dominion Transmission, Inc., 445 West Main Street, Clarksburg, West Virginia, 26301 at (304) 627–3462 or by fax at (304) 627–3305.

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 August 14, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest. 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.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-filing'' link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19201 Filed 7–30–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–390–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

July 24, 2002.

Take notice that on July 18, 2002 Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Revised Sheet No. 193; Original Sheet No. 193A, and First Revised Sheet No. 194.

Eastern Shore states that the tariff sheets are being submitted to comply with Commission Order No. 587–N, issued on March 11, 2002 in Docket No. RM96–1–019. Order No 587–N requires interstate pipelines to make tariff filings to be effective July 1, 2002 ''to comply with the requirement to implement recalls of scheduled and unscheduled capacity for the Timely and Evening Nomination cycles and for recalls of unscheduled capacity.''

Eastern Shore states that copies of its filing has been mailed to its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19217 Filed 7–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–118003]

High Island Offshore System, L.L.C.; Notice of Compliance Filing

July 24, 2002.

Take notice that on July 18, 2002, High Island Offshore System, L.L.C. (HIOS), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Second Substitute Fifth Revised Sheet No. 171. HIOS requests that this sheet be made effective January 4, 2002.

HIOS states that the referenced sheet is being filed in compliance with the Federal Energy Regulatory Commission's July 3, 2002 Order in the referenced proceeding, which required HIOS to use the recourse rate as the cap on the valuation of a negotiated rate nomination for interruptible service.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This

filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19215 Filed 7–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–066]

Natural Gas Pipeline Company of America; Notice of Negotiated Rates

July 24, 2002.

Take notice that on July 17, 2002, 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 August 1, 2002.

Natural states that the purpose of this filing is to implement two (2) negotiated rate transactions with Natural and Illinois Power Company under Natural's Rate Schedules FTS and NSS pursuant to Section 49 of the General Terms and Conditions of Natural's Tariff.

Natural states that copies of the filing are being mailed to interested state commissions and all parties set out on the Commission's official service list at Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19212 Filed 7–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–403–002 and RP01–388–003]

Northern Border Pipeline Company; Notice of Compliance Filing

July 24, 2002.

Take notice that on July 17, 2002, Northern Border Pipeline Company (Northern Border) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1 revised tariff sheets listed on Appendices A and B to the filing.

Northern Border states that the revised tariff sheets are being filed in order to comply with the Commission's May 16, 2002 Order in the referenced proceedings, which relates to Northern Border's previous filings to comply with Order Nos. 637, 637-A, and 637-B.

Northern Border states that copies of this filing have been sent to all of Northern Border's contracted Shippers, interested state regulatory commissions, and all parties of record in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 31, 2002. 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. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19213 Filed 7–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR98–11–003]

Pan Energy Louisiana Intrastate, LLC; Notice To Change Statement of Operating Conditions

July 24, 2002.

Take notice that on June 28, 2002, Pan Energy Louisiana Intrastate, LLC (PELICO) filed, pursuant to Section 284.123(e) of the Commission's regulations, a revised Statement of Operating Conditions to reflect a change in the index price for delivery points from the Gas Daily Tennessee, 100 Leg Index to the Gas Daily Tennessee, 500 Leg Index. In addition, PELICO is reflecting a change in name from Pan Energy Louisiana Intrastate Company to Pan Energy Louisiana Intrastate, LLC. PELICO requests a proposed effective date of July 1, 2002.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the date of this filing, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to protest this rate proceeding must file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed with the Secretary of the Commission on or before August 8, 2002. 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 petition is on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the

instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19210 Filed 7–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–108–000]

Truckee Donner Public Utility District v. Idaho Power Company, IDACORP Energy, L.P., and IDACORP, Inc.; Notice of Complaint

July 24, 2002.

Take notice that on July 23, 2002, the Truckee Donner Public Utility District (Truckee) filed a complaint against Idaho Power Company, IDACORP Energy, L.P., and IDACORP, Inc. (the Idaho parties).

In the complaint, Truckee seeks reformation or termination of a long-term contract for the purchase of wholesale electric power from the Idaho parties, which the parties entered into (under Idaho Power's market-based tariff) during the recent crisis in Western electric power markets, and other related relief.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest 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). All such motions or protests must be filed on or before August 12, 2002.

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. Answers to the complaint shall also be due on or before August 12, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance).

Comments, protests, interventions and answers 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.

Linwood A. Watson, Jr.

Deputy Secretary

[FR Doc. 02–19202 Filed 7–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–497–001 and RP01–47–003]

Viking Gas Transmission Company; Notice of Compliance Filing

July 24, 2002.

Take notice that on July 17, 2002, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1 the tariff sheets listed on Appendix A to the filing, to become effective September 15, 2002.

Viking states that the purpose of this filing is to comply with the Order on Compliance with Order Nos. 637, 587-G and 587-L, that the Commission issued on June 17, 2002 in Docket No. RP00–497–000 (''June 17, 2002 Order'').

Viking states that copies of the filing have been mailed to all of its jurisdictional customers, to affected state regulatory commissions and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 31, 2002. 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. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19214 Filed 7–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–170–000, et al.]

Bonnet Carre Power, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

July 23, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Bonnet Carre Power, L.L.C.

[Docket No. EG02–170–000]

Take notice that on July 19, 2002, Bonnet Carre Power, L.L.C. (Applicant), a Delaware limited liability company, with its principal office located at 101 Ash Street, San Diego, California 92101, filed with the Federal Energy Regulatory Commission (Commission) an Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's regulations and Section 32 of the Public Utility Holding Company Act of 1935, as amended. Applicant states it will be engaged directly and exclusively in operating an approximately 1200 MW natural gas-fueled electric generating facility (the Facility) located in St. John the Baptist Parish, four miles south of the City of LaPlace, Louisiana, and selling energy at wholesale from the Facility.

Comment Date: August 13, 2002.

2. PacifiCorp

[Docket No. ER02–2333–000]

Take notice that on July 16, 2002, PacifiCorp tendered for filing with the Federal Energy Regulatory Commission (Commission) the First Amendment and Restated Long-Term Power Sales Agreement between PacifiCorp and Southern California Edison Company, (Agreement). The Agreement amends PacifiCorp's FERC Electric Rate Schedule No. 248 (as supplemented). PacifiCorp requests an effective date of January 1, 2002, as well as waiver for good cause of the Commission's prior Notice and Filing Requirements.

Copies of the filing were served upon Southern California Edison Company and the state commissions of California,

Montana, Oregon, Washington, Utah, and Idaho.

Comment Date: August 6, 2002.

3. Virginia Electric and Power Company

[Docket No. ER02–2334–000]

Take notice that on July 17, 2002, Virginia Electric and Power Company (Dominion Virginia Power or the Company) tendered for filing the following Service Agreement for Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to Dominion Energy Marketing, Inc. designated as Service Agreement No. 368 under the Company's FERC Electric Tariff, Second Revised Volume No. 5; and Service Agreement for Non-Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to Dominion Energy Marketing, Inc. designated as Service Agreement No. 369 under the Company's FERC Electric Tariff, Second Revised Volume No. 5.

The foregoing Service Agreements are tendered for filing under the Open Access Transmission Tariff to Eligible Purchasers effective June 7, 2000. Under the tendered Service Agreements, Dominion Virginia Power will provide point-to-point service to Dominion Energy Marketing, Inc. under the rates, terms and conditions of the Open Access Transmission Tariff. Dominion Virginia Power requests an effective date of June 18, 2002, as requested by the customer.

Copies of the filing were served upon Dominion Energy Marketing, Inc., the Virginia State Corporation Commission, and the North Carolina Utilities Commission. *Comment Date:* August 7, 2002.

4. PacifiCorp

[Docket No. ER02–2335–000]

Take notice that on July 18, 2002, PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Federal Energy Regulatory Commission's Rules and Regulations, an Amended and Restated Long Term Power Sales Agreement with Utah Municipal Power Agency.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon. *Comment Date:* August 8, 2002.

5. Ameren Energy, Inc. on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company

[Docket No. ER02–2336–000]

Take notice that on July 19, 2002, Union Electric Company d/b/a/ AmerenUE (AmerenUE), pursuant to Part 35 of the regulations of the Federal Energy Regulatory Commission (Commission), submitted for filing an executed interchange Agreement with Associated Electric Cooperative. UE seeks Commission acceptance of this agreement effective July 19, 2002.

Copies of this filing were served on the Missouri Public Service commission and the counter party.

Comment Date: August 9, 2002.

6. Energy Investments Management, Inc.

[Docket No. ER02–2338–000]

Take notice that on July 18, 2002, Energy Investments Management, Inc. (EIM) petitioned the Federal Energy Regulatory Commission (Commission) for acceptance of EIM Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

EIM intends to engage in wholesale electric power and energy purchases and sales as a marketer. EIM is not in the business of generating or transmitting electric power.

Comment Date: August 8, 2002.

7. Citadel Energy Products LLC

[Docket No. ER02–2339–000]

Take notice that on July 18, 2002, Citadel Energy Products LLC submitted for filing, pursuant to section 205 of the Federal Power Act, and part 35 of the Commission's regulations, an application for authorization to make sales, as a power marketer, of capacity, energy, and certain Ancillary Services at market-based rates; to reassign transmission capacity; and to resell firm transmission rights (FTRs).

Comment Date: August 8, 2002.

8. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER02–2340–000]

Take notice that on July 18, 2002, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply) filed Service Agreement No. 156 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services. Allegheny Energy Supply requests a waiver of notice requirements for an effective date of June 24, 2002 for Indianapolis Power & Light Company.

Copies of the filing have been provided to all parties of record.

Comment Date: August 8, 2002.

Standard Paragraph

E. 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 ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19196 Filed 7–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4273–012, et al.]

Cargill-Alliant, LLC, et al.; Electric Rate and Corporate Regulation Filings

July 22, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Cargill-Alliant, LLC

[Docket No. ER97–4273–012]

Take notice that on July 15, 2002, Cargill-Alliant, LLC, tendered for filing a notification of change in status with respect to its authority to engage in wholesale sales of capacity, energy, and ancillary services at market-based rates.

Comment Date: August 5, 2002.

2. San Diego Gas & Electric Company

[Docket No. ER02–1558–001]

Take notice that on July 18, 2002, San Diego Gas & Electric (SDG&E) tendered for filing Amendment No. 1 to Service

Agreement No. 5 of SDG&E's FERC Electric Tariff, First Revised Volume No. 6. The Amendment No. 1 reflects changes made to Appendix J, the monthly Operation & Maintenance (O&M) charge that SDG&E will assess.

Comment Date: August 8, 2002.

3. UGI Utilities, Inc.

[Docket No. ER02–2042–001]

Take notice that on July 16, 2002, UGI, Utilities, Inc. (UGI) tendered for filing a substitute market-based rate schedule showing the correct designation as FERC Electric Rate Schedule No. 10 under which it proposes to sell capacity and energy to affiliates and non-affiliates at market-based rates. UGI requests an effective date of August 1, 2002.

Comment Date: August 6, 2002.

4. Nevada Power Company

[Docket No. ER02–2329–000]

Take notice that on July 16, 2002, Nevada Power Company (Nevada Power) tendered for filing an executed Memorandum of Understanding (MOU) between Nevada Power and Reliant Energy Bighorn, LLC.

Comment Date: August 6, 2002.

5. PacifiCorp

[Docket No. ER02–2331–000]

Take notice that on July 16, 2002, PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Federal Energy Regulatory Commission's Rules and Regulations, a First Amended Long Term Power Sales Agreement with Public Service Company of Colorado.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment Date: August 6, 2002.

6. Florida Power & Light Company

[Docket No. ER02–2332–000]

Take notice that on July 16, 2002, Florida Power & Light Company (FPL) filed with the Federal Energy Regulatory Commission an unexecuted Interconnection and Operation Agreement between FPL and Midway Generating Company, L.L.C. (Midway) that sets forth the terms and conditions governing the interconnection between Midway's generating project located in St. Lucie County, Florida and FPL's transmission system.

A copy of this filing has been served on Midway and the Florida Public Service Commission. The Interconnection and Operation Agreement is designated as Florida Power & Light Company Original Service Agreement No. 209 to its OATT, FERC Electric Tariff, Second Revised Volume No. 6.

Comment Date: August 6, 2002.

Standard Paragraph

E. 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 ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19195 Filed 7–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 1982–017, 2567–009, 2639–009, 2491–025, and 2440–040—Wisconsin and Project No. 2670–014—Wisconsin]

Northern States Power Company, and City of Eau Claire; Notice of Availability of Environmental Assessment

July 24, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the applications for new license for the Holcombe, Wissota, and Dells Projects, and amendments to license for the Chippewa Falls, Jim Falls, and Cornell Projects, located on the Chippewa River, in Chippewa, Rusk, and Eau Claire Counties, Wisconsin, and has prepared an Environmental Assessment (EA) for the projects. In the EA, the Commission's staff has analyzed the potential environmental effects of the projects, and has concluded that approval of the projects and amendments, with appropriate environmental measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426. The EA may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions. Please call (202) 208–2222 for assistance.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1–A, Washington, DC 20426. Please affix ''Holcombe, Wissota, Dells, Cornell, Jim Falls, and Chippewa Falls Project Nos. 1982–017, 2567–009, 2670–014, 2639–009, 2491–025, and 2440–040'' to all comments. For further information, contact Mark Pawlowski at (202) 219–2795 or e-mail *mark.pawlowski@ferc.gov*. Comments may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19203 Filed 7–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2652–007, Montana]

PacifiCorp; Notice of Availability of Final Environmental Assessment

July 22, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects staff has reviewed the application for a subsequent license for the Bigfork Hydroelectric Project located on the Swan River, in Flathead County,

Montana, and has prepared a final environmental assessment (EA) for the project. The project does not occupy any Federal or tribal lands. In the final EA, the Commission's staff has analyzed the potential environmental effects of the existing project and has concluded that approval of the project, with appropriate environmental protection measures, would not constitute a major federal action significantly affecting the quality of the human environment.

On April 12, 2002, Commission staff issued a draft EA for the project and requested comments within 45 days. Five entities filed comments which are addressed in this final EA.

Copies of the final EA can be viewed at the Commission's Reference and Information Center, Room 2A, 888 First Street, NE., Washington, DC 20426, or by calling 202–208–1371. The document also can be viewed on the web at *http://rimsweb1.ferc.gov/rims* (call 202–208–2222 for assistance).

For further information, contact Steve Hocking at 202–219–2656.

Magalie R. Salas,

Secretary.

[FR Doc. 02–18987 Filed 7–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11566–000–Maine]

Ridgewood Maine Hydro Partners, L.P.; Notice of Availability of Final Environmental Assessment

July 24, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486,52 FR 47879), the Office of Energy Projects has reviewed the application for an original license for the Damariscotta Mills Project, located on the Damariscotta River, in Lincoln, County, Maine, and has prepared an Environmental Assessment (EA) for the project. There are no Federal lands occupied by the project works or located within the project boundary. In the EA, the Commission staff has concluded that approval of the proposed project, with appropriate mitigation measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 2-A, of the Commission's offices at 888 First street, NE., Washington, DC 20426. The EA may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link-select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19206 Filed 7–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Addendum to January 30, 2002; Offer of Settlement

July 24, 2002.

Take notice that the following addendum to an offer of settlement has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Addendum to January 30, 2002 Offer of Settlement.

b. *Project Nos.:* 2364–012 and 2365–023.

c. *Date Filed:* July 16, 2002.

d. *Applicant:* Madison Paper Industries.

e. *Name of Projects:* Abenaki and Anson Projects.

f. *Location:* On the Kennebec River, in the towns of Anson and Madison, Somerset County, Maine. The projects do not occupy any federal lands.

g. *Filed Pursuant to:* Rule 602 of the Commission's rules of practice and procedure, 18 CFR 385.602.

h. *Applicant Contact:* Christopher C. Bean; Vice-President of Engineering, Maintenance, and Utilities; Main Street; P.O. Box 129, Madison, ME; (207) 696–1195. The applicant requests that copies of all correspondence be provided to Maureen Winters, Project Manager, Kleinschmidt Associates, 75 Main Street, P.O. Box 576, Pittsfield, ME 04967; (207) 487–3328.

I. *FERC Contact:* Nan Allen, (202) 219-2938, e-mail: *nan.allen@ferc.gov*

j. *Deadline for filing comments*: 20 days from the date of this notice. Reply comments due 30 days from the date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. Madison Paper Industries (MPI) filed an addendum to its January 30, 2002 offer of settlement on behalf of itself and the U.S. Fish and Wildlife Service; National Park Service, Bureau of Indian Affairs; Maine State Planning Office; Maine Department of Inland Fisheries and Wildlife; Maine Department of Marine Resources; Maine Department of Conservation; Maine Atlantic Salmon Commission; Town of Anson; Town of Madison; Appalachian Mountain Club; Trout Unlimited, including the Kennebec Valley Chapter of Trout Unlimited; Kennebec Valley Trails; Friends of the Kennebec Salmon; Maine Council of the Atlantic Salmon Federation; Maine Historic Preservation Commission; and American Rivers. In the addendum, the signatories agree that their intent is that the licensee not be obligated to implement any protection, mitigation, or enhancement measures earlier than May 1, 2004. The addendum additionally states that a parcel of land included in the shoreland buffer zone under the offer of settlement has been reserved by MPI for future development, and therefore, a separate set of conservation easement restrictions would be developed for the parcel.

l. A copy of the Addendum to the January 30, 2002 Offer of Settlement is on file with the Commission and is available for public inspection. This filing may also be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in h above.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19204 Filed 7–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

July 24, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Preliminary Permit.

b. Project No.: 12258–000.

c. Date filed: June 20, 2002.

d. Applicant: Rathbun Hydro, LLC.

e. Name and Location of Project: The Rathbun Dam Hydroelectric Project would be located on the Chariton River in Appanoose County, Iowa. The project would utilize the U.S. Army Corps of Engineers' existing Rathbun Dam.

f. Filed Pursuant to: Federal Power Act, 16 USC §§ 791(a)—825(r).

g. Applicant Contact: Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630.

h. FERC Contact: James Hunter, (202) 219–2839.

i. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions and 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. Please include the project number (P–12258–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. Description of Project: The proposed project, using the existing Rathbun Dam and Lake, would consist of: (1) A proposed 700-foot-long, 8-foot-diameter steel penstock, (2) a proposed powerhouse containing one generating unit with an installed capacity of 3.5 megawatts, (3) a proposed one-mile-long, 25-kilovolt transmission line, and (4) appurtenant facilities. The project would have an average annual generation of 10.4 gigawatthours.

k. 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 ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item g. above.

l. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19207 Filed 7–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

July 24, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Preliminary Permit.

b. Project No.: 12264–000.

c. Date filed: June 24, 2002.

d. Applicant: Hannibal Hydro, LLC.

e. Name and Location of Project: The Hannibal L&D Hydroelectric Project would be located on the Ohio River in Wetzel County, West Virginia. The project would utilize the U.S. Army Corps of Engineers' existing Hannibal Locks and Dam.

f. Filed Pursuant to: Federal Power Act, 16 USC §§ 791(a)—825(r).

g. Applicant Contact: Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630.

h. FERC Contact: James Hunter, (202) 219–2839.

i. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions and 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. Please include the project number (P–12264–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. Description of Project: The proposed project, using the existing Hannibal Locks and Dam, would consist of: (1) Two proposed 50-foot-long, 196-inch-diameter concrete penstocks, (2) a proposed powerhouse containing two generating units, each with an installed capacity of 10 megawatts, (3) a proposed one-mile-long, 50-kilovolt transmission line, and (4) appurtenant facilities. The project would have an average annual generation of 185 gigawatthours.

k. 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 ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item g. above.

l. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19208 Filed 7–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

July 24, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Preliminary Permit.

b. Project No.: 12270–000.

c. Date filed: June 25, 2002.

d. Applicant: Universal Electric Power Corporation.

e. Name and Location of Project: The Gathright Dam Hydroelectric Project would be located on the Jackson River in Allegheny County, Virginia. The project would utilize the U.S. Army Corps of Engineers' existing Gathright Dam.

f. Filed Pursuant to: Federal Power Act, 16 USC §§ 791(a)—825(r).

g. Applicant Contact: Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. FERC Contact: James Hunter, (202) 219–2839.

i. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests and interventions and 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. Please include the project number (P–12270–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. *j. Description of Project:* The proposed project, using the existing Gathright Dam and Reservoir, would consist of: (1) A proposed penstock connecting to the existing discharge conduit, (2) a proposed powerhouse containing three generating units with a total installed capacity of 4.54 megawatts, (3) a proposed 12.7-kilovolt transmission line connecting to an existing substation, and (4) appurtenant facilities. The project would have an average annual generation of 17 gigawatthours.

k. 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 ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item g. above.

l. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19209 Filed 7–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice

July 24, 2002.

The following notice of metting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: July 31, 2002, 10:00 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.— Items listed on the Agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMAITON: Magalie R. Salas, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda. However, all public documents may be examined in the reference and information center.

801st—Meeting July 31, 2002, Regular Meeting, 10:00 a.m.

Administrative Agenda

A–1.
Docket# AD02–1, 000, Agency Administrative Matters
A–2.
Docket# AD02–7, 000, Customer Matters, Reliability, Security and Market Operations

Markets, Tariffs and Rates—Electric

E–1.
Docket# RM01–12, 000, Electricity Market Design and Structure
E–2.
Docket# ER02–2153, 000, ISO New England Inc.
E–3.
Docket# ER02–2233, 000, Grid America Participants
E–4.
Docket# ER02–2014, 000, Entergy Services, Inc.
E–5.
Omitted
E–6.
Docket# ER02–2043, 000, California Independent System Operator Corporation
Other#s ER02–2046, 000, California Independent System Operator Corporation
E–7.
Docket# ER02–2033, 000, Midwest Independent Transmission System Operator, Inc.
Other#s ER02–2033, 001, Midwest Independent Transmission System Operator, Inc.
E–8.
Omitted
E–9.
Omitted
E–10.
Omitted
E–11.
Docket# RT01–15, 002, Avista Corporation, Nevada Power Company, Portland General Electric Company and Sierra Pacific Power Company
Other#s ER02–323, 000, TransConnect, LLC
E–12.
Docket# RT01–35, 005, Avista Corporation, Bonneville Power Administration, Idaho Power Company, Nevada Power Company, Northwestern Energy, L.L.C., PacifiCorp, Portland General Electric Company, Puget Sound Energy, Inc., Sierra Pacific Power Company and British Columbia Hydro and Power Authority
Other#s RT01–35, 007, Avista Corporation Bonneville Power Administration, Idaho Power Company, Nevada Power Company, Northwestern Energy, L.L.C., PacifiCorp, Portland General Electric Company, Puget Sound Energy, Inc., Sierra Pacific Power Company and British Columbia Hydro and Power Authority
E–13.
Omitted
E–14.
Omitted
E–15.
Omitted
E–16.
Omitted
E–17.
Docket# ER97–2358, 002, Pacific Gas and Electric Company
Other#s ER97–2355, 002, Southern California Edison Company
ER97–2364, 002, San Diego Gas & Electric Company
ER97–4235, 002, San Diego Gas & Electric Company
ER98–497, 002, San Diego Gas & Electric Company
ER98–2322, 000, Southern California Edison Company
ER98–2351, 001, Pacific Gas and Electric Company
ER98–2371, 000, San Diego Gas & Electric Company
E–18.
Omitted
E–19.
Omitted
E–20.
Docket# TX02–1, 000, Pinnacle West Capital Corporation
Other#s TX02–1, 001, Pinnacle West Capital Corporation
E–21.
Docket# ER02–456, 001, Electric Generation LLC
E–22.
Omitted
E–23.
Omitted
E–24.
Omitted
E–25.
Docket# EL02–46, 001, Generator Coalition v. Entergy Services, Inc.
Other#s ER01–2201, 002, Entergy Services, Inc.
E–26.
Docket# EL02–58, 001, Public Service Company of New Mexico v. Arizona Public Service Company
E–27.
Omitted
E–28.
Docket# EL02–99, 000, Baja California Power, Inc.
E–29.
Omitted
E–30.
Docket# RM02–12, 000, Standardization of Small Generator Interconnection Agreements and Procedures
E–31.
Docket# EL02–65, 000, Alliance Companies
Other#s RT01–88, 016, Ameren Corporation
E–32.
Docket# EL02–98, 000, PSEG Power Cross Hudson Corporation
E–33.
Docket# EL02–63, 000, Constellation Power Source, Inc. v. California Power Exchange Corporation
Other#s EL02–104, 000, California Power Exchange Corporation
E–34.
Docket# EL02–95, 000, Constellation Power Source, Inc. v. American Electric Power Service Corporation and Southwest Power Pool, Inc.
Other#s ER02–2028, 000, American Electric Power Service Corporation
E–35.
Omitted
E–36.
Docket# ER00–2360, 000, Pacific Gas and Electric Company
Other#s ER00–2360, 001, Pacific Gas and Electric Company
ER00–2360, 003, Pacific Gas and Electric Company
E–37.
Omitted
E–38.
Omitted
E–39.
Omitted
E–40.
Omitted
E–41.
Docket# RT02–1, 000, Arizona Public Service Company
Other#s EL02–9, 000, Arizona Public Service Company
E–42.
Docket# ER00–2413, 008, American Electric Power Service Corporation
Other#s ER00–3435, 004, Carolina Power & Light Company
ER01–247, 006, Virginia Electric & Power Company
E–43.
Docket# PL02–7, 000, Policy Statement Regarding Standard of Review for Proposed Changes to Market-Based Rate

Contracts for Wholesale Sales of Electric Energy by Public Utilities

Miscellaneous Agenda

M–1.
Docket# RM02–11, 000, Civil Monetary Penalty Inflation Adjustment Rule
M–2.
Docket# RM02–10, 000, Electronic Registration
M–3.
Docket# RM02–3, 000, Accounting and Reporting of Financial Instruments, Comprehensive Income, Derivatives and Hedging Activities

Markets, Tariffs and Rates—Gas

G–1.
Docket# RP02–147, 000, ANR Pipeline Company
Other#s RP02–147, 001, ANR Pipeline Company
G–2.
Docket# RP02–385, 000, Questar Southern Trails Pipeline Company
G–3.
Docket# RP96–389, 055, Columbia Gulf Transmission Company
G–4.
Docket# RP02–383, 000, Columbia Gas Transmission Corporation
G–5.
Docket# RP02–384, 000, Columbia Gulf Transmission Company
G–6.
Docket# RP96–312, 076, Tennessee Gas Pipeline Company
Other#s RP96–312, 077, Tennessee Gas Pipeline Company
RP96–312, 078, Tennessee Gas Pipeline Company
RP96–312, 079, Tennessee Gas Pipeline Company
RP96–312, 080, Tennessee Gas Pipeline Company
RP96–312, 081, Tennessee Gas Pipeline Company
G–7.
Omitted
G–8.
Docket# RP02–382, 000, Crossroads Pipeline Company
G–9.
Omitted
G–10.
Docket# RP02–379, 000, CMS Trunkline LNG Company, LLC
G–11.
Omitted
G–12.
Docket# RP01–350, 000, Colorado Interstate Gas Company
Other#s CP00–452, 000, Colorado Interstate Gas Company
CP01–1, 000, Colorado Interstate Gas Company
RP01–200, 000, Colorado Interstate Gas Company
RP01–350, 008, Colorado Interstate Gas Company
G–13.
Omitted
G–14.
Docket# RP02–367, 000, Northern Border Pipeline Company
G–15.
Omitted
G–16.
Omitted
G–17.
Docket# RP02–378, 000, Texas Gas Transmission Corporation
G–18.
Docket# RP02–368, 000, Midwestern Gas Transmission Company
G–19.
Omitted
G–20.
Omitted
G–21.
Docket# IS02–109, 002, Platte Pipe Line Company
G–22.
Omitted
G–23.
Omitted
G–24.
Docket# RP02–212, 001, Columbia Gulf Transmission Company
G–25.
Docket# RP02–213, 001, Columbia Gas Transmission Corporation
G–26.
Omitted
G–27.
Docket# MG02–2, 000, Central New York Oil and Gas Company, LLC
G–28.
Docket# RP02–309, 000, Sunoco, Inc. (R&M) v, Transcontinental Gas Pipe Line Corporation
G–29.
Omitted
G–30.
Docket# RP99–485, 000, Enbridge Pipelines (KPC)
G–31.
Docket# OR02–5, 000, Big West Oil, LLC, Chevron Products Company and Tesoro Refining and Marketing Company v. Elberta Energy Company, Ltd., Express Pipeline LLC and Platte Pipe Line Company
Other#s OR02–8, 000, Big West Oil, LLC, Chevron Products Company, Sinclair Oil Corporation and Tesoro Refining and Marketing Company v. Express Pipeline LLC
Other#s IS02–384, 000, Platte Pipe Line Company
G–32.
Docket# RP00–482, 002, Reliant Energy Gas Transmission Company
Other#s RP01–12, 002, Reliant Energy Gas Transmission Company
RP01–317, 003, Reliant Energy Gas Transmission Company

Energy Projects—Hydro

H–1.
Docket# P–6032, 044, Niagara Mohawk Power Corporation and Fourth Branch Associates (Mechanicville)
H–2.
Omitted
H–3.
Omitted
H–4.
Docket# P–1864, 016, North Shore Concerned Citizens Group of Lake Gogebic v. Upper Peninsula Power Company
H–5.
Docket# P–6132, 008, John C. Jones
H–6.
Omitted

Energy Projects—Certificates

C–1.
Docket# CP00–166, 002, Williams Gas Pipelines Central, Inc.
C–2.
Docket# CP99–76, 000, Transcontinental Gas Pipe Line Corporation
C–3.
Omitted
C–4.
Omitted
C–5.
Docket# CP96–583, 002, Kinder Morgan Texas Pipeline, Inc.
C–6.
Docket# CP02–382, 000, West Texas Gas, Inc.
C–7.
Docket# CP99–233, 000, Florida Gas Transmission Company
C–8.
Omitted
C–9.
Omitted
C–10.
Omitted
C–11.
Omitted
C–12.
Docket# CP01–87, 003, Dominion Transmission, Inc.

Magalie R. Salas,

Secretary.

[FR Doc. 02–19194 Filed 7–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Meeting, Notice of Vote, Explanation of Action Closing Meeting and List of Persons To Attend

July 24, 2002.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: July 31, 2002 (30 Minutes Following Regular Commission Meeting).

PLACE: Hearing Room 5, 888 First Street, NE., Washington, DC 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Non-Public. Investigations and Inquiries and Enforcement Related Matters.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone (202) 208–0400.

Chairman Wood and Commissioners Massey, Breathitt and Brownell voted to

hold a closed meeting on July 31, 2002. Attached is the certification of the General Counsel explaining the action closing the meeting.

The Chairman and the Commissioners, their assistants, the Commission's Secretary and her assistant, the General Counsel and members of her staff, and a stenographer are expected to attend the meeting. Other staff members from the Commission's program offices who will advise the Commissioners in the matters discussed will also be present.

Magalie R. Salas,

Secretary.

[FR Doc. 02–19278 Filed 7–25–02; 4:48 pm]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7252–6]

EPA Science Advisory Board, Contaminated Sediments Science Plan Panel; Request for Nominations

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for nominations to serve on the Contaminated Sediments Science Plan Panel of the U. S. Environmental Protection Agency's Science Advisory Board.

SUMMARY: The U.S. Environmental Protection Agency's (Agency, EPA) Science Advisory Board (SAB) is announcing the formation of a Contaminated Sediments Science Plan Panel and its solicitation of nominations of qualified individuals to serve on this Panel.

The SAB provides independent scientific and technical advice to the EPA Administrator on Agency positions; in this case, the SAB will advise on a Contaminated Sediments Science Plan that the Agency will use to develop and coordinate Agency-wide science activities in the area of contaminated sediments. Those selected to serve on the SAB's Contaminated Sediments Science Plan Panel will review the Science Plan in the Autumn of 2002.

The approved policy under which the EPA Science Advisory Board selects review panels is described in a recent SAB Commentary [*EPA Science Advisory Board (SAB) Panel Formation Process: Immediate Steps to Improve Policies and Procedures—An SAB Commentary* (EPA–SAB–EC–COM–002–003), which can be found on the SAB website (*http://www.epa.gov/sab*) at *http://www.epa.gov/sab/ecm02003.pdf.*]

Any interested person or organization may nominate qualified individuals for membership on the Panel. Nominations (preferably in electronic format) must include the individual's name, occupation, position, qualifications to address the issue, and contact information (*i.e.,* telephone number, fax number, mailing address, email, and/or Website). To be considered, all nominations must include a current bio, CV or resume (preferably electronic in MSWord or WordPerfect) providing information on the nominee's background, experience, and qualifications for this Panel.

The SAB staff asks that nominations be provided in the following way:

1. Send the nomination by e-mail to: *martin.lawrence@epa.gov.*

2. Use one email per person being nominated.

3. Please use ''contaminated sediments'' in the subject field, followed by the last name of the candidate you are nominating. (For example, ''Contaminated Sediments: Smith).

4. Attach supporting information in MS Word or WordPerfect files ending in ''.doc'' or ''.wpd''.

5. In a separate file from the bio, CV or resume, please provide the following information in the order shown:

For the Nominating Individual:
First Name:
Last Name:
Email Address:
Organization Title:
Mailing Address:
Work Phone:
Work Fax:

For the Candidate being nominated:
First Name:
Last Name:
Professional Title:
Department:
School or Unit:
University or Organization:
Mailing Address:
Work Phone:
Fax Work Phone:
Email Address:
Website for CV (if one exists):

Nominator's Assessment of Expertise: The following areas of expertise will be useful in this review. Please indicate the areas of expertise the candidate could contribute:

- Human health effects assessment (particularly in persistent, bioaccumulative & toxic materials, *e.g.* PCBs)
- Ecological effects assessment (particularly in persistent, bioaccumulative and toxic materials, *e.g.* PCBs)
- Physico-chemical nature of sediments
- Soil contamination remediation technologies
- Baseline and post remediation site monitoring
- Risk communication to the public
- Information data management systems
- Ecological fate and transport modeling of contaminants in surface waters and sediments
- Exposure assessment
- Cost-benefit valuation

Background: The Contaminated Sediments Science Plan is a mechanism for the U.S. Environmental Protection Agency (EPA) to develop and coordinate Agency-wide science activities in the contaminated sediments area. Along with the EPA's contaminated sediments science activities database, this plan provides an analysis of the current Agency science activities in this area, identifies and evaluates the science gaps, and provides a strategy for filling these gaps.

The Contaminated Sediments Science Plan has three goals to promote the vision of providing a strong scientific basis for addressing contaminated sediments: (1) To develop and disseminate the tools and science necessary to address the management of contaminated sediments; (2) To enhance the level of coordination and communication of science activities dealing with contaminated sediments across the EPA's Progam and Regional Offices and the Office of Research and Development; and (3) To develop an effective, cost-efficient strategy to promote these scientific activities and research.

To allow interested parties to view the Draft Contaminated Sediments Science Plan, which is receiving public comment, the July 22, 2002 **Federal Register** (Volume 67, Number 140, Notices, Pages 47798–47800) announced the following Internet Web addresses for viewing the Plan: *http://www.epa.gov/superfund/action/guidance/cssp.pdf* and *http://www.epa.gov/superfund/action/guidance/cssp-appendix.pdf.*

For technical inquiries, you may contact Lee Hofmann, Office of Solid Waste and Emergency Response, Mail Code 5103T, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460 at telephone number 202–566–1928, or by e-mail at: *hofmann.lee@epa.gov.*

Charge to the Panel: Details of the Charge may change as a result of discussions between the Agency and the Panel. Updates will be posted on the SAB Website: (*www.epa.gov/sab*).

The EPA solicits comments from the U.S. Environmental Protection Agency's

Science Advisory Board on all aspects of the draft science plan. In particular, the EPA requests comments and information on the following questions contained in the current draft charge to the SAB panel:

1. The Contaminated Sediments Science Plan (Science Plan) is the first official Agency science plan of its kind designed to address a significant cross-agency environmental issue in a systematic and integrated fashion. Does the Science Plan adequately convey the need for such a strategic planning document, i.e., are the goals and objectives of the plan understandable and appropriate to the subject?

2. Are the major areas of contaminated sediments science (sediment site characterization, exposure assessment, human health effects and risk assessment, ecological effects and risk assessment, sediment remediation, baseline and post-remediation monitoring, risk communication, and information management and exchange activities) appropriately addressed? Are any major areas missing?

3. Are the key recommendations clearly defined and appropriate to resolve the science needs discussed in Chapter 3?

4. Are there other issues or key recommendations which should be considered in this Science Plan?

FOR FURTHER INFORMATION CONTACT: Nominations in electronic format should be submitted to *martin.lawrence@epa.gov*. Anyone unable to submit in electronic format should send the nomination paperwork to Mr. Lawrence Martin, Designated Federal Official (DFO), EPA Science Advisory Board, U.S. Environmental Protection Agency (1400A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone (202) 564–6497; FAX (202) 501–0323. Nominations should arrive no later than August 14, 2002. The SAB will not formally acknowledge or respond to nominations.

The nominations received through this solicitation will be combined with other sources; e.g., the Agency, SAB members, and external outreach. From this larger group of nominees (termed the ''WIDECAST''), a smaller subset (the ''Short List'') will be identified for more detailed consideration. The Short List will include the names of candidates, a short biosketch of each candidate, and the names of those who nominated them. The Short List will be posted on the SAB Website (*http://www.epa.gov/sab/fiscal02.htm*) and public comments accepted on the expertise, conflict-of-interest, and apparent lack of impartiality (as defined by federal regulation) of individual candidates as well as on the overall balance of views represented on the Panel. At the SAB, a balanced panel is characterized by inclusion of the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors can be influenced by work history and affiliation), and the collective breadth of experience to address the charge adequately.

Public reaction to the Short List candidates will be considered in the selection of the Panel, along with information provided by candidates and information gathered by SAB Staff independently on the background of each candidate. Criteria to be used in evaluating an individual panelist include: (a) Expertise, knowledge, and experience (primary factors); (b) Availability and willingness to serve; (c) Scientific credibility and impartiality; and (d) Skills working in committees and advisory panels.

Panel members will be asked to attend at least one public face-to-face meeting and, probably, several public conference call meetings over the anticipated 3-month course of the activity. The Executive Committee (EC) of the SAB will review the Panel's report in a public meeting and reach a judgment about its transmittal to the Administrator.

General Information—Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in the *EPA Science Advisory Board FY2001 Annual Staff Report* which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256, or at *http://www.epa.gov/sab/annreport01.pdf.*

Dated: July 24, 2002.

A. Robert Flaak,

Acting Deputy Director, EPA Science Advisory Board.

[FR Doc. 02–19225 Filed 7–29–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7252–2]

Environmental Laboratory Advisory Board (ELAB) Meeting Date, and Agenda

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of teleconference meeting.

SUMMARY: The Environmental Protection Agency's Environmental Laboratory Advisory Board (ELAB) will have a teleconference meeting on August 21, 2002, at 11 a.m. EDT to discuss the ideas, comments, and suggestions presented at the July 9 ELAB Open Forum and July 11 ELAB Meeting, as well as new business. Items to be discussed include: (1) Restructuring of the National Environmental Laboratory Accreditation Conference (NELAC) to allow it to better serve the future needs of EPA, the States, and the private sector, (2) discussion of ELAB recommendations to EPA, (3) recommendations for increasing small laboratory participation in NELAC and (4) recommendations for increasing the number of States that are Accrediting Authorities. ELAB is soliciting input from the public on these and other issues related to the National Environmental Laboratory Accreditation Program (NELAP) and the NELAC standards. Written comments on NELAP laboratory accreditation and the NELAC standards are encouraged and should be sent to Mr. Edward Kantor, DFO, PO Box 93478, Las Vegas, NV 89193, faxed to (702) 798–2261, or e-mailed to *kantor.edward@epa.gov*. Members of the public are invited to listen to the teleconference calls and, time permitting, will be allowed to comment on issues discussed during this and previous ELAB meetings. Those persons interested in attending should call Edward Kantor at 702–798–2690 to obtain teleconference information. The number of lines are limited and will be distributed on a first come, first serve basis. Preference will be given to a group wishing to attend over a request from an individual.

Dated: July 22, 2002.

J. Gareth Pearson,

Acting Director, Environmental Sciences Division, National Environmental Research Laboratory.

[FR Doc. 02–19227 Filed 7–29–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7252–3]

Meeting of the Ozone Transport Commission for the Northeast United States

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency is

announcing the 2002 Annual Meeting of the Ozone Transport Commission (OTC). During this meeting, the OTC will deal with appropriate matters within the Ozone Transport Region in the Northeast and Mid-Atlantic States, as provided for under the Clean Air Act Amendments of 1990. This meeting is not subject to the provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended.

DATES: The OTC meeting will be held on Tuesday, August 6, 2002 starting at 9 a.m. (DST).

ADDRESSES: The Inn at Essex, 70 Essex Way, Essex Junction, Vermont 05452; (802) 878–1100. Important Note: The Mid-Atlantic/Northeast Visibility Union (MANE–VU) Board will meet the previous day, on Monday, August 5, 2002, from 1 p.m. until 5 p.m. (DST), at the same location.

FOR FURTHER INFORMATION CONTACT: Judith M. Katz, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103; (215) 814–2100. For Documents and Press Inquiries Contact: Ozone Transport Commission, 444 North Capitol Street, NW., Suite 638, Washington, DC 20001; (202) 508–3840; e-mail: *ozone@sso.org;* Web site: *http://www.sso.org/otc.*

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 contain, at Section 184, provisions for the ''Control of Interstate Ozone Air Pollution.'' Section 184(a) establishes an ''Ozone Transport Region'' (OTR) comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia, and the District of Columbia. The Assistant Administrator for Air and Radiation of the Environmental Protection Agency convened the first meeting of the commission in New York City on May 7, 1991. The purpose of the OTC is to deal with ground level ozone formation, transport, and control within the OTR.

The purpose of this notice is to announce that this Commission will meet on August 6, 2002. The meeting will be held at the address noted earlier in this notice.

Section 176A(b)(2) of the Clean Air Act Amendments of 1990 specifies that the meetings of the OTC are not subject to the provisions of the Federal Advisory Committee Act. This meeting will be open to the public as space permits.

Type of Meeting: Open.

Agenda: Copies of the final agenda will be available from the OTC office (202) 508–3840 (by e-mail: *ozone@sso.org* or via the OTC Web site at *http://www.sso.org/otc*) on Tuesday, July 29, 2002. The MANE–VU agenda will be available at the same time, but separately on MANE–VU's Web site at *http://www.sso.manevu.org.* The purpose of this meeting is to review major ozone health studies, discuss the role of clean energy and energy efficiency in ozone reduction efforts, and discuss regional approaches to reducing ground-level ozone, including ozone transport.

Dated: July 23, 2002.

Donald S. Welsh,

Regional Administrator, Region III.

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Privacy Act of 1974; Publication of Notices of Systems of Records and Proposed New Systems of Records

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice; publication of notices of systems of records, and proposed new systems of records.

SUMMARY: This notice proposes four new systems of records and changes to a number of existing systems of records. This notice republishes all of EEOC's notices for its systems of records subject to the Privacy Act in one issue of the **Federal Register** so that an accurate and complete text of the notices is available for use by individuals and by agency Privacy Act officers.

DATES: The changes to the existing systems of records are effective on July 30, 2002. The proposed new systems of records will become effective, without further notice, on September 27, 2002, unless comments dictate otherwise.

ADDRESSES: Written comments may be sent to the Office of Executive Secretariat, Equal Employment Opportunity Commission, Room 10402, 1801 L Street, NW., Washington, DC 20507. Copies of this notice are available in the following alternate formats: large print, braille, electronic file on computer disk, and audio-tape. Copies may be obtained from the Publications Center by calling 1–800–699–3362.

FOR FURTHER INFORMATION CONTACT: Thomas J. Schlageter, Assistant Legal Counsel or Kathleen Oram, Senior Attorney (202) 663–4669 (voice) or (202) 663–7026 (TDD).

SUPPLEMENTARY INFORMATION: The Equal Employment Opportunity Commission last published its Privacy Act systems notices in 1994. The Commission proposes four new systems of records to cover, in two cases, new programs that will collect individually identifiable records and, in the other two cases, existing records that through the use of information technology have become individually identifiable. In addition, the Commission is amending several of its systems to include additional categories of individuals or of records. The Commission is adding two new routine uses to its two private sector case files systems and four new routine uses to its government-wide system of records covering federal sector complaint and appeal records. Finally, the Commission has amended several system notices to reflect current office names and has amended Appendix A to reflect current addresses of Commission offices. To ensure that users will have a copy of the current text of each of its system notices, the Commission is publishing the complete text of all of its systems notices.

A brief description of the major changes follows:

EEOC–1 Age and Equal Pay Act Discrimination Case Files. A new category of individuals was added to cover individuals who file complaints under section 321 of the Government Employees Rights Act of 1991.

EEOC–1 Age and Equal Pay Act Discrimination Case Files and EEOC–3 Title VII and Americans With Disabilities Act Discrimination Case Files. Two new routine uses are proposed for each system. One would permit disclosure of information to officials of state or local bar associations or disciplinary boards or committees when they are investigating complaints against attorneys in connection with their representation of a party before EEOC. The proposed routine use in EEOC–3, the Title VII and ADA case files system, is limited to disciplinary boards or committees under the control of a state or local government because these files are covered by the confidentiality provisions contained in Title VII, 42 U.S.C. 2000e–5(b) and 8(e), and may not be disclosed to members of the public. Officials of state or federal governments are not members of the public. The second new routine use would permit disclosure of information to federal officials in connection with hiring, issuing a security clearance, or conducting a background check. The Commission has determined that these proposed routine uses are compatible with the law enforcement purpose of the systems of records.

EEOC–5 General Correspondence Records. The system of records was

amended to cover all correspondence and communications, by letter, phone call, or email, throughout the agency to reflect the use of computerized tracking systems in many offices.

EEOC–7 Employee Pay and Leave Records. Routine use i was amended to replace the General Services Administration with the Department of Interior. EEOC has switched its pay and leave system administration from the General Services Administration to the Department of the Interior.

EEOC–8 Employee Travel and Reimbursement Records. Routine use e was amended to replace the General Services Administration with the Department of Interior. EEOC has switched its financial management administrative services from GSA to the Department of the Interior.

EEOC–9 Claims Collection Records. Routine use j was amended to replace the General Services Administration with the Department of Interior. EEOC has switched its financial management administrative services from GSA to the Department of the Interior.

EEOC–12 Telephone Call Detail Records. The categories of individuals and records were amended to include U.S. government phone card holders and phone card records, including billing records.

EEOC–13 Employee Identification Cards. The categories of records was amended to cover proximity card lists and records throughout the agency, where applicable. The system was previously limited to Headquarters proximity card holders.

EEOC–15 Internal Harassment Inquiries. The Commission approved an internal order governing investigations of allegations of harassment made by EEOC employees. This new system of records covers current or former EEOC employees' complaints or reports of harassment, witness statements, reports of interviews, findings and recommendations, decisions and corrective actions taken and related correspondence and exhibits. Nine routine uses are proposed for the system. In addition, it is proposed to exempt this system from certain provisions of the Privacy Act pursuant to section (k)(2) of the Act. A Notice of Proposed Rulemaking is published separately in today's **Federal Register** proposing amendments to EEOC's Privacy Act regulations that describe this exemption.

EEOC–16 Office of Inspector General Investigative Files. The Office of the Inspector General has reorganized its filing system and will be maintaining its investigative files by the name of the individuals who are subjects of investigations by the Office relating to the programs and operations of the EEOC. The Commission is adding a system of records covering those files. Six routine uses are proposed for the new system. In addition, it is proposed to exempt this system of records from certain provisions of the Privacy Act pursuant to sections (j)(2) and (k)(2) of the Act. A Notice of Proposed Rulemaking is published separately in today's **Federal Register** proposing amendments to EEOC's Privacy Act regulations that describe those exemptions.

EEOC–17 Defensive Litigation Files. The Commission's Office of Legal Counsel has upgraded its computerized tracking system and filing system covering its defensive litigation files and has created a set of files containing testimony, affidavits and declarations given by individuals during EEOC's defense of lawsuits brought against the agency. Consequently, the Commission is adding a system of records covering the Office of Legal Counsel's defensive litigation files. The system covers all documents related to civil or administrative litigation brought against the Commission, which are retrievable by the name of the individual who filed the litigation or the name of the individual witnesses who gave testimony, affidavits or declarations during the course of such litigation. Five routine uses are proposed for the new system.

EEOC–18 Reasonable Accommodation Records. The Commission has issued an internal order establishing procedures for providing reasonable accommodation for individuals with disabilities under the Rehabilitation Act of 1973. This new system of records covers all current and former EEOC employees and applicants' requests for reasonable accommodations, medical records, notes or records made about requests, decisions on requests and records made to implement or track decisions on requests. Four routine uses are proposed for the system.

The proposed routine uses in the four new systems of records noted above meet the compatibility criteria since the information involved is collected for the purpose of the applicable routine uses. We anticipate that any disclosure pursuant to these routine uses will not result in any unwarranted adverse effects on personal privacy.

EEOC/GOVT–1 Equal Employment Opportunity in the Federal Government Complaint and Appeal Records. The two routine uses proposed to be added to EEOC–1 and EEOC–3, permitting disclosure to bar associations or disciplinary boards and to federal agencies when hiring, or conducting background checks or security clearances are proposed to be added to this system as well. They are described in greater detail above. In addition, the Commission proposes to add a new routine use permitting disclosure of information to employees of contractors engaged by an agency to carry out the agency's responsibilities under 29 CFR part 1614. Finally, the Commission proposes to add a new routine use permitting disclosure of information to potential witnesses during the course of an investigation, as may be appropriate and necessary to perform the agency's functions under 29 CFR part 1614. The Commission has determined that these four proposed routine uses are compatible with the law enforcement purpose of the system of records.

A complete list of all EEOC systems of records is published below. The complete text of the notices follows.

For the Commission.

Cari M. Dominguez,

Chair.

EEOC Systems of Records

EEOC–1 Age and Equal Pay Act Discrimination Case Files.
EEOC–2 Attorney Referral List.
EEOC–3 Title VII and Americans With Disabilities Act Discrimination Case Files.
EEOC–4 Biographical Files.
EEOC–5 Correspondence and Communications.
EEOC–6 Employee Assistance Program Records.
EEOC–7 Employee Pay and Leave Records.
EEOC–8 Employee Travel and Reimbursement Records.
EEOC–9 Claims Collection Records.
EEOC–10 Grievance Records.
EEOC–11 Records of Adverse Actions Against Nonpreference Eligibles in the Excepted Service.
EEOC–12 Telephone Call Detail Records.
EEOC–13 Employee Identification Cards.
EEOC–14 Employee Parking Records.
EEOC–15 Internal Harassment Inquiries.
EEOC–16 Office of Inspector General Investigative Files.
EEOC–17 Defensive Litigation Files.
EEOC–18 Reasonable Accommodation Records.
EEOC/GOVT–1 Equal Employment Opportunity in the Federal Government Complaint and Appeal Records.

EEOC–1

SYSTEM NAME:

Age and Equal Pay Act Discrimination Case Files.

SYSTEM LOCATION:

Field Office where the charge or complaint of discrimination was filed (see Appendix A). Records of

complaints filed under section 321 of the Government Employees Rights Act of 1991 are located in the Office of Federal Operations, 1801 L Street, NW., Washington, DC 20507, after a hearing has been requested.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons other than federal employees and applicants who file charges or complaints with EEOC alleging that an employer, employment agency or labor organization has violated the Age Discrimination in Employment Act of 1967 or the Equal Pay Act of 1963, or who file complaints under section 321 of the Government Employees Rights Act of 1991.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains the records compiled during the investigation of age and equal pay discrimination cases and during the investigation and hearing of complaints filed under section 321 of the Government Employees Rights Act of 1991. These records include:

a. Documents submitted by charging party or complainant such as charge of discrimination, personal interview statement, and correspondence.

b. Documents submitted by employer such as statement of position, correspondence, statements of witnesses, documentary evidence such as personnel files, records of earnings, employee benefit plans, seniority list, job titles and descriptions, applicant data, organizational charts, collective bargaining agreements, petition to revoke or modify subpoena.

c. Records gathered and generated by EEOC in the course of its investigation and, in complaints filed under section 321 of the Government Employees Rights Act of 1991, during the hearing, such as letters of referral to state fair employment practices agencies, correspondence with state fair employment practices agencies, witness statements, investigator's notes, investigative plan, report of initial and exit interview, investigator's analyses of evidence and charge, subpoenas, decisions and letters of determination, conciliation agreements, correspondence and any additional evidence gathered during the course of the investigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 29 U.S.C. 209, 211, 216, 217, 625; 44 U.S.C. 3101; 2 U.S.C. 1220.

PURPOSE(S):

This system is maintained for the purpose of enforcing the prohibitions against employment discrimination contained in the Age Discrimination in Employment Act, the Equal Pay Act and section 321 of the Government Employees Rights Act of 1991.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to a federal, state, or local agency or third party as may be appropriate or necessary to perform the Commission's functions under the Age Discrimination in Employment Act or Equal Pay Act.

b. To disclose information contained in these records to state and local agencies administering state or local fair employment practices laws.

c. To disclose non-confidential and non-privileged information from closed ADEA/EPA case files (a file is closed when the Commission has terminated its investigation and has decided not to sue) to the employer where a lawsuit has been filed against the employer involving that information, to other employees of the same employer who have been notified by the Commission of their right under 29 U.S.C. 216 to file a lawsuit on their own behalf, and their representatives.

d. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of a party to the charge.

e. To disclose pertinent information to the appropriate federal, state or local agency responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation or order, where the EEOC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

f. To disclose information to another federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a federal agency when the government is a party to the judicial or administrative proceeding.

g. To disclose information to officials of state or local bar associations or disciplinary boards or committees when they are investigating complaints against attorneys in connection with their representation of a party before EEOC.

h. To disclose to a Federal agency in the executive, legislative, or judicial branch of government, in response to its request information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and in computer databases.

RETRIEVABILITY:

These records are retrievable by charging party name, employer name and charge number.

SAFEGUARDS:

Paper records are maintained in a secured area to which only authorized personnel have access. Access to and use of these records is limited to those persons whose official duties require such access. The premises are locked when authorized personnel are not on duty. Access to computerized records is limited, through use of access codes and entry logs, to those whose official duties require access.

RETENTION AND DISPOSAL:

Cases that are dismissed or closed for other than no cause are destroyed six months following the date of dismissal or closure. No cause files that are of value in the development of future class action or pattern and practice cases are retired to the Federal Records Center one year after the date of the last action and destroyed after three additional years. All other no cause files are destroyed one year after the date of the last action. Negotiated settlement files are destroyed one year after the calendar year in which the settlement agreement is signed or after all obligations under the agreement are satisfied, whichever occurs later. Where monetary benefits are realized in concurrent Age, Equal Pay, and Title VII cases, the file is destroyed three years after the date of the last action. Other files are retired to the Federal Records Center one year after the date of the last action, including action in the federal courts or the last compliance review (the final report submitted by the respondent after conciliation to indicate compliance) and destroyed after three additional years, except landmark cases. Landmark cases are transferred to the nearest Federal Records Center two years after final court action and offered to the National Archives ten years after final court action.

SYSTEM MANAGER(S) AND ADDRESS:

Director of the field office where the charge was filed (see Appendix A).

Director of the Office of Federal Operations, 1801 L Street, NW., Washington, DC 20507.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt under 5 U.S.C. 552a(k)(2) from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) of the Act.

EEOC–2

SYSTEM NAME:

Attorney Referral List.

SYSTEM LOCATION:

All District Offices (see Appendix A).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Attorneys who represent plaintiffs in employment discrimination litigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains attorneys' names, business addresses and telephone numbers, the nature and amount of civil rights litigation experience, state and federal bar admission, whether the attorneys have the capacity and desire to handle class actions; whether the attorneys charge consultation fees (and how much); whether the attorneys will waive the consultation fee; the types of fee arrangements the attorneys will accept, and whether the attorneys speak a foreign language fluently.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2000e–4(g); 44 U.S.C. 3101.

PURPOSE(S):

This system is maintained for the purpose of providing charging parties, upon their request, with information about local attorneys who represent plaintiffs in employment discrimination litigation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To refer charging parties to attorneys who handle litigation of employment discrimination lawsuits.

b. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored on prepared forms, index cards and computer databases.

RETRIEVABILITY:

Indexed alphabetically by names of the attorneys.

SAFEGUARDS:

Access to this system of records is restricted to EEOC personnel who have a legitimate use for the information. This system is stored in filing cabinets. Access to computerized records is limited, through use of access codes and entry logs, to those whose official duties require access.

RETENTION AND DISPOSAL:

Files are reviewed and updated annually.

SYSTEM MANAGER(S) AND ADDRESS:

Regional Attorney at each District Office (*see* Appendix A).

NOTIFICATION PROCEDURE:

Inquiries concerning this system of records should be addressed to the appropriate system manager. It is necessary to furnish the following information: (1) Full name of the individual whose records are requested; (2) mailing address to which reply should be sent.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

The individual on whom the record is maintained.

EEOC–3

SYSTEM NAME:

Title VII and Americans With Disabilities Act Discrimination Case Files.

SYSTEM LOCATION:

Field Office where the charge of discrimination was filed (see Appendix A).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons, other than federal employees and applicants, who file charges alleging that an employer, employment agency, labor organization or joint labor-management apprenticeship committee has violated Title VII of the Civil Rights Act of 1964 or the Americans With Disabilities Act of 1990, or both.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records compiled during the investigation of race, color, religion, sex, and national origin discrimination cases and cases of discrimination against individuals with disabilities. These records include:

a. Documents submitted by charging party, such as charge of discrimination, personal interview statement, medical records and correspondence.

b. Documents submitted by employer such as statement of position, correspondence, statements of witnesses, documentary evidence such as personnel files, records of earnings, EEO data, employee benefit plans, seniority list, job titles and descriptions, applicant data, organizational charts, collective bargaining agreements, petition to revoke or modify subpoena.

c. Records gathered and generated by EEOC in the course of its investigation such as letters to state or local fair employment practice agencies, correspondence with state fair employment practice agencies, witness statements, investigator's notes, investigative plan, investigator's analyses of the evidence and charge, report of initial and exit interviews, copy of deferral to state, subpoenas, decisions and letters of determination, analysis of deferral agency action, conciliation agreements, correspondence and any additional evidence gathered during the course of the investigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 42 U.S.C. 2000e–5, –8 and –9; 42 U.S.C. 12117; 44 U.S.C. 3101.

PURPOSE(S):

This system is maintained for the purpose of enforcing the prohibitions against employment discrimination contained in Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act of 1990.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to a federal, state, or local agency or third party as may be appropriate or necessary to perform the Commission's functions under Title VII of the Civil Rights Act of 1964 and the Americans With Disabilities Act of 1990.

b. To disclose information contained in these records to state and local agencies administering state or local fair employment practices laws.

c. To disclose non-confidential or non-privileged information contained in these records to the following persons after a notice of right to sue has been issued:

1. Aggrieved persons and their attorneys in case files involving Commissioner Charges provided that such persons have been notified of their status as aggrieved persons;

2. Persons or organizations filing on behalf of an aggrieved person provided that the aggrieved person has given written authorization to the person who filed on his or her behalf to act as the aggrieved person's agent for this purpose, and their attorneys;

3. Employers and their attorneys, provided that the charging party or aggrieved person has filed suit under Title VII or the Americans With Disabilities Act, or both.

d. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of a party to the charge.

e. To disclose pertinent information to the appropriate federal, state or local agencies responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation or order, where EEOC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

f. To disclose information to another federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a federal agency when the government is a party to the judicial or administrative proceeding.

g. To disclose information to officials of disciplinary boards or committees under the control of a state or local government when they are investigating complaints against attorneys in connection with their representation of a party before EEOC.

h. To disclose to a Federal agency in the executive, legislative, or judicial branch of government, in response to its request information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and in computer databases.

RETRIEVABILITY:

These records are retrievable by charging party name, employer name and charge number.

SAFEGUARDS:

Paper records are maintained in a secured area to which only authorized personnel have access. Access to and use of these records is limited to those persons whose official duties require such access. The premises are locked when authorized personnel are not on duty. Access to computerized records is limited, through use of access codes and entry logs, to those whose official duties require access.

RETENTION AND DISPOSAL:

Cases that are dismissed or closed for other than no cause are destroyed six months following the date of dismissal or closure. No cause files that are of value in the development of future class action or pattern and practice cases are retired to the Federal Records Center one year after the date of the last action and destroyed after three additional years. All other no cause files are destroyed one year after the date of the last action. Negotiated settlement files are destroyed one year after the calendar year in which the settlement agreement is signed or after all obligations under the agreement are satisfied, whichever occurs later. Where monetary benefits are realized in concurrent Age, Equal Pay, Title VII and Americans With Disabilities Act cases, the file is destroyed three years after the date of the last action. Other files are retired to the Federal Records Center one year after the date of the last action, including action in the federal courts or the last compliance review (the final report submitted by the respondent after conciliation to indicate compliance) and destroyed after three additional years, except landmark cases. Landmark cases are transferred to the nearest Federal Records Center two years after final court action and offered to the National Archives ten years after final court action.

SYSTEM MANAGER(S) AND ADDRESS:

Director of the field office where the charge was filed.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt under 5 U.S.C. 552a(k)(2) from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) of the Act.

EEOC–4

SYSTEM NAME:

Biographical Files.

SYSTEM LOCATION:

Office of Communications and Legislative Affairs, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Commissioners, General Counsels and Commission officials.

CATEGORIES OF RECORDS IN THE SYSTEM:

Includes for each the name, date and place of birth, education, employment history, and other biographical information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101, 42 U.S.C. 2000e–4.

PURPOSE(S):

This system is maintained for the purpose of providing information about EEOC officials to members of the Congress and the public.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used

a. To answer public and congressional inquiries regarding EEOC Commissioners, General Counsels and Commission officials.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in locking metal file cabinets available to office employees and on computer databases.

RETREIVABILITY:

Indexed by last name of the Commissioner, General Counsel or Commission official.

SAFEGUARDS:

Files are kept in the Office of Communications and Legislative Affairs, which is locked evenings, weekends and holidays. Access to computerized records is limited, through use of access codes and entry logs, to those whose official duties require access.

RETENTION AND DISPOSAL:

Maintained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Communications and Legislative Affairs, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507.

NOTIFICATION PROCEDURES:

Inquiries concerning this system of records should be addressed to the system manager. All inquiries should furnish the full name of the individual and the mailing address to which the reply should be mailed.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORDS PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains.

EEOC–5

SYSTEM NAME:

Correspondence and Communications.

SYSTEM LOCATION:

All locations listed in appendix A and all headquarters offices, 1801 L Street, NW., Washington, DC 20507.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Charging parties, members of the general public, members of Congress and current and former federal employees who seek information or assistance from EEOC.

CATEGORIES OF RECORDS IN THE SYSTEM:

a. Inquiries from Members of Congress, the White House and members of the general public, including current and former federal employees.

b. EEOC responses to the above inquiries.

c. Computer tracking system indicating the dates inquiries are received, to whom and when they are assigned for response and the dates they are answered.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101; 42 U.S.C. 2000e–4.

PURPOSE(S):

This system is maintained for the purpose of responding to inquiries from members of Congress and the public seeking information or assistance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office at the request of the individual.

b. To disclose information to another federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a federal agency when the government is a party to the judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file cabinets and on computer databases.

RETRIEVABILITY:

Computer entries are retrievable by name of author of a letter, by subject, by key word, by reference number, by name of person to whom assigned, and by dates assigned, due and answered.

SAFEGUARDS:

These records are kept in a secured area to which only authorized personnel have access. Access to and use of these records is limited to those persons whose official duties require such access. The premises are locked when authorized personnel are not on duty. Access to computerized records is limited, through use of access codes and entry logs, to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are maintained for three years from the date of the last communication and then destroyed. Tracking system information is maintained in the computer for four years.

SYSTEM MANAGER(S) AND ADDRESS:

Director of each Commission field and Headquarters office. (*See* Appendix A.)

NOTIFICATION PROCEDURE:

Inquiries concerning this system of records should be addressed to the system manager. All inquiries should furnish the full name of the individual and the mailing address to which the reply should be mailed.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORDS PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Members of Congress, their staffs, the White House, charging parties, members of the general public, current and former federal employees.

EEOC–6

SYSTEM NAME:

Employee Assistance Program Records.

SYSTEM LOCATION:

Employee Assistance Program contractor.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current EEOC employees who have been referred to or contacted the Employee Assistance Program because of personal problems, emotional problems, or alcohol or drug abuse.

CATEGORIES OF RECORDS IN THE SYSTEM:

May contain information relating to individuals counseled by the Employee Assistance Program including supervisor's referral, (if the employee was referred by the supervisor), documentation of visits to employee counselors (federal, state, local government, or private), and notes or records made by the counselor of discussions held with the employee or with the physician, therapist or health care professional of the employee. In addition, records in this system may include documentation of treatment by a therapist at a federal, state, local government, or private institution, summary information produced at case closure, and other documents deemed pertinent to the provision of program services to the employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 290dd–1 and 3; 290ee–1 and 3; 5 U.S.C. 7901; 44 U.S.C. 3101.

PURPOSE(S):

This system is maintained for the purpose of providing counseling services to EEOC employees who have been referred to or contacted the Employee Assistance Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose information to authorized personnel of the contractor that administers the EEOC Employee Assistance Program.

b. To disclose information to medical personnel to meet a bona fide medical emergency.

c. To disclose information to qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report or otherwise disclose patient identities in any manner (when such records are provided to qualified researchers employed by the Commission, all patient identifying information shall be removed).

Note: Disclosure of these records beyond officials of the Commission having a bona fide need for them or to the person to whom they pertain is rarely made because disclosures of information pertaining to an individual with a history of alcohol or drug abuse must be limited to comply with the restrictions of the regulations regarding the

Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR part 2, as authorized by 42 U.S.C. 290dd–3 and 290ee–3. Records pertaining to the physical and mental fitness of employees are, as a matter of Commission policy, afforded the same degree of confidentiality and are generally not disclosed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and on computer databases.

RETRIEVABILITY:

Indexed by name of employee.

SAFEGUARDS:

Files are maintained in locked cabinets accessible only to Employee Assistance Program personnel. Access to computerized records is limited, through use of access codes and entry logs, to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are retained until three years after the employee has ceased contact with the counselor or until the employee's separation or transfer, whichever comes first.

SYSTEMS MANAGER(S) AND ADDRESS:

Administrator, Employee Assistance Program, Office of Human Resources, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507; Field Office Directors (see Appendix A).

NOTIFICATION PROCEDURES:

Any person wanting to know whether this system of records contains information about him or her should contact the appropriate system manager. Such person should provide his or her full name, date of birth, and social security number.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

The sources of these records are:

a. The employee or members of the employee's family;

b. Persons to whom the employee has been referred for assistance;

c. Commission officers and employees;

d. Program counselors.

EEOC–7

SYSTEM NAME:

Employee Pay and Leave Records.

SYSTEM LOCATION:

All locations listed in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of EEOC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Time and attendance cards and forms; leave records (includes employee name, branch or office, pay period ending, leave and overtime used during the pay period); requests for leave (earned or advance) or leave of absence; requests for an authorization of overtime; annual attendance record (indicates name, social security number, service computation date, hours and dates worked and taken as leave, pay plan, salary and occupation code, grade, leave earned and used); thrift savings plan participation, deductions for medicare, FICA, taxes, life and health insurance, union contributions, charitable contributions, savings allotments and bond issuance and bond balance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101.

PURPOSE(S):

The records in this system are maintained in accordance with the requirements set forth by statutes, regulations and guidance from the Office of Personnel Management, the General Services Administration and the Thrift Savings Board. They are maintained for the purpose of providing salaries and other benefits to EEOC employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

b. To provide a copy of an employee's Department of the Treasury Form W–2, Wage and Tax Statement, to the state, city or other local jurisdiction which is authorized to tax the employee's compensation. The record will be provided in accordance with a withholding agreement between the state, city or other jurisdiction and the Department of Treasury pursuant to 5 U.S.C. 5516, 5517 or 5520, or in response to a written request from an appropriate official of the taxing jurisdiction. The request must include a copy of the applicable statute or ordinance authorizing the taxation of compensation and should indicate whether the authority of the jurisdiction to tax the employee is based on place of residence, place of employment, or both.

c. To disclose copies of executed city tax withholding certificates to a city pursuant to a withholding agreement between the city and the Department of the Treasury (5 U.S.C. 5520) in response to a written request from an appropriate city official.

d. To disclose the social security number only, in the absence of a withholding agreement, to a taxing jurisdiction that has furnished this agency with evidence of its independent authority to compel disclosure of the social security number, in accordance with section 7 of the Privacy Act, 5 U.S.C. 552a note.

e. To disclose pertinent information to the appropriate federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where EEOC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

f. To disclose to an agency in the executive, legislative or judicial branch or the District of Columbia's Government information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, the issuance of a license, grant, or other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

g. To disclose to an authorized appeal grievance examiner, formal complaints examiner, administrative judge, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint or appeal filed by an employee.

h. To disclose to the Office of Personnel Management in accordance with the agency's responsibility for evaluation and oversight of Federal personnel management.

i. To disclose to officers and employees of the Department of the Interior in connection with administrative services provided to this agency under agreement with DOI.

j. To disclose information to another federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a federal agency when the

government is a party to the judicial or administrative proceeding.

k. To disclose information to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services Federal Parent Locator system (FPLS) and Federal Tax Offset system for use in locating individuals and identifying their income sources to establish paternity, establish and modify orders of support and for enforcement action.

l. To disclose information to the Office of Child Support Enforcement for release to the Social Security Administration for verifying social security numbers in connection with the operation of the FPLS by the Office of Child Support Enforcement.

m. To disclose information to the Office of Child Support Enforcement for release to the Department of Treasury for purposes of administering the Earned Income Tax Credit Program (Section 32, Internal Revenue Code of 1986) and verifying a claim with respect to employment in a tax return.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored electronically and in file folders.

RETRIEVABILITY:

Indexed by an assigned employee code.

SAFEGUARDS:

Access to these records is limited to employees whose official duties require such access.

RETENTION AND DISPOSAL:

The records are destroyed after three years.

SYSTEM MANAGER(S) AND ADDRESS:

Director of each Commission Office (See Appendix A).

NOTIFICATION PROCEDURE:

Inquiries concerning this system of records should be addressed to the system manager. It is necessary to furnish the following information: (1) Name; (2) social security number; (3) mailing address to which the response is to be sent.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Official personnel folder, data submitted by employees and data submitted by the offices where the individuals are or were employed.

EEOC–8

SYSTEM NAME:

Employee Travel and Reimbursement Records.

SYSTEM LOCATION:

All locations listed in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Includes travel orders, travel vouchers, records of travel advances, amounts owed the agency by employees for travel and other purposes, amounts payable to the employee for travel and other purposes, payments made to the employees for travel and other reimbursable transactions and a record of the difference between the cost of official travel as estimated in the travel order and the amount actually expended by the employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3512, 44 U.S.C. 3101.

PURPOSE(S):

These records are maintained in accordance with the General Service Administration's regulations for the purpose of allowing EEOC employees to travel for official business and reimbursing travel expenses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where EEOC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose to an agency in the executive, legislative or judicial branch or the District of Columbia's Government, information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, the issuance of a license, grant, or other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

c. To disclose to an authorized appeal grievance examiner, formal complaints examiner, administrative judge, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint or appeal filed by an employee.

d. To disclose to the Office of Personnel Management in accordance with the agency's responsibility for evaluation and oversight of Federal personnel management.

e. To disclose to officers and employees of the Department of the Interior in connection with administrative services provided to this agency under agreement with DOI.

f. To disclose information to another federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a federal agency when the government is a party to the judicial or administrative proceeding.

g. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored on prepared forms and on computer databases.

RETRIEVABILITY:

Indexed alphabetically by name, social security number, and/or chronologically by event and name.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Personnel screening is employed to prevent unauthorized disclosure. Files are stored in standard cabinets, safes and secured rooms. Access to computerized

records is limited, through use of access codes and entry logs, to those whose official duties require access.

RETENTION AND DISPOSAL:

These records are destroyed in accordance with GSA General Records Schedule 2.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Financial Management Division, Office of Chief Financial Officer and Administrative Services, EEOC, 1801 L Street, NW., Washington, DC 20507.

NOTIFICATION PROCEDURE:

Employees of the Commission wishing to know whether information about them is maintained in this system of records should address inquiries to the Director of the Office where employed (see Appendix A). The individual should provide his or her full name, date of birth, social security number and mailing address.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Bills, receipts and claims presented by employees and original data generated by the Commission.

EEOC–9

SYSTEM NAME:

Claims Collection Records.

SYSTEM LOCATION:

These records are located in the Finance Management Division, Office of Chief Financial Officer and Administrative Services, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who is indebted to the United States as a result of his or her interaction or financial activities with the Commission or another federal agency including, but not limited to, any current or former Commission employee.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains:

a. Case Files. These files contain information and evidence on the identity and location of the individual who is subject to a claim, the origin and amount of the indebtedness, decisions and determinations regarding a claim, actions taken to collect a claim, and the results of those actions. Depending on the status of a claim, a case file may include such records as documents evidencing indebtedness, written demands for payment, required notices, financial statements, medical disability statements, agency investigative reports, credit reports, written agreements for payment, intra-agency and inter-agency memoranda of consultation and opinion on the collection action, documentation resulting from a hearing, requests for waiver, requests for reconsideration, written determinations and decisions, certifications of indebtedness by this or another agency, counterclaims, judgments and documents evidencing payment or compromise of the debt.

b. Internal Revenue Service (IRS) Mailing Address Index. Consists of cards containing the name or other identifying information on the individual for whom mailing address information has been requested and received from the IRS, the date on which this information was received from the IRS, and the purpose to which the information has been put.

c. Index on Disclosures to Consumer Reporting Agencies. Records containing the name and other identifying information on the individual whose delinquent debt has been reported to consumer reporting agencies, i.e., credit bureaus, and the kind and type of information reported.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 5514, 5522, 5584, 5705, 5724(f); 15 U.S.C. 1692; 26 U.S.C. 6331; 31 U.S.C. 3701, 3702, 3711, 3716, 3717, 3718, 3719; 44 U.S.C. 3101; 4 CFR parts 91–93, 101–105.

PURPOSE(S):

This system is maintained for the purpose of collecting debts owed the United States by individuals as a result of their interaction with the Commission or another federal agency. The debts are collected in accordance with the Commission's regulatory debt collection procedures, which include salary offset, administrative offset, Federal income tax refund offset and wage garnishment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose information to appropriate officials and employees of the Department of Justice for the purposes of litigation and forced collection on administratively uncollected debts.

b. To disclose information to appropriate officials of the Department of the Treasury and the Office of Management and Budget to provide reports on debt collection activities.

c. To disclose information to another federal agency for the purpose of collecting a debt owed to the Commission by an individual through EEOC's debt collection procedures undertaken by the other agency upon proper certification or evidence of the debt owed from the Commission.

d. To disclose information to another federal agency for the purpose of collecting a debt owed to that agency by an individual through EEOC's debt collection procedures undertaken by the Commission upon proper certification or evidence of the debt owed from the other agency.

e. To disclose a debtor's name and social security number to the Secretary of the Treasury or his or her designee for the purpose of obtaining the debtor's mailing address from the IRS.

f. To disclose mailing addresses obtained from the IRS to consumer reporting agencies only for the limited purpose of obtaining a commercial credit report on the particular taxpayer.

g. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

h. To disclose pertinent information to the appropriate federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where EEOC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

i. To disclose to an agency in the executive, legislative or judicial branch or the District of Columbia's government in response to its request, or at the initiation of the agency maintaining the records, information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, the issuance of a license, grant, or other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

j. To disclose to officers and employees of the Department of the Interior in connection with administrative services provided to this agency under agreement with DOI.

k. To disclose information to the Defense Manpower Data Center, Department of Defense, to secure

computer matching services for the purpose of identifying and locating individuals who are receiving federal salaries or benefit payments and are delinquent in their repayment of debts owed to the U.S. government under programs administered by the Equal Employment Opportunity Commission in order to collect the debts under the provisions of the Debt Collection Act of 1982 (Pub L. 97–365) by voluntary repayment, or administrative or salary offset procedures.

l. To disclose information to the U.S. Postal Service to secure computer matching services for the purpose of identifying and locating individuals who are receiving federal salaries or benefit payments and are delinquent in their repayment of debts owed to the U.S. government under programs administered by the Equal Employment Opportunity Commission in order to collect the debts under the voluntary provisions of the Debt Collection Act of 1982 (Pub. L. 97–365) by voluntary repayment, or by administrative or salary offset procedures.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and on computer databases.

RETRIEVABILITY:

These records are indexed by the name of the individual and social security number. The records may be retrieved by either of these indexes.

SAFEGUARDS:

Records are maintained and stored in file cabinets in a secured area to which only authorized personnel have access. Access to and use of these records is limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Individual case files are usually retained for two years after the claim is collected. Case records on individuals whose delinquent debts are reported to consumer reporting agencies are retained indefinitely. Other case files may be maintained for a period up to ten years. IRS Mailing Address Index on any individual is not maintained beyond six years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Chief Financial Officer and Administrative Services, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507.

NOTIFICATION PROCEDURES:

Under the Debt Collection Act, individuals are notified if claims collection records are maintained on them in accordance with statutory procedures for debt collection, and disclosing information to a consumer reporting agency. Individuals may also contact the System Manager in order to obtain notification of claims collection records on themselves.

Individuals must provide their full names under which records may be maintained, their social security number, and a mailing address to which a reply should be sent.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by or from:

a. The individual on whom the record is maintained;

b. Other Federal agencies;

c. Personnel, payroll, travel records, contract records or other records;

d. Administrative hearings;

e. Court records;

f. Consumer reporting agencies.

EEOC–10

SYSTEM NAME:

Grievance Records.

SYSTEM LOCATION:

These records are located in Office of Human Resources, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507 and in other headquarter offices and field offices where the grievances were filed (*see* Appendix A).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former EEOC employees who have submitted grievances to the EEOC in accordance with part 771 of the regulations of the Office of Personnel Management (OPM)(5 CFR part 771) and EEOC Order No. 570.003, or a negotiated procedure.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains all documents related to the grievance, including statements of witnesses, reports of interviews and hearings, examiners' findings and recommendations, a copy of the original and final decision, and related correspondence and exhibits. This system includes files and records of internal grievance and arbitration systems that EEOC has or may establish through negotiations with recognized labor organizations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101; 5 U.S.C. 7121.

PURPOSE(S):

These records result from EEOC employees' grievances, filed under the Commission's administrative grievance procedures or the formal grievance procedures contained in section 7121 of the Civil Service Reform Act.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose information to any source from which additional information is requested in the course of processing a grievance, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request and identify the type of information requested.

b. To disclose pertinent information to the appropriate federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where EEOC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

c. To disclose to an agency in the executive, legislative or judicial branch or the District of Columbia's government, information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, the issuance of a license, grant, or other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

d. To disclose information to another federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a federal agency when the government is a party to the judicial or administrative proceeding.

e. To provide information to a congressional office from the record of an individual in response to an inquiry

from that congressional office made at the request of that individual.

f. To disclose to an authorized appeal grievance examiner, formal complaints examiner, administrative judge, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint or appeal filed by an employee.

g. To disclose in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

h. To provide information to officials of labor organizations recognized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices and matters effecting work conditions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and on computer databases.

Retrievability:

These records are retrieved by the names of the individuals on whom they are maintained.

SAFEGUARDS:

These records are maintained in lockable metal filing cabinets to which only authorized personnel have access. Access to computerized records is limited, through use of access codes and entry logs, to those whose official duties require access.

RETENTION AND DISPOSAL:

These records are shredded or burned 3 years after closing the case.

SYSTEM MANAGER(S) AND ADDRESS:

If the grievance is pending at or was never raised beyond the office level, the system manager is the head of the office. (See Appendix A.) In all other situations, the system manager is the Director, Office of Human Resources, EEOC, 1801 L Street, NW., Washington, DC 20507.

NOTIFICATION PROCEDURES:

It is required that individuals submitting grievances be provided a copy of the record under the grievance process. They may, however, contact the agency personnel or designated office where the action was processed regarding the existence of such records on them. They must furnish the following information for their records to be located and identified: (a) Name; (b) approximate date of closing of the case and kind of action taken; (c) organizational component involved.

RECORDS ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided:

a. By the individual on whom the record is maintained;

b. By testimony of witnesses;

c. By agency officials;

d. From related correspondence from organizations or persons.

EEOC–11

SYSTEM NAME:

Records of Adverse Actions Against Nonpreference Eligibles in the Excepted Service.

SYSTEM LOCATION:

These records are located in Office of Human Resources, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507 or in the headquarters and field offices in which the actions have been taken.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former nonpreference eligible, excepted service Equal Employment Opportunity Commission (EEOC) employees against whom an adverse action has been proposed or taken and who have not completed two years of current and continuous service in the same or similar positions. (This system covers only those adverse action files not covered by OPM/GOVT–3.)

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records and documents on the processing of adverse actions for employees who are nonpreference eligibles in the excepted service and who do not have two years of continuous service in their positions. The records include copies of the notice of proposed action, materials relied on by the agency to support the reasons in the notice, replies by the employee, statements of witnesses, reports, and agency decisions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101.

PURPOSE(S):

These records result from the proposal, processing, and documentation of adverse actions taken by the Commission against nonpreference eligible, excepted service EEOC employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in records may be used:

a. To provide information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

b. To disclose pertinent information to the appropriate federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the EEOC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

c. To disclose information to any source from which additional information is requested for processing any of the covered actions or in regard to any appeal or administrative review procedure, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

d. To disclose information to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, or the classifying of jobs, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

f. To disclose information to another federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a federal agency when the government is a party to the judicial or administrative proceeding.

g. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

h. To disclose to an authorized appeal grievance examiner, formal complaints examiner, administrative judge, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint or appeal filed by an employee.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and on computer databases.

RETRIEVABILITY:

These records are retrieved by the names or social security number of the individuals on whom they are maintained.

SAFEGUARDS:

These records are maintained in locked metal filing cabinets to which only authorized personnel have access. Access to computerized records is limited, through use of access codes and entry logs, to those whose official duties require access.

RETENTION AND DISPOSAL:

Records documenting an adverse action are disposed of 4 years after the closing of the case.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Human Resources, and Directors of Field Offices (see Appendix A).

NOTIFICATION PROCEDURES:

Individuals receiving notice of a proposed action are provided access to all documents supporting the notice. They may also contact the personnel office where the action was processed regarding the existence of such records on them. They must furnish the following information for their records to be located and identified:

a. Name

b. Approximate date of closing of case and kind of action taken

c. Organizational component involved.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided:

a. By the individual on whom the record is maintained

b. By witnesses

c. By agency officials.

EEOC–12

SYSTEM NAME:

Telephone Call Detail Records.

SYSTEM LOCATION:

Telecommunications and Networking Division, Office of Information Resources Management, EEOC, 1801 L Street, NW., Washington DC 20507, and each field office listed in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals (generally EEOC employees) who make long distance telephone calls from EEOC telephones, individuals who received long distance telephone calls placed from or charged to EEOC telephones, and individuals who are assigned U.S. government phone cards.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to the use of EEOC telephones and government phone cards to place long distance calls; records indicating the assignment of telephone numbers to employees; records relating to the location of telephones.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101.

PURPOSE(S):

These records are maintained for the purpose of keeping an account of long distance telephone calls made from EEOC telephones and charged to U.S. government phone cards held by EEOC employees and ensuring that phone calls and card charges are made for official business only.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information from these records may be used:

a. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

b. To disclose to representatives of the General Services Administration or the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

c. To disclose information to another federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a federal agency when the government is a party to the judicial or administrative proceeding.

d. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

e. To disclose to an agency in the executive, legislative or judicial branch or the District of Columbia's government in response to its request, or at the initiation of the EEOC, information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, the issuance of a license, grant or other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

f. To disclose to a telecommunications company providing telecommunications support to permit servicing the account.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and on computer databases.

RETRIEVABILITY:

Records are retrieved by employee name or identification number, by name of recipient of telephone call, by telephone number.

SAFEGUARDS:

Records are maintained and stored in file cabinets in a secured area to which only authorized personnel have access. Access to computerized records is limited, through use of access codes and entry logs, to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are disposed of as provided in the National Archives and Records Administration's General Records Schedule 12.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Telecommunications and Networking Division, Office of Information Resources Management, EEOC, 1801 L Street, NW., Washington, DC 20507 and the Directors of the field offices listed in Appendix A.

NOTIFICATION PROCEDURES:

Inquiries concerning this system of records should be addressed to the system manager. It is necessary to provide the following information: (1) Name; (2) social security number; (3) telephone number (office number if Commission employee); (4) mailing address to which response is to be sent.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Telephone assignment records; call detail listings; results of administrative inquiries relating to assignment of responsibilities for placement of specific long distance calls; government phone card bills.

EEOC–13

SYSTEM NAME:

Employee Identification Cards.

SYSTEM LOCATION:

Resource Management Division, Office of the Chief Financial Officer and Administrative Services, EEOC, 1801 L Street, NW., Washington DC 20507, and each of the field offices in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current EEOC employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Identification cards that include name, signature, social security number, date of issue and photograph, and list of all persons who possess current identification cards. In addition, for office locations permitting access by proximity cards, numbered proximity cards and list of all persons with their assigned proximity card numbers, all doors controlled by the proximity cards and all persons permitted access to each door.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

44 U.S.C. 3101; 41 CFR 101–20.3.

PURPOSE(S):

These records are maintained for the purpose of ensuring that EEOC offices and buildings are secure and that only authorized individuals have access to those offices and buildings.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information from these records may be used:

a. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

b. To disclose to other government agencies and to the public whether an individual is a current employee of the EEOC.

c. To disclose information to another federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a federal agency when the government is a party to the judicial or administrative proceeding.

d. To disclose pertinent information to the appropriate federal, state, or local agency responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and on computer databases.

RETRIEVABILITY:

Records are retrieved by employee name, by identification number, and, for proximity card holders, by proximity card number.

SAFEGUARDS:

Records are maintained and stored in file cabinets in a secured area to which only authorized personnel have access. Access to computerized records is limited, through use of access codes and entry logs, to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are destroyed one year after termination of employment relationship.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Resource Management Division, Office of Chief Financial Officer and Administrative Services, EEOC, 1801 L Street, NW., Washington DC, 20507, and the Directors of the field offices listed in Appendix A.

NOTIFICATION PROCEDURES:

Inquiries concerning this system of records should be addressed to the system manager. It is necessary to provide the following information: (1) Name; (2) social security number; (3) mailing address to which response is to be sent.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from the employee and, for proximity card holders, from his or her use of the assigned proximity card.

EEOC–14

SYSTEM NAME:

Employee Parking Records.

SYSTEM LOCATION:

Resource Management Division, Office of the Chief Financial Officer and Administrative Services, 1801 L Street, NW., Washington DC 20507.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

EEOC employees who apply for or have been assigned parking spaces in the Headquarters building and members of their car pools.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application for parking space form and addendum form for members of car pools containing employee name, office and telephone number, signature and date, and list of employees with their assigned spaces.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101; 41 CFR 101–20.1.

PURPOSE(S):

These records are maintained for the purpose of assigning parking spaces to EEOC headquarters employees in the building parking garage.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information from these records may be used:

a. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

b. To disclose information in response to a request for discovery or for the appearance of a witness, to the extent that the information disclosed is relevant to the subject matter involved in the pending judicial or administrative proceeding.

c. To disclose information in a proceeding before a court or adjudicative body to the extent the information is relevant and necessary to the proceeding.

d. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and electronically.

RETRIEVABILITY:

Records are retrieved by employee name.

SAFEGUARDS:

Records are maintained and stored in file cabinets in a secured area to which only authorized personnel have access. Access to and use of the records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are disposed of upon termination of employment relationship or earlier release of assigned parking space.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Resource Management Division, Office of the Chief Financial Officer and Administrative Services, EEOC, 1801 L Street, NW., Washington DC 20507.

NOTIFICATION PROCEDURES:

Inquiries concerning this system of records should be addressed to the system manager. It is necessary to provide the following information: (1) Name; (2) assigned parking space number or approximate date of application; (3) mailing address to which response is to be sent.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from the employee.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

EEOC–15

SYSTEM NAME:

Internal Harassment Inquiries.

SYSTEM LOCATION:

Office of the Executive Secretariat, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former EEOC employees who have submitted complaints or reports of harassment under EEOC Order 560.005, Prevention and Elimination of Harassment in the Workplace, and current and former EEOC employees who have been accused of harassment under that Order.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains all documents related to a complaint or report of harassment, including statements of witnesses, reports of interviews, investigator's and Coordinator's findings and recommendations, final decisions and corrective action taken, and related correspondence and exhibits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 633a; 29 U.S.C. 791; 42 U.S.C. 2000e–16; 44 U.S.C. 3101; Exec. Order No. 11478, 34 FR 12985; Exec. Order No. 13087, 63 FR 30097.

PURPOSE(S):

These records are maintained for the purpose of conducting internal investigations into allegations of harassment brought by EEOC employees and taking appropriate action in accordance with EEOC Order 560.005.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose information as necessary to any source from which additional information is requested in the course of processing a complaint or report of harassment made pursuant to EEOC Order 560.005.

b. To disclose pertinent information to the appropriate federal, state or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the EEOC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

c. To disclose information to another federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a federal agency when the government is a party to the judicial or administrative proceeding.

d. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

e. To disclose to an authorized appeal grievance examiner, formal complaints examiner, administrative judge, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint or appeal filed by an employee.

f. To disclose in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

g. To disclose to the complaining party who filed the complaint or report of harassment and to the alleged harasser the outcome of any inquiry that may have been conducted and of disciplinary and corrective steps taken.

h. To provide to officials of labor organizations recognized under the Civil Service Reform Act information to which they are statutorily entitled when relevant and necessary to their duties of exclusive representation concerning personnel polices, practices, and matters affecting work conditions.

i. To provide to the Office Head of the office handling a statutory or collective bargaining claim whose subject matter is identical to that of a complaint or report of harassment filed under EEOC Order 560.005 written notice of the actions taken under the Order regarding that complaint or report.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and on computer databases.

RETRIEVABILITY:

These records are cross-indexed by the name of the individual who files a complaint or report of harassment, the name of the alleged victim of harassment, if any, and the name of the alleged harasser. The records may be retrieved by any of the above three indexes.

SAFEGUARDS:

The records are maintained in locked metal filing cabinets to which only authorized personnel have access. Access to computerized records is limited, through use of access codes and entry logs, to those whose official duties require access.

RETENTION AND DISPOSAL:

These records are maintained for one year after the complaint or report of harassment is closed and then transferred to the Federal Records Center where they are destroyed after three years.

SYSTEM MANAGER(S) AND ADDRESS:

Coordinator of Complaints and Reports of Harassment, EEOC, 1801 L Street, NW., Washington, DC 20507.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt under 5 U.S.C. 552a(k)(2) from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) of the Act.

EEOC–16

SYSTEM NAME:

Office of Inspector General Investigative Files.

SYSTEM LOCATION:

Office of Inspector General (OIG), Equal Employment Opportunity Commission (EEOC), 1801 L Street, NW, Washington, DC 20507.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are subjects of investigations by the Office of Inspector General relating to the programs and operations of the Equal Employment Opportunity Commission. Subject individuals include, but are not limited to, current and former employees; current and former agents or employees of contractors and subcontractors in their personal capacity, where applicable; and other individuals whose actions affect the EEOC, its programs or operations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence relating to the investigation; internal staff memoranda; copies of subpoenas issued during the investigation, affidavits, statements from witnesses, transcripts of testimony taken during the investigation, and accompanying exhibits; documents, notes, investigative notes, staff working papers, draft materials and other documents and records relating to the investigation; opening reports, progress reports, and closing reports; and other investigatory information or data relating to the alleged or suspected criminal, civil, or administrative violations or similar wrongdoing by subject individuals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978, as amended, 5 U.S.C. App.3.

PURPOSE(S):

Pursuant to the Inspector General Act of 1978, as amended, this system of records is maintained for the purpose of: (1) Documenting the conduct and outcome of investigations by the OIG and other investigative agencies regarding EEOC programs and operations; (2) reporting the results of investigations to other Federal agencies, other public authorities or professional organizations which have the authority to bring criminal prosecutions, or civil or administrative actions, or to impose other disciplinary sanctions; (3) maintaining a record of the activities which were the subject of investigations; (4) reporting investigative findings to other components of EEOC for their use in operating and evaluating their programs or operations, and in the imposition of civil or administrative sanctions; (5) coordinating relationships with other Federal agencies, state and local governmental agencies and nongovernmental entities in matters relating to the statutory responsibilities of the OIG; and (6) acting as a repository and source for information necessary to fulfill the reporting requirements of the Inspector General Act, 5 U.S.C. App.3.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

a. To disclose pertinent information to the appropriate federal, state or local agency responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation or order, where the EEOC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to any source, private or governmental, to the extent necessary to secure from such source information relevant to and in furtherance of a legitimate OIG investigation, audit, inspection, or other inquiry.

c. To disclose information to agencies, offices or establishments of the executive, legislative, or judicial branches of the Federal or state governments:

(1) Where such agency, office, or establishment has an interest in an individual for employment purposes, including a security clearance or determination as to access to classified information, and needs to evaluate the individual's qualifications, suitability, or loyalty to the United States Government, or access to classified information or restricted areas, or

(2) Where such agency, office, or establishment conducts an investigation of the individual for purposes of granting a security clearance, or for making a determination of qualifications, suitability or loyalty to the United States Government, or access to classified information or restricted areas, or

(3) Where the records or information in those records is relevant and necessary to a decision with regard to the hiring or retention of an employee or disciplinary or other administrative action concerning an employee.

d. To disclose information to another federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a federal agency when the government is a party to the judicial or administrative proceeding.

e. To disclose information to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the written request of that individual.

f. To private contractors who have been retained by OIG to perform any functions or analyses that facilitate or are relevant to an OIG investigation, audit, inspection, or inquiry.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The OIG Investigative Files consist of paper records maintained in file folders, cassette tapes of interviews and an automated data base maintained on computer diskettes.

RETRIEVABILITY:

The records are retrieved by the name of the subject of the investigation or by a unique control number assigned to each investigation.

SAFEGUARDS:

The folders, cassettes and diskettes are stored in locked file cabinets in the OIG. Access is restricted to EEOC personnel whose official duties require such access.

RETENTION AND DISPOSAL:

Records are held for five (5) years and then retired to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, Equal Employment Opportunity Commission, P. O. Box 18858, Washington, DC 20036–8858.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Specific: Pursuant to 5 U.S.C. 552a(k)(2) the Office of Inspector General Investigative Files are exempt from subsections (c)(3), (d)(1), (d)(2) and (e)(1) of the Privacy Act.

General: Pursuant to 5 U.S.C. 552a(j)(2), investigatory materials compiled for criminal law enforcement in the Office of Inspector General Investigative Files are exempt from subsections (c)(3), (d)(1), (d)(2), (e)(1), (e)(2), and (e)(3) of the Privacy Act.

EEOC–17

SYSTEM NAME:

Defensive Litigation Files.

SYSTEM LOCATION:

Office of Legal Counsel, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed civil or administrative litigation against EEOC

and individuals who have given sworn testimony, affidavits, or declarations under penalty of perjury in such actions.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains all documents related to litigation brought against the Commission. These records include:

a. Documents submitted or filed by plaintiffs, grievants, and EEO complainants to prosecute civil or administrative litigation against the EEOC, such as complaints, grievances, unfair labor practice claims, motions and briefs.

b. Documents submitted by the EEOC to defend the action against it such as an answer to a civil complaint or a motion to dismiss or for summary judgment, and a reply to an administrative EEO complaint, grievance, or unfair labor practice.

c. Administrative determinations at issue in the litigation such as final agency EEO decisions, final grievance decisions, final decisions on personnel actions, final agency administrative dispositions of tort claims, and agency determinations under the Freedom of Information Act.

d. Discovery and investigatory materials such as witness statements, affidavits, declarations under penalty of perjury, correspondence, records, exhibits and other documentary evidence.

e. Litigation materials, such as attorney work product, attorney notes, hearing transcripts, legal memoranda, and related correspondence and exhibits.

e. Final judgments, orders, decisions, decrees, and settlement agreements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101.

PURPOSE(S):

These records are maintained for the purpose of defending EEOC in litigation brought against it by current and former employees, charging parties, respondents and members of the public.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information as may be appropriate or necessary for the Commission to defend itself in a civil action or administrative proceeding, or to seek enforcement of a settlement, order or final decision involving the same or a similar matter.

b. To provide information to a congressional office in response to an inquiry from the congressional office made at the request of a party to the administrative or civil proceeding to which the record pertains.

c. To disclose pertinent information to an appropriate federal court, agency or administrative body responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation or order, where the EEOC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation, or in order to seek enforcement or clarification of an order or decision for or against the EEOC to which the record pertains.

d. To disclose information to another federal agency or to a court when the government is a party to the judicial or administrative proceeding.

e. To disclose, in response to an order, information that is relevant to a pending judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in locked filing system. Information identifying existing files is maintained in electronic form accessible by computer.

RETRIEVABILITY:

These records are cross-indexed by name of the plaintiff/complainant/grievant/aggrieved individual, and Office of Legal Counsel reference number. The records may be retrieved by either index.

SAFEGUARDS:

Paper records maintained at EEOC headquarters are kept in locked cabinets in the Office of Legal Counsel. Access to and use of these records is limited to those persons whose official duties require such access. The premises are locked evenings, weekends and holidays. Paper records which have been retired are maintained at the Federal Records Center. Access to computerized records is limited, through use of passwords, to those whose official duties require access, input and retrieval of information.

RETENTION AND DISPOSAL:

Two years after the date of closure of the underlying civil or administrative action (*e.g.,* final order, decision on appeal), records pertaining to that action are retired to the Federal Records Center. Thereafter, files are destroyed seven years after the date of closure of the underlying action.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Legal Counsel, Office of Legal Counsel, Equal Employment Opportunity Commission, 1801 L Street, NW. Washington, DC 20507.

NOTIFICATION PROCEDURES:

Any person wanting to know whether this system of records contains information about him or her should contact the System Manager. Such person should provide his or her full name, date of birth, social security number, and mailing address to which a response is to be sent, and forum, filing date, and docket number of the action involved, if available.

RECORD ACCESS PROCEDURES:

The records described herein are compiled in reasonable anticipation of a civil action or proceeding. Pursuant to section (d)(5) of the Privacy Act of 1974, as amended, 5 U.S.C. 552a(d)(5), an individual is precluded from access to such records.

CONTESTING RECORDS PROCEDURES:

Same as the Notification Procedures above.

RECORD SOURCE CATEGORIES:

Plaintiffs, grievants, complainants, aggrieved individuals, current and former EEOC employees.

EEOC–18

SYSTEM NAME:

Reasonable Accommodation Records.

SYSTEM LOCATION:

All locations listed in Appendix A and all headquarters offices, 1801 L Street, NW., Washington, DC 20507.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former EEOC employees and applicants who have requested reasonable accommodations under the Rehabilitation Act of 1973.

CATEGORIES OF RECORDS IN THE SYSTEM:

Requests for reasonable accommodations; medical records; notes or records made during consideration of requests; decisions on requests; records made to implement or track decisions on requests.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Rehabilitation Act of 1973, 29 U.S.C. 791; E.O. 13164.

PURPOSE(S):

This system is maintained for the purpose of considering, deciding and implementing requests for reasonable accommodation made by EEOC employees and applicants.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. To disclose information to medical personnel to meet a bona fide medical emergency.

b. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceeding.

c. To disclose information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

d. To disclose to an authorized appeal grievance examiner, formal complaints examiner, administrative judge, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint or appeal filed by an employee.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and on computer databases.

RETRIEVABILITY:

Indexed by name of employee or applicant.

SAFEGUARDS:

Files are maintained in locked cabinets. Access is restricted to EEOC personnel whose official duties require such access. Access to computerized records is limited, through use of access codes and entry logs, to those whose official duties require access.

RETENTION AND DISPOSAL:

These records will be maintained for the longer of an employee's tenure with EEOC, or for 5 years. Thereafter, they will be destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Disability Program Manager, Office of Equal Opportunity, EEOC, 1801 L Street, NW., Washington, DC 20507.

EEOC/GOVT–1

SYSTEM NAME:

Equal Employment Opportunity in the Federal Government Complaint and Appeal Records.

SYSTEM LOCATION:

Equal employment opportunity complaint files are maintained in an Office of Equal Employment Opportunity or other designated office of the agency or department where the complaint was filed. EEO Appeal files (including appeals from final negotiated grievance decisions involving allegations of discrimination) and petitions for review of decisions of the Merit Systems Protection Board are maintained in the Office of Federal Operations, Equal Employment Opportunity Commission, Washington, DC 20507 and in EEOC field offices (*see* Appendix A).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for federal employment and current and former federal employees who contact an EEO counselor or who file complaints of discrimination or reprisal with their agency, or who file appeals on EEO complaints, petitions for review of decisions of the Merit Systems Protection Board, or appeals of final decisions in negotiated grievance actions involving allegations of discrimination.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information or documents compiled during the pre-complaint counseling and the investigation of complaints filed under section 717 of Title VII, section 15 of the Age Discrimination in Employment Act, section 501 of the Rehabilitation Act, and the Equal Pay Act and all appeals.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

42 U.S.C. 2000e–16(b) and (c); 29 U.S.C. 204(f) and 206(d); 29 U.S.C. 633(a); 29 U.S.C. 791; Reorg. Plan No. 1 of 1978, 43 FR 19607 (May 9, 1978); Exec. Order No. 12106, 44 FR 1053 (Jan. 3, 1979).

PURPOSE(S):

These records are maintained for the purpose of counseling, investigating and adjudicating complaints of employment discrimination brought by applicants and current and former federal employees against federal employers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to another federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a federal agency when the government is a party to the judicial or administrative proceeding.

c. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

d. To disclose to an authorized appeal grievance examiner, formal complaints examiner, administrative judge, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint or appeal filed by an employee.

e. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

f. To disclose information to officials of state or local bar associations or disciplinary boards or committees when they are investigating complaints against attorneys in connection with their representation of a party before EEOC.

g. To disclose to a Federal agency in the executive, legislative, or judicial branch of government, in response to its request information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

h. To disclose information to employees of contractors engaged by an agency to carry out the agency's responsibilities under 29 CFR part 1614.

i. To disclose information to potential witnesses as appropriate and necessary to perform the agency's functions under 29 CFR part 1614.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and in computer databases.

RETRIEVABILITY:

These records are indexed by the names of the individuals on whom they are maintained.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

These records are maintained for one year after resolution of the case and then transferred to the Federal Records Center where they are destroyed after three years.

SYSTEM MANAGER(S) AND ADDRESS:

Within the agency or department where the complaint of discrimination or reprisal was filed, the system manager is the Director of the Office of Equal Employment Opportunity or other official designated as responsible for the administration and enforcement of equal employment opportunity laws and regulations within the agency or department.

Where an individual has appealed an EEO complaint or final negotiated grievance decision to the EEOC or petitioned the EEOC to review a decision of the Merit Systems Protection Board, the system manager of the appeal or petition file is the Director, Office of Federal Operations, Equal Employment Opportunity Commission, Washington, DC 20507.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to subsection (k)(2) of the Privacy Act, 5 U.S.C. 552a(k)(2), this system of records is exempt from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) of the Act.

Appendix A

U.S. EEOC Albuquerque District Office, 505 Marquette Street, NW., Suite 900, Albuquerque, New Mexico 87102–2158.
U.S. EEOC Atlanta District Office, 100 Alabama Street, SW, Suite 4R30, Atlanta, Georgia 30303.
U.S. EEOC Baltimore District Office, City Crescent Building, 10 South Howard Street, 3rd Floor, Baltimore, Maryland 21201–2526.
U.S. EEOC Birmingham District Office, Ridge Park Place, 1130 22nd Street, Suite 2000, Birmingham, Alabama 32205.
U.S. EEOC Boston Area Office, John F. Kennedy Fed Bldg., 2400 Government Center, Rm 475, East Tower, Boston, Massachusetts 02114.
U.S. EEOC Buffalo Local Office, 6 Fountain Plaza, Suite 350, Buffalo, New York 14202.
U.S. EEOC Charlotte District Office, 129 West Trade Street, Suite 400, Charlotte, North Carolina 28202.
U.S. EEOC Chicago District Office, 500 West Madison Street, Suite 2800, Chicago, Illinois 60661.
U.S. EEOC Cincinnati Area Office, 550 Main Street, Suite 10019, Cincinnati, Ohio 45202.
U.S. EEOC Cleveland District Office, Tower City—Skylight Office Tower, 1660 West Second Street, Suite 850, Cleveland, Ohio 44113–1454.
U.S. EEOC Dallas District Office, 207 South Houston Street, 3rd Floor, Dallas, Texas 75202–4726.
U.S. EEOC Denver District Office, 303 East 17th Avenue, Suite 510, Denver, Colorado 80203.
U.S. EEOC Detroit District Office, 477 Michigan Avenue, Room 865, Detroit, Michigan 48226–9704.
U.S. EEOC El Paso Area Office, The Commons Building C, Suite 100, 4171 North Mesa Street, El Paso, Texas 79902.
U.S. EEOC Fresno Local Office, 1265 West Shaw Avenue, Suite 103, Fresno, California 93711.
U.S. EEOC Greensboro Local Office, 2303 W. Meadowview Road, Suite 201, Greensboro, North Carolina 27405–7813.
U.S. EEOC Greenville Local Office, Wachovia Bldg., 301 North Main Street, Suite 1420, Greenville, South Carolina 29601.
U.S. EEOC Honolulu Local Office, 300 Ala Moana Boulevard, Room 7123–A, P.O. Box 50082, Honolulu, Hawaii 96850–0051.
U.S. EEOC Houston District Office, 1919 Smith Street, 7th Floor, Houston, Texas 77002.
U.S. EEOC Indianapolis District Office, 101 West Ohio Street, Suite 1900, Indianapolis, Indiana 46204–4203.
U.S. EEOC Jackson Area Office, 100 West Capitol Street, Suite 207, Jackson, Mississippi 39269.
U.S. EEOC Kansas City Area Office, 400 State Avenue, Suite 905, Kansas City, Missouri 66101.
U.S. EEOC Little Rock Area Office, 425 West Capitol Avenue, Suite 625, Little Rock, Arkansas 72201.
U.S. EEOC Los Angeles District Office, 255 East Temple Street, 4th Floor, Los Angeles, California 90012.
U.S. EEOC Louisville Area Office, 600 Dr. Martin Luther King Jr., Pl., Suite 268, Louisville, Kentucky 40202.
U.S. EEOC Memphis District Office, 1407 Union Avenue, Suite 621, Memphis, Tennessee 38104.
U.S. EEOC Miami District Office, One Biscayne Tower, 2 South Biscayne Boulevard, Suite 2700, Miami, Florida 33131.
U.S. EEOC Milwaukee District Office, 310 West Wisconsin Avenue, Suite 800, Milwaukee, Wisconsin 53203–2292.
U.S. EEOC Minneapolis Local Office, 330 South 2nd Avenue, Suite 430, Minneapolis, Minnesota 55401–2224.
U.S. EEOC Nashville Area Office, 50 Vantage Way, Suite 202, Nashville, Tennessee 37228–9940.
U.S. EEOC Newark Area Office, One Newark Center, 21st Floor, Newark, New Jersey 07102–5233.
EEOC New Orleans District Office, 701 Loyola Avenue, Suite 600, New Orleans, Louisiana 70113–9936.
U.S. EEOC New York District Office, 201 Varick Street, Room 1009, New York, New York 10014.
U.S. EEOC Norfolk Area Office, Federal Building, Suite 739, 200 Granby Street, Norfolk, Virginia 23510.
U.S. EEOC Oakland Local Office, 1301 Clay Street, Suite 1170–N, Oakland, California 94612–5217.
U.S. EEOC Oklahoma Area Office, 210 Park Avenue, Suite 1350, Oklahoma City, Oklahoma 73102.
U.S. EEOC Philadelphia District Office, 21 South 5th Street, Suite 400, Philadelphia, Pennsylvania 19106.
U.S. EEOC Phoenix District Office, 3300 North Central Avenue, Suite 690, Phoenix, Arizona 85012–2504.
U.S. EEOC Pittsburgh Area Office, 1001 Liberty Avenue, 3rd Floor, Pittsburgh, Pennsylvania 15222–4187.
U.S. EEOC Raleigh Area Office, 1309 Annapolis Drive, Raleigh, North Carolina 27608–2129.
U.S. EEOC Richmond Area Office, 830 East Main Street, 6th Floor, Richmond, Virginia 23219.
EEOC San Antonio District Office, 5410 Fredericksburg Road, Suite 200, San Antonio, Texas 78229–3555.
U.S. EEOC San Diego Area Office, 401 B Street, Suite 1550, San Diego, California 92101.
EEOC San Francisco District Office, 901 Market Street, Suite 500, San Francisco, California 94103.
U.S. EEOC San Jose Local Office, 96 North 3rd Street, Suite 200, San Jose, California 95112.
San Juan Area Office, 525 F.D. Roosevelt Ave., Plaza Las Americas, Suite 1202, San Juan, Puerto Rico 00918–8001.
U.S. EEOC Savannah Local Office, 410 Mall Boulevard, Suite G, Savannah, Georgia 31406–4821.
U.S. EEOC Seattle District Office, Federal Office Building, 909 First Avenue, Suite 400, Seattle, Washington 98104–1061.
U.S. EEOC St. Louis District Office, Robert A. Young Building, 1222 Spruce Street, 8th Floor, Room 8.100, St. Louis, Missouri 63103.
U.S. EEOC Tampa Area Office, 501 East Polk Street, Room 1020, Tampa, Florida 33602.
U.S. EEOC Washington Field Office, 1400 L Street, NW, Suite 200, Washington, DC 20005.

[FR Doc. 02–18895 Filed 7–29–02; 8:45 am]
BILLING CODE 6570–01–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on August 1, 2002, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Kelly Mikel Williams, Secretary to the Farm Credit Administration Board, (703) 883–4024, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

Approval of Minutes

- July 11, 2002 (Open).

Dated: July 26, 2002.

Kelly Mikel Williams,

Secretary, Farm Credit Administration Board.

[FR Doc. 02–19370 Filed 7–26–02; 2:56 pm]

BILLING CODE 6705–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY:

Background

June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–I's and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for Comment on Information Collection Proposals

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before September 30, 2002.

ADDRESSES: Comments should be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson may also be delivered to the Board's mail facility in the West Courtyard between 8:45 a.m. and 5:15 p.m., located on 21st Street between Constitution Avenue and C Street, N.W. Members of the public may inspect comments in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. on weekdays pursuant to § 261.12, except as provided in § 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

A copy of the comments may also be submitted to the OMB desk officer for the Board: Joseph F. Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.Mary M. West, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Capria Mitchell (202) 872–4984, Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to Approve Under OMB Delegated Authority to Revise, Without Extension, The Following Reports:

Report title: Financial Statements for Bank Holding Companies

Agency form number: FR Y–9C, FR Y–9LP, FR Y–9SP, and FR Y–9CS

OMB control number: 7100–0128

Frequency: Quarterly and semiannually

Reporters: Bank holding companies (BHCs)

Annual reporting hours: 321,581 hours

Estimated average hours per response: FR Y–9C: 33.98 hours, FR Y–9LP: 4.55 hours, FR Y–9SP: 3.89 hours, FR Y–9CS: 30 minutes, FR Y–9ES: 30 minutes

Number of respondents: FR Y–9C: 1,859, FR Y–9LP: 2,193, FR Y–9SP: 3,566, FR Y–9CS: 600; FR Y–9ES: 100

Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 1844(c)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form.

Abstract: The FR Y–9C consists of standardized consolidated financial statements similar to the Federal Financial Institutions Examination Council (FFIEC) Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031 & 041; OMB No.7100–0036). The FR Y–9C is filed quarterly by top–tier bank holding companies that have total assets of $150 million or more and by lower–tier bank holding companies that have total consolidated assets of $1 billion or more. In addition, multibank holding companies with total consolidated assets of less than $150 million with debt outstanding to the general public or engaged in certain nonbank activities must file the FR Y–9C.

The FR Y–9LP includes standardized financial statements filed quarterly on a parent company only basis from each bank holding company that files the FR Y–9C. In addition, for tiered bank holding companies, a separate FR Y–9LP must be filed for each lower tier bank holding company.

The FR Y–9SP is a parent company only financial statement filed semiannually by one–bank holding companies with total consolidated

assets of less than $150 million, and multibank holding companies with total consolidated assets of less than $150 million that meet certain other criteria. This report, an abbreviated version of the more extensive FR Y–9LP, is designed to obtain basic balance sheet and income statement information for the parent company, information on intangible assets, and information on intercompany transactions.

The FR Y–9CS is a free form supplement that may be utilized to collect any additional information deemed to be critical and needed in an expedited manner. It is intended to supplement the FR Y–9C and FR Y–9SP reports.

Current actions: The Federal Reserve proposes to implement the Financial Statements for Employee Stock Ownership Plan Bank Holding Companies (FR Y–9ES) for BHCs that are Employee Stock Ownership Plans (ESOPs) that currently submit either the FR Y–9LP or the FR Y–9SP. The proposed FR Y–9ES form, because it is more consistent with the ESOP's current reporting requirements for other purposes, should significantly lower burden for those ESOPs that currently file the FR Y–9LP or FR Y–9SP. Additionally, data collected on the FR Y–9ES would more accurately reflect the ESOP's financial condition and therefore complement the data collected on the consolidated statements (FR Y–9C).

The proposed new report draws upon aspects of (1) the IRS Form 5500 Annual Return/Report of Employee Benefit Plan filed by ESOPs, (2) requirements found in the AICPA's Audit Guide for Employee Benefits Plans, (3) Statement of Position No. 76–3 Accounting Practices for Certain Employee Stock Ownership Plans, (4) Statement of Position No. 93–6 Employers' Accounting for Employee Stock Ownership Plans, and (5) other publications relating to ESOPs.

This report would be filed annually by approximately 100 Employee Stock Ownership Plans (ESOPs) that are considered bank holding companies. Bank holding companies that are subsidiaries of ESOP BHCs will continue to submit the FR Y–9C, FR Y–9LP, or FR Y–9SP in accordance with the appropriate reporting requirements.

The proposed FR Y–9ES would be a three–page form that would collect information on the benefit plan activities made by ESOP BHCs. There are four schedules on the FR Y–9ES: Statement of Changes in Net Assets Available for Benefits, Statement of Net Assets Available for Benefits, Memoranda, and Notes to the Financial Statements.

The annual FR Y–9ES would be collected as of December 31 and submitted to the Federal Reserve by July 31. The Federal Reserve is considering granting extensions if the respondent has been granted an extension for filing their IRS/DOL Form 5500. The IRS allows institutions to extend their submission until October 15, by submitting Form 5558 on or before July 31. The respondent would be required to send a copy of their Form 5558 to the appropriate Reserve Bank by July 31. The Federal Reserve is specifically seeking comment on the proposed deadline for the FR Y–9ES.

Board of Governors of the Federal Reserve System, July 24, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–19111 Filed 7–29–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 14, 2002.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. Southern Bancorp, Inc., Employee Stock Ownership Plan, Marietta, Georgia; to retain voting shares of Southern Bancorp, Inc., Marietta, Georgia, and thereby indirectly retain voting shares of Southern National Bank, Marietta, Georgia.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. S&E Pritchard Enterprises, Ltd., San Antonio, Texas; to acquire voting shares of InterContinental Banksahres Corp, San Antonio, Texas, and thereby indirectly acquire voting shares of InterContinental National Bank, San Antonio, Texas.

Board of Governors of the Federal Reserve System, July 25, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–19224 Filed 7–29–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 23, 2002.

A. Federal Reserve Bank of Minneapolis (Julie Stackhouse, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. North Star Holding Company, Inc., Jamestown, North Dakota; to acquire 100 percent of the voting shares of Northern Plains Investment, Inc., Jamestown, North Dakota, and thereby

indirectly acquire voting shares of Stutsman County State Bank, Jamestown, North Dakota.

B. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Bethlehem Financial Corporation, Belen, New Mexico, to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of Belen, Belen, New Mexico.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. ISB Holdings, Inc., Perryton, Texas, and ISB Delaware Holdings, Inc., Wilmington, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of Interstate Bank, SSB, Perryton, Texas.

Board of Governors of the Federal Reserve System, July 25, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–19223 Filed 7–29–02; 8:45 am]

BILLING CODE 6210–01–S

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Government in the Sunshine Meeting Notice

AGENCY: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11 a.m., Monday, August 5, 2002.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR MORE INFORMATION CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: July 26, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–19353 Filed 7–26–02; 2:56 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–72]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404)498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: State Influenza Coordinators Survey—New—National Center for Infectious Diseases (NCID), Centers for Disease control and Prevention (CDC.) Influenza epidemics in the United States are associated with approximately 20,000 deaths and 114,000 hospitalizations each year; influenza pandemics are responsible for dramatic increases in morbidity and mortality worldwide. In order to detect ''novel'' viruses, changes in circulating strains, and the clinical impact of circulating strains, surveillance systems must present a broad picture of influenza activity. Data on morbidity and mortality are essential and must be reported in a timely manner.

Influenza Surveillance at CDC consists of four components: U.S. Sentinel Physician Network, State and Territorial Epidemiologist Reports, 122 Cities Mortality Report, and the WHO/NRVESS Laboratory Reports. Each of the 50 states as well as the District of Columbia participate in at least one of the CDC's four surveillance components, however, additional surveillance activities within the states are currently unclear. In order to develop or enhance current Influenza surveillance activities at CDC and prepare for the future, including possible pandemics, it is crucial that we are aware of any existing surveillance systems at the state level. We are proposing a survey of state health departments, specifically each state's Influenza Surveillance Coordinator in order to ascertain the nature of flu surveillance in his/her state as well as how prepared the state is for things to come. The data collected will be used to improve and/or enhance national surveillance efforts.

The questionnaire that will be used focuses on state surveillance systems as well as pandemic preparedness. Questions will be asked regarding current surveillance including: Sentinel Physicians Systems, Nursing home surveillance, and School Absenteeism. There is no cost to respondents.

Respondents	No. of respondents	No. of responses/respondent	Average burden/response (in hours)	Total burden (in hours)
State health departments	53	1	30/60	27
Total				27

Dated: July 23, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–19144 Filed 7–29–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02191]

Expansion of HIV/AIDS/TB Care and Prevention Activities Among People With HIV/AIDS in the Republic of Uganda; Notice of Availability of Funds; Amendment

A notice announcing the availability of Fiscal Year 2002 funds for cooperative agreements for the Expansion of HIV/AIDS/TB Care and Prevention Activities Among People with HIV/AIDS in the Republic of Uganda was published in the **Federal Register**, June 20, 2002, Volume 67, No. 119, pages 42006–42007. The notice is amended as follows: On page 42006, Column 3, Paragraph ''I. Submission and Deadline'', remove ''July 17, 2002'' and insert in its place ''August 9, 2002''.

Dated: July 24, 2002.

Rebecca B. O'Kelley,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–19161 Filed 7–29–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02198]

International Programs To Prevent and Control Micronutrient Malnutrition; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for the international prevention and control of micronutrient malnutrition.

The purpose of this program is to achieve the elimination of micronutrient malnutrition, especially iron, iodine and vitamin A deficiencies by: Component 1 supporting and strengthening program development, epidemiology, laboratory, intervention, and communications capacity of nutrition/micronutrient programs in selected countries through regional strategies activities, including distribution of vitamin A capsules, iron, and folic acid supplements to target populations worldwide; component 2 developing and implementing program policy and standards, maintaining relationships with ministries of health (MOH) and other policy makers, and setting international standards for nutritional status; component 3 testing the usefulness of the micronutrient version of CDCynergy as a planning, training or evaluation tool for developing countries participating in national or regional food fortification and supplementation programs.

B. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) and 317(k)(2) of the Public Health Service Act, (42 U.S.C. 247b(k)(2)), as amended. The Catalog of Federal Domestic Assistance number is 93.945.

C. Eligible Applicants

Assistance will be provided only to those potential applicants that are eligible as described below:

All components must involve work with developing countries only.

Eligibility for Component 1

Assistance will be provided only to the United Nations Children's Fund (UNICEF), New York, New York. No other applications are solicited.

UNICEF is the only organization that has country-based offices to support direct delivery of public health programs and services in nearly every country in the world. Additionally, UNICEF's mandate also address educational related health issues. This focus has enabled UNICEF programs to develop a leadership role in micronutrient deficiency intervention programs across multiple sectors of society because of the significant impact of such programs on health and population-based health education. In addition to national offices, UNICEF supports sub-national programs which provide direct access to local public health and education programs.

UNICEF supports micronutrient deficiency intervention programs around the world through the distribution of vitamin A capsules, as well as iron and folic acid supplements to target populations. UNICEF supports country-based salt iodization programs around the world to reduce the burden of iodine deficiency disorders.

Eligibility for Component 2

Assistance will be provided only to the World Health Organization (WHO) and its Eastern Mediterranean Regional Office (EMRO). No other applications are solicited.

WHO is the most appropriate and qualified agency to conduct the activities under this component because it is the only organization that (a) has demonstrated the necessary expertise and experience in technical, policy, and program issues relating to micronutrient malnutrition; (b) maintains relationships with MOH officials and other policy makers throughout the region; and (c) serves as the source of international standards for nutritional status, including micronutrient status.

WHO supports micronutrient malnutrition intervention programs. WHO is a partner in a global initiative to eliminate micronutrient malnutrition.

In the past ten years WHO/EMRO has made progress in working towards the prevention of iron deficiency anemia (IDA) and the elimination of iodine deficiency disorders (IDD). WHO/EMRO identified flour fortification with iron and folate as the best preventive and most sustainable strategy for IDA, as bread and other wheat-flour products are widely consumed in the countries of region. Through regional workshops, WHO/EMRO has helped countries write action plans for flour fortification with iron and folate, and at present, six countries have either begun or are in the process of beginning flour fortification. Additionally, WHO/EMRO supports country-based salt iodization programs throughout the region which has had a significant impact on reducing the burden of iodine deficiency disorders.

Eligibility for Component 3

Applicants must have a presence and/or office in a country and demonstrate the ability to implement the activity within the country.

Assistance will be provided to public and private nonprofit organizations and institutions working in developing countries; such as, educational institutions, universities, colleges, research institutions, hospitals, faith-based organizations and other organizations and institutions. Applicants must have the authorization and overall resources to implement a micronutrient program in a country or region of a country.

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.

Special Guidelines for Technical Assistance Conference Call

Technical assistance will be available for potential applicants for Component 3 on a conference call to be held August 6, 2002 at 8:30 a.m. Eastern Standard Time.

Potential applicants are requested to call in using only one telephone line. The conference call can be accessed by calling 1–800–311–3437 (Federal call (404) 639–3277) and entering access code 750237. The purpose of the conference call is to help potential applicants to:

1. Understand the scope and intent of the program Announcement for the International Micronutrient Malnutrition Program.

2. Be familiar with the Public Health Service's funding policies and application and review procedures.

Participation in this conference call is not mandatory. At the time of the call, if you have problems accessing the call, contact 404–639–7550.

D. Availability of Funds

Approximately 1,900,000 is available in FY 2002 to fund approximately four awards.

Component Funding

Approximately $1,400,000 is available in FY 2002 to fund UNICEF (Component 1) and WHO (Component 2). It is expected that $1,000,000 will be awarded for component 1 and $400,000 will be available for Component 2. Approximately $500,000 is available in FY 2002 to fund two awards under Component 3. The average award for Component 3 is expected to be $250,000.

Matching funds are not required for this program.

It is expected that awards under this program announcement will begin on or about September 30, 2002 and will be made for a 12-month budget period within a project period of one year. Funding estimates may change.

Use of Funds

1. Cooperative agreement funds may be used to support personnel and to purchase equipment, supplies, and services directly related to project activities consistent with the scope of the cooperative agreement. Funds provided under this program cannot be used to supplant existing program funds, provide personal health services, medications, patient rehabilitation or to support facilities construction or renovation.

2. All requests for funds, including the budget contained in the application, shall be stated in U.S. dollars. Once an award is made, the Department of Health and Human Services (DHHS) will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

3. The costs that are generally allowable in grants to domestic organizations are likewise allowable to foreign institutions and international organizations, with the following exceptions: Indirect Costs: With the exception of the American University, Beirut, the Gorgas Memorial Institute, and the WHO, indirect costs will not be paid (either directly or through a sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location, major alteration and renovation, customs and import duties, and, with limited exception, patient care.

E. Program Requirements

In conducting activities to achieve the purpose of this cooperative agreement, the recipient will be responsible for conducting the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities for Component 1

a. Identify, prioritize and support developing countries based on demonstration of interest and commitment of government to support population-based micronutrient deficiency interventions. Through surveys, assess the burden of micronutrient deficiencies, in support of recognized population-based intervention strategies, (i.e. food fortification and/or micronutrient supplementation). Assessment projects may include (1) an analysis of quantitative and qualitative data to determine micronutrient status and needs of populations; (2) assess relevant knowledge, attitudes and practices of target populations, health professionals and programs, and other relevant entities; (3) assess the infrastructure needed for various intervention strategies; and (4) allow for basic formative research needed for health communication strategies.

b. Survey data should be used for program development and determination of baseline data on process and/or impact indicators to allow for intervention program monitoring and assessing impact on micronutrient status of the population.

c. Identify, prioritize, and support developing countries to design and implement innovative surveillance systems to monitor and evaluate the process of the intervention programs (e.g. quality control of fortified foods at production, retail and/or household level; and population coverage of intervention program) and their impact on the micronutrient status of the population. Developing countries should: (1) Implement or have existing population-based micronutrient deficiency intervention programs, specifically, food fortification or universal supplementation strategies, and (2) demonstrate national support for surveillance system maintenance after initial development.

d. Support selected country programs to plan, implement and evaluate population-based intervention strategies to prevent and control iron deficiency among preschool children (especially 6–24 months old) with an emphasis on fortification of complementary foods and/or supplementation.

e. Strengthen micronutrient epidemiology and health communication capacity through training activities.

f. Identify staff personnel to be housed in selected regional office(s), to provide oversight and support for country level activities.

g. Utilize a grass roots approach to carry out micronutrients activities in selected countries.

1. Recipient Activities for Component 2

a. Develop and provide strategies for training capacity building and organizing regional training programs and strategies on surveillance and monitoring of population-based micronutrient deficiency interventions, (especially flour fortification), and for formative research in support of micronutrient communication strategies. Training should be linked to relevant follow up activities at the country levels.

b. Develop and provide guidance on food fortification and micronutrient status assessment. Provide policy, technical and other support to countries in the region in developing and carrying out micronutrient status surveys to estimate the prevalence of micronutrient deficiencies; assess relevant knowledge, attitudes and practices of target populations, health professionals and programs, and other relevant entities.

c. Provide policy and technical support for countries within a region with existing population-based micronutrient deficiency intervention programs to design and implement innovative surveillance systems to monitor the process and impact of the intervention programs, especially flour fortification.

d. Convene regional meetings to develop policy and program strategies,

guidance and standards for food fortification, and micronutrient status assessment and monitoring strategies.

e. Identify staff person to be housed in selected regional office(s) to provide oversight and support to regional level activities.

1. Recipient Activities for Component 3 Activities (a) through (e) are first priority activities.

a. Conduct assessment activities to identify communication gaps and needs in a country with an existing micronutrient programs, and utilize CDCynergy for Micronutrients to create and begin implementation of a micronutrient communication plan. Activities specified in the plan should include: (1) Conduct stakeholder meetings to plan communication activities; (2) gather country- and region-specific background information on micronutrient program, in general and specific to communication; (3) conduct formative research to clarify communication goals; (4) develop communication concepts and messages to test; (5) conduct pre-testing research and pilot tests; (6) draft and disseminate creative materials (e.g. print, audio, video); (7) produce and disseminate materials; and (8) conduct process and impact evaluation at the level of behavior change. Translate the text of the existing tutorial and examples, on an as needed basis.

b. Develop performance measures to assess the overall usefulness of CDCynergy and its applicability to country or regional efforts in micronutrient communication planning.

c. Train staff at appropriate professional levels to use CDCynergy. Prepare a micronutrient communication ''case-study'' in a step-wise fashion, of a relevant national or regional experience to be used on future editions of CDCynergy.

d. Conduct training for students, international trainees and other learners about communication planning for nutrition programs. Prepare model curricula for multiple teaching and training situations.

e. Provide technical support on a short-term basis to manage applications of CDCynergy.

f. Establish necessary operational links with global partners in country or region in which CDCynergy is to be tested.

g. Customize CDCynergy for Micronutrients for Country/Regional Use. NOTE: This activity should be considered a secondary priority to be started after activities (a) through (f) have been completed.

Customization would begin with: (1) Translation of tutorial into a language appropriate to the target population and in common use throughout the region or country (such as, Chinese, Arabic, French, Portugese, Russian, Spanish or other widely-used language in country or region; (2) identify culturally and geographically relevant examples, drawing on the ''case study'' examples created during CDCynergy training workshops, of successful communication interventions for fortification or supplement distribution programs. Prepare the examples as ''case study'' according to CDCynergy Phases and steps. (3) identify and make available data and planning documents that support the example (e.g. Country/Regional versions of ''State of the World's Children,'' National planning documents for micronutrients, etc.); and (4) identify language appropriate, current references to explain methodological issues (e.g. health communication, education or health promotion theories, program evaluation).

h. Conduct model training and evaluation of ''draft'' version of customized version by:

(1) Identifying up to 20 persons engaged in communication planning for micronutrients;

(2) Train program staff to use CDCynergy to plan communication activities over the natural course of a communication program;

(3) Develop process measures for how CDCynergy has affected program planning, implementation or evaluation; and

(4) Evaluate training activities.

i. Finalize custom version of the appropriate revised components within CDCynergy. Based on training and program utility, develop final version of CDCynergy.

j. Develop and disseminate the new customized version of CDCynergy through training and collaborative activities with partners.

2. CDC Activities (a, b and c Applicable for Both Components and 2; d and e Applicable to Component 3)

a. Provide epidemiologic, laboratory and communications technical assistance in support of regional or country-based activities.

b. Provide technical assistance and support in development and provision of policy, guidance and standards for food fortification, micronutrient status assessment and monitoring strategies.

c. Participate in process to identify staff person(s) to be housed in selected regional offices of UNICEF and WHO.

d. Provide implementation training technical assistance, including development of Epi Info-based software to help standardize micronutrient status assessment and reporting procedures.

e. Assist in the development and dissemination of a customized version(s) of CDCynergy focused on micronutrient malnutrition.

F. Application Content

All applicants should use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated using the criteria listed, so it is important to follow them in laying out your program plan. Applications should not exceed 30 double-spaced pages, printed on one side, with one-inch margins, in 12-point font, excluding budget, justification, and appendixes. All applicants applying for component three should also submit appendices including resumes, job descriptions, organizational chart, and any other supporting documentation as appropriate. All materials must be suitable for photocopying (*i.e.,* no audiovisual materials, posters, tapes, etc.).

Applicants must designate in the Executive Summary of their application the component (1, 2, or 3) for which they are applying. Provide the following information:

1. Executive Summary

All applicants must provide a summary of the program described in the proposal (two pages maximum).

2. Background and Need (eight pages)

Describe the need and the current resources available for component activities, to include: Development of a plan for building capacity through training and support.

a. Existing initiatives, capacity, and infrastructure (e.g. collaborations/partnerships; surveillance activities and systems; evaluation activities; information, media and health communications; and education and outreach strategies) within which elimination of micronutrient malnutrition is possible.

b. The overall country/region barriers currently faced related to developing and implementing a program for the elimination of micronutrient malnutrition.

c. The overall micronutrient malnutrition burden for the country/region.

d. Description of the need for micronutrient malnutrition funding to enhance existing efforts.

e. The gaps in resources, staffing, capabilities, and programs that, if addressed, might further the progress of the elimination of micronutrient malnutrition.

3. Staffing (not included in 20-page limitation)

Describe program staffing. Provide resumes or job descriptions for budgeted positions at regional levels.

4. Training Capacity (five pages)

Provide a description and evidence of training capabilities deemed appropriate to the program.

5. Work Plan (five pages)

The applicant should provide a detailed work plan that describes how the proposed activities will be conducted. The work plan should include the following:

a. Goals and objectives.

b. Activities planned to achieve objectives.

c. Data that will be used to assess program activities.

d. Time line for assessing progress.

e. Who is responsible for activities.

f. Overall measures of effectiveness.

6. Organizational Support (five pages)

Provide a plan for program management, including an organizational chart. Describe those positions which have oversight responsibility. Address leadership and administrative plans for the next budget period. Discuss strategies for ensuring appropriate communication among key staff on the status of program implementation, maintenance, and related issues.

7. Budget and Budget Justification

Provide a detailed line-item budget with justifications consistent with the purpose and proposed objectives.

Requested Budget Information

Applicants are urged to submit a separate budget for each component applied for in response to this program announcement: (1) A detailed budget and narrative justification that supports the activities for funding in response to this program announcement, and (2) a categorical budget consistent with budget Form 424A.

G. Submission and Deadline

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.* They may also be obtained by calling the Grants Management Specialist listed in the where to obtain Additional Information Section of this announcement.

Applications must be received on or before 5:00 p.m., EST, August 29, 2002. Submit the application to:

Technical Information Management Section—PA 02198, Procurement and Grants Office, Centers of Disease Control, 2920 Brandywine Drive, Atlanta, Georgia 30341.

Applications may not be submitted electronically.

Deadline: Applications shall be considered as meeting the deadline if they are received on or before 5:00 p.m. Eastern Time on the deadline date.

Applications which do not meet the criteria above will be returned to the applicant.

H. Evaluation Criteria

Measures of Effectiveness

Applicants 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 be objective and quantitative and must measure the intended outcome. These measures of effectiveness shall be submitted with the application and shall be an element of evaluation.

The applications received will be evaluated against the following component criteria and will be reviewed by an independent review group appointed by CDC.

1. All Components (1, 2, and 3) Evaluation Criteria (total 100 points)

a. Work Plan (60 Points total)

(1) The extent to which the plan for achieving the proposed activities appears realistic and feasible and relates to the stated program requirements and purposes of this cooperative agreement (30 Points).

(2) The extent to which the proposed plan for evaluating progress toward meeting objectives appears reasonable and feasible (10 Points).

(3) The degree to which the collaboration on development of a training plan with partners is demonstrated through documented and collaborative activities (10 Points).

(4) The degree to which objectives are specific, time-phased, measurable, realistic, and related to identified needs, program requirements, and purpose of the program (10 Points)

b. Staffing (20 Points)

The degree to which the proposed staff have the relevant background, qualifications, and experience; and the degree to which the organizational structure supports staffs' ability to conduct proposed activities and provide staff in country/regional areas.

c. Background and Need (10 Points)

The extent to which the applicant identifies specific needs, resources and interest (commitment of government) available for the activities and presents data justifying the need for the program in terms of the magnitude of the burden.

d. Training capacity (10 Points)

The extent to which the applicant provides evidence of other training capabilities deemed appropriate to the program.

e. Budget (Not Scored)

The extent to which the budget appears reasonable and consistent with the proposed activities and intent of the program.

f. Human Subjects

Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects? (Not 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.)

I. Other Requirements

Progress Reporting Requirements

Provide CDC with original plus two copies of:

1. Semi-annual progress reports. The first report is due April 30, 2003. The final report is due 90 days after the end of the budget period. Semi-annual progress reports should include:

a. A comparison/description of actual accomplishments (narrative) to the goals established during the first six months of the budget period and should consist of no more than 20 pages.

b. The reason for which established goals were not met and strategies to be implemented to achieve unmet objectives.

c. A description of any new objectives to support the implementing of the findings from research and other assessment activities.

d. Provide measures of effectiveness to evaluate the accomplishment of the various identified objectives of the cooperative agreement. These measures must be objective and must measure the intended outcome. These measures shall be reported in semi-annual and annual progress reports.

2. Final financial and performance reports, no more than 90 days after the end of the project period.

Fiscal Reporting Requirements

a. Awardee is required to obtain annual audit of these CDC funds (program-specific audit) by a U.S. based

audit firm with International branches and current licensure/authority in country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by CDC.

b. A Fiscal Recipient Capability Assessment may be required, pre or post award, with potential awardee in order to review their business management and fiscal capabilities regarding the handling of U.S. Federal funds.

Send all reports to the Grants Management Specialist identified in the ''Where To Obtain Additional Information'' Section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the announcement.

AR–1 Human Subjects Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–12 Lobby Restrictions
AR–14 Accounting System Requirements
AR–15 Proof of Non-Profit Status

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC Home page Internet address—*http://www.cdc.gov.* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Cynthia Collins, Grants Management Specialist, International/Territories Acquisition and Assistance Branch, Procurement and Grants Office, Program Announcement 02198, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Rd., Room 3000, Atlanta, GA 30341–5539, Telephone: 770–488–2757, E-mail address: *coc9@cdc.gov*.

For program technical assistance, for Components 1 and 2 contact: Dan Sadler, Deputy Director, Division of Nutrition and Physical Activity, Centers for Disease Control and Prevention, 4770 Buford Highway, NE., MS K–24, Atlanta, GA 30341, Telephone number: 770–488–6042, FAX: 770–488–6000, E-mail address: *mds1@CDC.Gov*.

For program technical assistance, for Component 3 contact: Dr. Claudia Parvanta, Director, Division of Health Communications, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., MS D–42, Atlanta, GA 30333, Telephone number: 404–639–7281, FAX: 404–639–7391, E-mail address: *cip0@cdc.gov*.

Dated: July 24, 2002.

Rebecca B. O'Kelley,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–19169 Filed 7–29–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of August 2002.

Name: Advisory Committee on Interdisciplinary, Community-Based Linkages.

Date and Time: August 5, 2002; 8:30 a.m.–5 p.m., August 6, 2002; 8 a.m.–4:00 p.m.

Place: The Doubletree Hotel, 1750 Rockville Pike, Rockville, Maryland 20852.

The meeting is open to the public.

Agenda items will include, but not be limited to: Welcome; plenary discussion of the role of the grant programs under Title VII, Part D, Public Health Service Act in meeting Public Health Preparedness objectives; interdisciplinary training issues related to bioterrorism; reinforcement of community-based linkages; presentations by speakers representing: the Division of Health Careers Diversity and Development, Bureau of Health Professions, the Office of Minority Health, Health Resources and Services Administration; and the Office of Public Health Preparedness, Department of Health and Human Services; and Committee members. Meeting content will address preparation of the Committee's annual report to the Secretary and the Congress and the scheduling of topics for the next Committee meeting in October 2002.

Public comment will be permitted before lunch and at the end of the Committee meeting on August 5, 2002. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, with a copy of their presentation to: Bernice A. Parlak, Executive Secretary, Division of State, Community and Public Health, Bureau of Health Professions, Health Resources and Services Administration, Room 9–105, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–1898.

Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The Division of State, Community and Public Health will notify each presenter by mail or telephone of their assigned presentation time.

Persons who do not file an advance request for a presentation, but wish to make an oral statement may register to do so at the Doubletree Hotel, Rockville, Maryland, on August 5, 2002. These persons will be allocated time as the Committee meeting agenda permits.

Anyone requiring information regarding the Committee should contact Bernice A. Parlak, Division of State, Community and Public Health, Bureau of Health Professions, Health Resources and Services Administration, Room 9–105, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–1898.

Proposed agenda items are subject to change as priorities dictate.

Dated: July 25, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–19301 Filed 7–29–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper

performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Protection and Advocacy for Individuals with Mental Illness (PAIMI) Annual Program Performance Report (OMB No. 0930–0169, Revision)

The Protection and Advocacy for Individuals with Mental Illness (PAIMI) Act (42 U.S.C. 10801 *et seq.*) authorized funds to support protection and advocacy services on behalf of individuals with severe mental illness and severe emotional impairment who are at risk for abuse and neglect and other civil rights violations while under treatment in a residential facility.

Under the PAIMI Act, formula grant awards are made to protection and advocacy (P&A) systems designated by the governors of the 50 states and 6 territories, and the District of Columbia to ensure that the rights of individuals with severe mental illness and severe emotional disturbance are not violated. In October 2000, the PAIMI Act was amended to create a 57th P&A system—the Native American Consortium in Shiprock, New Mexico. Whenever the annual PAIMI appropriation reaches $30 million or more, State P&A systems may serve eligible individuals with serious mental illness or severe emotional impairments, as defined under the Act, residing in the community, including their own homes. However, PAIMI eligible persons residing in public and private residential care or treatment facilities have priority for all P&A system services. The Children's Health Act of 2000 (42 U.S.C. 290aa *et seq.*), also referenced State P&A authority to obtain information on incidents of seclusion, restraint and related deaths (*See* Parts H and I of that Act.).

The PAIMI Act requires P & A systems to file an annual report on their activities and accomplishments and to provide information on such topics as: Numbers of individuals served, types of complaints addressed, and the number of intervention strategies used to resolve the presenting issues. Under the Act, there is an Advisory Council which is also required to submit an annual report that assesses the effectiveness of the services provided to, and the activities conducted by, the P&A systems on behalf of PAIMI eligible individuals and their family members.

The Substance Abuse Mental Health Services Administration (SAMHSA) is revising the PAIMI Annual Program Performance Report for the following reasons: (1) To make it consistent with the requirements of the annual reporting requirements under the PAIMI Act and the PAIMI Rules (42 CFR part 51), as well as the new reporting requirements under Parts H & I of the Children's Health Act of 2000 and Part C of the Developmental Disabilities and Patient's Bill of Rights Act of 2000 (42 U.S.C. 6001 *et seq.*); (2) to conform to the GPRA requirements that SAMHSA obtain information that closely measures actual outcomes of programs that are funded by the agency, and (3) to determine if the reporting burden can be reduced by removing any information that does not facilitate evaluation of the programmatic and fiscal effectiveness of a State P&A system.

SAMHSA proposes revisions to the Annual Advisory Council Report to reflect the statutory and regulatory requirements of the PAIMI Act. Planned revisions to the PAIMI Annual Program Performance Report include, but may not be limited to the following items: (1) Addition of annual actual budget/financial expenditures and sub-contractor information, as required by the PAIMI Act (42 U.S.C. 10805(a)(7) and the PAIMI Rules 42 CFR 51.8); (2) Advisory Council, Governing Board and PAIMI staff demographic information, such as, filled and vacant positions, will be revised in a comprehensive graph format; (3) P&A systems will have more choices so that all ''information not available'' and ''no information provided'' statements will be deleted to ensure that the systems focus on gathering more accurate client data during the intake and referral process; (4) Sections (such as, PAIMI program mechanisms for public comment, individual PAIMI clients, grievance procedures) will be revised to capture critical information required under the PAIMI Act, the PAIMI Rules and the Children's Health Act of 2000 and placed in a graph format; (5) Case complaints and problems of the PAIMI eligible individuals served by P&A systems will be modified to capture more accurate information, such as, the number of PAIMI eligible clients not served due to resource and/or priority limitations; (6) Information on the number of open and closed cases involving incidents of abuse, neglect, and civil rights complaints will be expanded to reflect the new PAIMI authorities, *e.g.,* investigations of seclusion, and restraint, and related fatalities in public and private facilities, such as, emergency rooms of general hospitals, interim-care facilities, nursing homes, non-medical community-based facilities for children and youth, etc.; (7) Information on the actual annual program priorities and objectives achieved in the reporting year will be compared to the projected priorities and objectives, submitted with the corresponding grant application for that reporting year, to determine whether the P&A effectively used its resources to achieve individual, systemic or legislative advocacy outcomes and accomplishments on behalf of PAIMI eligible clients; (8) Sections focused on the types of intervention strategies, the public education, training and awareness activities of the P&A systems will be placed in a chart format; and, (9) the Advisory Council Report will be revised so that data collected is consistent with that captured in the Annual PAIMI Performance Report. The revised report formats will be effective for the report due on January 1, 2004.

The annual burden estimate is as follows:

	No. of respondents	No. of responses per respondent	Hours per response	Total hour burden
Annual Program Performance Report	57	1	28	1,596
Activities and Accomplishments			(20)	(1,140)
Performance outcomes			(3)	(171)
Expenses			(2)	(114)
Budget			(2)	(114)
Priority statements and objectives			(1)	(57)

	No. of respondents	No. of responses per respondent	Hours per response	Total hour burden
Advisory Council Report	57	1	10	570
Total	114			2,166

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: July 23, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–19165 Filed 7–29–02; 8:45 am]

BILLING CODE 4162–20–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

National Survey of Characteristics and Funding of School Mental Health Services—New

SAMHSA's Center for Mental Health Services will sponsor this national study of the mental health services provided in U.S. public schools. A substantial proportion of public schools provide some level of mental health screening, prevention, and treatment services to their students. However, no national-level data are available on these services. The study is designed to document the types of mental health problems encountered in schools, the mental health services provided, the types and qualifications of staff providing the services, the arrangements for delivery of services, and the funding of those services. The study will examine the prevalence of these mental health resources and their distribution across schools in the nation as they vary by grade level, size, locale, and the student populations served.

The survey will be conducted as a self-administered mail survey (with telephone followup) of a nationally representative sample of 2,000 public elementary, middle and secondary schools. The districts associated with the sampled schools will be asked to answer questions about funding sources, budgets, and issues related to funding. The results of the study will be available in the summer of 2003. Response burden for the survey is summarized in the following table.

Questionnaire	Number of respondents	Responses/ respondent	Burden/response (hrs.)	Total burden hours
Telephone call to school district	1,200	1	.17	204
School district	1,200	1	.5	600
School	2,000	1	1.0	2,000
Total	3,200			2,804

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Herron Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 23, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–19166 Filed 7–29–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Opioid Drugs in Maintenance and Detoxification Treatment of Opioid Dependence

42 CFR Part 8 (OMB No. 0930–0206, Revision)—This regulation establishes a certification program managed by SAMHSA's Center for Substance Abuse Treatment (CSAT). The regulation requires that Opioid Treatment Programs (OTPs) be certified. ''Certification'' is the process by which SAMHSA determines that an OTP is qualified to provide opioid treatment under the Federal opioid treatment standards established by the Secretary of Health and Human Services. To become certified, an OTP must be accredited by a SAMHSA-approved accreditation body. The regulation also provides standards for such services as individualized treatment planning, increased medical supervision, and assessment of patient outcomes. This submission seeks continued approval of the information collection requirements in the regulation, minor changes to Form SMA–162, and approval of a new form to be used in implementing the regulation.

SAMHSA currently has approval for the Application for Certification to Use Opioid Drugs in a Treatment Program Under 42 CFR 8.11 (Form SMA–162) and the Application for Approval as Accreditation Body Under 42 CFR 8.3(b) (Form SMA–163). SAMHSA also is seeking approval of a new form that has been developed at the request of the treatment field, the Exception Request and Record of Justification Under 42 CFR 8.12 (Form SMA–168), which may be used on a voluntary basis by physicians when there is a patient care situation in which the physician must make a treatment decision that differs from the treatment regimen required by the regulation. This is a simplified, standardized form to facilitate the documentation, request, and approval process for exceptions. The tables that follow summarize the annual reporting burden associated with the regulation, including burden associated with the forms.

ESTIMATED ANNUAL REPORTING REQUIREMENT BURDEN FOR ACCREDITATION BODIES

42 CFR citation	Purpose	No. of respondents	Responses/ respondents	Hours/ response	Total hours
8.3 (b)(1–11)	Initial approval (SMA–163)	2	1	3.0	6.0
8.3 (c)	Renewal of approval (SMA–163)	2	1	1.0	2.0
8.3 (e)	Relinquishment notification	1	1	0.5	0.5
8.3 (f)(2)	Non-renewal notification to accredited OTP's	1	90	0.1	9.0
8.4(d)(2) (b)(1)(ii)	Notification to SAMHSA for seriously noncompliant programs.	2	2	1.0	4.0
8.4 (b)(1)(iii)	Notification to OTP for serious noncompliance	2	2	1.0	4.0
8.4 (d)(1)	General documents and information to SAMHSA upon request.	7	4	0.5	14.0
8.4(d)(2)	Accreditation survey to SAMHSA upon request	7	53	0.02	7.42
8.4 (b)(3)	List of surveys, surveyors to SAMHSA upon request	7	6	0.2	8.4
8.4 (d)(4)	Report of less than full accreditation to SAMHSA	7	2.5	0.5	8.75
8.4 (d)(5)	Summaries of Inspections	7	50	0.5	175.0
8.4(e)	Notifications of Complaints	7	5	0.5	17.5
8.6(a)(2) and (b)(3)	Revocation notification and to Accredited OTP's	1	50	0.3	15.0
8.6(b)	Submission of 90-day Corrective plan to SAMHSA	1	1	10	10.0
8.6(b)(1)	Notification to accredited OTP's of Probationary Status.	1	50	0.3	15.0
TOTAL		7			297

ESTIMATED ANNUAL REPORTING REQUIREMENT BURDEN FOR OPIOID TREATMENT PROGRAMS

42 CFR citation	Purpose	No. of respondents	Responses/ respondents	Hours/ response	Total hours
8.11(b)	New programs approval (SMA–162)	75	1	1.50	112.50
8.11(b)	Renewal of approval (SMA–162)	350	1	1.00	350.00
8.11(b)	Relocation of Program (SMA–162)	35	1	1.17	40.95
8.11(d)	Application for transitional certification (SMA–162)*	7	1	1.58	11.06
8.11(e)(1)	Application for provisional certification	75	1	1	75.00
8.11(e)(2)	Application for extension of provisional certification	30	1	.25	7.50
8.11(f)(5)	Notification of sponsor or medical director change (SMA–162).	60	1	.2	12.00
8.11(g)(2)	Documentation to SAMHSA for interim maintenance	1	1	1	1.00
8.11(h)	Request to SAMHSA for Exemption from 8.11 and 8.12 (SMA–168).	1,100	6	.152	1003.2
8.11(i)(1)	Notification to SAMHSA Before Establishing Medication Units (SMA–162).	10	1	.25	2.5
8.12(j)(2)	Notification to State Health Officer When Patient Begins Interim Maintenance.	1	20	.33	6.6
8.24	Contents of Appellant Request for Review of Suspension.	2	1	.25	.50
8.25(a)	Informal Review Request	2	1	1.00	2.00
8.26(a)	Appellant's Review File and Written Statement	2	1	5.00	10.00
8.28(a)	Appellant's Request for Expedited Review	2	1	1.00	2.00
8.28(c)	Appellant Review File and Written Statement	2	1	5.00	10.00
TOTAL		1,100			1,647

*This is a one-time requirement that will be fully met during the first three years of approval for the final rule.

SAMHSA believes that the recordkeeping requirements in the regulation are customary and usual practices within the medical and rehabilitative communities and has not calculated a response burden for them. The recordkeeping requirements set forth in 42 CFR 8.4, 8.11 and 8.12 include maintenance of the following: 5-year retention by accreditation bodies of certain records pertaining to accreditation; documentation by an OTP of the following: A patient's medical examination when admitted to treatment, a patient's history, a treatment plan, any prenatal support provided the patient, justification of unusually large initial doses, changes in a patient's dosage schedule, justification of unusually large daily doses, the rationale for decreasing a patient's clinic

attendance, and documentation of physiologic dependence.

The rule also includes requirements that OTPs and accreditation organizations disclose information. For example, 42 CFR 8.12(e)(1) requires that a physician explain the facts concerning the use of opioid drug treatment to each patient. This type of disclosure is considered to be consistent with the common medical practice and is not considered an additional burden. Further, the rule requires, under § 8.4(i)(1) that accreditation organizations shall make public their fee structure; this type of disclosure is standard business practice and is not considered a burden.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Herron Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 23, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–19167 Filed 7–29–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by August 29, 2002.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Michael Robert Daley, Modesto, CA, PRT–060090.

The applicant requests a permit to import the sport hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

Applicant: Mick W. Wagner, Springdale, AR, PRT–060054.

The applicant requests a permit to import the sport-hunted trophy of two male bonteboks (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

Applicant: John P. McLaurin, III, Fairfax, VA, PRT–057424.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

Applicant: Dana G. Kirk, Kerrville, TX, PRT–057429.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: July 19, 2002.

Charles S. Hamilton,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–19154 Filed 7–29–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application.

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit Number TE839777

Applicant: Don R. Helms, Bellevue, Iowa.

The applicant requests a permit pursuant to 50 CFR 17.22 to take (capture, handle and release) the Topeka shiner (Notropis topeka) throughout Iowa. Research activities are proposed for studies to identify populations of Topeka shiners, develop methods to minimize or avoid project related impacts to those populations, and to identify new populations. The scientific research is aimed at enhancement of survival of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who requests a copy of such documents from the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, *peter_fasbender@fws.gov,* telephone (612) 713–5343, or FAX (612) 713–5292.

Dated: July 16, 2002.

Charlie Wooley,

Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 02–19163 Filed 7–29–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Endangered Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt.

SUMMARY: We announce our receipt of applications to conduct certain activities pertaining to scientific research and enhancement of survival of endangered species.

DATES: Written comments on these requests for permits must be received August 29, 2002.

ADDRESSES: Written data or comments should be submitted to the Assistant Regional Director-Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225–0486; telephone 303–236–7400, facsimile 303–236–0027.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone 303–236–7400.

SUPPLEMENTARY INFORMATION: The following applicants have requested renewal of scientific research and enhancement of survival permits to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Applicant: North Eastern Wisconsin Zoo, Green Bay, Wisconsin, TE–051829.

The applicant requests a permit to possess black-footed ferrets (*Mustela nigripes*) for public display in conjunction with recovery activities for the purpose of enhancing the species' survival and recovery.

Applicants: Dawn Martin, Buys and Associates, Inc., Englewood, Colorado, TE–056165; Kris R. Gruwell, HDR Engineering, Inc., Salt Lake City, Utah, TE–058896.

The applicants request permits to survey for southwestern willow flycatchers (*Empidonaz traillii extimus*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Applicant: Central Nebraska Public Power and Irrigation District, Gothenburg, Nebraska, TE–038221.

The applicant requests a permit amendment to add take of interior least terns (*Sterna antillarum athalassos*) and piping plovers (*Charadrius melodus)* in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

Applicant: Scott W. Campbell, University of Kansas, Kansas Biological Survey, Lawrence, Kansas, TE–038527.

We propose to amend this permit for additional Topeka shiner (*Notropis topeka*) collection from Willow Creek, Wallace County, Kansas, in conjunction with reintroduction and recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Applicant: Kevin R. Bestgen, Colorado State University, Fort Collins, Colorado, TE–046795.

The applicant requests a permit amendment to add take of humpback chub (*Gila cypha*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Dated: June 28, 2002.

John A. Blankenship,

Deputy Regional Director, Denver, Colorado.

[FR Doc. 02–19168 Filed 7–29–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permit for marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

On April 18, 2002, a notice was published in the **Federal Register** (67 FR 19207), that an application had been filed with the Fish and Wildlife Service by Francis J. Kelsch for a permit (PRT–055028) to import one polar bear taken from the Northern Beaufort Sea population, Canada, for personal use.

Notice is hereby given that on June 18, 2002, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

On April 25, 2002, a notice was published in the **Federal Register** (67 FR 20545), that an application had been filed with the Fish and Wildlife Service by Louis F. Spadaccino for a permit (PRT–055444) to import one polar bear taken from the Lancaster Sound population, Canada, for personal use.

Notice is hereby given that on June 18, 2002, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

On May 7, 2002, a notice was published in the **Federal Register** (67 FR 30721), that an application had been filed with the Fish and Wildlife Service by Jeffry Stohr for a permit (PRT–055673) to import one polar bear taken from the Northern Beaufort Sea population, Canada, for personal use.

Notice is hereby given that on June 24, 2002, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

On May 30, 2002, a notice was published in the **Federal Register** (67 FR 37852–37853), that an application had been filed with the Fish and Wildlife Service by Alaska Science Center, U.S. Geological Survey, Anchorage, AK, for a permit (PRT–740507) to renew and amend a permit authorizing the following annual activities with Northern sea otter (*Enhydra lutris lutris*): take up to 300 animals, including but not limited too, incidental take, capture/recapture, release, collect biological samples, tag, mark, implant, and import biological samples as part of a long term study on the species.

Notice is hereby given that on July 9, 2002, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

Dated: July 19, 2002.

Charles S. Hamilton,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–19155 Filed 7–29–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Hanford Reach National Monument Federal Advisory Committee Meetings Notice

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Hanford Reach National Monument Federal Advisory Committee Meetings.

SUMMARY: The U.S. Fish and Wildlife Service is announcing four meetings of the Hanford Reach National Monument Federal Planning Advisory Committee (Committee). All meetings will take place at the Consolidated Information Center, Washington State University Tri-Cities Campus in Richland, Washington (see **ADDRESSES**). Verbal comments will be considered during the course of the meeting and written comments will be accepted that are submitted by the close of the meeting.

DATES: The Hanford Reach National Monument Advisory Committee meetings are:

1. Wednesday, August 14, 2002, from 9:30 a.m. to 4:00 p.m.
2. Tuesday, September 10, 2002, from 9:00 a.m. to 4:00 p.m.
3. Wednesday, October 16, 2002, from 9:00 a.m. to 4:00 p.m.
4. Tuesday, November 19, 2002, from 9:00 a.m. to 4:00 p.m.

ADDRESSES: All meetings will take place at the Consolidated Information Center, Washington State University Tri-Cities Campus, 2770 University Drive, Richland, Washington, in Rooms 120 and 120A. Any member of the public wishing to submit written comments should send their comments to Greg Hughes, Designated Federal Official for the Hanford Reach National Monument Federal Planning Advisory Committee, Hanford Reach National Monument/ Saddle Mountain National Wildlife Refuge, 3250 Port of Benton Blvd., Richland, Washington 99352; fax (509) 375–0196. Copies of the draft meeting agenda can be obtained from the Designated Federal Official.

FOR FURTHER INFORMATION CONTACT: For further information concerning any of the meetings please contact Greg Hughes, Designated Federal Official for the Hanford Reach National Monument (HRNM) Federal Planning Advisory Committee; phone (509) 371–1801, fax (509) 375–0196.

SUPPLEMENTARY INFORMATION: Over the next several months, the Hanford Reach National Monument Federal Planning Advisory Committee will consider feedback received during the public scoping process from June 12, 2002, through October 12, 2002. Parallel to the scoping process, the Committee will meet to hear from surrounding Native Americans on their valid existing rights and traditional uses in the Monument, and to consider baseline information received during the Cultural Resources, Wildlife and Habitat, and Public Uses Reviews. The Committee will also consider draft visions and goals for the Monument Comprehensive Conservation Plan (CCP).

Dated: July 15, 2002.

Don Weathers,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 02–19254 Filed 7–29–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Scientific Earthquake Studies Advisory Committee

AGENCY: Geological Survey, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 106–503, the Scientific Earthquake Studies Advisory Committee will hold its second meeting. The meeting location is the Green Center on the campus of the Colorado School of Mines in Golden, Colorado. The Committee is comprised of members from academia, industry, and State government. The Committee shall advise the Director of the U.S. Geological Survey (USGS) on matters relating to the USGS's participation in the National Earthquake Hazards Reduction Program.

The Committee will review a draft of the 5-year plan of the U.S. Geological Survey's National Earthquake Hazards Reduction Program. This will include a critique of the goals and objectives of the Program over the next 5 years in earthquake hazards assessments, in research on earthquake processes and effects, an in earthquake monitoring and notification.

Meetings of the Scientific Earthquake Studies Advisory Committee are open to the public.

DATES: August 26, 2002, commencing at 9 a.m. and adjourning at 4:30 p.m. on August 27, 2002.

CONTACT: Dr. John R. Filson, U.S. Geological Survey, 12201 Sunrise Valley Drive, Reston, Virginia 20192, (703) 648–6785.

Dated: July 10, 2002.

P. Patrick Leahy,

Associate Director for Geology.

[FR Doc. 02–19160 Filed 7–29–02; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–320–1990–PB–24 1A]

Extension of Approved Information Collection, OMB Approval Number 1004–0194

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) request the Office of Management and Budget (OMB) to extend an existing approval to collect information to ensure operators and mining claimants meet their responsibilities while conducting exploration, mining, and reclamation work on public lands. BLM uses Forms 3809–1, 3809–2, and 3809–4 to collect financial guarantee bond information for surface management activities. The nonform information under 43 CFR 3809 authorizes operators and mining claimants to perform surface management activities under the General Mining Law.

DATES: You must submit your comments to BLM at the address below on or before September 30, 2002. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Regulatory Affairs Group (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov.* Please include ''ATTN: 1004–0194'' and your name and address with your comments.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW, Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Rick Deery, Solid Minerals Group, on (202) 452–0353 (Commercial or FTS). Persons who use a

telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Deery.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden 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.

Under the General Mining Law, a citizen may enter onto public domain lands that are subject to the law to prospect and explore for valuable mineral deposits. They may do so without seeking the government's permission beforehand. The rights to a deposit of a valuable mineral are granted through the act of discovering the mineral deposit. After making a discovery, a prospector may choose to locate and record a mining claim to protect investments in exploration and to have a secure tenure to discovered valuable mineral deposits. Locating a mining claim is not a prerequisite for conducting operations on the public lands, nor is it even a requirement for carrying out mining operations. BLM uses the regulations at 43 CFR 3809 to govern hardrock mineral exploration and development on the public lands and Federal interests in the lands. The hardrock minerals are subject to the provisions of the 1872 General Mining Law (30 U.S.C. 22, *et seq.*, as amended).

BLM collects nonform information on surface management activities from mining claimants and operators.

Information collection for surface mgmt activities	Estimated hours
Notice Level Activities:	
1. Small exploration operations	16
2. Medium scale exploration operations	48
Plan Level Activities:	
3. Small placer operation	80
4. Placer mine operations	160
5. Industrial mineral operations	160
6. Small underground mine	160
7. Open pit mine operations	480
8. NEPA compliance:	
Exploration	320
EA-level mines, simple320.	
EA-level mines, standard	890
EIS-level mines	2,480
9. Section 106 of NHPA	30

You must submit the requested information and forms to the proper BLM office. BLM uses Form 3809–1—Surface Management Surety Bond Form, 3809–2—Surface Management Personal Bond Form, and 3809–4—Generalized Bond Rider Form for submitting financial guarantee on surface management activities.

Based on BLM's experience administering this program, we estimate the public reporting burden is 8 minutes each to complete Forms 3809–1, 3809–2 and 3809–4. These estimates include the time spent on research, gathering, and assembling information, reviewing instructions, and completing the respective forms. In FY 2000, BLM estimated 1,897 surface management activity responses are filed annually, with a total annual burden of 306,536 hours. Respondents vary from individuals and small businesses to large corporations.

Any member of the public may request and obtain, without charge, a copy of BLM Forms 3809–1, 3809–2, and 3809–4 by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of a public record.

Dated: July 23, 2002.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 02–19188 Filed 7–29–02; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–250–1220–PC–24 1A]

Extension of Approved Information Collection, OMB Approval Number 1004–0165

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) requests the Office of Management and Budget (OMB) to extend an existing approval to collect information from individuals submitting nominations for significant caves under the Federal Cave Resources Protection Act of 1988 and requesting confidential cave information. BLM needs the information to determine which caves we will list as significant and decide whether to grant access to confidential cave information.

DATES: You must submit your comments to BLM at the address below on or before September 30, 2002. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Regulatory Affairs Group (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov*. Please include ''Attn: 1004–0165'' and your name and address with your comments.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact James Goodbar, BLM Field Office, Carlsbad, New Mexico, on (505) 234–5929 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Goodbar.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden 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.

The Federal Cave Resources Protection Act of 1988, 102 Stat. 4546, 16 U.S.C. 4301, requires identifying, protecting, and maintaining significant caves on public lands the Department of the Interior, BLM manages. The implementing regulations are found at 43 CFR 37-Cave Management. Federal agencies must consult with ''cavers'' and other interested parties and develop a list of significant caves. The regulations establish criteria for identifying significant caves and integrate cave management into existing planning and management processes to protect cave resource information. We protect this information to prevent vandalism and disturbance of significant caves. Other Federal or state agencies, bona fide educational or research institutes, or individuals or organizations who assist land management agencies with cave management activities may request access to confidential cave information. BLM uses the Significant Cave Nomination Worksheet to collect some of the requested information on cave management activities.

Based on BLM's experience administering this program, we estimate the public reporting burden is 3 hours for each nomination and 30 minutes for each request for confidential cave information. In FY 2000, BLM estimated 50 cave nominations and 10 requests for confidential cave information are filed annually, with a total annual burden of 155 hours. Respondents are cavers and other interested parties.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of a public record.

Dated: July 19, 2002.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 02–19190 Filed 7–29–02; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Docket No. WO–320–1330–PB–1A]

Extension of Approved Information Collection, OMB Approved Number 1004–0121

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) requests the Office of Management and Budget (OMB) to extend an existing approval to collect information from applicants to lease and develop solid minerals other than coal and oil shale. BLM uses the information to determine whether an applicant, permittee, or lessee is qualified to hold an interest under the terms of the implementing regulations at 43 CFR Part 3500.

DATES: You must submit your comments to BLM at the address below on or before September 30, 2002. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Regulatory Affairs Group (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to *WOComment@blm.gov.* Please include ''Attn: 1004–0121'' and your name and address with your comments.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L. Street, NW., Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Phillip Allard, Solid Minerals Group, on (202) 452–5195 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Allard.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden 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.

These regulations implement numerous statutes including:

(1) The Mineral Leasing Act of 1920 (30 U.S.C. 181 *et seq.*)

(2) The Mineral Leasing Act of 1947 (30 U.S.C. 351–359);

(3) Section 402 of Reorganization Plan No. 3 of 1946 (5 U.S.C. Appendix);

(4) The Multiple Mineral Development Act of 1954 (30 U.S.C. 521–531);

(5) The National Environmental Policy Act of 1976 (43 U.S.C. 1710 *et seq.*).

The implementing regulations (43 CFR part 3500) outline procedures for members of the public to submit applications, offers, statements, petitions, and various forms. BLM uses Forms 3510–1, 3520–7, 3510–2, 3504–1, 3504–3, and 3504–4 to collect the information to determine whether an applicant qualifies to hold a lease to obtain a benefit under the terms of the MLA, its subsequent amendments, related statutes, and the regulations. The affected public consists of all present and prospective holders of Federal solid material leases other than coal or oil shale, prospecting permits, use permits, and exploration licenses.

BREAKDOWN OF INFORMATION COLLECTIONS AND TOTAL HOURS

Type of info collection	Number of responses	Hrs. per response	Total hours
Prospecting Permit	25	1	25
Exploration Plan for Prospecting Permit	20	80	1,600
Prospecting Permit Extension	5	1	5

BREAKDOWN OF INFORMATION COLLECTIONS AND TOTAL HOURS—Continued

Type of info collection	Number of responses	Hrs. per response	Total hours
Preference Right Lease	2	100	200
Competitive Lease Bid	5	40	200
Fringe Acreage Lease or Lease Modification	5	40	200
Assignment or Sublease	40	2	80
Lease Renewals or Adjustmenets	15	1	15
Use Permit	1	1	1
Exploration License	1	3	3
Exploration Plan for Exploration License	1	80	80
Development Contract	1	1	1
Bond	150	4	600
Mine Plan	5	150	750
Total	276	.....	3,760

Based on BLM's experience administering the leasing program, we estimate the public reporting burden as indicated in the above chart to complete the applications, petitions, offers, and statements as required. BLM estimates that we receive 276 filings annually, with a total annual burden of 3,760 hours. The respondents vary from individuals to small businesses and major corporations.

Any member of the public may request and obtain, without charge, a copy of BLM Forms 3510–1, 3520–7, 3510–2, 3504–3, and 3504–4 by contacting the person identified under **FOR FURTHER INFORMATION CONTACT**.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: July 17, 2002.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 02–19191 Filed 7–29–02; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–030–02–1610–DE–24–1A]

Notice of Extension of Call for Nomination Period

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Extension of Call for Nominations for the Grand Staircase—Escalante National Monument Advisory Committee.

SUMMARY: This notice is issued to extend the call for nominations for the Grand Staircase-Escalante National Monument's (GSENM) Advisory Committee from July 30, 2002, to August 20, 2002.

SUPPLEMENTARY INFORMATION: Any individual or organization may nominate one or more persons to serve on the GSENM Advisory Committee. Individuals may nominate themselves for committee membership. You may obtain nomination forms from the GSENM office or download the application from the following Internet address: *www.ut.blm.gov/monument.* To make a nomination, you must submit a completed nomination form, letters of reference from the represented interests or organizations, as well as any other information that speaks to the nominee's qualifications. Applications must be submitted to the Monument Manager, Grand Staircase-Escalante National Monument, Bureau of Land Management, 190 E. Center Street, Kanab, Utah, 84741, by close of business August 20, 2002. The Grand Staircase-Escalante National Monument Advisory Committee advises the Bureau of Land Management on resource management issues associated with the National Monument.

FOR FURTHER INFORMATION CONTACT: David Hunsaker, Acting Monument Manager, (435) 644–4300, or the following Web site address: *www.ut.blm.gov/monument.*

Dated: July 18, 2002.

Robert A. Bennett,

Associate State Director.

[FR Doc. 02–19192 Filed 7–29–02; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–070–02–1020–PG]

Notice of Public Meeting, Western Montana Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM), Western Montana Resource Advisory Council will meet as indicated below.

DATES: The meeting will be held September 5, 2002 at the BLM Dillon Field Office, 1005 Selway Drive, Dillon, Montana beginning at 8 a.m. The public comment period will begin at 11:30 a.m. and the meeting will adjourn at approximately 2 p.m.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in western Montana. At this meeting, topics we plan to discuss include: updates from the RAC Subgroups on Travel Management, Wild and Scenic River Suitability, and Commercial Use. If time allows, the RAC may hear an update on implementation of the Sage Grouse Conservation Plan. All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for

individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, or other reasonable accommodations, should contact the BLM as provided below.

FOR FURTHER INFORMATION CONTACT: Marilyn Krause, Resource Advisory Council Coordinator, at the Butte Field Office, 106 North Parkmont, Butte, Montana 59701, telephone 406–533–7617 or Jon Raby, Acting Field Manager, Dillon Field Office, telephone 406–683–2337.

Dated: June 27, 2002.

Jon Raby,

Acting Field Manager.

[FR Doc. 02–19185 Filed 7–29–02; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–956–02–1420–BJ]

Arizona; Notice of Filing of Plats of Survey

July 12, 2002.

Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004

1. The plats of survey of the following described land were officially filed in the Arizona State Office, Phoenix, Arizona, on the dates indicated:

A plat representing the dependent resurvey of a portion of the east boundary and a portion of the subdivisional lines and the subdivision of sections 13, 14, 24, 26 and 27, Township 9 North, Range 2 East of the Gila and Salt River Meridian, Arizona, accepted February 10, 2002 and officially filed February 16, 2002.

This plat was prepared at the request of the Phoenix Field Office, Bureau of Land Management.

A plat representing the dependent resurvey of the Fourth Standard Parallel North, through portions of Ranges 4 and 5 East (north boundary), a portion of the south and east boundaries, and a portion of the subdivisional lines, the subdivision of certain sections and a metes-and-bounds survey in section 22, in Township 16 North, Range 4 East of the Gila and Salt River Meridian, Arizona, accepted January 22, 2002 and officially filed January 25, 2002.

This plat was prepared at the request of the United States Forest Service.

A plat representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of section 15 and metes-and-bounds surveys in section 15, in Township 18 North, Range 4 East of the Gila and Salt River Meridian, Arizona, accepted January 7, 2002 and officially filed January 16, 2002.

This plat was prepared at the request of the United States Forest Service.

A plat representing the dependent resurvey of a portion of the subdivisional lines, the survey of a portion of the subdivisional lines, the subdivision of sections 15, 16 and 21, a metes-and-bounds survey of Public Land Order 5687 in sections 8, 9, 16, 17, 21 and 28, and a traverse along the 3720 foot contour in section 15, in Township 41 North, Range 9 East of the Gila and Salt River Meridian, Arizona, accepted June 3, 2002 and officially filed June 7, 2002.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

A plat representing the survey of the Fifth guide Meridian East, (east boundary), the south, west and north boundaries, and the subdivisional lines, in Township 31 North, Range 20 East of the Gila and Salt River Meridian, Arizona, accepted January 30, 2002 and officially filed February 13, 2002.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

A plat representing the survey of the Eight Standard Parallel North, (south boundary), in Township 33 North, Range 27 East of the Gila and Salt River Meridian, Arizona, accepted January 30, 2002 and officially filed February 13, 2002.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

A plat representing the survey of the Eighth Standard Parallel North, (south boundary), in Township 33 North, Range 28 East of the Gila and Salt River Meridian, Arizona, accepted January 30, 2002 and officially filed February 13, 2002.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

A plat representing the survey of the Eighth Standard Parallel North, (south boundary), the Seventh Guide Meridian East, (west boundary), the east and north boundaries, and the subdivisional lines, in Township 33 North, Range 29 East of the Gila and Salt River Meridian, Arizona, accepted June 3, 2002 and officially filed June 7, 2002.

This plat was prepared at the result of the Bureau of Indian Affairs, Navajo Regional Office.

A plat representing the dependent resurvey of portions of the west and north boundaries, in Township 37 North, Range 30 East of the Gila and Salt River Meridian, Arizona, accepted January 30, 2002 and officially filed February 13, 2002.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

A plat representing the dependent resurvey of a portion of the north boundary and a portion of the subdivisional lines, the subdivision of sections 3 and 4, the metes-and-bounds survey of the Beaver Dam Wilderness Area boundaries through sections 3, 4, 10 and 15 and an informative traverse in section 3, in Township 41 North, Range 14 West of the Gila and Salt River Meridian, Arizona, accepted June 13, 2002 and officially filed June 19, 2002.

This plat was prepared at the request of the Arizona Strip Field Office, Bureau of Land Management.

A plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of section 21, in Township 6 South, Range 19 East of the Gila and Salt River Meridian, Arizona, accepted May 20, 2002 and officially filed May 22, 2002.

This plat was prepared at the request of the Safford Field Office, Bureau of Land Management.

2. All inquiries in relation to these lands should be sent to the Arizona State Office, Bureau of Land Management, 222 N. Central Avenue, P.O. Box 1552, Phoenix, Arizona 85001–1552.

Kenny D. Ravnikar,

Chief Cadastral Surveyor of Arizona.

[FR Doc. 02–19184 Filed 7–29–02; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1420–BJ]

Idaho: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of the following described lands were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., on the dates specified:

The plat representing the dependent resurvey of a portion of the south boundary, and a portion of the subdivisional lines, and the subdivision of section 35 and the metes-and-bounds survey of lots 2 and 4, section 35, in T. 14 N., R. 18 E., Boise Meridian, Idaho, was accepted October 29, 2001. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

The plat representing the dependent resurvey of portions of the south boundary, the corrective dependent resurvey of portions of the south boundary, the dependent resurvey of portions of the subdivisional lines, the corrective dependent resurvey of portions of the subdivisional lines, and the dependent resurvey of portions of Tract 37, and the subdivision of sections 29 and 32, and the metes-and-bounds survey of Tract 38, in T. 2N., R. 4 W., Boise Meridian, Idaho, was accepted November 1, 2002. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

The plat for T. 1 S., R. 2 W. and T. 1 S., R. 1 W., Boise Meridian, Idaho, was accepted November 6, 2001. The plat was prepared to meet certain administrative needs of the U.S. Fish and Wildlife Service.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 11, in T. 1 S., R. 3 W., Boise Meridian, Idaho, was accepted November 8, 2001. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

The plat representing the dependent resurvey of portions of the first standard parellel south, T. 6 S., R. 24 E., portions of the east boundary, and of the subdivisional lines and the subdivision of sections 5, 9, 14, 15, and 24, in T. 7 S., R. 25 E., Boise Meridian, Idaho, was accepted November 13, 2001.

The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

The plat representing the depending resurvey of a portion of the west boundary, and a portion of the subdivisional lines, and the subdivision of sections 19 and 20, in T. 7 S., R. 26 E., Boise Meridian, Idaho, was accepted November 14, 2001. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

The plat representing the dependent resurvey of a portion of the subdivisional lines of T. 4 N., R. 2 E., Boise Meridian, Idaho, was accepted November 30, 2001. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

The plat representing the dependent resurvey of a portion of the north boundary and a portion of the subdivisional lines, and the subdivision of section 2, in T. 1 N., R. 1 W., Boise Meridian, Idaho, was accepted December 5, 2001. The plat was prepared to meet certain administrative needs of the Birds of Prey National Conservation Area.

The plat representing the dependent resurvey of portions of the subdivisional lines, H.E.S. 37, H.E.S. 38, and of the boundaries of certain mineral surveys, and the subdivision of sections 2 and 3, and certain metes-and-bounds surveys in sections 2 and 3, in T. 5 N., R. 11 E., Boise Meridian, Idaho, and the plat representing the dependent resurvey of portions of the first standard parallel north, the subdivisional lines, and of H.E.S. 39, and the subdivision of section 34, and a metes-and-bounds survey in section 34, in T. 6 N., R. 11 E., Boise Meridian, Idaho, were accepted December 7, 2001. The plats were prepared to meet certain administrative needs of the U.S.D.A., Forest Service.

FOR FURTHER INFORMATION CONTACT: Duane E. Olsen, Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657, 208–373–3980.

Dated: January 9, 2002.

Duane E. Olsen,

Chief, Cadastral Surveyor for Ohio.

Editorial note: This document was received at the Office of the Federal Register on July 25, 2002.

[FR Doc. 02–19187 Filed 7–29–02; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–952–02–1420–BJ]

Notice of Filing of Plats of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, (30) thirty calendar days from the date of this publication.

Indian Meridian, Oklahoma: T. 18 N., R. 5 E., approved May 21, 2002, for Group 62 OK;

Kansas: T. 34 S., R. 41 E., approved May 31, 2002, for Group 25 KS;

Protraction Diagrams for: T. 25 S., R. 22 E., approved April 18, 2002, NM;

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the NM State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed. The above-listed plats represent dependent resurveys, surveys, and subdivisions.

These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico, 87502–0115. Copies may be obtained from this office upon payment of $1.10 per sheet.

Dated: July 18, 2002.

Bob Bewley,

Acting Chief Cadastral Surveyor for New Mexico.

[FR Doc. 02–19189 Filed 7–29–02; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–926–02–1420–BJ]

Survey Plat Filings

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of Intent for Filing of Plat of Survey.

SUMMARY: The plat of the following described land is scheduled to be officially filed in the Montana State Office, Billings, Montana, thirty (30) days from the date of this publication.

SUPPLEMENTARY INFORMATION:

Black Hills Meridian, South Dakota

T. 4 S., R. 11 E.

This plat, in 3 sheets, represents the dependent resurvey of a portion of the north boundary of the Pine Ridge Indian Reservation, a portion of the subdivisional lines, the adjusted original meanders of the left bank of the South Fork of the Cheyenne River through sections 16, 21, 28, 29, 31, and 32, and the adjusted original meanders of the right bank of the South Fork of the Cheyenne River through sections 16 and 21, and the survey of the medial line and certain partition lines of the abandoned channel of the South Fork of the Cheyenne River in sections 16 and 21, a certain division of accretion line,

the new meanders of the left bank of the South Fork of the Cheyenne River through sections 28, 29, 30, 31, and 32, and a portion of section 21, and the new meanders of a portion of the right bank of the South Fork of the Cheyenne River through section 21, in Township 4 South, Range 11 East, Black Hills Meridian, South Dakota, was officially accepted June 3, 2002.

The survey was requested by the U.S. Forest Service, Nebraska National Forest, and was necessary to identify lands administered by the U.S. Forest Service.

A copy of the preceding described plat will be immediately placed in the open files and will be available to the public as a matter of information.

If a protest against this survey, as shown on this plat, is received prior to the date of the official filings, the filings will be stayed pending consideration of the protests.

This particular plat will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

FOR FURTHER INFORMATION CONTACT: Steve L. Toth, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, P.O. Box 36800, Billings, Montana 59107–6800, telephone (406) 896–5121 or (406) 896–5009.

Dated: June 11, 2002.

Thomas M. Deiling,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 02–19183 Filed 7–29–02; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–926–02–1420–BJ]

Survey Plat Filings

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of Intent for Filing of Plat of Survey.

SUMMARY: The plats of the following described land are scheduled to be officially filed in the Montana State Office, Billings, Montana, thirty (30) days from the date of this publication.

SUPPLEMENTARY INFORMATION:

Black Hills Meridian, South Dakota

T. 1 S., R. 13 E.

The plat, in four sheets, representing the dependent resurvey of a portion of the east boundary, a portion of the subdivisional lines, the adjusted original meanders of the former right bank of the South Fork of the Cheyenne River through sections 13, 23, 24, 27, and 28, and the adjusted original meanders of an island in the South Fork of the Cheyenne River in sections 27 and 28, and the subdivision of sections 13, 23, 24, and 26, the survey of the meanders of the present right bank of the South Fork of the Cheyenne River, downstream, in sections 13, 27, and 28, the median line of an abandoned channel in the South Fork of the Cheyenne River in sections 27 and 28, and a certain division of accretion line in section 27, Township 1 South, Range 13 East, Black Hills Meridian, South Dakota, was accepted July 11, 2002.

T. 2 S., R. 13 E.

The plat, in two sheets, representing the dependent resurvey of a portion of the west boundary (Third Guide Meridian East) through Township 2 South, between Ranges 12 and 13 East, a portion of the east boundary, a portion of the north boundary, a portion of the subdivisional lines, and the adjusted original meanders of the former right bank of the South Fork of the Cheyenne River through section 6, and the subdivision of sections 1, 4, and 6, the survey of the meanders of the present right bank of the South Fork of the Cheyenne River through a portion of section 6, and a division of accretion line in section 6, Township 2 South, Range 13 East, Black Hills Meridian, South Dakota, was accepted July 11, 2002.

T. 1 S., R. 14 E.

The plat, in three sheets, representing the dependent resurvey of a portion of the west boundary, a portion of the subdivisional lines, and the adjusted original meander line of the former left bank of the South Fork of the Cheyenne River through portions of sections 7, 8, and 18, and the subdivision of section 18, the survey of portions of the meander line of the present left bank of the South Fork of the Cheyenne River through sections 7, 8, and 18, and a division of accretion line in section 8, Township 1 South, Range 14 East, Black Hills Meridian, South Dakota, was accepted July 11, 2002.

T. 1 N., R. 14 E.

The plat, in four sheets, representing the dependent resurvey of a portion of the Black Hills Base Line through Ranges 13 and 14 East, portions of the east and west boundaries, a portion of the subdivisional lines, and a portion of the adjusted original meander lines of the right and left banks of the South Fork of the Cheyenne River through sections 31 and 32, and the subdivision of sections 1, 6, 10, 17, 18, 29, 31, and 32, the survey of a portion of the meander lines of the present right and left banks of the South Fork of the Cheyenne River, and certain division of accretion lines in sections 31 and 32, Township 1 North, Range 14 East, Black Hills Meridian, South Dakota, was accepted July 11, 2002.

T. 2 N., R. 14 E.

The plat, in three sheets, representing the dependent resurvey of portions of the south, east, west, and north boundaries, a portion of the subdivisional lines, and a portion of the adjusted original meanders of the right bank of the South Fork of the Cheyenne River, and the subdivision of sections 1, 2, 3, 10, 11, 14, 22, 31, and 35, and the survey of the meanders of the present left bank of the South Fork of the Cheyenne River, downstream, through a portion of section 11, sections 12 and 13, and a portion of section 35, Township 2 North, Range 14 East, Black Hills Meridian, South Dakota, was accepted July 11, 2002.

T. 3 N., R. 14 E.

The plat, in three sheets, representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of sections 11, 15, 21, and 22, Township 3 North, Range 14 East, Black Hills Meridian, South Dakota, was accepted July 11, 2002.

T. 3 N., R. 15 E.

The plat, in three sheets, representing the dependent resurvey of a portion of the east boundary, a portion of the west boundary, and a portion of the subdivisional lines, and the subdivision of sections 1, 2, 6, 11, and 24, and the survey of the meanders of the present right bank of the South Fork of the Cheyenne River, upstream, through a portion of section 6, Township 3 North, Range 15 East, Black Hills Meridian, South Dakota, was accepted July 11, 2002.

T. 4 N., R. 14 E.

The plat, in two sheets, representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of section 1, Township 4 North, Range 14 East, Black Hills Meridian, South Dakota, was accepted July 11, 2002.

T. 4 N., R. 15 E.

The plat, in four sheets, representing the dependent resurvey of the south boundary, a portion of the east boundary, the west boundary, a portion of the subdivisional lines, and the adjusted original meanders of the former left bank through sections 7 and 18, the

former right bank through section 31, upstream, and an island, former lot 9, in section 31 of the South Fork of the Cheyenne River, and the subdivision of certain sections and the survey of certain partition lines and a portion of the medial line of the abandoned channel between an island, former lot 9, in section 31, and the former right bank of the South Fork of the Cheyenne River, certain division of accretion 4 lines and meanders of the present left and right banks of the South Fork of the Cheyenne River, upstream and downstream, Township 4 North, Range 15 East, Black Hills Meridian, South Dakota, was accepted July 11, 2002.

T. 5 N., R. 13 E.

The plat, in three sheets, representing the dependent resurvey of a portion of the First Standard Parallel North, through Range 13 East, a portion of the Third Guide Meridian East through Township 5 North between Ranges 12 and 13 East, a portion of the east boundary, a portion of the north boundary, and a portion of the subdivisional lines, and the subdivision of sections 2, 3, 6, 8, 10, 11, 12, 13, 15, 22, and 24, the survey of a division of accretion line and the meander line of the present left bank of the Belle Fourche River, downstream, through portions of section 22, Township 5 North, Range 13 East, Black Hills Meridian, South Dakota, was accepted July 11, 2002.

T. 5 N., R. 14 E.

The plat, in four sheets, representing the dependent resurvey of a portion of the First Standard Parallel North, through Range 14 East, a portion of the east boundary, a portion of the north boundary, a portion of the subdivisional lines, and the adjusted original meanders of the right bank of the Belle Fourche River, through sections 1 and 12, and the subdivision of sections 1, 6, 12, 21, 22, and 23, the survey of certain division of accretion lines and certain meanders of the present left and right banks of the Belle Fourche River, Township 5 North, Range 14 East, Black Hills Meridian, South Dakota, was accepted July 11, 2002.

T. 5 N., R. 15 E.

The plat, in four sheets, representing the dependent resurvey of a portion of the First Standard Parallel North, through Range 15 East, the east boundary, a portion of the north boundary, and a portion of the subdivisional lines, and the subdivision of sections 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 21, 22, 23, 24, 26, 32, 34, and 35, the dependent resurvey of certain adjusted original meanders of the South Fork of the Cheyenne and Belle Fourche Rivers in Townships 5 and 6 North, Ranges 15 East, the survey of certain division of accretion lines in Township 5 North, Range 15 East and the survey of certain meanders of the present banks of the South Fork of the Cheyenne and Belle Fourche Rivers in Townships 5 and 6 North, Ranges 15 East, Black Hills Meridian, South Dakota, was accepted July 11, 2002.

T. 5 N., R. 16 E.

The plat, in four sheets, representing the dependent resurvey of a portion of the First Standard Parallel North, through Range 16 East, a portion of the east boundary, a portion of the north boundary, a portion of the subdivisional lines, and the adjusted original meanders of the left bank, upstream, through sections 2 and 3 and the right bank, downstream, through section 2, of the Cheyenne River, and the subdivision of sections 2, 3, 4, 5, 7, 8, 9, 10, 15, 19, 23, 24, 25, 31, and 32, and the survey of a certain division of accretion line and the meander lines of the present right bank of the Cheyenne River through a portion of section 4, Township 5 North, Range 16 East, Black Hills Meridian, South Dakota, was accepted July 11, 2002.

The survey was executed at the request of the District Manager (Field Manager), Miles City District (Miles City Field Office) and was necessary to identify lands administered by the Bureau of Land Management.

Copies of the preceding described plats and related field notes will be immediately placed in the open files and will be available to the public as a matter of information.

If protests against these surveys, as shown on these plats, are received prior to the dates of the official filings, the filings will be stayed pending consideration of the protests.

These particular plats will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

FOR FURTHER INFORMATION CONTACT: Robert L. Brockie, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, P.O. Box 36800, Billings, Montana 59107–6800, telephone (406) 896–5121 or (406) 896–5009.

Dated: July 18, 2002.

Michael T. Birtles,

Acting Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 02–19186 Filed 7–29–02; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–926–02–1420–BJ]

Survey Plat Filings

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of Intent for Filing of Plat of Survey.

SUMMARY: The plat of the following described land is scheduled to be officially filed in the Montana State Office, Billings, Montana, thirty (30) days from the date of this publication.

SUPPLEMENTARY INFORMATION:

Black Hills Meridian, South Dakota

T. 4 S., R. 11 E.

This plat, in 3 sheets, represents the dependent resurvey of a portion of the north boundary, a portion of the subdivisional lines, certain adjusted original meanders of the left and right banks of the South Fork of the Cheyenne River through sections 2, 3, 9, 10, and 16, and an island situated in the South Fork of the Cheyenne River and the subdivision of sections 2, 3, 10, and 11, and the survey of the medial lines and a partition line of the abandoned channel and the relicted channel of the South Fork of the Cheyenne River, certain division of accretion lines, and certain new meanders of the left and right banks of the South Fork of the Cheyenne River through sections 2, 3, 9, 10, and 16, in Township 4 South, Range 11 East, Black Hills Meridian, South Dakota, was officially accepted July 15, 2002.

The survey was requested by the U.S. Forest Service, Nebraska National Forest, and was necessary to identify lands administered by the U.S. Forest Service.

A copy of the preceding described plat will be immediately placed in the open files and will be available to the public as a matter of information.

If a protest against this survey, as shown on this plat, is received prior to the date of the official filings, the filings will be stayed pending consideration of the protests.

This particular plat will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

FOR FURTHER INFORMATION CONTACT: Steve L. Toth, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, P.O. Box 36800, Billings, Montana 59107–6800, telephone (406) 896–5121 or (406) 896–5009.

Dated: July 16, 2002.

Heidi L. Pfosch,

Acting Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 02–19193 Filed 7–29–02; 8:45 am]

BILLING CODE 4310–DN–P

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–02–021]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: August 6, 2002 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 303–TA–23, 731–TA–566–570, and 731–TA–641 (Final) (Reconsideration) (Remand) (Ferrosilicon from Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' views on remand to the Court of International Trade on or before September 13, 2002.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: July 25, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–19347 Filed 7–26–02; 2:56 pm]

BILLING CODE 7020–02–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATES: Weeks of July 29, August 5, 12, 19, 26, September 2, 2002.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 29, 2002

There are no meetings scheduled for the Week of July 29, 2002.

Week of August 5, 2002—Tentative

There are no meetings scheduled for the Week of August 5, 2002.

Week of August 12, 2002—Tentative

Tuesday, August 13, 2002

9:30 a.m. Briefing on Special Review Group Response to the Differing Professional Opinion/Differing Professional View (DPO/DPV) Review (Public Meeting) (Contact: John Craig, 301–415–1703)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*

Week of August 19, 2002—Tentative

Wednesday, August 21, 2002

9:30 a.m. Briefing on NRC International Activities (Public Meeting) (Contact: Janice Dunn Lee, 301–415–1780)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*

2 p.m. Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD) (Public Meeting) (Contact: John Zabko, 301–415–2308)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*

Week of August 26, 2002—Tentative

There are no meetings scheduled for the Week of August 26, 2002.

Week of September 2, 2002—Tentative

There are no meetings scheduled for the Week of September 2, 2002.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

* * * * *

Additional Information

By a vote of 4–0 on July 22, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Affirmation of (a) Duke Energy Corporation (McGuire Nuclear Station, Units 1 & 2, Catawba Nuclear Station, Units 1 & 2) Appeal of LBP–02–04: SAMA Contention and (b) Direct Final Rule on Electronic Maintenance and Submission of Information'' be held on July 23, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule. html.*

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: July 25, 2002.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 02–19335 Filed 7–26–02; 12:41 pm]

BILLING CODE 7590–01–M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Notice of Meeting

Board Meeting: September 10, 2002—Las Vegas, Nevada: The Nuclear Waste Technical Review Board will hold a meeting to discuss DOE technical and scientific activities related to the proposed development of a repository for spent nuclear fuel and high-level radioactive waste disposal at Yucca Mountain, Nevada. Issues to be discussed include performance assessment and repository system barrier analyses.

Pursuant to its authority under section 5051 of Public Law 100–203, Nuclear Waste Policy Amendments Act of 1987, on Tuesday, September 10, 2002, the Nuclear Waste Technical Review Board (Board) will meet in Las Vegas, Nevada, to discuss U.S. Department of Energy (DOE) technical activities related to a proposed repository for spent nuclear fuel and high-level radioactive waste at Yucca Mountain, Nevada. At the meeting, the DOE will present updates on important aspects of its technical and scientific program and will participate along with other interested parties in a round-table discussion of performance assessment and repository system barrier analysis. The meeting is open to the public, and opportunities for public comment will be provided. The Board is charged by Congress with reviewing the technical and scientific validity of DOE activities related to managing spent nuclear fuel and high-level radioactive waste.

The Board meeting will be held at the Alexis Park Hotel, 375 Harmon Avenue, Las Vegas, Nevada 89109. The telephone numbers are (702) 796–3300 or (800) 453–8000; the fax number is (702) 796–3354. The meeting will start at 8 a.m.

A greeting by the Board's incoming chairman, Dr. Michael Corradini, will open the morning session followed by remarks by outgoing chairman, Dr. Jared Cohon. Four additional new Board members will be introduced, and four members departing the Board will be recognized. The greeting and introductions will be followed by a general overview of the DOE program and a briefing on the Yucca Mountain project's plans. The DOE will then provide an update on its science and engineering activities followed by a report on the proposed science and technology program. The final presentation before lunch will be given by a representative of Inyo County, California, who will report on the County's regional ground water monitoring program. Immediately following the lunch break, the chair of the DOE's Igneous Consequences Peer Review Panel will present an interim report from the Panel. This presentation will be followed by updates on corrosion testing and repository design. The final session of the afternoon will focus on performance assessment and barrier analysis, during which representatives of the DOE and the Electric Power Research Institute (EPRI) will make presentations. A round-table discussion of these topics will follow the presentations. Round-table participants will include representatives from the State of Nevada, the DOE, the EPRI, the Nuclear Regulatory Commission, the Advisory Committee on Nuclear Waste, and others. Round-table participants will discuss underlying causes for differences in TSPA estimates, the significance of those differences, and issues related to different repository-system barrier analyses.

A public comment period has been scheduled for 5:30–6:00 p.m. However, if members of the public are unable to comment at that time, time will be provided on as-needed basis before the lunch break. Those wanting to speak during the public comment period are encouraged to sign the ''Public Comment Register'' at the check-in table. A time limit may have to be set on individual remarks, but written comments of any length may be submitted for the record.

A detailed agenda will be available approximately one week before the meeting. Copies of the agenda can be requested by telephone or obtained from the Board's Web site at www.nwtrb.gov. Beginning October 10, 2002, transcripts of the meeting will be available on the Board's Web site, via e-mail, on computer disk, and on a library-loan basis in paper format from Davonya Barnes of the Board staff.

A block of rooms has been reserved at the Alexis Park Hotel. To obtain the meeting rate, reservations must be made by August 21, 2002. When making a reservation, please state that you are attending the Nuclear Waste Technical Review Board meeting. For more information, contact the NWTRB; Karyn Severson, External Affairs; 2300 Clarendon Boulevard, Suite 1300; Arlington, VA 22201–3367; (tel) 703–235–4473; (fax) 703–235–4495; (e-mail) info@nwtrb.gov.

The Nuclear Waste Technical Review Board was created by Congress in the Nuclear Waste Policy Amendments Act of 1987. The Board's purpose is to evaluate the technical and scientific validity of activities undertaken by the Secretary of Energy related to the disposal of the nation's spent nuclear fuel and high-level radioactive waste. In the same legislation, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, to determine its suitability as the location of a potential repository for the permanent disposal of spent nuclear fuel and high-level radioactive waste.

Dated: July 26, 2002.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 02–19146 Filed 7–29–02; 8:45 am]

BILLING CODE 6820–AM–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

TIMES AND DATES: 1 p.m, Monday, August 5, 2002; 8:30 a.m., Tuesday, August 6, 2002.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., in the Benjamin Franklin Room.

STATUS: August 5–1 p.m. (Closed); August 6–8:30 a.m. (Open).

MATTERS TO BE CONSIDERED:

Monday, August 5–1 p.m. (Closed)

1. Financial Performance.
2. Fiscal Year 2003 Establish/Deploy Report.
3. Preliminary Fiscal Year 2003 Integrated Financial Plan.
4. Strategic Planning.
5. Personnel Matters and Compensation Issues.

Tuesday, August 6–8:30 a.m. (Open)

1. Minutes of the Previous Meeting, July 1–2, 2002.
2. Remarks of the Postmaster General and CEO.
3. National Postal Forum Report.
4. Briefing on Pipe Bomb Investigation.
5. Fiscal Year 2002 Borrowing Resolution.
6. Financial the Postal System.
7. Capital Investments.
   a. Fairfax, Virginia, Main Post Office.
   b. Office of Inspector General—Office Space Additional Funding Request.
   c. 76 automated Package Processing Systems.
8. Tentative Agenda for the September 5–6, 2002, meeting in Washington, D.C.

CONTACT PERSON FOR MORE INFORMATION: William T. Johnstone, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

William T. Johnstone,

Secretary.

[FR Doc. 02–19275 Filed 7–25–02; 4:32 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46238; File No. SR–BSE–2002–07]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Competing Specialists and Objections to Competing Specialist Competition

July 19, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 25, 2002, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain sections of its rules related to competing specialists (as defined in BSE Rules, Chapter XV, *Dealer Specialists,* section 18, *Procedures for Competing Specialists*) and objections to competition that may be raised by

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

regular specialists when competing specialists apply for the right to compete with regular specialists. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Chapter XV

Dealer Specialists

Procedures for Competing Specialists

Sec. 18 * * *

* * * 2. Objections to Competition

a. *A specialist may object to competition.*[3] *After notice of such objection to permit competition is provided by the regular specialist, the specialist must reduce his objection, and the reason(s) therefore, to writing* [Any objection by the regular specialist to permit competition in one or more of such specialist's stocks must be in writing on a form designated by the Exchange] and *file it* [filed] with the Exchange within 48 hours[4] of notice[5] of the competing specialist's application.

[b. Once a specialist has objected to competition, the reasons for objection must be set forth in writing and delivered to the Exchange within 24 hours of the objection.]

[c] *b.* A Market Performance Committee meeting will be scheduled to review the reasons for objection, and to determine whether an entering competitor could jeopardize the fair and orderly market maintained by the regular specialist in relation to the stock at issue. The regular specialist will be permitted to appear before the Committee to give the Committee the opportunity to question the regular specialist in regard to the reasons for objection. The applicant (competitor) will also be permitted to appear before the Committee to respond to any issues raised. After the Market Performance Committee renders its decision, either party may appeal to the Executive Committee and then, if necessary, to the Board of Governors.[6]

d. [In the event that the Market Performance Committee rules in favor of competition and the regular specialist seeks to appeal that decision] *Pending Market Performance Committee review of any objection, competition in the security may be permitted upon the affirmative determination of a majority of the floor members of the Market Performance Committee, based on the standard set forth in Paragraph b. of this section 18. Pending the outcome of any appeal process,* competition in the security at issue will [commence] *be permitted. The results of such competition may be used by either the regular specialist in support of their objection, or considered by the Market Performance Committee, Executive Committee, or Board of Governors, in their respective determinations.* [pending the outcome of the appeal process.]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the section of the Exchange's Competing Specialist Initiative (''CSI'') procedures relating to objections to competition filed by a regular specialist. The Exchange is seeking to implement a procedure that would permit competition pending a review of any objection to competition filed by a regular specialist.

Under current CSI procedures set forth in Chapter XV, *Dealer Specialists,* section 18, *Procedures for Competing Specialists,* any objection to competition by a regular specialist will prevent a competing specialist from trading, and competing with the regular specialist, in the security at issue, until the objection is adjudicated by the Exchange's Market Performance Committee (''MPC''). The result of this procedure is that competition is therefore prohibited during the period between the time a specialist first states an objection, and the time when an MPC meeting can be convened, and the objection fully vetted and decided upon by the committee. By current design, this process takes several days, as the specialist is permitted 48 hours to formally present his objection and the reason therefore to the Exchange, and a meeting of the 15 person Market Performance Committee is then convened. In the meantime, competition is not permitted in the security in question, regardless of the reasons supporting the regular specialist's objection, and regardless of the volatility or other characteristics of the security.

In order to streamline this process, the Exchange is proposing that a majority of the floor members of the MPC can vote to permit competition in a security pending the formalization of a regular specialist's objection and the subsequent convening of a full meeting of the MPC to review the objection. This will enhance competition to the ultimate benefit of investors, while still offering the regular specialist the opportunity to formalize an objection, and have that objection be heard before the full MPC. At the same time, it will allow competition in instances in which a majority of the floor members of the MPC deem it, after consideration of the pertinent facts, to be warranted.

The standard by which the MPC judges whether competition is warranted is the ''fair and orderly maintenance of the market.'' This standard will be imposed, as it is currently, on the full MPC during their ultimate hearing of any objection, but also on the floor members of the MPC during any interim decisions. By mandating this standard, the Exchange is ensuring that at all stages of objection, each MPC member is consistent in his consideration and decision making. Moreover, the Exchange is preventing a situation whereby a regular specialist may object for competitive or other reasons unrelated to the fair and orderly maintenance of the market.

It should be noted that nothing in this proposal will affect the MPC's ultimate decision making authority relating to whether competition in a security should be permitted. If competition is permitted based on an affirmative vote of the majority of the floor members of the MPC, it can be withdrawn at a subsequent meeting of the full committee, if the full committee agrees that the fair and orderly maintenance of the market would be adversely affected by continued competition. It should also be noted that, since the establishment of the CSI program at the Exchange in 1996, there have been only three objections to competition by regular specialists, only one of which was upheld by the MPC based on the

[3] Only the regular specialist can object to competition in his/her stocks.

[4] Unless the regular specialist is unavailable, in which case within [48] *24* hours of becoming available.

[5] Once an application is received by the Exchange [a written] notification will be issued to the regular specialist(s) in whose stocks competition is being sought.

[6] All appeals must be submitted within ten (10) business days of the final decision of either the Market Performance Committee or the Executive Committee.

standard of the maintenance of a fair and orderly market.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6(b) of the Act,[7] in general, and section 6(b)(5) of the Act,[8] in particular, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–2002–07 and should be submitted by August 20, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–19156 Filed 7–29–02; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before August 29, 2002. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: New Markets Venture Capital (NMVC) Program. Application Funding and Reporting.

No's: 2184, 2185.

Frequency: On Occasion.

Description of Respondents: Program Applicants and participants; SSBIC's receiving grants under the NMVC program.

Responses: 1,131.

Annual Burden: 13,925.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 02–19170 Filed 7–29–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3364, Amdt #5]

State of New York

In accordance with information received from the Federal Emergency Management Agency, the above numbered declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to January 31, 2003.

The deadline for filing applications for economic injury has also been amended to January 31, 2003. All other information remains the same.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 23, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–19172 Filed 7–29–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3428, Amdt. #6]

State of Texas

In accordance with a notice received from the Federal Emergency Management Agency, dated July 22, 2002, the above numbered declaration is hereby amended to include DeWitt and Victoria Counties in the State of Texas as disaster areas due to damages caused by severe storms and flooding occurring on June 29, 2002 and continuing.

In addition, applications for economic injury loans from small businesses located in the following contiguous

counties may be filed until the specified date at the previously designated location: Jackson and Calhoun Counties in Texas. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.,* the deadline for filing applications for physical damage is September 2, 2002, and for economic injury the deadline is April 4, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 23, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–19171 Filed 7–29–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4074]

Culturally Significant Objects Imported for Exhibition Determinations: ''Fabergé and the Age of Imperial Russia''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''Fabergé and the Age of Imperial Russia,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit objects at Bellagio Gallery of Fine Art, Las Vegas, NV from on or about August 26, 2002 to on or about January 26, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, contact Orde Kittrie, Attorney-Adviser, Office of the Legal Adviser, Department of State, (telephone: 202/401–4779). The address is Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: July 23, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–19236 Filed 7–29–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Allegheny, Beaver and Butler Counties, PA

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Cancellation of the notice of intent.

SUMMARY: This notice rescinds the previous Notice of Intent (issued February 10, 1997—Vol. 62, No. 27) to prepare an Environmental Impact Statement for a proposed transportation improvement in the vicinity of northern Allegheny County and southern Beaver and Butler Counties.

FOR FURTHER INFORMATION CONTACT: David W. Cough, P.E., Director of Operations, Federal Highway Administration, Pennsylvania Division Office, 228 Walnut Street, Room 508, Harrisburg, PA 17101–1720, Telephone (717) 221–3411—OR—Tom Fox, Assistant District Engineer for Design, Pennsylvania Department of Transportation, District 11–0, 45 Thoms Run Road, Bridgeville, PA 15017, Telephone (412) 429–5005.

SUPPLEMENTARY INFORMATION: Additional traffic analyses have indicated that no single reasonable and cost effective alternative exists for the large-scale study corridor. Environmental Assessments and/or Categorical Exclusion Evaluations may be pursued, as appropriate, based on a revised project scoping.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Dated: July 23, 2002.

James A. Cheatham,

FHWA Division Administrator, Harrisburg, PA.

[FR Doc. 02–19143 Filed 7–29–02; 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.

Alaska Railroad Corporation

[Docket Number FRA–2002–12407]

The Alaska Railroad Corporation (ARRC) of Anchorage, Alaska, has petitioned the Federal Railroad Administration (FRA) for a temporary waiver of compliance from the requirements of the Railroad Locomotive Safety Standards, 49 CFR part 229.137, Locomotive Cab Sanitation.

The Alaska Railroad Corporation is asking for an extension of time for a period of three (3) years to make modifications and conversions to 52 locomotives to bring them into compliance with the Locomotive Cab Sanitation Rule. These conversions need to take place in the wintertime outside of their busy season. However, the maximum they are able to remove from service in the wintertime is approximately 10 locomotives from a fleet consisting of 52 locomotives of which 27 locomotives have already been converted and are in compliance. This leaves a total of 25 locomotives that need to be converted. The three (3) year time period that is requested should be quite adequate. This is on account of a lack of availability of funds and service requirements so as not to hinder their normal operation.

At present, the ARRC is currently utilizing portable toilets and will continue to use them until such time that their fleet is brought into compliance with federal regulations. The ARRC will endeavor to utilize non-complying locomotives in the lead position as little as possible.

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 (*e.g.,* Waiver Petition Docket Number FRA–2002–12407) 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.*

Issued in Washington, DC on July 22, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–19131 Filed 7–29–02; 8:45 am]

BILLING CODE 4910–06–P

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.

Finger Lakes Railway, Corp.

[Docket Number FRA–2001–10215]

The Finger Lakes Railway, Corp. seeks to amend a previously granted waiver of compliance from the requirements of the Safety Glazing Standards-Passenger Car, 49 CFR 223.15, which requires all windows be FRA certified glazing and a minimum of four emergency windows. The petitioner requests the waiver for four cars recently purchased from Via Rail Canada, Inc. The coaches were built between 1954 and 1956, and were equipped with tempered glazing which met the Canadian glazing requirements. The coaches would be utilized in charter service in the rural Finger Lakes Region of New York State for trips between 15 to 20 miles in length. The original request was granted for speeds not to exceed 15 mph. The Finger Lakes Railway indicates that they have upgraded various sections of their track and are requesting to amend the previously granted waiver to allow speed not to exceed 25 mph.

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 (*e.g.,* Waiver Petition Docket Number FRA–2001–10215) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room Pl–401, Washington, DC 20590–0001. 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.*

Issued in Washington, DC on July 22, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–19132 Filed 7–29–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Title 49 Code of Federal Regulations (CFR), §§ 211.9 and 211.41 notice is hereby given that the Federal Railroad Administration (FRA) has received a request for waiver of compliance from certain requirements of Federal railroad safety regulations. The individual petition is described below, including the parties seeking relief, the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

National Railroad Passenger Corporation

Union Pacific Railroad

[Docket Number FRA–2002–12836]

The Union Pacific Railroad (UP) and The National Railroad Passenger Corporation (Amtrak) seek a waiver of compliance from certain sections of 49 CFR parts 216, Special Notice and Emergency Order Procedures: Railroad Track, Locomotive and Equipment; 217, Railroad Operating Rules; 218, Railroad Operating Practices; 229, Railroad Locomotive Safety Standards; 233, Signal Systems Reporting Requirements; 235, Instructions Governing Applications for Approval of a Discontinuance or Material Modification of a Signal System or Relief from the Requirements of part 236; 236, Rules, Standards, and Instructions Governing the Installation, Inspection, Maintenance, and Repair of Signal and Train Control Systems, Devices, and Appliances; and 240, Qualification and Certification Of Locomotive Engineers, under § 211.51, Tests, to allow them to develop, implement, and test technology designed to prevent train collisions and overspeed violations and to protect track maintenance personnel from trains. The program will enable the industry to demonstrate and validate the technology, referred to as Positive Train Control, (PTC) before it is implemented on a larger scale.

PTC is a communications-based train control system designed to monitor each communicating train's position, velocity, and acceleration in real time and prompt the engineer to take action before a violation occurs associated with the limits of authority, track bulletins, track speed, temporary speed restrictions, and working limits of track maintenance personnel. If the engineer fails to take the necessary action to slow or stop the train, PTC will initiate a full service brake application to stop the train before a violation occurs.

PTC will interface with the UP computer-aided dispatching (CAD) system, from which it will receive track bulletins, form-based authorities, and the dispatcher's requests for switches and signals. The PTC system will consist of four segments that work together to provide enforcement against train movement violations: the central office segment; the locomotive segment; the wayside segment, and the communications segment. The central office segment will consist of the PTC server that will develop and issue

enforceable movement authorities and speed restrictions for each PTC-equipped train. This information is sent through the communications segment to the locomotive segment located on board the controlling locomotive of each train. The locomotive segment enforces a train's movement and speed limits by monitoring the train's location and speed, providing warnings, and applying the brakes to stop the train if necessary to prevent a violation of speed limit or authority. The wayside segment monitors the status of switches, signals, and track circuits, and forwards this status, via the communications segment, to the central office segment. The locomotive and wayside segments work in concert to provide for the advance activation of grade crossings with constant warning times for train speeds greater than 79 mph.

The PTC program will be tested and demonstrated on the UP's Joliet and Springfield subdivisions in the State of Illinois between Mazonia, milepost 62.6 and Ridgley, milepost 181.0, a distance of approximately 118.4 miles. Relief is sought for the PTC test operations on all main track and signalized sidings between Mazonia and Ridgley. The present method of operation in the territory is by signal indications of a traffic control system. The current method of operation will remain in effect whether PTC is operative, fails, or is cut-out. Tests at speeds of 80 mph or more ,or those involving the display of the PTC aspect on wayside signals will be conducted under Absolute Block conditions only. During tests at speeds of 80 mph or more, flaggers will provide warning in each direction of highway traffic at crossings equipped with active crossing signals. No PTC tests requiring the exercise of the requested waiver will be conducted on revenue trains. Benign tests not requiring the exercise of the requested waivers such as tests of communications coverage or location determination system accuracy may be conducted using revenue trains.

PTC testing will temporarily require additional operating practices of a benign nature, but only on PTC-equipped test trains and only when a test is in progress. The additional operating practices contemplated for PTC test trains will include PTC initialization procedures, digital transmission and onboard display of authorities and restrictions, enforcement of limits of authority and speed limits/restrictions through automatic brake applications, and procedures for recovery following an enforcement action.

The waiver is requested for a testing period commencing September 1, 2002, and extending to the conclusion of the test phase. The test period is not expected to exceed two years and will terminate August 31, 2004, unless the UP notifies the FRA of an earlier termination date. A high speed demonstration run will be conducted in the test territory. This demonstration will allow Railroad, Government, and contractor officials the opportunity to witness the operation of the PTC system.

The following are the current waiver requests and the petitioners' justification:

Section 216.13

Special notice for repairs—locomotive. Waiver is requested for PTC-equipped locomotives to the extent that non-operation of PTC equipment installed on board, whether through malfunction or deactivation shall not be construed as an unsafe condition requiring special notice for repairs; waiver is sought for non-PTC-equipped locomotives operating in the PTC pilot territory to the extent that the absence of PTC equipment on board shall not be construed as an unsafe condition requiring special notice for repairs.

Justification: With or without PTC equipment operating on board the controlling locomotive, a train remains subject to existing operating rules. PTC tests require flexibility in installing, removing, turning on, and turning off the on-board equipment. The PTC tests will involve only a small subset of locomotives that will be PTC-equipped for testing.

Section 217.9

Program of operational tests and inspections; recordkeeping. Waiver is requested exempting operation of PTC equipment and procedures from the requirements for operational tests and inspections and associated recordkeeping.

Justification: During the PTC test phase, procedures for using PTC equipment and functions will be refined and modified. Until such procedures are defined, they cannot be addressed in the General Code of Operating Rules (GCOR). In any case, PTC is expected to have minimal impact on the operating rules.

Section 217.11

Program of instruction on operating rules; recordkeeping; electronic recordkeeping. Waiver is requested exempting tests of PTC equipment and procedures from the requirements for instruction and recordkeeping.

Justification: During the PTC test phase, procedures for using PTC equipment and functions will be refined and modified. Until such procedures are defined they cannot be addressed in the GCOR. In any case PTC is expected to have minimal impact on the operating rules.

Part 218

(Subpart D) Prohibition Against Tampering With Safety Devices. Waiver is requested exempting onboard PTC equipment from the requirements of §§ 218.51, 218.53, 218.55, 218.57, 218.59, and 218.61 to the extent that PTC equipment on board a locomotive shall not be considered a ''safety device'' subject to the provisions of this subpart at any time during the test phase.

Justification: PTC tests require flexibility in installing, removing, turning on, and turning off the onboard equipment. The UP also needs the flexibility to permanently disable or remove PTC equipment in the event that a production system is not implemented.

Section 229.135

Event recorders. Waiver is requested to the extent that PTC equipment on board a locomotive shall not be considered an ''event recorder'' subject to the provisions of this section during the test phase.

Justification: PTC equipment by design will operate intermittently during the test phase. The data accumulated by the onboard PTC equipment will be used to develop and refine PTC functions. Such data can be expected to contain anomalies that do not reflect true operating conditions but by analysis will contribute to achieving necessary objectives in the PTC design.

Section 233.9

Annual reports. Waiver is requested exempting PTC operations in the test phase from the reporting requirements of this section.

Justification: PTC tests require flexibility in installing, removing, turning on, and turning off PTC equipment. UP also requires the flexibility to permanently disable or remove PTC equipment in the event that a production system is not implemented.

Section 235.5

Changes requiring filing of application. Waiver is requested exempting the PTC from the requirements of this section during the test phase.

Justification: PTC tests require flexibility in installing, removing, modifying, turning on, and turning off

the PTC equipment. UP also requires the flexibility to permanently disable or remove PTC equipment in the event that a production system is not implemented.

Section 236.0

Applicability, minimum requirements, and civil penalties. Waiver is requested from the requirements of paragraph (d) to the extent that PTC may be tested on test trains operated at speeds of 80 or more miles per hour.

Justification: During the PTC test phase, PTC will be tested to assure the system will function as intended at all speeds up to but not exceeding 110 mph. Tests at speeds of 80 or more mph will be made under absolute block conditions with no other train present. In addition, an appropriately equipped flagger will provide warning for each direction of highway traffic at each crossing equipped with active crossing warning signals for each test run made a speeds of 80 or more mph.

Section 236.4

Interference with normal functioning of device. Waiver is requested to the extent that PTC equipment shall be excluded from this requirement during the test phase.

Justification: During the PTC test phase, the ''normal functioning'' of PTC will be identified, defined and refined. PTC tests require flexibility in installing, removing, turning on, and turning off the PTC equipment. With or without PTC equipment operating on board the controlling locomotive, the train remains subject to the provisions of the rules governing the existing methods of operation.

Section 236.5

Design of control circuits on closed circuit principle. Waiver is requested excepting PTC equipment from the closed circuit design requirement.

Justification: PTC is composed of solid-state components that are software driven. Neither the hardware nor software can technically be designed to meet the provisions of this section.

Section 236.11

Adjustment, repair, or replacement of component. Waiver is requested exempting PTC components on board a locomotive from the requirements of this section.

Justification: PTC tests require flexibility in installing, removing, modifying, turning on and turning off PTC equipment. Failure of a PTC component during the test phase will not jeopardize the safety of train operations.

Section 236.15

Timetable instructions. Waiver is requested exempting the PTC territory from the timetable designation requirement of this section during the PTC test phase.

Justification: The PTC test phase will consist of tests and demonstrations, at undetermined levels and identifying the test territory in the timetable as would be both premature and an unnecessary paperwork burden.

Section 236.23

Aspects and indications. Waiver is requested to the extent that the PTC display on board an equipped locomotive shall not be construed to represent or correspond to signal aspects or indications subject to the requirements of this section.

Justification: The PTC design excludes any visual display of signal aspects or indications. PTC enforceable authorities, which may or may not derive from signal indications on board. Text authorities, such as track bulletins, are displayed to the train crew. Since PTS is a safety overlay, trains remain subject to wayside signals. Information on the PTC display will correspond with but in no way represent authority conveyed through wayside signals.

Section 236.76

Tagging of wires and interference of wires or tags with signal apparatus. Waiver is requested exempting PTC equipment from the wire tagging requirement.

Justification: PTC hardware consists of computers, computer peripherals, and communication devices. While the inapplicability of this section to circuit boards, connectors, and cables would appear obvious, waiver is sought for clarification.

Section 236.101

Purpose of inspection and tests; removal from service of relay or device failing to meet test requirements. Waiver is requested exempting PTC equipment from the requirement for removal of failed equipment from service.

Justification: PTC tests require flexibility in installing, removing, turning on, and turning off the equipment. With or without PTC equipment operating on board, a train remains subject to the safety provisions of existing method of operation.

Section 236.107

Ground tests. Waiver is requested exempting PTC equipment from the requirement for ground testing during the test phase.

Justification: PTC hardware consists of computers, computer peripherals, and communication devices. Ground tests would serve no purpose in ensuring safety and could be damaging to this equipment.

Section 236.109

Time releases, timing relays and timing devices. Waiver is requested exempting PTC equipment from the testing requirement of this section during the test phase.

Justification: The timing devices in PTC equipment are software-driven, have no moving parts, and are far more reliable than the devices for which this regulation was promulgated to address.

Section 236.110

Results of tests. Waiver is requested exempting PTC tests from the record keeping requirements of this section.

Justification: During the PTC test phase, the types of tests necessary to ensure appropriate levels of maintenance will be defined.

Section 236.501

Forestalling device and speed control. Waiver is requested exempting PTC from the requirement for medium-speed restriction.

Justification: PTC will not be connected to the signal system in the same manner as a conventional automatic train control system and will not enforce speed restrictions indicated by signal aspects. PTC will enforce permanent speed restrictions reflected in the track database, temporary speed restrictions issued through the CAD system, and speed reductions as required by the limits of authority or conditions ahead.

Section 236.504

Operation interconnected with automatic block-signal system. Waiver is requested exempting PTC from the requirement of interconnection with an automatic block-signal system.

Justification: PTC will not be connected to the signal system in the same manner as a conventional automatic train stop, train control, or cab signal system. However PTC will receive input from the signal system and operate to perform its intended function in the event of failure of the engineer to obey a restrictive condition displayed in the cab.

Section 236.511

Cab signals controlled in accordance with block conditions stopping distance in advance. Waiver is requested

exempting the PTC onboard display from the cab-signal requirements in this section.

Justification: PTC is not an automatic cab signal system and will not be connected to the signal system in the same manner as a conventional cab signal system, but will receive input from the signal system that forms the basis for limits of authority and high speed operations that will be depicted on the PTC display.

Section 236.514

Interconnection of cab signal system with roadway signal system. Waiver is requested exempting PTC from the requirement of interconnection with a roadway signal system.

Justification: PTC system will not be connected to the roadway signal system in the same manner as a conventional cab signal system, but will receive input from the signal system that forms the basis for limits of authority and high speed operations.

Section 236.515

Visibility of cab signals. Waiver is requested exempting any PTC display from the visibility requirement of this section during the test phase.

Justification: PTC is not a cab signal system and the design excludes any visual representation of signal aspects or indications.

Section 236.534

Entrance to equipped territory; requirements. Waiver is requested exempting the PTC from the requirements of this section during the test phase.

Justification: PTC tests require flexibility in installing, removing, turning on, and turning off PTC equipment.

Section 236.551

Power supply voltage; requirement. Waiver is requested exempting the onboard PTC power supply from the voltage requirement in this section.

Justification: PTC onboard equipment will function with more than a 50% variation in voltage.

Section 236.552

Insulation resistance; requirement. Waiver is requested exempting PTC equipment from the insulation resistance requirement of this section.

Justification: PTC on-board equipment consists of computers, computer peripherals, and communications equipment. Insulation resistance tests could be damaging to such components.

Section 236.553

Seal, where required. Waiver is requested exempting PTC from the seal requirement of this section.

Justification: The PTC system will allow for manual disablement of on-board PTC functions and equipment both remotely from the dispatching office and through an onboard manual function. Use of the onboard cutout function will be electronically monitored and reported to the dispatcher as an alarm.

Section 236.566

Locomotive of each train operating in train stop, train control or cab signal territory; equipped. Waiver is requested to the extent that the equipment requirements in this section shall not apply to PTC during the test phase.

Justification: A small subset of locomotives operating in the test territory will be PTC-equipped; the majority of trains will not be equipped. PTC tests require flexibility in installing, removing, turning on and turning off the onboard equipment. In any case, all PTC tests will be conducted under the provisions of the rules governing the existing rules of operation.

Section 236.567

Restrictions imposed when device fails and/or is cut out enroute. Waiver is requested exempting PTC tests from the restrictions associated with device failure or cutout.

Justification: PTC tests require flexibility in installing, removing, turning on and turning off the onboard equipment. All PTC tests will be conducted under the provisions of the rules governing the existing methods of operation and a failure or deactivation of PTC equipment will not jeopardize safety of train operations.

Section 236.586

Daily or after trip test. Waiver is requested exempting the PTC from the requirements of this section during the test phase.

Justification: During the PTC test phase, the requirements for a daily or after trip test, if necessary, will be defined. An objective is to perform this test without human intervention.

Section 236.587

Departure test. Waiver is requested exempting the PTC from the requirements of this section during the test phase.

Justification: During the PTC test phase, the requirements for a departure test will be defined. An objective is to perform this test without human intervention.

Section 236.588

Periodic test. Waiver is requested exempting PTC from the requirements of this section during the test phase.

Justification: During the PTC test phase, the requirements for periodic testing will be defined.

Section 236.703

Aspect. Clarification is requested exempting the PTC display from this definition.

Justification: PTC is not an automatic cab signal system and its design does not include any visual representation of signal aspects or indications.

Section 236.805

Signal, cab. Clarification is requested exempting the PTC display from this definition.

Justification: PTC is not an automatic cab signal system and its design does not include any visual representation of signal aspects or indications.

Section 240.127

Criteria for examining skill performance. Waiver is requested exempting PTC from the testing requirements of this section during the PTC test phase.

Justification: Criteria and procedures for PTC performance evaluation do not yet exist; they will be identified during the PTC test phase.

Section 240.129

Criteria for monitoring operational performance of certified engineers. Waiver is requested exempting PTC from the performance monitoring procedures during the PTC test phase.

Justification: Criteria and procedures for PTC performance evaluation do not yet exist; they will be identified and defined during the PTC test phase.

It is acknowledged for clarification that PTC, when fully operative during the test phase, will comply with the following regulations:

Part 234

Grade crossing signal system safety. All sections.

Section 236.8

Operating characteristics of electromagnetic, electronic, or electrical apparatus. PTC computing equipment will comply with this regulation.

Section 236.501

Forestalling device and speed control. PTC is designed to enforce maximum authorized speeds, speed restrictions,

slow speed and absolute stop. PTC will comply with Section 236.501 except for paragraph (b)(2).

Section 236.502

Automatic brake application, initiation by restrictive block conditions stopping distance in advance. PTC is designed to initiate an automatic brake application stopping distance in advance of the end of limits of authority; a train or locomotive; or the beginning of each lower speed restriction in the route.

Section 236.503

Automatic brake application; initiation when predetermined rate of speed exceeded. PTC will comply with this regulation.

Section 236.505

Proper operative relation between parts along roadway and parts on locomotive. PTC will function as intended under all conditions of speed, weather, oscillation and shock. PTC will comply with this regulation.

Section 236.506

Release of brakes after automatic application. After a PTC-initiated brake application, brakes cannot be released until the train is stopped.

Section 236.507

Brake application; full service. PTC will comply with this regulation.

Section 236.508

Interference with application of brakes by means of brake valve. PTC equipment will not interfere with or impair the efficiency of the automatic or independent brake valves.

Section 236.509

Two or more locomotives coupled. PTC will be made operative only on the controlling locomotive; however, PTC tests that do not affect train operations may occur on trailing locomotives.

Section 236.513

Audible indicator. The audible indicator for PTC will have a distinctive sound and be clearly audible under all operating conditions.

Section 236.516

Power supply. PTC equipment will have its own isolated power supply.

Section 236.565

Provision made for preventing operation of pneumatic brake-applying apparatus by double-heading cock; requirement. Operation of the double-heading cock (cutoff pilot valve) will not cut out PTC before the automatic brake is cut out.

Section 236.590

Pneumatic apparatus. Pneumatic apparatus will be inspected and cleaned as required.

Part 236 Subpart G

Definitions. As applicable except § 236.703 and § 236.805.

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 (e.g., Waiver Petition Docket Number FRA–2002–12113) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, DC., 20590–0001. Communications received within 30 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.*

Issued in Washington, DC.

Edward W. Pritchard,

Acting Director, Office of Safety Assurance and Compliance.

[FR Doc. 02–19134 Filed 7–29–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2002–12924]

Notice of Request for Revision of a Currently Approved Information Collection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to revise the following currently approved information collection: Rail Fixed Guideway Systems, State Safety Oversight.

DATES: Comments must be submitted before September 30, 2002.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the United States Department of Transportation, Central Dockets Office, PL–401, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 10 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT: Mr. Roy Field, Office of Program Management, (202) 366–0197.

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Title: Rail Fixed Guideway Systems, State Safety Oversight (*OMB Number: 2132–0558*).

Background: 49 U.S.C. 5330 requires each State to designate a State Safety Oversight agency to oversee the safety and security operations of ''a rail fixed guideway system'' within the State's jurisdiction. To comply with Section 5330, State oversight agencies must require System Safety Program Plans (SSPPs) from rail fixed guideway systems; review and approve these SSPPs; require notification of unacceptable hazardous conditions according to the American Public Transportation Association (APTA) Hazard Classification Matrix; require and review corrective action plans from rail fixed guideway systems to eliminate such conditions; require an ongoing safety audit process at the rail fixed guideway systems; and submit both an annual certification to FTA that the State is in compliance with the requirements of section 5330 and an

annual report documenting safety activities. Collection of this information will enable the State oversight agency to monitor effectively the safety of the rail fixed guideway system. Without certification from the State oversight agency, FTA would be unable to determine each State's compliance with Section 5330.

If a State fails to comply with the requirements of section 5330, FTA may withhold up to five percent of funds apportioned under section 5307 to a State, or urbanized area within a State, beginning in Fiscal Year 1997.

Estimated Annual Burden on Respondents: Approximately 663.50 hours for each of the 56 respondents.

Estimated Total Annual Burden: 37,158 hours.

Frequency: Annual.

Issued: July 24, 2002.

Dorrie Y. Aldrich,

Associate Administrator for Administration.

[FR Doc. 02–19130 Filed 7–29–02; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2002–12479; Notice 1]

Dorel Juvenile Group; Receipt of Application for Determination of Inconsequential Non-Compliance

Dorel Juvenile Group [Cosco] (DJG), of Columbus, Indiana, failed to comply with S5.4.1(a) of Federal Motor Vehicle Safety Standard (FMVSS) No. 213, ''Child Restraint Systems,'' which incorporates S5.1(d) of FMVSS No. 209, ''Seat Belt Assemblies,'' and has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.'' DJG has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of the application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgement concerning the merits of the application.

The following summarizes the DJG petition based upon information provided with the petition in accordance with the requirements of 49 CFR part 556, ''Exemption for Inconsequential Defect or Noncompliance.''

Summary of the Petition

On July 11, 2001, as a result its fiscal year 2001 testing, NHTSA notified DJG, by telephone, of a potential noncompliance regarding DJG's tether webbing. The noncompliance is the webbing utilized for tether assemblies on many of DJG child restraints produced from January 2000 through September 30, 2001 (39 Models and 3,957,826 units). DJG determined that one of the suppliers of tether webbing utilized in the tether assemblies had provided some webbing that did not meet the abrasion test requirements. DJG's unabraded tether webbing strength, measured by NHTSA's FY 2001 compliance testing, was 4,450 pounds, and after abrasion it was 2,450 pounds (a ratio of abraded/unabraded webbing strength of 55%). Section 5.4.1(a) of FMVSS No. 213 requires webbing to have an abraded strength of not less than 75% of its unabraded breaking strength.

DJG believes that because its unabraded webbing strength was high (4,450 pounds), not meeting the 75% abrasion strength requirement of S5.4.1(a) of FMVSS No. 213 is inconsequential to motor vehicle safety. DJG believes that its abraded strength at 2,450 pounds is far in excess of the anchorage strength requirements specified in FMVSS No. 225 ''Child restraint anchorage systems'' at 1,191 pounds. DJG also believes that the abraded webbing strength test procedure set forth in S5.4.1(a) of FMVSS No. 213 is flawed and that minimum abraded breaking strength should be specified. Therefore, DJG filed this petition on the basis that the noncompliance is inconsequential to motor vehicle safety.

Availability of the Petition and Other Documents

The petition and other relevant information are available for public inspection in NHTSA Docket No. NHTSA–2002–12479. You may call the Docket at (202) 366–9324 or you may visit the Docket Management in Room PL–401, 400 Seventh Street, SW, Washington, DC 20590 (10:00 a.m. to 5 p.m., Monday through Friday). You may also view the petition and other relevant information on the Internet. To do this, do the following:

(1) Go to Docket Management System (DMS) Web page for the Department of Transportation (*http://dms.dot.gov*)

(2) On that page, click on ''Simple Search.''

(3) On the next page (*http://dms.dot.gov/search/SearchFormSimple.cfm*), type the docket number ''12479.'' After typing the docket number, click on ''search.''

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments and other materials.

Comments

Interested persons are invited to submit written data, views and arguments on the petition of DJG described above. Comments should refer to the Docket Number and be submitted to: U.S Department of Transportation Docket Management, Room PL 401, 400 Seventh Street, SW, Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent practicable. When the application is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: August 29, 2002.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: July 23, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–19141 Filed 7–29–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub-No. 618)]

CSX Transportation, Inc.—Discontinuance—at Memphis, in Shelby County, TN

On July 10, 2002, CSX Transportation, Inc. (CSXT), filed with the Surface Transportation Board (Board) an application for permission to discontinue service over a 1.1-mile portion of its Midwest Region, Nashville Division, Memphis Terminal line between milepost ONI 224.00, at Memphis and milepost ONI 222.9 east of Memphis, in Shelby County, TN.[1]

[1] CSXT previously filed a petition for exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon the above line, plus an additional 12.24 miles of rail line, extending from milepost ONI 224.00 near Memphis, to milepost ONI 210.66 near Cordova. The Board denied the petition in *CSX Transportation, Inc.—Abandonment Exemption—(Between Memphis and Cordova) in Shelby County,* Continued

The line traverses U.S. Postal Service ZIP Codes 38111 and 38112. Applicant has indicated that the line includes the station of Memphis.

The line does not contain federally granted rights-of-way. Any documentation in CSXT's possession will be made available promptly to those requesting it. The applicant's entire case for discontinuance (case-in-chief) was filed with the application.

The line of railroad has appeared on CSXT's system diagram map or has been included in its narrative in category 1 since March 6, 2002.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

Any interested person may file with the Board written comments concerning the proposed discontinuance or protests (including the protestant's entire opposition case), by August 26, 2002. Because this is a discontinuance proceeding, and not an abandonment, trail use/rail banking, and public use requests are not appropriate. Also, only offers of financial assistance (OFA) under 49 U.S.C. 10904 to subsidize (not purchase) the line will be entertained.

Persons opposing the discontinuance who wish to participate actively and fully in the process should file a protest. Persons who may oppose the discontinuance but who do not wish to participate fully in the process by submitting verified statements of witnesses containing detailed evidence should file comments. Persons seeking information concerning the filing of protests should refer to 49 CFR 1152.25.

In addition, a commenting party or protestant may provide: (i) An OFA to subsidize rail service under 49 U.S.C. 10904 (due 120 days after the application is filed or 10 days after the application is granted by the Board, whichever occurs sooner); and (ii) recommended provisions for protection of the interests of employees.

The line sought to be discontinued will be available for subsidy for continued rail use, if the Board decides to permit the discontinuance, in accordance with applicable laws and regulations (49 U.S.C. 10904 and 49 CFR 1152.27). Each OFA must be accompanied by a $1,100 filing fee. *See* 49 CFR 1002.2(f)(25). No subsidy arrangement approved under 49 U.S.C. 10904 shall remain in effect for more than 1 year unless otherwise mutually agreed by the parties (49 U.S.C. 10904(f)(4)(B)). Applicant will promptly provide upon request to each interested party an estimate of the subsidy required to keep the line in operation. The carrier's representative to whom inquiries may be made concerning subsidy terms is set forth below.

All filings in response to this notice must refer to STB Docket No. AB–55 (Sub-No. 618) and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Louis E. Gitomer, Esq., Ball Janik, LLP, 1455 F St., NW., Suite 225, Washington, DC 20005. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, every document filed with the Board must be served on all parties to the discontinuance proceeding. 49 CFR 1104.12(a).

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1552. [TDD for the hearing impaired is available at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in discontinuance proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: July 24, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–19218 Filed 7–29–02; 8:45 am]

BILLING CODE 4915–00–P

TN, STB Docket No. AB–55 (Sub-No. 590X) (STB served Dec. 12, 2001), finding that CSXT had failed to show that the current situation imposed a burden on it that outweighed the harm if the line were to be abandoned. The Board's denial of the petition was without prejudice to CXST's refiling an appropriate application or a petition for exemption. On March 29, 2002, CSXT filed a petition under 49 U.S.C. 10502 for exemption from 49 U.S.C. 10903 in *CSX Transportatioin, Inc.—Discontinuance Exemption—(Between East of Memphis and Cordova) in Shelby County, TN,* STB Docket No. AB–55 (Sub-No. 615X) to discontinue service over the 12.24-mile segment of the line between milepost ONI 222.9, east of Memphis, and milepost ONI 210.66, near Cordova, at the end of the line. The Board granted the petition by decision served on July 17, 2002.

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 949; ATF O 1130.29]

Delegation Order—Delegation of The Director's Authorities in 27 CFR Part 26, Liquors and Articles From Puerto Rico and the Virgin Islands

To: All Bureau Supervisors

1. *Purpose.* This order delegates certain authorities of the Director to subordinate ATF officers and prescribes the subordinate ATF officers with whom persons file documents which are not ATF forms.

2. *Background.* The Director has the authority to take final action on matters relating to liquors and articles from Puerto Rico and the Virgin Islands. Certain of these authorities have been delegated to lower organizational levels through ATF O 1130.23—Delegation Order—Delegation of the Director's Authorities in 27 CFR part 250, Liquors and Articles from Puerto Rico and the Virgin Islands. ATF is currently restructuring the part numbering system in title 27 of the Code of Federal Regulations (CFR). The regulations relating to liquors and articles from Puerto Rico and the Virgin Islands, previously located in 27 CFR part 250, are now recodified as 27 CFR part 26. Due to this restructuring, ATF O 1130.23 must be cancelled and a new order must be issued to reflect the new part number.

3. *Cancellation.* ATF O 1130.23, Delegation Order—Delegation of the Director's Authorities in 27 CFR part 250, Liquors and Articles from Puerto Rico and the Virgin Islands, dated 8/13/2001, is canceled.

4. *Delegations.* Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Order No. 120–01 (formerly 221), dated June 6, 1972, and by 26 CFR 301.7701–9, this ATF order delegates certain authorities to take final action prescribed in 27 CFR part 26 to subordinate officials. Also, this ATF order prescribes the subordinate officials with whom applications, notices, and reports required by 27 CFR part 26, which are not ATF forms, are filed. The attached table identifies the

regulatory sections, authorities and documents to be filed, and the authorized ATF officials. The authorities in the table may not be redelegated.

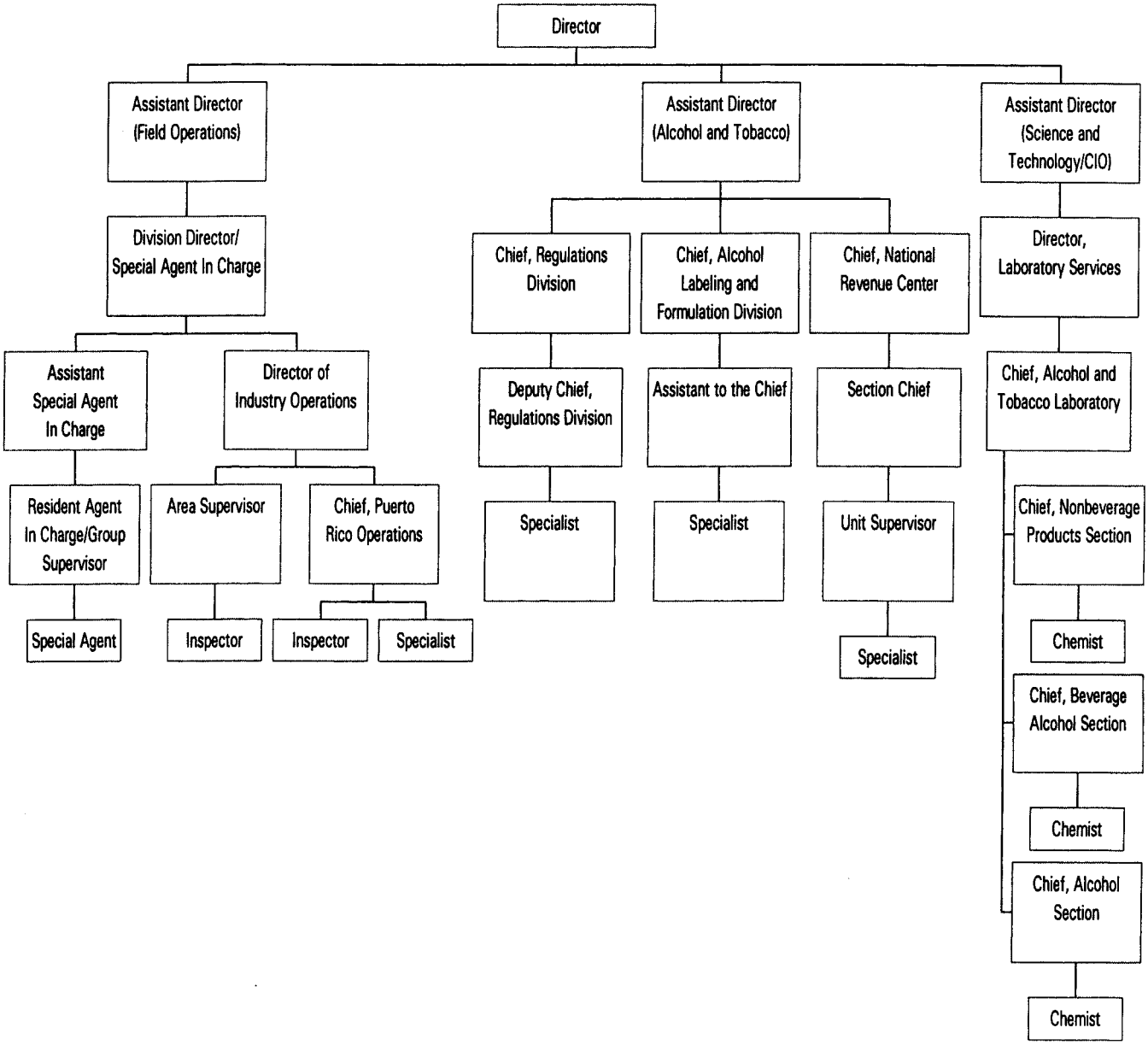
5. *Questions.* If you have questions about this ATF order, contact the Regulations Division (202–927–8210).

Bradley A. Buckles,
Director.

Regulatory section	Officer(s) authorized to act or receive document.
§ 26.2(a)	Chief or Deputy Chief, Regulations Division
§ 26.11—liquor bottle definition	Specialist, Alcohol Labeling and Formulation Division (ALFD)
§ 26.37	Inspector, Specialist or Special Agent
§ 26.43	Chemist, Inspector, Specialist or Special Agent
§ 26.52(b) and (c)	Chief, Puerto Rico Operations
§ 26.62a	Chief, Puerto Rico Operations
§ 26.65	Chief, Puerto Rico Operations
§ 26.70	Chief, Puerto Rico Operations
§ 26.70a	Specialist, Puerto Rico Operations
§ 26.71(c) and (d)	Chief, Puerto Rico Operations
§ 26.72	Chief, Puerto Rico Operations
§ 26.74	Chief, Puerto Rico Operations
§ 26.75	Chief, Puerto Rico Operations
§ 26.81	Chief, Puerto Rico Operations
§ 26.96	Chief, Puerto Rico Operations
§ 26.105	Chief, Puerto Rico Operations
§ 26.110	Chief, Puerto Rico Operations
§ 26.112(c)(1) and (4) and (e)	Chief, Puerto Rico Operations
§ 26.112a(b)(1) and (3) and (c)(1)	Chief, Puerto Rico Operations
§ 26.116	Inspector, Specialist or Special Agent
§ 26.119	Chief, Puerto Rico Operations, to whom forms are forwarded. Inspector, Specialist or Special Agent to examine forms.
§ 26.126	Chief, Puerto Rico Operations
§ 26.128	Inspector, Specialist or Special Agent
§ 26.173(a)	Chief, Puerto Rico Operations
§ 26.174(a) and (e)	Inspector, Specialist or Special Agent
§ 26.193(b)	Chief, Puerto Rico Operations
§ 26.194	Area Supervisor or Chief, Puerto Rico Operations
§ 26.197	Unit Supervisor, National Revenue Center (NRC)
§ 26.209	Specialist, Regulations Division, or Chemist, ATF Laboratory
§ 26.222(b) and (c)	Chief, Puerto Rico Operations
§ 26.275(a)	Section Supervisor, NRC to authorize files to be located at another business location. Inspector, Specialist or Special Agent to examine files.
§ 26.276	Inspector, Specialist or Special Agent to inspect and copy records. Director of Industry Operations to extend record retention.
§ 26.303	Section Chief, NRC
§ 26.309(a)	Chief, Puerto Rico Operations
§ 26.310(a) and (e)	Inspector, Specialist or Special Agent
§ 26.314(b)	Specialist, ALFD
§ 26.316	Specialist, ALFD
§ 26.318	Specialist, ALFD
§ 26.319	Section Chief, NRC
§ 26.331	Chief or Deputy Chief, Regulations Division

BILLING CODE 4810–31–P

ATF Organization - not a complete organization chart



[FR Doc. 02–19129 Filed 7–29–02; 8:45 am]
BILLING CODE 4810–31–C

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0107]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to audit accountings of fiduciaries.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 30, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to ''OMB Control No. 2900–0107'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (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 respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Certificate as to Securities, VA Form 21–4709.

OMB Control Number: 2900–0107.

Type of Review: Extension of a currently approved collection.

Abstract: VA is required to supervise benefits paid to fiduciaries on behalf of beneficiaries who are incompetent or under legal disability. Supervision includes a requirement that the fiduciary account periodically for the funds he/she has received on behalf of the beneficiary. VA Form 21–4709 is used by estate analysts employed by VA to verify investment in savings bonds and other securities reported in the beneficiary estate.

Affected Public: Individuals or households, Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government.

Estimated Annual Burden: 863 hours.

Estimated Average Burden Per Respondent: 12 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 4,316.

Dated: July 17, 2002.

By direction of the Secretary.

Genie McCully,

Acting Director, Information Management Service.

[FR Doc. 02–19173 Filed 7–29–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0108]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments for information to determine eligibility for income-based benefits programs.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 30, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to ''OMB Control No. 2900–0108'''' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (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 respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Report on Income from Property or Business, VA Form 21–4185.

OMB Control Number: 2900–0108.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used to derive net income from property or business. The information is used to determine whether the beneficiary is eligible for VA benefits and, if eligibility exists, to determine the proper rate of benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 29,500 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 59,000.

Dated: July 17, 2002.

By direction of the Secretary.

Genie McCully,

Acting Director, Information Management Service.

[FR Doc. 02–19174 Filed 7–29–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Establishment of New System of Records.

SUMMARY: The Privacy Act of 1974 (5 U.S.C. 552(e)(4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is establishing a new system of records entitled, ''Alternative Dispute Resolution Tracking System-VA'' (116VA09).

DATES: Comments on this new system of records must be received no later than August 29, 2002. If no public comment is received, the new system will become effective August 29, 2002.

ADDRESSES: You may mail or hand-deliver written comments concerning the proposed new system of records to the Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or fax comments to (202) 273–9289; or email comments to *OGCRegulations@mail.va.gov.* All relevant material received before August 29, 2002 will be considered. Comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Frederic Conway (09), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. (202) 273–6743.

SUPPLEMENTARY INFORMATION:

I. Description of Proposed Systems of Records

VA is committed to the appropriate use of alternative dispute resolution (ADR) for resolving conflicts and disputes. To monitor the use of ADR within VA, VA is creating an ADR tracking system. The proposed system will capture information about the type and frequency of use of ADR within VA. It will track the number of times ADR is utilized, the types of disputes submitted to ADR, the length of time it took to use the ADR process, the outcome of the ADR and the degree of satisfaction of the users of ADR with the process. Collection and analysis of this data will enable VA to determine the effectiveness of the ADR program and identify areas for improvement.

VA will gather the information through a web-based tracking system. Individual ADR coordinators at the facility or regional level will enter data in the system. Regional levels are determined by the VA Staff Office or Administration involved. For example, the regional level in the Veterans Health Administration is the Veterans Integrated Service Network (VISN) level. ADR coordinators will have individually assigned unique passwords to enter and access data, and will only be able to access the data that they enter. This information may be maintained locally by the ADR coordinator and will be maintained nationally by the Dispute Resolution Specialist (09).

The Categories of Individuals Covered by the System may include the ADR Coordinators, the individuals who conduct the ADR process, e.g., mediators and arbitrators, the individuals who requested ADR, the respondents, and the representatives of the ADR requesters and respondents. ADR requesters are any individuals who may use the VA ADR process and who seek to use ADR as a method to resolve disputes. Examples of ADR requesters may include management officials, VA employees, contract employees, or individuals who have filed a tort claim under the Federal Tort Claims Act based upon a claim allegedly involving VA or its employees. Respondents may be any individuals who have been asked to participate in an ADR process, such as management officials, co-workers, or contracting officers.

The Categories of Records in the System may include such information as: the name, grade and step of the ADR requesters and respondents; the type of ADR requested, e.g., mediation or arbitration; the source of the individual(s) conducting the ADR, e.g., another Federal agency; the grades and steps of the individuals conducting the ADR process; administrative data on the particular ADR case, e.g., date requested; date concluded and total hours spent on the ADR; the nature of the dispute, e.g., discrimination or harassment; the stage in the dispute in which ADR is inserted, the jurisdictional forum in which the dispute was located when ADR was requested, any waiver of rights under 29 CFR part 1614, the terms of any settlement agreement, e.g., damages, attorneys fees, reassignment, and the satisfaction of the parties with the ADR process.

The Department is gathering this information for the following purposes. VA will use the information to track and monitor agency dispute resolution activities at the local level. VA also intends to analyze the data to evaluate ADR utilization VA-wide, identify agency ADR best practices, and determine whether certain forms of ADR may be more appropriate in various types of cases.

VA's policies and practices for storing, retrieving, accessing, retaining and disposing of records will be as follows. VA will store the ADR tracking system on a server located in a [enter site location and operator]. Records are indexed and retrieved by the names or identification numbers of the ADR program participants, such as the ADR requestors respondents, and mediators. The safeguards for the data limit access to only those individuals who either administer the ADR tracking system or serve as ADR coordinators. VA will retain and dispose of these records in accordance with the applicable records control schedule approved by the Archivist of the United States.

II. Proposed Routine Use Disclosures of Data in the System

VA is proposing to establish the following Routine Use disclosures of information maintained in the system:

1. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

Individuals sometimes request the help of a Member of Congress in resolving some issue relating to a matter before VA. The Member of Congress then writes VA, and VA must be able to give sufficient information to be responsive to the inquiry.

2. Disclosure may be made to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of Title 44 U.S.C.

NARA is responsible for archiving old records no longer actively used, but which may be appropriate for preservation; they are responsible in general for the physical maintenance of the Federal Government's records. VA must be able to turn records over to NARA in order to determine the proper disposition of such records.

3. Records from this system of records may be disclosed to the Department of Justice (DOJ) or in a proceeding before a court, adjudicative body, or other administrative body before which the Agency is authorized to appear when: (1) The Agency, or any component thereof; (2) any employee of the Agency in his or her official capacity, where DOJ or the Agency has agreed to represent the employee; or (3) the United States, when the Agency determines that litigation is likely to affect the Agency or any of its components; is a party to litigation, and has an interest in such litigation, and the use of such records by DOJ or the Agency is deemed by the Agency to be relevant and necessary to the litigation, provided, however, that the disclosure is compatible with the purpose for which the records were collected.

Whenever VA is involved in litigation, or occasionally when another party is involved in litigation and VA policies or operations could be affected by the outcome of the litigation, VA would be able to disclose information to the court or parties involved. A determination would be made in each instance that, under the circumstances involved, the purpose served by use of the information in the particular litigation is compatible with a purpose for which VA collects the information.

4. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, or other entities with whom VA has a contract or agreement or where there is a subcontract to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

VA must be able to provide information to contractors or subcontractors with whom VA has a contract or agreement in order to perform the services of the contract or agreement.

5. VA may disclose on its own initiative any information in this system that is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order.

VA must be able to comply with the requirements of agencies charged with enforcing the law and investigations of violations or possible violations of law. VA must also be able to provide information to Federal, State, local, tribal and foreign agencies charged with protecting the public health as set forth in law.

6. Disclosure may be made to an appeal, grievance, hearing, or complaints examiner; an equal employment opportunity investigator, arbitrator, or mediator; and an exclusive representative or other person authorized to investigate or settle a grievance, complaint, or appeal filed by an individual who is the subject of the record.

Whenever VA is involved in an appeal, grievance, or complaint, or occasionally when another party is involved and VA policies or operations could be affected by the outcome, VA would be able to disclose information to the examiner or other official or parties involved. A determination would be made in each instance that, under the circumstances involved, the purpose served by use of the information is compatible with a purpose for which VA collects the information. The information may be needed by the examiner or investigator in order to resolve a grievance. Inability to release the data may have a negative impact on the individual filing the grievance.

7. Disclosure may be made to the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), and the General Accounting Office (GAO) in order for them to perform their responsibilities for evaluating Federal programs.

VA must be able to provide information to these agencies in order for them to carry out their responsibilities for evaluating Federal programs.

8. Information may be disclosed to officials of labor organizations recognized under 5 U.S.C. Chapter 71, when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

VA must be able to disclose information to officials of labor organizations to assist them in fulfilling their responsibilities in representing employees. This routine use is intended to provide no greater authority to release records to officials of labor unions than provided under 5 U.S.C. 7114(b)(4).

9. Information may be disclosed to officials of the Merit Systems Protection Board or the Office of the Special Counsel when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

VA must be able to disclose information to these agencies to assist them in fulfilling their responsibilities.

10. Information may be disclosed to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or for other functions of the Commission as authorized by law.

VA must be able to disclose information to the Commission in order for it to fulfill its responsibilities to protect employee rights.

11. Information may be disclosed to the Federal Labor Relations Authority (including its General Counsel) when appropriate jurisdiction has been established and the information has been requested in connection with the investigation and resolution of allegations of unfair labor practices or in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised; and to the Federal Service Impasses Panel in matters they are considering.

VA must be able to disclose information to these agencies in order for them to fulfill their responsibilities.

III. Compatibility of the Proposed Routine Uses

The Privacy Act permits VA to disclose information about individuals without their consent for a routine use when the information will be used for a purpose that is compatible with the purpose for which we collected the information. In all of the routine use disclosures described above, the recipient of the information will use the information in connection with a matter relating to one of VA's programs, will use the information to provide a benefit to VA, or disclosure is required by law.

The notice of intent to publish and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: July 15, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

116VA09

SYSTEM NAME:

Alternative Dispute Resolution Tracking System-VA.

SYSTEM LOCATION:

VA will store the ADR tracking system on a web development server located in Silver Spring, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records include information concerning VA employees and other individuals who have participated in a VA alternative dispute resolution program.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records may contain information related to the name, grade and step of the ADR requesters and respondents; the type of ADR requested, e.g., mediation or arbitration; the type of ADR used; the source of the individual(s) conducting the ADR, e.g., another Federal agency; the grades and steps of the individuals conducting the ADR process; administrative data on the particular ADR case, e.g., date requested; date concluded and total hours spent on the ADR; the nature of the dispute, e.g., discrimination or harassment; the stage in the dispute in which ADR is inserted, the jurisdictional forum in which the dispute was located when ADR was requested, any waiver of rights under 29 CFR part 1614, the terms of any settlement agreement, e.g., damages, attorneys fees, reassignment, and the satisfaction of the parties with the ADR process, and. the source of the neutral third party who conducted the procedure, e.g., the facility's program, a local shared neutral's program, the national program, or a private, non governmental program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5, United States Code, sections 571–584; Federal Acquisition Regulation; Part 33, Protests, Disputes, and Appeals and/or VA Acquisition Regulation, Part 833, Protests, Disputes, and Appeals; and Title 29, Code of Federal Regulations, section 1614.

PURPOSE(S):

VA will use the information to track and monitor agency dispute resolution activities at the local level. VA also intends to analyze the data to evaluate ADR utilization VA-wide, identify agency ADR best practices, and determine whether certain forms of ADR may be more appropriate in various types of cases.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

VA is proposing to establish the following routine use disclosures of the information that will be maintained in the system:

1. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

2. Disclosure may be made to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of Title 44 U.S.C.

3. Records from this system of records may be disclosed to the Department of Justice (DOJ) or in a proceeding before a court, adjudicative body, or other administrative body before which the Agency is authorized to appear when: (1) The Agency, or any component thereof; (2) any employee of the Agency in his or her official capacity, where DOJ or the Agency has agreed to represent the employee; or (3) the United States, when the Agency determines that litigation is likely to affect the Agency or any of its components; is a party to litigation, and has an interest in such litigation, and the use of such records by DOJ or the Agency is deemed by the Agency to be relevant and necessary to the litigation, provided, however, that the disclosure is compatible with the purpose for which the records were collected.

4. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, or other entities with whom VA has a contract or agreement or where there is a subcontract to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

5. VA may disclose on its own initiative any information in this system that is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. VA must be able to comply with the requirements of agencies charged with enforcing the law and investigations of violations or possible violations of law.

6. Disclosure may be made to an appeal, grievance, hearing, or complaints examiner; an equal employment opportunity investigator, arbitrator, or mediator; and an exclusive representative or other person authorized to investigate or settle a grievance, complaint, or appeal filed by an individual who is the subject of the record.

7. Disclosure may be made to the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), and the General Accounting Office (GAO) in order for them to perform their responsibilities for evaluating Federal programs.

8. Information may be disclosed to officials of labor organizations recognized under 5 U.S.C. Chapter 71, when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

9. Information may be disclosed to officials of the Merit Systems Protection Board or the Office of the Special Counsel when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

10. Information may be disclosed to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or for other functions of the Commission as authorized by law.

11. Information may be disclosed to the Federal Labor Relations Authority (including its General Counsel) when appropriate jurisdiction has been established and the information has been requested in connection with the investigation and resolution of allegations of unfair labor practices or in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised; and to the Federal Service Impasses Panel in matters they are considering.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on a web development server.

RETRIEVABILITY:

Records are retrieved by name or other assigned identifiers of the individuals who participate in the VA ADR process.

SAFEGUARDS:

1. Access to and use of these records is limited to those persons whose official duties require such access.

2. Access to the ADR tracking system is controlled by using an individually unique user identification code.

3. Access to the VA facility where the ADR tracking system is maintained is controlled at all hours by the Federal Protective Service, VA, or other security personnel and security access control devices.

4. Public use files prepared for purposes of research and analysis are purged of personal identifiers.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with records disposition authority approved by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

Official responsible for policies and procedures: Dispute Resolution Specialist (09), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

NOTIFICATION PROCEDURE:

Individuals who wish to determine whether this system of records contains information about them should address written inquiries to Dispute Resolution Specialist (09), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

RECORD ACCESS PROCEDURE:

Individuals seeking information regarding access to and contesting of records in this system may write Dispute Resolution Specialist (09), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above.)

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by employees who serve as local ADR program coordinators who obtain information from the ADR program participants.

[FR Doc. 02–19176 Filed 7–29–02; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 67, No. 146

Tuesday, July 30, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket 29-2002]

Foreign–Trade Zone 20—Newport News, Application for Subzone, Canon Virginia, Inc. (Computer Printers and Related Products), Newport News, VA

Correction

In notice document 02–17853 beginning on page 46632 in the issue of Tuesday, July 16, 2002, make the following correction:

On page 46633, in the first column, in the fifth line ''[60 days from date of publication]'' should read ''September 16, 2002''.

[FR Doc. C2–17853 Filed 7–29–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Department of the Army

Inland Waterways Users Board; Request for Nominations

Correction

In notice document 02–18274 beginning on page 47525 in the issue of Friday, July 19, 2002, make the following correction:

On page 47526, in the first column, in paragraph numbered (3), in the fourth line, ''ten–miles'' should read ''ton–miles ''.

[FR Doc. C2–18274 Filed 7–29–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF EDUCATION

Local Flexibility Demonstration Program Office of Elementary and Secondary Education, Department of Education; Notice inviting applications for the Local Flexibility Demonstration Program

Correction

In notice document 02–18306, beginning on page 47528 in the issue of Friday, July 19, 2002, make the following correction:

On page 47528, in the second column, in the fifth paragraph headed *Applications Available*:, in the first line, the date ''September 17, 2002'' is changed to read ''July 19, 2002''.

[FR Doc. C2–18306 Filed 7–29–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 2

[Docket No. 97N–0023]

RIN 0910–AA99

Use of Ozone-Depleting Substances; Essential-Use Determinations

Correction

In rule document 02–18610 beginning on page 48370 in the issue of Wednesday, July 24, 2002, make the following correction:

On page 48370, in the third column, under the heading ''**ACTION:**'', in the first line, insert the words ''Final rule.''.

[FR Doc. C2–18610 Filed 7–29–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–AD]

RIN 2120–AA64

Airworthiness Directives; Vulcanair S.p.A P 68 Series Airplanes

Correction

In proposed rule document 02–17601 beginning on page 46427 in the issue of Monday, July 15, 2002, make the following correction:

§39.13 [Corrected]

On page 46429, in the table, in §39.13, under the heading Model, in the second line, ''P 68 ''OBSERVER'' should read ''P 68 ''OBSERVER 2'' ''.

[FR Doc. C2–17601 Filed 7–29–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
July 30, 2002

Part II

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants: Site Remediation; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7241–6]

RIN 2060–AH41

National Emission Standards for Hazardous Air Pollutants: Site Remediation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes National Emission Standards for Hazardous Air Pollutants (NESHAP) under the authority of section 112 of the Clean Air Act (CAA) for the site remediation source category. The EPA has determined that site remediation activities can be major sources of organic hazardous air pollutants (HAP) (including benzene, ethyl benzene, toluene, vinyl chloride, xylenes) and other volatile organic compounds (VOC). The range of potential human health effects associated with exposure to these organic HAP and VOC include cancer, aplastic anemia, upper respiratory tract irritation, liver damage, and neurotoxic effects (e.g., headache, dizziness, nausea, tremors). The proposed rule would implement section 112(d) of the CAA by requiring those affected site remediation activities to meet emissions limitations, operating limit, and work practice standards reflecting the application of the maximum achievable control technology (MACT). When implemented, we estimate that the proposed rule would reduce annual regulated HAP emissions from the source category by approximately 50 percent or 570 megagrams per year (Mg/yr) (630 tons per year (tpy)) and reduce nationwide VOC emissions by 3,680 Mg/yr (4,050 tpy).

DATES: *Comments.* Submit comments on or before September 30, 2002.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by September 19, 2002, a public hearing will be held on August 27, 2002.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–99–20, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–99–20, U.S. EPA, 401 M Street, SW, Washington, D.C. 20460. The EPA requests that a separate copy also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing. If a public hearing is held, it will be begin at 10:00 a.m. and will be held at the new EPA facility complex in Research Triangle Park, North Carolina, or at an alternate site nearby. You should contact Ms. JoLynn Collins, Waste and Chemical Processes Group, Emission Standards Division, U.S. EPA (C439–03), Research Triangle Park, NC 27711, telephone (919) 541–5671 to request a public hearing, to request to speak at a public hearing, or to find out if a hearing will be held.

Docket. Docket No. A–99–20 contains supporting information used in developing the standards. The docket is located at the U.S. EPA, 401 M Street, SW, Washington, DC 20460, in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. Copies of docket materials may be obtained by request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Nizich, Waste and Chemical Processes Group, Emission Standards Division (C439–03), U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–3078, facsimile number (919) 541–0246, electronic mail address ''nizich.greg@epa.gov''.

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by electronic mail (e-mail) to: ''*a-and-r-docket@epa.gov*.'' Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems. Comments will also be accepted on disks in WordPerfect® file format. All comments and data submitted in electronic form must note the docket number: A–99–20. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention Mr. Greg Nizich, c/o OAQPS Document Control Officer, U.S. EPA (C404–02), RTP, NC 27711.

The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

Public Hearing. Persons interested in presenting oral testimony or inquiring whether a hearing is to be held should contact Ms. JoLynn Collins of the EPA at (919) 541–5671 at least 2 days before the public hearing. Persons interested in attending the public hearing must also call Ms. Collins to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposed standards.

Docket. The docket is an organized and complete file of all the information considered by the EPA in the development of the proposed rule. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and potentially affected industries to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to the proposed rule are available for review in the docket, or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

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

Background Information. The background information for the proposed rule is not contained in a formal background information document. Background information we used in developing the proposed rule is presented in technical memoranda that

we have included in Docket No. A–99–20.

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

Category	NAICS*	Examples of regulated entities
Industry	325211 325192 325188 32411 49311 49319 48611 42269 42271	Site remediation activities at businesses at which organic materials currently are or have been in the past stored, processed, treated, or otherwise managed at the facility. These facilities include: organic liquid storage terminals, petroleum refineries, chemical manufacturing facilities, and other manufacturing facilities with collocated site remediation activities.
Federal Government		Federal agency facilities that conduct site remediation activities.

*North American Industry Classification System (NAICS) code. Representative industrial codes at which site remediation activities have been or are currently conducted at some but not all facilities under a given code. The list is not necessarily comprehensive as to the types of facilities at which a site remediation cleanup may potentially be required either now or in the future.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that we are now aware could potentially be regulated by this action.

A comprehensive list of North American Industry Classification System (NAICS) codes cannot be compiled for businesses or facilities potentially regulated by the proposed rule due to the nature of activities regulated by the source category. The industrial code alone for a given facility does not determine whether the facility is or is not potentially subject to the proposed rule. The proposed rule may be applicable to any type of business or facility at which a site remediation is conducted to clean up media contaminated with organic HAP and other hazardous material. Thus, for many businesses and facilities subject to the proposed rule, the regulated sources (i.e., the site remediation activities) are not the predominant activity, process, operation, or service conducted at the facility. In these cases, the industrial code indicates a primary product produced or service provided at the facility rather than the presence of a site remediation performed to support the predominant function of the facility. For example, NAICS code classifications where site remediation activities are currently being performed at some but not all facilities include, but are not limited to, petroleum refineries (NAICS code 32411), industrial organic chemical manufacturing (NAICS code 3251xx) and plastic materials and synthetics manufacturing (NAICS code 3252xx). However, we are also aware of site remediation activities potentially subject to the proposed rule being performed at facilities listed under NAICS codes for refuse systems, waste management, business services, miscellaneous services, and nonclassifiable.

To determine whether your facility is regulated by the action, you should carefully examine the applicability criteria in the proposed rule. If you have questions regarding the applicability of the proposed rule to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this document.

Outline. The following outline is provided to assist you in reading this preamble.

I. Background
A. What is the source of authority for development of the proposed rule?
B. What is a site remediation?
C. Why is site remediation a unique NESHAP source category?
D. What are the sources of organic HAP emissions from site remediation activities?
E. What are the potential health effects associated with organic HAP emitted from site remediation activities?
F. What is the relationship of the proposed rule to other EPA regulatory actions affecting site remediation activities?
G. What criteria are used in the development of NESHAP?
II. Summary of the Proposed Rule
A. Who is affected by the proposed rule?
B. What are the affected sources?
C. What are the standards for process vents?
D. What are the standards for remediation material management units?
E. What are the standards for equipment leaks?
F. What are requirements for remediation material sent off-site?
G. What are the general compliance requirements?
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J. What are the notification, recordkeeping, and reporting requirements?
K. What are the implications of this NESHAP for Clean Air Act title V requirements?
L. What are the implications of this NESHAP for Clean Air Act New Source Review Requirements?
III. Rationale for Selecting the Proposed Standards
A. What is the scope of the source category to be regulated?
B. How did we select the pollutants to be regulated?
C. How did we select the affected source to be regulated?
D. How did we determine MACT for the affected sources?
E. How did we select the format of the proposed standards?
F. How did we select the testing and initial compliance requirements?
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IV. Summary of Environmental, Energy, and Economic Impacts
A. What are the emissions reductions?
B. What are the cost impacts?
C. What are the economic impacts?
D. What are the non-air quality health, environmental, and energy impacts?
V. Administrative Requirements
A. Executive Order 12866, Regulatory Planning and Review
B. Executive Order 13132, Federalism
C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
F. Unfunded Mandates Reform Act of 1995
G. Regulatory Flexibility Act (RFA) as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
H. Paperwork Reduction Act
I. National Technology Transfer and Advancement Act

I. Background

A. What Is the Source of Authority for Development of the Proposed Rule?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. The category of major sources covered by today's proposed rule was listed on July 16, 1992 (57 FR 31576). Major sources of HAP are defined by section 112 of the CAA to be those sources that emit or have the potential to emit at least 10 tpy of any single HAP or 25 tpy of any combination of HAP. As a supplement to the list of source categories published on July 16, 1992, the EPA developed the publication entitled ''Documentation of Developing the Initial Source Category List'' (EPA–450/3–91–030, July 1992). This document contains descriptions of the types of activities included within each source category of major sources. This document states that future information may be used to refine the source category descriptions (EPA–450/3–91–030, page A–2).

We included site remediation on the NESHAP source category list to address HAP emissions from technologies and work practices used to clean up or reduce chemical contamination in soils, groundwater, other types of contaminated media and other materials at those facilities that are major sources of HAP as defined by section 112(a)(1) of the CAA.

During the initial development of the proposed rule, we obtained additional information regarding the cleanup of contamination from leaking underground storage tanks at those facilities that are not associated with industrial or manufacturing facilities and where the predominant, if not only, potential source of HAP emissions is the remediation cleanup activity itself (e.g., cleanup of contaminated soil or groundwater due to a leaking underground tank at a small commercial business, farm, or private residence). Our analysis shows that the HAP emissions from a typical cleanup of contamination from the size and types of underground tanks commonly used at these facilities to store motor fuels or heating oils is significantly below the major source levels (i.e., 10 tpy of a single HAP or 25 tpy of all HAP) (see docket A–99–20). Therefore, we plan to modify our initial description for the site remediation source category to exclude remediation activities at residential and farm sites, and from leaking underground storage tanks located at gasoline service stations (businesses typically associated with NAICS codes 447110 and 447190). The source category description will be revised at the next update of the source category list as required under CAA section 112(c).

B. What Is a Site Remediation?

A site remediation is performed in response to the release of hazardous substances into the environment (e.g., soil, groundwater, or other environmental media). It involves taking appropriate action to remove, store, treat, and/or dispose of the hazardous substances to the extent necessary to protect human health and the environment. The term ''cleanup'' generally refers to the activities performed to address the hazardous substance contamination. This term frequently is used interchangeably with the term ''remediation.''

Site remediations can be performed to address hazardous substance contamination resulting from either past or current human activities. Examples of such activities include accidental releases of chemical substances; undetected leaks in tanks or pipelines; releases from the use of incorrectly designed or poorly maintained equipment for the management of materials containing hazardous substances; improper disposal of hazardous substances in surface impoundments, containers, waste piles, or landfills; and abandoned hazardous substances.

Organic materials such as chlorinated hydrocarbons, petroleum products, polycyclicaromatic hydrocarbons, and phenols are emitted into the air from site remediations. Site remediations are also performed to clean up contamination from the release of heavy metals (most commonly lead, chromium, arsenic, and cadmium) and other inorganic hazardous substances.

Some site remediations address contamination resulting from management practices used at a given facility for special types of waste materials such as mixed wastes (wastes containing both radioactive and non-radioactive hazardous constituents) and low-level radioactive wastes.

The actions taken at a given contamination site to protect human health and the environment vary depending on site-specific conditions such as the composition, physical form, and quantity of the hazardous substance and the relative degree of contamination. Typically, remediation or cleanup activities involve a contaminated media of one physical form or another (e.g., contaminated soil or groundwater). However, at some sites remediation or cleanup involves materials other than contaminated media; this might include, for example, wastes left in tanks and containers or other ''pure'' materials in the environment that do not include media (e.g., oil pumped from below ground). We use the term ''remediation material'' for both contaminated media and pure materials that are remediated.

At some sites, the remediation material is left undisturbed and containment techniques are used to prevent or significantly reduce further migration of the contaminants to surrounding soils or to underlying groundwater aquifers (e.g., installation of a physical barrier or cap on the surface of a contaminated landfill). At many sites, the remediation material is treated to remove or destroy the hazardous substance, transform the hazardous substance into a non-hazardous form, or reduce the concentration of the hazardous substance below a threshold level.

Treatment processes are available that allow the remediation material to be treated in place (commonly referred to as ''in situ'' treatment). Other treatment processes require first extracting the remediation material from the ground and then placing it in a treatment unit located at the site (commonly referred to as ''ex situ'' treatment).

Alternatively, all of the remediation material may be extracted from the site and the remediation material sent off-site to a facility for treatment or disposal, as appropriate for the form and characteristics of the remediation material (e.g., contaminated soils trucked to a hazardous waste treatment, storage, and disposal facility; or contaminated groundwater discharged through a sewer system to a publicly owned treatment works).

C. Why Is Site Remediation a Unique NESHAP Source Category?

The development of a NESHAP for site remediation presents a unique set of considerations unlike any other source category for which we have established a NESHAP. The sole purpose of conducting a site remediation is to clean up an existing environmental problem. Any HAP emissions from site remediation are the direct result of the remedial activities or operations taken with the intent of protecting human health and the environment from exposure to hazardous substances. The HAP emissions do not result from processing or refining raw material, manufacturing a product, distributing a product to consumers, or even managing waste to avoid an environmental problem. In developing a NESHAP for site remediation, careful consideration

must be given to establishing a proposed rule that balances the need for effective HAP emissions control with the overall goal of removing the threat to human health and the environment posed by the hazardous substances in the remediation material.

Site remediation cannot be categorized by a particular industry sector or group of industry sectors. Site remediation potentially may be conducted at any type of business or facility at which contamination has occurred due to past events or current activities at the facility. These facilities may be privately or government owned. Site remediation is also performed at facilities that have closed or have been abandoned.

Implementation problems resulting from the fact that a Site Remediation NESHAP would potentially be applicable to facilities across a wide spectrum of industry sectors are not insurmountable. We have promulgated NESHAP for some source categories that also affect multiple industry sectors. For example, many types of businesses and federal facilities in the United States have operations subject to the Off-Site Waste and Recovery Operations (OSWRO) NESHAP under 40 CFR part 63, subpart DD. Establishing a NESHAP for this type of broad-based source category, however, does affect the regulatory approach and format used as well as how to evaluate the impacts of the proposed rule.

For the NESHAP source categories defined in terms of a specific industrial or manufacturing sector, the facilities comprising the source category (or, in some cases, subcategories within the source category) share similar processes and emissions points. In contrast to these NESHAP source categories, the HAP emissions sources in the site remediation source category are dependent on site-specific factors. These factors determine the remedy required for a cleanup and, thereby, the sources and level of air emissions released, if any, by implementing activities associated with the selected remedy.

Another consideration is the finite period for which a site remediation is conducted. The objective of a site remediation is to mitigate a detected risk to public health or the environment by successfully completing the cleanup of the area contaminated by a hazardous substance. For NESHAP source categories associated with industrial processes or product distribution, the air emission sources typically remain in operation for many years (i.e., 10 years, 20 years, or even longer for some sources). Once an existing source reaches the end of its useful service life, it is often reconstructed or replaced with a new source. In contrast, the air emission sources associated with site remediations cease to exist once the remediation cleanup criteria are achieved. Depending on site-specific facts such as the extent of the contamination and the type of remediation activities needed, the life span of a given site remediation may be a short period lasting several weeks to a more extended period lasting several years. Even for those site remediation activities requiring a number of years to complete, it is important to recognize that ultimately the remediation activities at a facility will be completed, and the air emission sources will no longer exist.

D. What Are the Sources of Organic HAP Emissions From Site Remediation Activities?

Site remediation activities may emit HAP. The levels of organic HAP emissions at any given facility at which a cleanup of remediation material is being conducted depends on site-specific factors including the type of processes used and activities conducted; the quantity, organic HAP composition, and other characteristics of the remediation material; and the time required to complete the cleanup. The following sections briefly summarize potential types of HAP emission sources related to site remediation activities.

1. In situ Treatment Processes

In situ treatment processes are available for cleanup of soils and groundwater contaminated with hazardous organic substances. The in situ processes most frequently in use at existing remediation sites physically extract volatile and semi-volatile organics by inducing controlled air flow through the remediation material. Examples of these processes are soil vapor extraction for contaminated soil and air sparging for contaminated groundwater. If not controlled, the organic vapors extracted from the soil or aqueous media are released directly to the atmosphere. Bioremediation is another category of in situ treatment process that is commonly used to remove organic contaminants. These processes are destruction processes based on stimulating microbes in the soil or groundwater to grow using the organic contaminant compound as a food and energy source. A variety of other chemical, thermal, and physical treatment processes also have been used in limited numbers of in situ applications.

Organic HAP emissions from in situ treatment processes primarily occur through a process vent. A process vent is a pipe or duct that extends above ground level through which an air or gas stream from the remediation process is exhausted to the atmosphere. Emissions occur at the point at which the organic vapor stream exits the process vent outlet into the atmosphere. Because in situ treatment allows the contaminated material to be treated in place, the primary HAP emissions points for in situ treatment processes are process vents. Avoiding the need to first extract the contaminated media eliminates potential HAP sources associated with accumulating, handling, storing, and treating the remediation material in aboveground units.

2. Ex situ Treatment Processes

Ex situ treatment processes also remove, destroy, or transform the contaminants but first require the contaminated media to be extracted from the ground or water body before it can be treated. For a given site, using an ex-situ treatment process in place of an in situ treatment process generally allows the remediation to be completed in a shorter period; it also provides greater control of the consistency of the treatment results because of the ability to mix the extracted materials and better adjust the process parameters for optimal performance. However, total remediation costs likely will be higher using an ex situ treatment because of additional costs for material extraction and handling, worker protection, treated residual disposal, and other factors.

Many ex situ processes treat the extracted material in a tank, vessel, reactor, combustion unit, or similar type of contained process unit. Extracted material for some ex situ treatment processes is treated directly on the land surface or in a surface impoundment. The ex situ treatment processes frequently used at remediation sites are groundwater pump and treat, solidification/stabilization, and incineration. Thermal desorption, bioremediation, and air stripping are also types of ex situ treatment technologies commonly used for cleanup of soils and groundwater contaminated with hazardous organic substances.

Solidification/stabilization technologies are primarily used to treat metals and other types of inorganic contaminants. In general, these technologies have limited effectiveness for treatment of organics. Solidification and stabilization processes reduce the mobility of a contaminant by physically binding or enclosing it within a

stabilized mass (solidification), or by chemically binding to a stabilizing agent (stabilization).

Incineration can be used to destroy organics in contaminated soils and other contaminated solid wastes by combustion at high temperatures (i.e., 870 to 1,200°C (1,400 to 2,200°F)). The contaminated material is burned in a rotary, circulating-bed, fluidized-bed, or other type of combustor. Often an auxiliary fuel such as natural gas is also burned to initiate and sustain combustion of the contaminated material. Treatment of contaminated materials by incineration is most frequently conducted by sending the material to a permanent, off-site incinerator facility, although mobile incinerators are available and sometimes brought on-site. Incinerators used to treat remediation wastes are subject to existing air emission regulations. We promulgated interim standards for the NESHAP for hazardous waste combustion sources under 40 CFR part 63, subpart EEE with final standards to be promulgated by June 14, 2005. If the remediation wastes are classified as hazardous under the Resource Conservation and Recovery Act (RCRA) subtitle C regulations, the waste must be burned in a RCRA-permitted incinerator. Incinerators required to meet the hazardous waste combustion NESHAP or RCRA standards use extensive air pollution control systems to achieve emissions limitation standards for organics, particulate matter, metals, and chloride emissions. These systems treat the incinerator exhaust gas stream to control emissions of particulate matter, acid gases, and other pollutants.

Thermal desorption is another process used for treating contaminated soils. Unlike incineration, the process is not designed to destroy organics but instead to physically separate the organics from the media. The contaminated soil or other material is heated in a vessel to volatilize organic compounds. Two common vessel designs are the rotary dryer and thermal screw. The bed temperatures and residence times used for the process are at a level that will volatilize selected organic contaminants but will typically not oxidize them. A carrier gas or vacuum system is used to vent the volatilized organics from the vessel to a gas stream treatment system where the organic vapors are removed or destroyed. The organic contaminants typically are either removed through condensation followed by carbon adsorption, or they are destroyed in a secondary combustion chamber or a catalytic oxidizer.

The thermal desorption process is used at site remediation activities for the separation of organics from refinery wastes, hydrocarbon-contaminated soils, coal tar wastes, wood-treating wastes, creosote-contaminated soils, pesticides, and paint wastes. Many of these process units are transportable and are temporarily set up at the remediation site for the duration of the cleanup.

Air stripping is a physical separation process widely used to remove volatile organics from contaminated groundwater. Air stripping involves the mass transfer of VOC from the water to air by contacting the water with an induced air flow. For groundwater remediation, the air stripping process is typically conducted by pumping the groundwater from extraction wells to a packed tower or an aeration tank. Air strippers can be operated continuously or in a batch mode where the air stripper is intermittently fed from a collection tank. Using batch mode operation improves the air stripper performance consistency and energy efficiency compared to a continuously operated unit because mixing in the storage tanks provides a uniform feed water composition.

The typical packed tower air stripper uses a spray nozzle at the top of a tower to distribute the contaminated water over packing in the column. A fan or blower forces air upward from the bottom of the tower countercurrent to the water flow. A sump at the bottom of the tower collects decontaminated water while a vent on the top of the tower discharges the air/vapor stream. Depending on the organic concentrations in the groundwater and local air permitting requirements, the vent stream may be discharged directly to the atmosphere or through an appropriate organic air emission control device such as activated carbon adsorber, catalytic vapor oxidizer, or thermal vapor oxidizer.

Aeration tanks strip VOC by bubbling air into an open-top tank through which contaminated water flows. A forced air blower and a distribution manifold are designed to provide good air-water contact without the need for any packing materials. If the aeration tank is uncovered, the stripped VOC are emitted to the atmosphere.

Bioremediation technologies are successfully used to clean up excavated soils, dredged sludges and sediments, and pumped groundwater contaminated with petroleum hydrocarbons, solvents, pesticides, wood preservatives, and other organic chemicals. These processes rely on indigenous or inoculated micro-organisms (e.g., fungi, bacteria, and other microbes) to degrade organic contaminants found in the soil or groundwater by metabolism. In the presence of sufficient oxygen (aerobic conditions) and other nutrient elements, microorganisms convert many organic compounds to carbon dioxide, water, and microbial cell mass. In the absence of oxygen (anaerobic conditions), microorganisms convert the organic compounds to methane, limited amounts of carbon dioxide, and trace amounts of hydrogen gas.

For ex situ biotreatment of contaminated soils and dredged sediments, the excavated material is first processed to physically separate stones and other debris. The contaminated solids are then mixed with water to a predetermined concentration dependent upon the concentration of the contaminants, the rate of biodegradation, and the physical nature of the soils. This soil slurry is placed in a reactor vessel (i.e., a bioreactor) and mixed with nutrients and, in some cases, other additives. If the process is an aerobic process, air or oxygen is blown into the reactor. When biodegradation is complete, the soil slurry is dewatered using clarifiers, pressure filters, vacuum filters, sand drying beds, or centrifuges. Use of ex situ bioreactors often is favored over using an in situ bioremediation process for heterogenous soils, low-permeability soils, or when a shorter remediation period is required.

Biodegradation processes are used at many industrial facilities to treat process wastewaters containing organics. These same processes can be used to treat contaminated groundwater containing organics. At those remediation sites where bioremediation is used to treat contaminated groundwater pumped from the ground, the common practice is to discharge the water either to the facility's existing process wastewater treatment facility or directly to a sewer for treatment at an off-site wastewater treatment facility.

As an alternative to conducting biodegradation in a bioreactor or other type of enclosed vessel, land treatment and land farming are open biodegradation processes performed on top of the ground surface. For these processes, the extracted material is applied on top of the ground in thin, lined beds or, in some cases, tilled directly back into the upper soil layer. Aerobic microbes decompose the organic compounds contained in the applied material. The material is periodically turned over or tilled to aerate the waste. Organic emissions are generated due to the volatilization of organics from the exposed surface of the

materials primarily during initial application and tilling. After application and tilling, organic emissions continue to occur from the material mixture, although at a decreasing rate, until nearly all of the volatile organics originally in the applied material are either emitted or biologically degraded.

Like in situ treatment processes, primary sources of HAP emissions from many types of ex situ treatment processes are process vents. However, unlike in situ treatment processes, there are other potential HAP emissions sources associated with ex situ treatment processes because the contaminated media is extracted from the ground and subsequently managed at the facility as essentially a waste material. Even if treatment of the material is not performed at the facility, any tanks, containers, and other types of equipment used to handle and/or temporarily store the material before it is shipped off-site are potential sources of air emissions. These potential HAP emissions sources are discussed in the next section.

3. Other Extracted-Media Sources

Material extraction activities. Depending on the characteristics of the remediation material and the extraction method used, organic HAP may be emitted by the extraction activities. Soils, sludges, and sediments are frequently extracted using heavy construction equipment. Volatilization of organics from the freshly exposed surfaces of the extracted materials can release organic HAP into the atmosphere.

Tanks. Tanks can be used at a facility to accumulate, temporarily store, or treat extracted materials containing organics. These tanks can either be open tanks (i.e., the surface of the waste material is exposed directly to the atmosphere) or covered tanks (i.e., the surface of the waste material is enclosed by a roof or cover). Organic HAP emissions result from the volatilization of organic-containing materials placed in the tank, and the subsequent release of these organic vapors to the atmosphere. For open tanks, the organic vapors released from the surface of the material are dispersed immediately into the atmosphere by diffusion and wind effects. Covering a tank (referred to as a ''fixed-roof tank'') significantly lowers organic emissions compared to open tanks. However, organic HAP emissions still occur from fixed-roof tanks from the displacement of organic vapors that have collected in the enclosed space above the surface of the stored material through vents on the tank roof. This displacement occurs during tank filling operations when the vapors are pushed out through the tank vents by the rising level of material in the tank (commonly referred to as ''working losses'') and to a lesser extent, when the volume of the vapor in the tank is increased by fluctuations in ambient temperature or pressure (commonly referred to as ''breathing losses''.) The quantity of organic emissions from a fixed-roof tank varies depending on volatility of the organic constituents in the extracted materials.

Separators. Separators are used to separate oil or organics from water. Organic emissions from these sources are similar to those occurring from open-top wastewater treatment tanks.

Containers. Containers such as drums, dumpsters, and roll-off boxes may be used to accumulate, store, and treat extracted materials. Organic HAP emissions from containers can result from several emission mechanisms. Organic emissions occur during loading of liquid, slurry, and sludge waste materials into containers due to the displacement of organic vapors to the atmosphere through container openings by the rising level of material in the container. Once loaded, containers that remain open to the atmosphere are an emission source when organics evaporate from the exposed surface of the material placed in the container.

Surface Impoundments. Although extracted groundwater, slurries, and sludge materials are managed in tanks at most site remediations, these materials under special circumstances may be managed in surface impoundments. A surface impoundment is an earthen pit, pond, or lagoon. Organic emissions from surface impoundments occur as organics evaporate from the exposed surface of the materials placed in the impoundment. Surface impoundments containing organic-containing materials may have high organic emissions because of the large exposed surface area and the extended residence time that materials remain in the impoundment (sometimes weeks or months).

Transfer Equipment. Organic HAP emissions can potentially occur during the transfer of a material if the transfer system is open to the atmosphere. Volatilization of organics from the exposed surfaces of the extracted materials can release organic HAP into the atmosphere. Examples of such systems include individual drain systems (with all associated drains, junction boxes, and sewer lines), channels, flumes, gravity-operated conveyors (such as a chute), and mechanically-powered conveyors (such as a belt or screw conveyor).

Equipment Leaks. Leaks from pumps, valves, and other ancillary equipment needed to operate material handling and treatment processes can be a potential source of organic HAP emissions. Organic vapors can be emitted directly to the atmosphere by flowing through small openings created in worn or defective pump and valve packings, flange gaskets, or other types of equipment seals. In addition, organic emissions occur when liquids leak outside the equipment exposing the leaked fluid to the ambient air. Emissions result when organics contained in the drip, puddle, or pool of leaked liquid evaporate into the atmosphere. Although the quantity of organic emissions from a single leak is small, when many equipment leaks occur at a facility, the total organic HAP emissions from equipment leaks can be significant.

E. What Are the Potential Health Effects Associated With Organic HAP Emitted From Site Remediation Activities?

The range of potential human health effects associated with exposure to organic HAP and VOC include cancer, aplastic anemia, upper respiratory tract irritation, liver damage, and neurotoxic effects (e.g., headache, dizziness, nausea, tremors). Thus, the proposed rule has the potential for providing both cancer and noncancer related health benefits. The following is a summary of the potential health effects associated with exposure to some of the primary HAP emitted from site remediation activities.

1. Benzene

Acute (short-term) inhalation exposure of humans to benzene may cause drowsiness, dizziness, and headaches, as well as eye, skin, and respiratory tract irritation, and, at high levels, unconsciousness. Chronic (long-term) inhalation exposure has caused various disorders in the blood, including reduced numbers of red blood cells and aplastic anemia, in occupational settings. Reproductive effects have been reported for women exposed by inhalation to high levels, and adverse effects on the developing fetus have been observed in animal tests. Increased incidence of leukemia (cancer of the tissues that form white blood cells) has been observed in humans occupationally exposed to benzene. We have classified benzene as a Group A, known human carcinogen.

2. Ethyl benzene

Acute exposure to ethyl benzene in humans results in respiratory effects such as throat irritation and chest

constriction, irritation of the eyes, and neurological effects such as dizziness. Chronic exposure to ethyl benzene by inhalation in humans has shown conflicting results regarding its effects on the blood. Animal studies have reported effects on the blood, liver, and kidneys from chronic inhalation exposures. No information is available on the developmental or reproductive effects of ethyl benzene in humans, but animal studies have reported developmental effects, including birth defects in animals exposed via inhalation. We have classified ethyl benzene in Group D, not classifiable as to human carcinogenicity.

3. Toluene

Humans exposed to toluene for short periods may experience irregular heartbeat and effects on the central nervous system (CNS) such as fatigue, sleepiness, headaches, and nausea. Repeated exposure to high concentrations may induce loss of coordination, tremors, decreased brain size, and involuntary eye movements, and may impair speech, hearing, and vision. Chronic exposure to toluene in humans has also been indicated to irritate the skin, eyes, and respiratory tract, and to cause dizziness, headaches, and difficulty with sleep. Children exposed to toluene before birth may suffer CNS dysfunction, attention deficits, and minor face and limb defects. Inhalation of toluene by pregnant women may increase the risk of spontaneous abortion. We have developed a reference concentration of 0.4 milligrams per cubic meters (mg/m^3) for toluene. Inhalation of this concentration or less over a lifetime would be unlikely to result in adverse noncancer effects. No data exist that suggest toluene is carcinogenic. We have classified toluene in Group D, not classifiable as to human carcinogenicity.

4. Vinyl Chloride

Acute exposure to high levels of vinyl chloride in air has resulted in CNS effects such as dizziness, drowsiness, and headaches in humans. Chronic exposure to vinyl chloride through inhalation has resulted in liver damage to humans. Human and animal studies show adverse effects that raise a concern about potential reproductive and developmental hazards to humans from exposure to vinyl chloride. Cancer is a major concern from exposure to vinyl chloride via inhalation, as vinyl chloride exposure has been shown to increase the risk of a rare form of liver cancer in humans. We have classified vinyl chloride as a Group A, known human carcinogen.

5. Xylenes

Acute inhalation of mixed xylenes (a mixture of three closely related compounds) in humans may cause irritation of the nose and throat, nausea, vomiting, gastric irritation, mild transient eye irritation, and neurological effects. Chronic inhalation of xylenes in humans may result in CNS effects such as headaches, dizziness, fatigue, tremors, and incoordination. Other reported effects include labored breathing, heart palpitation, severe chest pain, abnormal electrocardiograms, and possible effects on the blood and kidneys. We have classified xylenes in Group D, not classifiable as to human carcinogenicity.

6. Volatile Organic Compounds

By requiring facilities to reduce organic HAP emitted from site remediation activities, the proposed rule would also reduce emissions of those VOC that are not HAP but contribute to adverse human health affects. Many VOC react photochemically with nitrogen oxides in the atmosphere to form tropospheric (low-level) ozone. A number of factors affect the degree to which VOC emission reductions will reduce ambient ozone concentrations.

Human laboratory and community studies have shown that exposure to ozone levels that exceed the national ambient air quality standards (NAAQS) can result in various adverse health impacts such as alterations in lung capacity and aggravation of existing respiratory disease. Animal studies have shown increased susceptibility to respiratory infection and lung structure changes. The VOC emissions reductions resulting from the proposed rule will reduce low-level ozone and have a positive impact toward minimizing these health effects.

Among the welfare impacts from exposure to air that exceeds the ozone NAAQS are damage to some types of commercial timber and economic losses for commercially valuable crops such as soybeans and cotton. Studies have shown that exposure to excessive ozone can disrupt carbohydrate production and distribution in plants. This can lead in turn to reduced root growth, reduced biomass or yield, reduced plant vigor (which can cause increased susceptibility to attack from insects and disease and damage from cold), and diminished ability to successfully compete with more tolerant species. In addition, excessive ozone levels may disrupt the structure and function of forested ecosystems.

F. What Is the Relationship of the Rule to Other EPA Regulatory Actions Affecting Site Remediation Activities?

Existing requirements for site remediations conducted under the Comprehensive Environmental Response and Compensation Liability Act (CERCLA) and RCRA programs are administered under the oversight of EPA's Office of Solid Waste and Emergency Response (OSWER). A site remediation may be regulated under one of three OSWER programs.

1. Superfund Removal and Remedial Actions

Remediation activities under the Superfund program are exempt from the requirements of the proposed rule. See discussion in section II.A of this preamble.

2. RCRA Corrective Actions

Remediation activities under the RCRA Corrective Action program are exempt from the requirements of the proposed rule. See discussion in section II.A of this preamble.

3. Underground Storage Tanks

Subtitle I of RCRA directs the EPA to establish regulatory programs to prevent, detect, and clean up releases from underground storage tanks (UST) containing petroleum or hazardous substances listed under section 101(14) of CERCLA (petroleum is specifically excluded from this CERCLA list). The EPA's Office of Underground Storage Tanks is responsible for developing and implementing the UST program. Federal regulations for UST have been developed which specify requirements for tank notification, interim prohibition, new tank standards, reporting and recordkeeping requirements for existing tanks, corrective action, financial responsibility, compliance monitoring and enforcement, and approval of State programs. The technical standards are codified in 40 CFR part 280 and 40 CFR part 281 with the list of CERCLA hazardous substances in 40 CFR part 302.4.

The EPA is authorized under subtitle I to delegate UST regulatory authority to approved State programs. States with delegated authority administer and enforce their own approved UST program instead of the Federal regulations. There are currently 25 States and the District of Columbia with approved UST programs. Each of the approved State UST programs is codified in 40 CFR part 282. In the other States without an approved UST program, EPA administers and enforces the Federal regulations.

An UST is a tank having a capacity greater than 110 gallons for which the volume of the tank (including the volume of any connected underground pipes) is 10 percent or more beneath the surface of the ground. The major category of UST regulated under this program are tanks used to store petroleum and petroleum-based substances including crude oil, motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils. The regulations also apply to underground tanks used to store any hazardous substance defined in section 101(14) of CERCLA but are not regulated as a hazardous waste under RCRA subtitle C. The regulations do not apply to underground tanks used for a number of specific applications listed in the applicability and definition sections of the rules.

The owners and operators of petroleum or hazardous substance UST systems must clean up any spills, leaks, or other releases from the tank into groundwater, surface water, or subsurface soils. Subpart F under 40 CFR part 280 specifies the general requirements for a release response and for corrective action. The specific requirements are determined based on the site-specific circumstances. In cases where contamination of soil or groundwater has occurred, the site remediation may proceed according to a corrective action plan approved by the EPA or the designated State or local agency responsible for implementing the UST program at the UST site. Under the subpart F requirements, this plan must provide for adequate protection of human health and the environment as determined by the site-specific factors including an exposure assessment.

G. What Criteria Are Used in the Development of NESHAP?

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new and existing sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. 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 standards are set at levels that assure 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 limitations achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing 5 sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of cost of achieving the emissions reductions, any health and environmental impacts, and energy requirements.

II. Summary of the Proposed Rule

The proposed rule would amend title 40, chapter I, part 63 of the Code of Federal Regulations by adding a new subpart GGGGG—National Emission Standards for Hazardous Air Pollutants for Site Remediation. The following is a summary of the requirements for the proposed rule.

A. Who is Affected by the Proposed Rule?

1. General Applicability

The proposed rule would affect owners and operators of facilities, with certain exceptions described below, that are major sources of HAP emissions, where a MACT activity is also conducted, and at which a site remediation is performed. All three criteria must exist for the rule to apply. For the purpose of implementing the proposed rule, a site remediation is one or more activities or processes used to remove, destroy, degrade, transform, or immobilize organic HAP constituents in soils, sediments, groundwater, surface waters, or other types of solid or liquid environmental media as well as pure materials that are not mixed with environmental media.

2. Major Source Determination

A major source of HAP is defined under CAA section 112 as any stationary source or group of stationary sources located within a contiguous area and under common control that emits, or has the potential to emit, any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year. In determining whether or not your facility is a major source, you would consider all sources of HAP emissions or potential emissions at your facility.

A major source determination includes consideration of a facility's potential to emit (PTE) as well as actual emissions. The PTE is the maximum capacity of a stationary source to emit under its physical and operational design. Any physical or operational limitations on the source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation, or on the type or amount of material combusted, stored, or processed, is treated as part of the source's design if the limitation is enforceable by the EPA Administrator.

There are a number of tools and resources available to assist an owner or operator in estimating and inventorying their facility's or source's HAP emissions. For example, our Air Clearinghouse for Inventories and Emission Factors (CHIEF) website (*www.epa.gov/ttn/chief/software/airchief*) provides the public and private sector users access to air emission data specific to estimating the types and quantities of pollutants that may be emitted from a variety of sources. For those sources or emission points most typically associated with site remediation activities (such as tanks and surface impoundments), our WATER9 computer program provides an analytical model for estimating compound specific air emissions from waste and wastewater collection, storage, and treatment systems.

For additional information on determining if your source is a major source, EPA policy memoranda and other guidance on major source determinations and PTE can be found on the Internet at *www.epa.gov/ttn/oarpg* under ''OAR Policy and Guidance Information'' or on the Air Toxics Website at *www.epa.gov/ttn/atw/pte/ptepa*

3. MACT Activity

A ''MACT activity'' is defined as a non-remediation activity that is covered by one of the listed major source categories. This list is compiled pursuant to CAA section 112(c) and was first published on July 16, 1992 (57 FR 31576). The list is updated periodically with the most recent update published in the **Federal Register** on February 12, 2002 (67 FR 6521). The term ''covered'' here does not mean that the non-remediation activity is necessarily subject to a MACT standard, just that the activity is included within the scope of a particular MACT source category.

4. Exemptions

The proposed rule would not apply to site remediations we are specifically excluding from applicability.

a. CERCLA Cleanups and RCRA Corrective Action

The proposed rule exempts sites addressed under CERCLA authority and corrective action activities initiated under permits or orders, including such activities under authorized state programs, at RCRA Treatment, Storage and Disposal facilities. Superfund National Priorities List (NPL) sites have extensive contamination that often require many years of study to determine a permanent remedy. Superfund sites are regulated under a program created by CERCLA that was enacted in 1980 and amended by the Superfund Amendments and Reauthorization Act in 1986.

The Superfund program is designed to protect public health and the environment while providing the flexibility to use effective and innovative remediation approaches that best suit the site-specific conditions at each CERCLA site (CERCLA section 121). The Superfund program conducts extensive evaluation of the contamination at each NPL site (see 40 CFR 300.430). As part of the evaluation process, a decision document (i.e., Record of Decision (ROD)) is developed for response actions, documenting the extent of contamination and the cleanup method(s) to be used at the site. Under this process, a site-specific analysis, considering the impacts to air, soil and groundwater, is conducted and an appropriate remedy is selected. During the ROD process, the general public is given the opportunity for input in the decision-making process through public hearings and submission of written comments. The public plays an important role in identifying and characterizing site-specific factors, such as the type of contaminants, the level and extent of contamination and other site-specific factors. We believe this procedure results in selection of the best plan for cleaning up each site and achieving the program's goals.

As implemented under the requirements of RCRA, hazardous waste treatment, storage and disposal facilities (TSDF) must obtain a permit specifying requirements for managing hazardous waste. As a condition of obtaining this permit, facilities are required to undertake corrective action addressing releases of hazardous waste and hazardous constituents from units at the facility which do not themselves require RCRA permits (solid waste management units) (RCRA section 3004(u)). For such designated contamination areas at TSDF, requirements for the cleanup of the contamination are included in the facility's RCRA permit, or Federal Order where applicable. Such cleanup activities are known as ''corrective actions.'' Although RCRA is a separate program from Superfund, the RCRA permitting or Federal Order process for TSDF share several significant characteristics with Superfund cleanup activities at NPL sites. First, it is also the intent of the RCRA Corrective Action program to protect public health and the environment while allowing flexibility in choosing solutions to eliminate or reduce site contamination. Second, RCRA permitting and Federal Order procedures involve the public in the decision-making process through informal public meetings, public hearings or written comment. Finally, an extensive site-specific evaluation is performed at the RCRA facility to evaluate the extent of the contamination, while considering appropriate remedies through a multi-media (i.e., air, soil, groundwater) perspective.

We believe that requiring remediation activities at Superfund NPL sites and at permitted or Federal Order RCRA corrective action sites to meet the requirements of this proposed rule could either create incentives to avoid cleanup, or result in the selection of a remediation approach that is less desirable, protective or permanent (e.g., capping or containing the contaminated media instead of permanently removing or treating the contaminants). (Cf. Louisiana Environmental Action Network v. EPA, 172 F. 3d 65, 67, 70 (D.C. Cir. 1999) (EPA lacks authority in many instances to compel excavation of wastes, so that imposition of requirements on excavated wastes discourages more protective remediations; EPA may permissibly adjust rules applicable to excavated wastes to avoid this result.)) Furthermore, we believe that these existing programs are the most appropriate, comprehensive and effective regulatory approach to address air emissions resulting from site remediation activities at sites addressed using CERCLA authority and RCRA corrective action sites and to avoid transfer from one medium to another.

b. Other Exemptions

The proposed rule would not apply to site remediation activities involving the cleanup of radioactive mixed waste managed in accordance with all applicable regulations under Atomic Energy Act and Nuclear Waste Policy Act authorities. Another applicability exemption is provided for those site remediations performed to clean up remediation material containing little or no organic HAP. The proposed rule would not apply to any facility for which the owner or operator demonstrates that the total annual organic HAP mass content of the remediation material to be cleaned up at the facility is less than one Mg/yr.

5. Application of Once In, Always In Policy

Due to the potential short term nature of site remediations, we have evaluated how the proposed rule fits with existing policies for CAA section 112 standards. Our current policy is that once a facility or source is subject to a MACT standard, it remains subject to that standard as long as the affected source definition or criteria are met. This is called the ''once in, always in'' policy. Because of the uniqueness of this source category and the nature of the activities that are being regulated in the proposed rule, we have evaluated how our once in, always in policy should apply relative to the site remediation source category.

The existing policy may affect facilities that conduct site remediations in situations where a facility is presently an area source and the remediation activities would increase the total facility PTE such that the facility exceeds the 10/25 tons of HAP criteria for a major source under CAA section 112. Because the facility is now considered a major source of HAP, another operation at the facility, such as a manufacturing process, would now be subject to NESHAP for other source categories located at their facility. Furthermore, after the remediation is completed, the facility would, in terms of emissions, essentially be back to where it was as an area source (assuming no change in the facility plant operations). Under the once in, always in policy, the facility would remain subject to the NESHAP that was triggered by the short-term change of source status from area to major brought about by the site remediation activity.

In the situation described above, we believe the once in, always in policy would create an obvious disincentive for owners or operators to engage in site remediations, particularly since voluntary remediation would be affected by the proposed rule. Our intent is to not prescribe requirements that create incentives to avoid a cleanup or result in the selection of less desirable or less protective or permanent remediation approaches. Therefore, we have determined that the once in, always in policy does not apply relative to the site remediation source category for those facilities that are area sources prior to and after the cleanup activity.

The above application of the once in, always in policy to site remediation activities addresses the issue of a facility's MACT obligation after completing a remediation activity. We believe a situation could occur, based on language in the CAA, that this policy does not address. Specifically, certain area sources for non-remediation activities could become major sources once a remediation activity begins operation. While the facility would have no MACT obligation (Site Remediation MACT or otherwise) after completing all remediation, compliance with a non-remediation MACT standard may be required due to the increase in PTE from the remediation activity. An example of this situation would be an area source chemical processing plant not currently subject to the Hazardous Organic NESHAP (HON), but with manufacturing operations covered by that MACT standard. After operating for many years as an area source, the facility initiates a remediation operation that increases its PTE to major source levels. Since the facility is now a major source of HAP, the facility would have to comply with the HON for the operations covered by that MACT standard. Furthermore, since the compliance dates for the various processes regulated by the HON have all passed, any controls required by the HON would have to be in place at the time the facility became a major source as specified by the HON. Prior to commencing the remediation activity, the facility may find it preferable to install federally enforceable controls on certain emission points and maintain area source status to avoid becoming subject to the industry-relevant MACT standard. We realize this option is not achievable in every case.

6. Exemption of Short-Duration Site Remediations

The EPA is proposing to exempt sources from the requirements of the proposed rule where the contamination requiring remediation occurs within 7 days prior to the remediation activity. This exemption is intended to apply to contamination commonly caused by a spill where the cleanup is initiated soon after the spill event and is of very short duration (i.e., typically 30 days or less). The purpose of this exemption is to encourage prompt attention to remediating contaminant spills and leakages.

Although the Agency is not proposing any other duration-based exemptions in the proposed rule, it is possible that other duration-based exemptions may be appropriate in light of the policy goal of encouraging voluntary site remediations to remove risk to human health and the environment. For example, there may be some site remediations that can be completed in the time required by this proposal to modify relevant permits; it may make sense in cases like this to complete the remediation activity as quickly as possible without waiting for paperwork modifications to be completed. The Agency requests comment on which situations, if any, might be appropriate for further duration-based exemptions to today's proposed rule.

B. What Are the Affected Sources?

The proposed rule defines three groups of affected sources, (1) process vents, (2) remediation material management units, and (3) equipment leaks. The affected source for process vents is the entire group of process vents associated with both in situ and ex situ remediation activities. The affected source for remediation material management units is the entire group of tanks, surface impoundments, containers, oil/water separators, and transfer systems used to store, transfer, treat, or otherwise manage remediation material. The affected source for equipment leaks is the entire group of remediation equipment components (pumps, valves, etc.) that contain or contact remediation material having a total organic HAP concentration equal to or greater than 10 percent by weight, and are intended to operate for 300 hours or more during a calendar year.

C. What Are the Standards for Process Vents?

The proposed rule would establish emission limitation and operating standards for certain process vents associated with site remediation treatment processes. The same standards would apply to both in situ and ex situ treatment processes. These standards would apply to the entire group of affected process vents associated with all of the treatment processes used for your site remediation. The standards would be the same for existing and new sources.

The air emission control requirements under the proposed rule would not apply to certain process vent streams with low flow, low HAP concentration characteristics. A process vent would be exempted from the air emission control requirements of the NESHAP if the owner or operator determines the process vent stream flow rate to be less than 0.005 standard cubic meters per minute. Also exempted would be those process vent streams having a flow rate less than 6.0 standard cubic meters per minute and a total HAP concentration in the vent stream less than 20 parts per million by volume (ppmv). This process vent exemption requires that both the process vent flow rate and the organic HAP concentration criteria be met to qualify for the exemption. A process vent would also be exempted from the air emission control requirements if the HAP concentration of the remediation material being treated by the vented process is less than 10 parts per million by weight (ppmw).

Under the proposed rule, you would have two compliance options for the affected process vents. The first option would be to reduce the total organic HAP emissions from all affected process vents at the facility to a level less than 1.4 kilograms per hour (kg/h) (approximately 3.0 pounds per hour) and 2.8 Mg/yr (approximately 3.1 tpy). You would have to achieve both of these mass emission limitations to comply with this option under the proposed rule. If the total organic HAP emissions from all affected process vents associated with your site remediation exceed either the hourly or annual mass emission limitation then you would need to use appropriate controls to reduce the emission levels to comply with the emission limitations. If you can meet both of the total organic HAP mass emission limitations using no controls or the existing controls you already have in place to meet federally-enforceable organic emission standards, then no additional controls would be required under the proposed rule for your affected process vents.

As an alternative to complying with the mass emission limits, a second option proposed under the proposed rule would be to reduce the total organic HAP emissions from all of the affected process vents by at least 95 weight percent. At sites with multiple affected process vent streams, you may comply with this option by a combination of controlled and uncontrolled process vent streams that achieve the 95 percent reduction standard on an overall mass-weighted average. For those process vent streams controlled by venting to a control device, the closed vent system and control device would need to meet certain requirements specified in the proposed rule.

D. What Are the Standards for Remediation Material Management Units?

The proposed rule would establish emissions limitation and operating standards for certain remediation management units (i.e., units associated with the management of remediation materials). For those remediation material management units required to

use air emission controls, the proposed rule would establish by source type (i.e., tanks, oil-water separators, containers, surface impoundments, transfer systems) separate sets of emission limitation, operating limit, and work practice standards as appropriate for each source type. The standards would be the same for existing and new sources. Air emission controls would be required on a remediation material management unit used to manage remediation material having an organic HAP (VOHAP) concentration equal to or greater than 500 ppmw. Remediation material with a VOHAP concentration of less than 500 ppmw is not required to be managed in controlled units.

The proposed rule also provides an exemption that would allow an owner or operator to selectively designate, on a site-specific basis, certain individual units to be exempt from the air emission control requirements regardless of the VOHAP concentration of the remediation material placed in the unit. Application of this discretionary exemption by the owner or operator would be limited based on remediation material organic HAP content. Under this provision, the total annual organic HAP mass content of the regulated remediation material placed in all of the units designated by the owner or operator as exempt units could not exceed 1 Mg/yr as determined in accordance with the procedures specified in the proposed rule.

Determination of VOHAP concentration can be made by either direct measurement of samples of the remediation material or through use of knowledge of the remediation material (i.e., application of owner/operator expertise using appropriate information regarding the remediation material). In using direct measurement, the VOHAP concentration of the collected samples would be measured using Method 305 in 40 CFR part 63, appendix A. As an alternative to using Method 305, you would be allowed to determine the organic HAP concentration using any one of the several alternative test methods, as applicable to the remediation material stream, and then adjust the test results using factors specified in the proposed rule to determined the VOHAP concentration.

The VOHAP determination using direct measurement for a given remediation material unit would be based on samples collected prior to placing the remediation material in the unit at any point you choose before the organic constituents in the material have the potential to volatilize and be released to the atmosphere. For example, you may sample the remediation material stream at the point where it is extracted from the ground (''point-of-extraction'' as defined in the proposed rule). Alternatively, you may choose to sample the remediation material stream within the remediation material unit (provided that organic constituents in the material have not been allowed to volatilize and be released to the atmosphere, as specified in the proposed rule).

Allowing the use of knowledge to determine the VOHAP concentration of a remediation material provides flexibility for the owner or operator to use any appropriate information to determine VOHAP concentration of a remediation material. The basis for knowledge of the remediation material could include existing information collected by the owner or operator for other purposes or new information collected specifically for the VOHAP remediation material determination.

For remediation material management units downstream of the contaminated area in particular, it is important to note that the determination of the VOHAP concentration is made within each remediation material management unit. This approach simplifies the determination process for varying treatment processes and addresses both the situation of management of a single remediation stream or management of two or more material streams combined (either remediation or non-remediation, or both). If a single material stream, or combination of streams, have a VOHAP concentration of 500 ppmw or greater in the management unit, then the unit is subject to the air emission control requirements for the particular unit as specified in the proposed rule. Once the VOHAP concentration falls below the 500 ppmw action level, the material need not be managed in controlled units. If the HAP concentration is increased to 500 ppmw or more in a downstream unit, that unit will need control.

For example, a facility remediation project involves a pump and treat system that generates groundwater with more than 500 ppmw VOHAP, measured as it exits the groundwater pumping/piping system. It is initially pumped into a holding tank managing the single remediation stream. The remediation material, the groundwater in this case, has a VOHAP concentration greater than 500 ppmw, and, therefore, the holding tank would be subject to the tank standards under the proposed rule. From the holding tank, the groundwater is sent to a larger mixing tank where the groundwater is mixed with other wastewater streams, where the combined VOHAP concentration is less than 500 ppmw, and the resultant mixture is treated to adjust the pH of the mixture. Because the VOHAP concentration of the combined streams is below 500 ppmw, the mixing tank would not be subject to the tank standards under the proposed rule.

Following this mixing operation, the combined wastewater is sent to an on-site wastewater treatment system. Since the mixture leaving the mixing tank has a VOHAP concentration of less than 500 ppmw, all downstream processes and management units (e.g., tanks, surface impoundments, containers or transfer systems) would not be subject to the control requirements for remediation material management units unless the concentration is increased to 500 ppmw or greater through phase separation or other method.

In general, we expect remediation streams to be managed separately so a stream would be managed in controlled units until it is treated to reduce the concentration below 500 ppmw. We believe, however, that in some cases a remediation stream may be combined with one or more streams and treated downstream from the mixing point. Mixing merely for the purposes of dilution is not allowed, but if mixing occurs to facilitate treatment (i.e., to treat all streams in a centralized operation), and the resulting stream has a VOHAP concentration below 500 ppmw, then that stream does not have to be managed in controlled units.

We realize this approach deviates somewhat from other rules regulating wastewater-type management or treatment units that require air emission controls after the VOHAP concentration falls below 500 ppmw due to mixing. For site remediation operations, this is an appropriate approach since we believe remediation activities are typically of a limited duration, relatively low-flow in comparison to facilitywide wastewater management operations, and often treated effectively in a facility-wide treatment system. We do not want to create obstacles that could inhibit overall treatment effectiveness. Moreover, we believe remediation streams would get some level of HAP reduction, and, thus, emission reduction, through biological treatment within a facility's wastewater treatment system.

1. Tanks

The proposed rule would establish emission limitation and work practice standards to control organic HAP emissions from those tanks managing remediation material having an average VOHAP concentration equal to or greater than the 500 ppmw action level.

For those tanks required to meet the air emission control requirements, you would need to achieve one of two levels of control. The required level of control would be determined by the tank design capacity and the maximum HAP vapor pressure of the extracted material in the tank.

For each tank required to use Level 1 controls, you would be required to comply with the existing 40 CFR part 63, subpart OO—National Emission Standards for Tanks—Level 1. For these tanks, you could also comply with the proposed rule by using Level 2 controls if you choose to do so.

For each tank required to use Level 2 controls, you would have five compliance options under the proposed rule. The compliance alternatives provided under the proposed rule would allow you to either: (1) Use a fixed-roof tank with an internal floating roof; (2) use an external floating roof tank; (3) vent the tank through a closed vent system to a control device that meets the requirements specified in the proposed rule; (4) locate an open tank inside an enclosure vented through a closed-vent system to a control device that meets the requirements specified in the proposed rule; or (5) use a pressurized tank that operates as a closed system during normal operations. The specific technical requirements for each of these alternatives are implemented under the proposed rule by cross-referencing the existing Tank Level 2 control standards in 40 CFR 63.685(d) of the OSWRO NESHAP.

2. Containers

The proposed rule would establish emission limitation and work practice standards to control organic HAP emissions from containers having a design capacity greater than 0.1 cubic meters (approximately 26 gallons) used to manage remediation material having a VOHAP concentration of 500 ppmw or more. For those containers required to use air emission controls, you would need to achieve one of three levels of control that would be determined by the container design capacity, the organic content of the extracted material in the container, and whether the container is used for a waste stabilization process. You would be required to comply with the specified requirements for the applicable control level in the existing 40 CFR part 63, subpart PP—National Emission Standards for Containers. Except for containers used for waste stabilization, these standards would require that you manage the extracted material in containers that use covers according to the requirements specified in the proposed rule. Should affected containers be used for a waste stabilization process, containers would be required to be vented to a control device.

Application of the container standards and the various levels of control is illustrated in the following example. In the situation where contaminated soil (i.e., the remediation material in this case) is excavated and placed in a dump truck (i.e., a container under the definitions used in the proposed rule), the truck containing the soil would be required to meet Level 1 controls if the VOHAP concentration is equal to or greater than 500 ppmw and the criteria for Level 2 controls is not met. If this were the case, as it likely would be in most remediation situations, then a cover such as tarp covering the remediation material would be adequate to meet the Level 1 control requirements. If the vapor pressure and VOHAP concentration were such that Level 2 controls were required then a more strenuous set of controls would apply.

3. Surface Impoundments

For each surface impoundment required to use air emission controls, you would be required to comply with the existing 40 CFR part 63, subpart QQ—National Emission Standards for Surface Impoundments. Under this subpart, you must meet one of two options: (1) Use a cover over the surface impoundment and vent through a closed-vent system to a control device; or (2) use a floating membrane cover designed and operated according to requirements specified in the proposed rule.

4. Oil-Water and Organic-Water Separators

For each oil-water or organic-water separator required to use air emission controls, you would be required to comply with the existing 40 CFR part 63, subpart VV—National Emission Standards for Oil-Water and Organic-Water Separators. Under this subpart, you must meet one of three options: (1) Use a floating roof on the separator; (2) use a cover over the separator that is vented through a closed-vent system to a control device; or (3) use a pressurized separator designed and operated according to requirements specified in the proposed rule.

5. Material Transfer Systems

For each individual drain system required to use air emission controls, you would be required to comply with the existing 40 CFR part 63, subpart RR—National Emission Standards for Individual Drain Systems. For transfer systems required to use air emission controls other than individual drain systems, you would be required to comply with one of three options: (1) Use covers; (2) use continuous hard-piping; or (3) use an enclosure vented to a control device.

E. What are the Standards for Equipment Leaks?

The proposed rule would establish work practice and equipment standards to control organic HAP emissions from leaks in pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, flanges and other connectors, and product accumulator vessels that either contain or contact a regulated material that is a fluid (liquid or gas) and has a total organic HAP concentration equal to or greater than 10 percent by weight. These work practice and equipment standards would not apply to equipment that operates less than 300 hours per calendar year. You would have the option of complying with the provisions of either 40 CFR part 63, subpart UU—National Emission Standards for Equipment Leaks—Control Level 1 or 40 CFR part 63, subpart UU—National Emission Standards for Equipment Leaks—Control Level 2. Both of these subparts require you to implement a leak detection and repair program (LDAR) and to make certain equipment modifications.

F. What Are the Requirements for Remediation Material Sent Off-Site?

Under the proposed rule, if you transfer remediation material containing organic HAP to another party, another facility, or receive it from another facility, this material would need to be managed according to the provisions of this subpart. In other words, if the material has a VOHAP concentration of 500 ppmw or more, as determined according to the procedure in the proposed rule, then at the new facility this material would need to be managed in units that meet the air emission control requirements under the Site Remediation NESHAP for the applicable remediation material management unit type (i.e., tank, containers, etc.). Similarly, any treatment process used for the transferred remediation material would need to meet the process vent control requirements.

G. What Are the General Compliance Requirements?

Under the proposed rule, you would be required to meet each applicable emission limitation and work practice standard in the proposed rule at all

times, except during periods of startup, shutdown, and malfunction. You must develop and implement a written startup, shutdown, and malfunction plan for your site remediation according to the provisions of 40 CFR 63.6(e)(3).

Also with regard to compliance, it is important to note that under the provisions of the proposed rule, if an affected source (i.e., a remediation management or treatment unit) is subject to and complying with the control requirements under another part 61 or part 63 standard (e.g., has either installed air emission controls or has taken other actions to reduce HAP emissions to levels dictated by the other part 61 or part 63 standards) then the affected source is exempt from the control requirements of the proposed rule in 40 CFR 63.7883 through 40 CFR 63.7933. However, the source must be controlling air emissions under the other rule; the exemption under the proposed rule does not apply if the source is merely exempt from the control requirements of the other rule and has not taken action to limit HAP emissions.

H. What Are the Testing and Initial Compliance Requirements?

Initial compliance for process vents would be demonstrating that either: (1) The total organic HAP emissions from all affected process vents is less than 1.4 kg/h and 2.8 Mg/yr; or (2) the total organic HAP emissions from all of the affected process vents is reduced by at least 95 weight percent.

Initial compliance for remediation material units would be demonstrating that either: (1) The VOHAP concentration of the remediation material managed in the unit is below the 500 ppmw action level; or (2) the unit meets all applicable air emission control requirements for the unit. If a control device is used, initial compliance is determined by either: (1) Performing a performance test according to 40 CFR 63.7 of the general provisions and using specific EPA reference test methods; or (2) performing a design evaluation according to procedures specified in the proposed rule. You also must establish your operating limits for the control device based on the values measured during the performance test or determined by the design evaluation.

I. What Are the Continuous Compliance Provisions?

To demonstrate continuous compliance with the applicable emission limitations and work practice standards under the proposed rule, you would perform periodic inspections and continuous monitoring of certain types of air pollution control equipment you use to comply with the proposed rule. In those situations when a deviation from the operating limits specified for a control device is indicated by the monitoring system or when a damaged or defective component is detected during an inspection, you must implement the appropriate corrective measures.

To demonstrate continuous compliance with an emission limitation for a given source, you would continuously monitor air emissions or operating parameters appropriate to the type of control device you are using to comply with the standard, and keep a record of the monitoring data. Compliance is demonstrated by maintaining each of the applicable parameter values within the operating limits established during the initial compliance demonstration for the control device.

There are different requirements for demonstrating continuous compliance with the work practice standards, depending on which standards are applicable to a given emission source. To ensure that the control equipment used to meet an applicable work practice standard is properly operated and maintained, the proposed rule would require that you periodically inspect and monitor this equipment. When a cover is used to comply with a work practice standard, you must visually inspect the cover periodically and keep records of the inspections. In addition, for external floating roofs, seal gap measurements must be performed on the secondary seal once per year and on the primary seal every 5 years. Leak detection monitoring using Method 21 would be required for certain types of covers to ensure gaskets and seals are in good condition, and for closed-vent systems to ensure all fittings remain leak-tight. In general, annual inspection and leak detection monitoring of covers is proposed. Annual inspection and leak detection monitoring would be required for closed-vent systems. Any defects or conditions causing failures detected by an inspection or monitoring need to be promptly repaired and records of the repairs kept.

You would be allowed to use an alternative to the monitoring required by these proposed standards. If you choose to do so, you would be required to request approval for alternative monitoring according to the procedures in 40 CFR 63.8 of the General Provisions.

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

The proposed rule would require you to keep records and file reports consistent with the notification, recordkeeping, and reporting requirements of the General Provisions of 40 CFR part 63, subpart A. Two basic types of reports are required: initial notification and semiannual compliance reports. The initial notification report advises the regulatory authority of applicability for existing sources or of construction for new sources.

The initial compliance report demonstrates that compliance has been achieved. This report contains the results of the initial performance test or design evaluation, which includes the determination of the reference operating parameter values or range and a list of the processes and equipment subject to the standards. Subsequent compliance reports describe any deviations of monitored parameters from reference values; failures to comply with the startup, shutdown, and malfunction plan (SSMP) for control devices; and results of LDAR monitoring and control equipment inspections.

Records required under the proposed standards must be kept for 5 years, with at least 2 of these years being on the facility premises. These records include copies of all reports that you have submitted to the responsible authority, control equipment inspection records, and monitoring data from control devices demonstrating that operating limits are being maintained. Records from the LDAR program and storage vessel inspections, and records of startups, shutdowns, and malfunctions of each control device are needed to ensure that the controls in place are continuing to be effective.

K. What Are the Implications of This NESHAP for Clean Air Act Title V Requirements?

1. What is the title V Program?

This program is a permit program established under title V of the CAA in 1990. A title V permit is intended to consolidate all of the air pollution control requirements into a single operating permit for a source's air pollution activities.

2. Under what circumstances am I required to obtain a title V permit for my remediation activity?

Title V requires all major sources to obtain permits (see 40 CFR 70.3, or 40 CFR 71.3). Major source status is triggered for a source under title V when actual emissions or potential to emit meets or exceeds certain major source

thresholds (see definition of major source at 40 CFR 70.2, or 40 CFR 71.2). Although a source subject to the Site Remediation MACT will be major for title V purposes based on emissions of HAP, title V also requires permits for sources that are major for other air pollutants, (e.g., the criteria pollutants). Sources that are subject to the Site Remediation MACT, by virtue of being major sources, will typically have to obtain an operating permit, if they don't already have one, or modify their existing permit under title V (either 40 CFR part 70 or 71). An option for avoiding major source status under title V for some sources that are not major prior to the remediation activity is voluntarily requesting practically-enforceable limitations (often operation or emissions-related) to reduce their potential to emit or actual emissions to levels below the major source thresholds. This option should be pursued through your permitting authority.

3. Who is responsible for obtaining the title V permit for a remediation activity?

Typically the party responsible for obtaining the title V major source permit will be either: (1) The owner or operator of the site remediation equipment or activities, or (2) the owner or operator of the source already existing at the facility that is covered by another MACT source category activity (the other collocated source). The decision as to who should apply for the permit in any specific case will be made on a case-by-case basis (site-dependent) and should be evaluated in consultation with the permitting authority, however, normal practice will be to issue the permit to the entity that has common control of all activities at the facility. Under the definition of major source used for HAP in 40 CFR part 70 or 71, all activities within a contiguous area under common control will be aggregated (grouped) together as a single source to determine major source status. While the source is ultimately responsible for making these determinations, permitting authorities will commonly assist sources in this task. Also note that the question of who may be required to apply for the permit will likely be affected by the way that pre-construction review permits (also referred to as New Source Review or NSR permits) were issued to such sources. Initial NSR permits are required prior to the commencement of construction activities, while initial title V operating permits are required generally after commencement of operations. Thus, permitting authorities are likely to follow decisions made in issuing NSR permits when looking at this question for title V purposes.

4. If I already have a title V permit, is a modification required for my remediation activity?

When there is a major source in a MACT source category that already has a title V operating permit, and a site remediation activity commences operation at the same facility and all activities at the facility are considered part of the same source (i.e., under common ownership and control), permitting authorities will require the previously issued operating permit to either be reopened or revised to reflect the new applicable requirements of the Site Remediation MACT. Permit reopening under 40 CFR 70.7(f), or 40 CFR 71.7(f), is required when a major source has a permit, there are 3 years or more left on the term of the permit, and we promulgate a new MACT standard (or other applicable requirement) that applies to the source. For such sources, if less than 3 years is left on the permit term, the State may generally wait until renewal to update the permit. On the other hand, modifications under 40 CFR 70.7(e), or 40 CFR 71.7(e), are required when a source has a permit and the source becomes subject to the MACT standard after the standard is promulgated (in most cases, these will be significant modifications under 40 CFR 70.7(e)(4), or 40 CFR 71.7(e)(3), but in some circumstances other permit modification procedures may apply).

5. If I have an existing title V permit, do I have to wait for completion of the permit modification before I begin the remediation activity?

In general, when site remediation activities are not addressed or prohibited by your existing operating permit, you may commence such activities at any time prior to the finalization of any formal title V permit modification procedures. However, when permit modification is required due to a new remediation activity and the new activity conflicts with (or is expressly prohibited by) the existing permit terms or conditions, the permit must be formally revised prior to commencing operation of such activities or you will be in violation of the permit prior to their revision.

6. The increase in potential-to-emit from a remediation activity will make my facility a major source overall, but only for a limited time. Am I required to get a title V permit? What activities can occur before my title V permit is issued?

All major sources are required by 40 CFR 70.5(a)(1), or 40 CFR 71.5(a)(2) to submit their permit application no later than 12 months after they commence operation, but State law could require it sooner. After that, 40 CFR 70.7(a)(2), or 40 CFR 71.7(a)(2), allows permitting authorities up to 18 months to issue the final permit, but State law may also require issuance sooner.

Major sources that expect to operate for 12 months or more obviously must submit a permit application in all cases. Sources that expect to operate less than 12 months (or whatever deadline the State sets) may decide not to prepare a permit application, at the risk of operating past that deadline without submitting the required application. Also note that policies concerning the permitting of such sources may vary from State to State; so it is also a good idea to contact your permitting authority concerning the steps necessary to fulfill your obligations under the operating permit program.

7. What are the requirements for remediation equipment that moves from one facility to another after completing each remediation activity?

Permitting authorities will decide how to permit such sources on a case-by-case basis, taking into account the particular circumstances known to them at that time. Many permitting authorities have policies or specific rules to address the permitting of portable sources, or other activities of short-duration, which are usually those expected to operate less than 1 or 2 years at any one location, and which are expected to operate in more than one location during a typical 5-year permit term. In addition, 40 CFR 70.6(e), or 40 CFR 71.6(e), addressing temporary sources, allows permitting authorities to issue a single operating permit for a major source that will operate in multiple locations during its 5-year permit term.

8. My facility's current operations are covered by an existing title V permit, do I have the option of obtaining a separate title V permit for a new remediation activity?

In some cases, permitting authorities have authority to issue multiple operating permits to a single source, and if this is the case, they may agree to issue a separate permit for the remediation activities. Although title V permits are typically thought of as a single permit that covers all the applicable requirements and all emissions units at a single source, the CAA allows permitting authorities to issue multiple permits to a single source. Such issuance would be consistent with title V as long as the assemblage of permits for a single major source addresses all applicable requirements at all subject emission

units (in the same way that a single major source permit would).

L. What Are the Implications for This NESHAP for Clean Air Act New Source Review Requirements?

This NESHAP does not change any of the existing requirements under the NSR program. The questions and answers within this section summarize the NSR program and a source's general requirements under this program.

1. How is the NSR program structured?

The NSR program is divided into three parts: Nonattainment NSR for major sources, Prevention of Significant Deterioration (PSD) for major sources, and minor source NSR. The term ''NSR'' is used to refer to both the overall program, and to the requirements that apply in nonattainment areas (e.g., nonattainment NSR). Nonattainment NSR applies to large facilities (major sources) located in areas where air quality is unhealthy to breathe —i.e. where the NAAQS for a CAA pollutant is not being met. These areas are called nonattainment areas.

Note: The term major source as it applies to the NSR program is discussed in detail in the July 23, 1996 **Federal Register** (61 FR 38429)). Nonattainment NSR for major sources of certain pollutants also applies in the federally designated ozone transport region (OTR), which consists of eleven northeastern states.[1]Prevention of significant deterioration (PSD) applies to major sources located in areas where air quality is currently acceptable—i.e. where the NAAQS for a CAA pollutant is being met. These are called attainment areas. Minor NSR applies to smaller sources and modifications that contribute to air pollution throughout the country.

2. Who runs the NSR and PSD programs?

The NSR program is administered by State and local air pollution permitting authorities, who are responsible for issuing all permits. Each state or local permitting authority is required to incorporate NSR and PSD requirements into its State Implementation Plan (SIP), which is the State's plan to ensure progress toward, or maintenance of, attainment of all NAAQS. A State's PSD program may be SIP-approved or delegated. If the State designs its own program, EPA may approve it so long as it meets the criteria listed in Federal PSD regulations. Otherwise, the State may take delegation of the Federal PSD program, as it is written in the Federal PSD regulations. A State's nonattainment NSR program must be a SIP-approved program meeting the criteria listed in Federal NSR regulations.

3. Who is subject to major NSR and PSD requirements?

No one may begin constructing a new major stationary source or undertake a major modification at an existing stationary source without obtaining an NSR or PSD permit from the permitting authority. The new major source would not need an NSR or PSD permit unless it had new potential emissions that qualify as major. Moreover, an existing major source that undertakes a major modification is subject to NSR or PSD only if there is a significant increase in emissions.

4. Do sources always need an NSR permit for a construction project?

Sources may avoid major NSR or PSD altogether by not increasing their emissions (e.g., by making changes that do not increase emissions, by installing controls on one part of the facility to offset increases at another part of the facility, or by agreeing to emission limits in their permit). Alternatively, facilities may comply with NSR by including modern controls in conjunction with an upgrade project or a new facility.

5. How long does the process take to complete?

The EPA estimates that the average time it takes to get a major NSR or PSD permit is about 7 months from receipt of the permit application.

6. When NSR or PSD applies, what must sources do?

a. Major Nonattainment NSR in Nonattainment Areas

New and existing major sources undertaking major modifications subject to nonattainment NSR must apply state of the art emission controls that meet the lowest achievable emissions rate (referred to as LAER). The LAER is based on the most stringent emission limitation in any State's SIP, or achieved in practice by the source category under review.

To get a permit, the applicant must also offset its emission increase by securing emissions reductions offsets from other sources in the area. The amount of the offset must be as great or greater than the new increase, and is based on the severity of the area's nonattainment classification. The more polluted the air is where the source is locating or expanding, the greater the emissions reductions required to offset the proposed increase. Offsets must be real reductions in emissions, not otherwise required by the CAA, and must be enforceable by the EPA.

Each applicant must also conduct an analysis of ''alternative sites, sizes, production processes, and environmental control techniques * * * (that) demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs of its location, construction, or modification.'' The applicant must also certify that all other sources operating within the State are operating in compliance with the CAA and SIP requirements. Finally, the public must be given adequate notice and opportunity to comment on each permit application.

b. Prevention of Significant Deterioration in Attainment Areas

New major sources and existing sources that undertake major modifications that are subject to PSD must apply best available control technology (BACT). The BACT determination ultimately made by the permitting authority allows for a consideration of energy, environmental, and economic impacts and other costs on a case-by-case basis that is specific to the facility's situation. The permitting authority then specifies an emission limit for the source that represents BACT.

Each PSD applicant must also perform an air quality analysis to demonstrate that the new emission increase will not cause or contribute to a violation of any applicable NAAQS or result in a significant deterioration of the air quality. Finally, each applicant must also conduct an analysis to ensure that the increase does not result in adverse impact on air quality related values, including visibility, that affect designated Class I areas, such as wilderness areas and national parks.

c. Minor NSR

For sources not otherwise covered by major PSD or NSR, the CAA requires permitting authorities to regulate construction and modifications to ensure that the NAAQS are achieved. State programs have widely varying requirements. Some are comprehensive, while others provide numerous exclusions. Some require a technology review, in addition to air quality modeling.

III. Rationale for Selecting the Proposed Standards

A. What Is the Scope of the Source Category To Be Regulated?

As we discussed in section I.A of this preamble, site remediation is one of the approximately 170 categories of sources included on the NESHAP source category list. The facilities included

[1] Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and Washington, DC.

within the scope of this source category include sites at which the cleanup is required to comply with requirements under a State regulatory program as well as sites at which cleanups are performed on a voluntary basis. In section II.A of this preamble, we discuss how statutory directives under RCRA and CERCLA direct us to address the control of air emissions from certain site remediations and that those activities under the RCRA Corrective Action and CERCLA authorities are exempt from the requirements of the proposed rule.

B. How Did We Select the Pollutants To Be Regulated?

The specific chemicals, compounds, or groups of compounds designated by Congress to be HAP are listed in CAA section 112(b). Included on the list are organic and inorganic chemicals. From this list of HAP, we selected the specific HAP to be regulated under this NESHAP for site remediations.

1. Organic HAP

Organic HAP potentially can be emitted from site remediations at many different types of facilities. We considered but decided not to select all of the organic HAP listed under section 112(b) for regulation in the Site Remediation NESHAP. Instead, we decided to be consistent with the approach we used for the OSWRO NESHAP as well as other NESHAP promulgated for source categories with large diversity in the organic chemical constituents present in the materials managed at any given facility and instead regulate on the basis of a surrogate that reasonably ensures MACT control of the organic HAP present. See *National Lime* v. *EPA,* 238 F. 3d, (D.C. Cir. 2000, upholding use of surrogates in establishing MACT standards).

When we developed the organic HAP list for the OSWRO NESHAP, we evaluated each organic chemical or chemical group listed as a HAP in CAA section 112(b) with respect to its potential to be emitted from a waste management or recovery operation. The criteria used to characterize and evaluate emission potential was based on a chemical constituent's Henry's law constant, evaluation of the aqueous and organic volatility characteristics of the chemical, and the ability of the analytical test methods to quantitate the chemical. Based on our evaluation, we selected 98 specific organic HAP compounds or compound groups to be regulated under the proposed rule (Table 1 to 40 CFR part 63, subpart DD.).

Although the OSWRO NESHAP, by an exclusion under the rule applicability, does not apply to units managing wastes from site remediations, the data base that we used to select the list of organic HAP for the OSWRO NESHAP included remediation wastes sent to hazardous waste TSDF. We believe that this data base is also representative of the range of organic HAP chemicals having the potential to be emitted from the sites requiring cleanup of media contaminated with volatile or semi-volatile organics and other remediation material. Therefore, we are proposing that same list of organic HAP used for the OSWRO NESHAP also be used for the Site Remediation NESHAP. This list is presented in Table 1 to proposed Subpart GGGGG. We request comment on the proposal to use this list of organic HAP for the Site Remediation NESHAP.

2. Inorganic HAP

The types of inorganic compounds listed as HAP in CAA section 112(b) that are most likely to be in contaminated media requiring remediation are heavy metals (i.e., antimony, arsenic, beryllium, cadmium, chromium cobalt, lead, manganese, mercury, nickel, and selenium). A widely used remediation approach for cleanup of soils, sludges, or sediments contaminated with heavy metals involves excavating the contaminated media, treating the remediation material in a solidification or stabilization process, and disposing of the treated material in an appropriate landfill (which may be on-site or an off-site facility). Metals in the contaminated soil are immobilized by the added binder material used for the fixation process. In situations where groundwater is contaminated with heavy metals, site remediation typically involves extracting the groundwater by pumping it to the surface and then removing the metals by a physical or chemical process (e.g., precipitation, ion exchange). The metals remain in the wet precipitate or other extraction media and are not released to the atmosphere.

For some site remediations involving the cleanup of media containing both metals and organic contaminates, the extracted remediation waste is burned in an incinerator or other combustion device. Metal HAP contained in the remediation waste vaporize at high combustion temperatures or become airborne as fine particles and can remain in combustion gases in either a gaseous or particulate form. Any metal HAP contained in the combustion gases that is not captured and removed by a control device is emitted to the atmosphere.

Based on our information regarding the cleanup of media contaminated with metals or other inorganic HAP, many of the remediation techniques used do not release the inorganic HAP to the atmosphere. In cases where remediation material containing inorganic HAP is burned in an incinerator, the incinerator used must already meet air standards under the CAA and RCRA that limit organic, particulate matter, metals, and chloride emissions. (See, e.g. 40 CFR part 263, subpart EEE (MACT standards for hazardous waste combustion sources).) Therefore, we are proposing that metals and other inorganic compounds listed as HAP in CAA section 112(b) not be regulated by this Site Remediation NESHAP. We are specifically requesting comment on this proposal and, in particular, would appreciate receiving data regarding the sources and quantity of inorganic HAP emissions from site remediations and available control technologies applicable to the sources in order to either support or revise our decision not to regulate inorganic HAP emissions under this NESHAP.

C. How Did We Select the Affected Source To Be Regulated?

For the purpose of implementing a NESHAP under 40 CFR part 63, ''affected source'' is defined to mean the stationary source, or portion of a stationary source that is regulated by a relevant standard or other requirement established pursuant to section 112 of the CAA. Each relevant standard is to designate the affected source for the purposes of that standard. Within a source category, we must decide which of the sources of HAP emissions (i.e., emission points or groupings of emission points) to which the proposed rule applies.

One option for the Site Remediation NESHAP is to define the affected source as the entire set of activities performed for a given site remediation such as the cleanup of contaminated soil or the cleanup of contaminated groundwater. The affected source would consist of the mix of emission points for the sequence of activities in which the contaminated media or other remediation material is extracted (if needed), stored, conveyed, treated, or, otherwise handled at the facility. Under this broad definition option, a separate emission limitation for MACT would be determined for the entire group of emission points associated with a site remediation to clean up the contaminated soil. Another emission limitation for MACT would be determined for the entire group of emission points associated with a site remediation to clean up the contaminated groundwater. Unlike the NESHAP source categories that can be

readily characterized by one or several standardized process configurations which are used throughout the industrial segment representing the source category, the operations used for all contaminated soil or contaminated groundwater remediations cannot. The activities, equipment configurations, and sequencing of operations used are not consistent from site remediation to site remediation. Therefore, we concluded that this option is not an appropriate approach for defining the affected sources for the Site Remediation NESHAP.

Another option we considered is to define the affected source in terms of common groupings of processes and equipment used for management and cleanup of contaminated media and other remediation materials (i.e., tanks, containers, process vents, and equipment leaks). Under this option, MACT is determined for each emission source group. We believe that this option is an appropriate way to define the affected source for the Site Remediation NESHAP. Designating the affected source to be a group of similar emission point types ensures that air emission controls of equivalent performance are applied at the same time to all of the units used to manage a remediation material stream. Also, this approach to defining sources is consistent with other NESHAP for related waste management operations (e.g., the OSWRO NESHAP). Therefore, for the Site Remediation NESHAP, we determined separate MACT for common groups of emission point sources.

The first group of common emission points designated to be an affected source for the Site Remediation NESHAP is the group of pipes, stacks, or ducts that allow the passage of gases, vapors, or fumes containing organic HAP to the atmosphere from any treatment process used at the facility to remove, destroy, or otherwise transform the hazardous substances in remediation material. These pipes, stacks, and ducts are collectively referred to as process vents in the proposed rule. The process vent may be either associated with an in situ process (e.g., soil vapor extraction used to treat contaminated soil) or ex situ process (e.g., air stripper used to treat contaminated ground water, or thermal desorption unit used to treat contaminated soil). For the purposes of applying the standards, a process vent is neither a vent that operates as a safety device nor a stack or duct used to exhaust combustion products from a boiler, furnace, incinerator, or other enclosed combustion device that is being used to treat a remediation waste or material. If these combustion devices are being used as an air pollution control device to control air emissions then the vent could be subject to the standards.

The next group of common emission points designated to be an affected source for the Site Remediation NESHAP is the group of units used at the facility which handle, temporarily store, or otherwise manage the remediation material once it has been extracted from the ground. This group of sources includes units that treat extracted contaminated media but do not use a process vent (e.g., a tank used for biological degradation treatment of contaminated groundwater). These units are tanks, containers, surface impoundments, oil-water and organic-water separators, individual drain systems, and other stationary transfer or conveyance. The units regulated under this affected source designation are collectively referred to as remediation material management units in the propose rule.

A third group of common emission points designated to be an affected source for the Site Remediation NESHAP is the group of equipment components prone to emitting organic HAP as a result of liquid or vapor leaks. This group of equipment consists of pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves and lines, valves, connectors, and instrumentation systems that contain or contact remediation material once it has been extracted from the ground.

We have identified two other types of remediation activities that may emit organic HAP but do not belong in any of the above three affected source groups. These activities are the excavation of contaminated soil and land treatment process for contaminated soils, sediments, and sludges. Excavation of contaminated soil involves the use of heavy machinery to dig up the soil. The excavated material is then either placed directly into dump trucks for transport offsite or moved to another location at the facility for storage or treatment. Land treatment processes are open biodegradation processes in which the contaminated soil, sediment, or sludge is excavated, re-applied in shallow layers on the ground surface, and periodically turned over or tilled to aerate the applied material. The organic contaminants are neutralized, destroyed or transformed by biological actions of microbes in the materials.

Our information indicates that there are no add-on controls currently in use to control organic emissions from these activities, nor are we aware of any practical work practices or process modification that can be implemented to reduce organic HAP emissions from these activities. Therefore, we are proposing not to develop standards under this NESHAP for either excavation operations or land treatment activities. We specifically request comment on the technical and practical feasibility of controlling HAP emissions from these remediation activities, actual HAP emissions rates that occur, and the costs of applying any applicable controls.

D. How Did We Determine MACT for the Affected Sources?

Section 112(d)(3) of the CAA specifies that the MACT standards for existing sources cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources for categories and subcategories with 30 or more sources. There are many more than 30 site remediations being conducted nationwide. Therefore, the MACT floor for existing sources at site remediations is established by the best-performing 12 percent of existing sources.

We reviewed our information for site remediations to find an approach for identifying the best-performing 12 percent of existing sources, arraying the data for each category of emission point. Our data includes individual existing sites where remediation activities use add-on air emission controls (e.g., venting air strippers through carbon adsorbers, management of remediation wastes in covered tanks). However, there are remediation sites in our data base at which no air emission controls are used. The use of air emission controls at a given location depends on a combination of factors including, but not limited to, the type and extent of contamination requiring cleanup, the nature of the site remediation activities used for the cleanup, and the requirements imposed by the agency having oversight of the site remediation.

Determining a MACT floor based on use of control measures other than add-on controls (e.g., fuel switching, material substitution or reformulation, process modification, material recycling within the process) is not technically appropriate for, or applicable to, the site remediation source category. This source category addresses HAP emissions that are released from the cleanup of pre-existing environmental contamination problems. By the time the need for site remediation has been identified, the opportunity has passed for applying any pollution prevention or source reduction techniques.

The use of add-on air emission controls by some existing site remediation activities indicates that the average emission limitation being achieved by the best performing 12 percent of these sources is at some level above applying no controls (i.e., the emission limitation achieved by best performing 12 percent of the sources is greater than zero). The difficulty we are presented with is not having the information to determine average emission limitation achieved by the best performing 12 percent of existing sources at site remediations nationwide. We do not have comprehensive nationwide facility survey data by which we can state, with a reasonable level of confidence, that the sources for which we do have air emission control data do indeed represent the top 12 percent of the best performing existing sources nationwide. These sources may represent well more than the top 12 percent but there also is the possibility that the sources represent less than the top 12 percent. We do not have the data needed to definitively calculate the statistical distribution of air emission controls used at existing remediation sites nationwide.

Obtaining nationwide counts of existing site remediation activities is not a trivial task given the uniqueness of the site remediation source category. Many site remediations are voluntary actions and are not reported for inclusion in existing EPA site remediation data bases. Furthermore, some existing site remediations are performed to address a unique contamination situation and may not be relevant to site remediations that are performed in the future. A comprehensive information collection survey to collect the needed data would require very significant time and resource commitments by both us and the survey respondents, and would not necessarily provide us with all of the information we need. In addition, it is not clear that on-going remediation activities have the available data needed to adequately characterize the source category.

Given the uniqueness of the site remediation source category, the extent of information currently available to us, and the complexities of gathering additional meaningful information, we decided to forgo statistically computing an emission limitation or identifying a specific control technology that represents the MACT floor for site remediations. The MACT floor for existing affected sources is some level of air emission control beyond no controls. Because the provisions of section 112 allow us to select MACT for a source category that is more stringent than the MACT floor (provided that the control level selected is technically achievable and that we consider the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements associated with the selected control level (CAA section 112(d)(2)), we chose to select the MACT technology directly.

To select a MACT technology from alternatives beyond the MACT floor for each affected source, we looked at the types of air emission controls required under national air standards for sources similar to those sources that potentially may be associated with site remediations. These air standards are NESHAP for other source categories, particularly the OSWRO NESHAP under 40 CFR part 63, subpart DD, and the air standards for RCRA hazardous waste treatment, disposal, and facilities under subparts AA, BB, and CC in 40 CFR parts 264 and 265 (RCRA Air Rules). The control levels established by the emission limitation and work practices we are proposing here are being implemented at existing sources subject to these similar rules; this demonstrates that the control levels are technically achievable.

As stated in the previous paragraph, these control requirements and action levels already exist in either the RCRA Air Rules or the OSWRO NESHAP, or both. Given that these existing rules specify control requirements for sources similar to those comprising the affected source group for the Site Remediation NESHAP, and that sources already regulated by these existing standards will likely manage and/or treat remediation material regulated by the Site remediation NESHAP also, we believe that the requirements within these existing rules represent industry practice for remediation activities and therefore MACT for the Site Remediation NESHAP. Nevertheless, we recognize that the existing standards were designed for controlling emissions from ongoing industrial activities that would continue for many years, rather than for limited-duration activities such as site remediations. The Agency requests comment on the appropriateness of using the existing standards for limited-duration site remediations.

E. How Did We Select the Format of the Proposed Standards?

The proposed standards for the Site Remediation NESHAP consist of a combination of several formats: numerical emission limits and operating limits, equipment standards, and work practice standards. We selected the formats for each of the proposed standards to be consistent with the formats used in other NESHAP for similar organic HAP sources.

F. How Did We Select the Testing and Initial Compliance Requirements?

The Site Remediation NESHAP would control three different groups of emission points: process vents, remediation material management units, and equipment leaks. The control technologies and work practices used to control these emission point groups would have different testing and initial compliance requirements. The methods proposed for testing and for demonstrating initial compliance with the proposed standards are consistent with those in other NESHAP that require using these same control technologies and work practices.

We selected the performance testing requirements to demonstrate compliance with the control device emission limits based on the use of the applicable EPA test methods. We propose in the proposed rule to use EPA Methods 1, 1A, 2, 2A, 2C, 2D, 3, 4, 9, 18 (total organic HAP or total organic compounds), 22, 25, 25A, 305 and 316 of 40 CFR part 60, appendix A, and SW 846 9095A. Consistent with the National Technology Transfer and Advancement Act (NTTAA), we conducted searches to identify potential voluntary consensus standards that could be used in place of these EPA methods. As discussed further in section V.H of this preamble, no applicable voluntary consensus standards were identified as practical alternatives to the EPA Methods included in the proposed rule.

G. How Did We Select the Continuous Compliance Requirements?

Continuous monitoring is required under each NESHAP so that we can determine whether a source remains in compliance following the initial compliance determination. When determining appropriate monitoring options, we considered the availability and feasibility of a number of monitoring strategies ranging from continuous emission monitoring to process and control device parameter monitoring.

Monitoring of control device operating parameters is considered most appropriate for many other similar emission sources and, therefore, we have included this as the primary monitoring approach in these proposed standards. We selected operating parameters for the following types of control devices that are reliable indicators of control device performance: thermal and catalytic

oxidizers, flares, adsorbers, condensers, boilers, incinerators, and process heaters. In general, we are proposing selected parameters and monitoring provisions that were included in the OSWRO NESHAP. Sources would monitor these parameters to demonstrate continuous compliance with the emission limits and operating limits.

H. How Did We Select the Notification, Recordkeeping, and Reporting Requirements?

The required notifications and other reporting are based on the General Provisions in subpart A of 40 CFR part 63. The initial notification and the semiannual compliance reports include information on the remediation material and affected site remediation activities, and they require any changes to this information to be reported in subsequent reports. Similarly, records are required that will enable an inspector to verify the facility's compliance status. Due to the nature of control devices that would be installed on site remediation processes and the emissions being controlled, we have determined that control device parameter monitoring is appropriate in this circumstance. The required records and reports are necessary to allow the regulatory authority to verify that the source is continuing to comply with the standards.

IV. Summary of Environmental, Energy, and Economic Impacts

A. What Are the Emissions Reductions?

We estimated nationwide organic HAP emissions from the site remediations potentially subject to the proposed rule based on the information available to us including remediation waste quantity and treatment practice data for the year 1997 and earlier. Nationwide organic HAP emissions from regulated sources are estimated to be approximately 1,140 Mg/yr. Nationwide VOC emissions from regulated sources are estimated to be approximately 7,360 Mg/yr. (Although not all VOC are organic HAP, we may permissibly note the air benefits from controlling non-HAP pollutants such as VOC when considering a MACT standard. (See S. Rep. 101–228, 101st Cong. 1st sess. 172) We estimate that implementation of the proposed rule would reduce these nationwide air emissions by approximately 50 percent to 570 Mg/yr of HAP and 3,680 Mg/yr of VOC.

B. What Are the Cost Impacts?

The nationwide total capital investment cost and the annual operating cost of the control equipment required to meet the proposed standards are estimated to be $17.6 million and $5.8 million per year, respectively. When fully implemented, the proposed rule is estimated to result in a total annual cost of $8.2 million per year.

C. What Are the Economic Impacts?

The proposed rule would affect owners and operators of facilities, subject to the exceptions described in section I.A of this preamble, that are major sources of HAP emissions and at which a site remediation is conducted to clean up media or other material contaminated with any of the organic HAP substances listed in the proposed rule. Because of the nature of activities regulated by the source category, a comprehensive list of NAICS codes cannot be compiled for businesses or facilities potentially regulated by this action. As a result, the economic impact analyses focused on a set of industries from the 1997 Biennial Reporting System (BRS) database that were known to be large quantity generators of hazardous waste and who were remediating hazardous waste as part of a site remediation. We believe that the data provides an adequate overview of the potential impacts of the proposed rule. However we recognize that the actual industries directly impacted by the proposed rule in the year the proposed rule is implemented and the costs incurred by these industries may differ somewhat from the set of industries identified in the 1997 BRS data and the costs assigned to these industries for the purposes of the economic analysis.

In general, we did not find evidence of significant impacts at the industry level. From the BRS data, over 80 industries were predicted to have annual compliance costs as a result of the proposed rule, and 15 industries accounted for 91 percent of the national compliance cost estimate of $8.16 million[2]. We employed an engineering or financial analysis to estimate impacts, which takes the form of the ratio of compliance costs to the value of sales (cost-to-sales ratio (CSR)). We calculated CSR for 12 industries and found all had CSR below 0.02 percent. The CSR are less than the lower quartile return on sales for all industries with profitability data available. We did not compute CSR for the remaining three industries because revenue data were not available.

The CSR will likely overstate the impact on firms and understate the impact on consumers. The CSR assumes that there are no changes in the market as a result of the higher costs of production faced by the firms and that the firms continue to produce the same quantities, sell at the same price and absorb the full amount of the compliance costs.

Small business impacts were particularly difficult to assess because of the uncertainty over the facilities that will actually be impacted by the proposed rule. As a result, we concluded that sufficient data and related information did not exist to conduct a small business screening analysis.

D. What Are the Non-Air Quality Environmental and Energy Impacts?

Compliance with the standards in the proposed rule requires using types of control equipment commonly in use to control organic emissions from process sources at many of the industrial facilities at which site remediations are most likely to occur. The non-air environmental and energy impacts associated with implementing the requirements of the proposed rule primarily are expected to result from the operation of these control devices. No significant adverse water, solid waste, or energy impacts are expected as a result of the proposed rule.

V. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is ''significant'' and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines ''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,

[2] Value reported in $2000. For the economic impact analysis, EPA adjusted this estimate to $1997 using a cost factor (0.9753) developed from the Chemical Engineering Composite Plant Cost Index. Thus, the total annual compliance costs in $1997 is $7.96 million.

or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that the proposed rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is, therefore, not subject to OMB review.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under Section 6 of Executive Order 13132, the EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the EPA consults with State and local officials early in the process of developing the proposed regulation.

The proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to the proposed rule.

C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

Under section 5(b) of Executive Order 13175, EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation. Under section 5(c) of Executive Order 13175, EPA may not issue a regulation that has tribal implications and that preempts tribal law, unless the Agency consults with tribal officials early in the process of developing the proposed regulation.

The EPA has concluded that the proposed rule may have tribal implications since site remediation activities could be conducted on tribal lands. We do not have any information identifying specific remediation activities being conducted at this time. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt State law. Thus, the requirements of sections 5(b) and 5(c) of the Executive Order do not apply to the proposed rule.

Consistent with EPA policy, EPA nonetheless has made attempts to invite tribal representatives to participate in the rulemaking activities early in the process of developing this proposed rule to permit them to have meaningful and timely input into its development. We have contacted tribal representatives and groups directly to notify them of this proposed rule development activity and to solicit their participation. Despite these efforts, EPA has not been contacted by tribal representatives to participate in the rulemaking process to date.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits comment on the proposed rule from tribal officials.

D. 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 the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the proposed rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The proposed rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. Furthermore, the proposed rule has been determined not to be ''economically significant'' as defined under Executive Order 12866.

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

The proposed rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating

an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The maximum total annual cost of the proposed rule for any year has been estimated to be about $23.4 million. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the EPA has determined that the proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's proposed rule is not subject to the requirements of section 203 of the UMRA.

G. Regulatory Flexibility Act (RFA) As Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

Under the Regulatory Flexibility Act, the Agency must prepare a Regulatory Flexibility Analysis unless the Administrator certifies that the rule, if promulgated, will not impose a significant economic impact on a substantial number of small entities. The Courts consistently have held that the provisions of the RFA apply only with respect to small entities that are subject to the proposed rule. The proposed rule sets minimum standards to be met when parties engage in future site remediation activities, but it does not itself require any party to undertake such activities. States may choose to direct a party to undertake site remediation, or parties may undertake remediation activities voluntarily. Today's action places no requirement on any party to initiate site remediation activities. The EPA anticipates that parties that undertake site remediation activities generally will do so voluntarily and that the impact of the proposed rule on those parties would not be significant. Further, because States and other parties will decide whether to undertake site remediation activities, it is extremely difficult, if not impossible, to predict how many or what types of small entities will undertake such activities. In addition, the proposed rule is structured to avoid impacts on small businesses. The proposed rule specifically excludes from its scope remediation activities conducted at gasoline stations, farm sites and residential sites (on the ground that these remediation activities would not exceed the threshold for major sources). Moreover, the proposed rule would apply only to remediation sites located at a facility that is a major source under the CAA and engages in a ''MACT activity'' (defined as a non-remediation activity covered in the MACT list of major source categories pursuant to CAA section 112(c)). Such sources tend to be large businesses. The proposed rule also contains emissions thresholds that are not likely to apply to small businesses. For example, the proposed rule exempts sources where the total annual quantity of HAP contained in all extracted remediation material at the facility is less than 1 Mg/yr. For these reasons, I certify that the rule, if promulgated, will not impose a significant economic impact on a substantial number of small entities.

H. Paperwork Reduction Act

We will submit the information collection requirements in the proposed rule for approval to the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 2062.01) and you may obtain a copy from Susan Auby by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822T), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr*. The information requirements are not effective until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to EPA policies set forth in 40 CFR part 2, subpart B.

The proposed rule would require maintenance inspections of the control devices but would not require any notifications or reports beyond those required by the General Provisions in subpart A to 40 CFR part 63. The recordkeeping requirements require only the specific information needed to determine compliance.

The annual monitoring, reporting, and recordkeeping burden to affected sources for this collection (averaged over the first 3 years after the effective date of the promulgated rule) is estimated to be 341,737 labor-hours per year, with a total annual cost of $17.7 million per year. These estimates include a one-time performance test and report (with repeat tests where needed), one-time submission of an SSMP with semiannual reports for any event when the procedures in the plan were not followed, semiannual compliance reports, maintenance inspections, notifications, and recordkeeping.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. By U.S. Postal Service, send comments on the ICR to the Director, Collection Strategies Division, U.S. EPA (2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked ''Attention: Desk Officer for EPA''.; or by courier, send comments on the ICR to the Director, Collection Strategies Division, U.S. EPA (2822T), 1301 Constitution Avenue, NW., Room 6143, Washington, DC 20460 (202) 566–1700. Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after July 30, 2002, a comment to OMB is best assured of having its full effect if OMB receives it by August 29, 2002. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

I. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Public Law No. 104–113, all Federal agencies are required to use voluntary consensus standards (VCS) in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires Federal agencies to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable VCS.

The proposed rulemaking involves technical standards. The EPA proposes in the proposed rule to use EPA Methods 1, 1A, 2, 2A, 2C, 2D, 3, 4, 9, 18 (total organic HAP or total organic compounds), 22, 25, 25A, 305 and 316 of 40 CFR part 60, appendix A, and Method 9095A in SW 846, ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods.'' Consistent with the NTTAA, EPA conducted searches to identify VCS in addition to these EPA methods. No applicable VCS were identified for EPA Methods included in the proposed rule.

The search for emissions measurement procedures identified 12 VCS as potential alternatives to the EPA methods specified in the proposed rule. Following further evaluation, the EPA determined that ten of these 12 standards identified for measuring emissions of HAP or surrogates subject to emissions standards in the proposed rule were impractical alternatives to EPA test methods for the purposes of the proposed rule. Therefore, the EPA does not intend to adopt these standards. The reasons for the determinations of these nine methods are discussed below.

The standard ISO 10780:1994, ''Stationary Source Emissions—Measurement of Velocity and Volume Flowrate of Gas Streams in Ducts,'' is impractical as an alternative to EPA Method 2 in the proposed rule. This standard, ISO 10780:1994, recommends the use of L-shaped pitots, which historically have not been recommended by EPA because the S-type design has large openings which are less likely to plug up with dust.

The standard ASTM D3464–96, ''Standard Test Method Average Velocity in a Duct Using a Thermal Anemometer,'' is impractical as an alternative to EPA Method 2 for the purposes of the proposed rule primarily because applicability specifications are not clearly defined, (e.g., range of gas composition, temperature limits). Also, the lack of supporting quality assurance data for the calibration procedures and specifications, and certain variability issues that are not adequately addressed by the ASTM standard limit EPA's ability to make a definitive comparison of the method in these areas.

The VCS ASTM D6060 (in review 2000), ''Practice for Sampling of Process Vents with a Portable Gas Chromatograph,'' is an impractical alternative for EPA Method 18 for the purposes of the proposed rule because it lacks acceptance criteria for calibration, details on using other collection media (e.g., solid sorbents), and reporting/documentation requirements that are included in EPA Method 18.

The VCS ASTM D6420–99, ''Standard Testing Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry (GC/MS),'' also is an impractical alternative for EPA Method 18 for the purposes of the proposed rule. This method only detects 25 of the 98 specific organic HAP constituents subject to regulation by the proposed rule. The specific organic HAP composition of the remediation material to be cleaned up is often unknown and using a method to determine compliance with total organic HAP emissions limitations that only detects a narrow subset of the entire group of 98 organic HAP compounds subject to the proposed rule is not appropriate. Method 18 is the only method currently available to ensure that all 98 HAP compounds regulated by the proposed rule are accounted for in the computation of the total organic HAP emissions from an affected source. We request comment on our decision not to include ASTM method D6420–99.

Two VCS, EN 12619:1999 ''Stationary Source Emissions-Determination of the Mass Concentration of Total Gaseous Organic Carbon at Low Concentrations in Flue Gases—Continuous Flame Ionization Detector Method'' and ISO 14965:2000(E) ''Air Quality-Determination of Total Nonmethane Organic Compounds-Cryogenic Preconcentration and Direct Flame Ionization Method,'' are impractical alternatives to EPA Method 25A for the purposes of this rulemaking because the standards do not apply to solvent process vapors in concentrations greater than 40 ppm for EN 12619 and 10 ppm carbon for ISO 14965. Methods with whose upper limits are this low are too limited to be useful in measuring source emissions, which are expected to be much higher.

Four of the nine VCS are impractical alternatives to EPA test methods for the purposes of the proposed rule because they are too general, too broad, or not sufficiently detailed to assure compliance with EPA regulatory requirements: ASTM D3796–90 (Reapproved 1996), ''Standard Practice for Calibration of Type S Pitot Tubes,'' for EPA Method 2; ASME C00031 or PTC 19–10–1981—Part 10, ''Flue and Exhaust Gas Analyses,'' for EPA Method 3; ASTM E337–84 (Reapproved 1996), ''Standard Test Method for Measuring Humidity with a Psychrometer (the Measurement of Wet- and Dry-Bulb Temperatures),'' for EPA Method 4; and ASTM D3154–91, ''Standard Method for Average Velocity in a Duct (Pitot Tube Method),'' for EPA Methods 1, 2, 2C, 3, and 4. Two of the 11 VCS identified in this search were not available at the time the review was conducted for the purposes of the proposed rule because they are under development by a voluntary consensus body: ASME/BSR MFC 13M, ''Flow Measurement by Velocity Traverse,'' for EPA Method 1 (and possibly 2); and ASME/BSR MFC 12M, ''Flow in Closed Conduits Using

Multiport Averaging Pitot Primary Flowmeters,'' for EPA Method 2. While we are not proposing to include these two VCS in today's proposed rule, the EPA will consider the standards when they are finalized.

The EPA takes comment on the compliance demonstration requirements in the proposed rule and specifically invites the public to identify potentially-applicable VCS. The commenter should also explain why this regulation should adopt these VCS in lieu of or in addition to EPA's standards. Emission test methods and performance specifications submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data and the procedure used to validate the candidate method (if a method other than Method 301, 40 CFR part 63, Appendix A was used).

Section 63.2406 and Table 5 of the proposed subpart GGGGG list the EPA testing methods and performance standards included in the proposed rule. Most of the standards have been used by States and industry for more than 10 years. Nevertheless, under § 63.7(f) of subpart A of 40 CFR part 63, the proposed rule also allows any State or source to apply to the EPA for permission to use an alternative method in place of any of the EPA testing methods or performance standards listed in the proposed rule.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: July 3, 2002.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63, of the Code of the Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

2. Part 63 is amended by adding subpart GGGGG to read as follows:

Subpart GGGGG—National Emission Standards for Hazardous Air Pollutants: Site Remediation

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Subpart GGGGG—National Emission Standards for Hazardous Air Pollutants—Site Remediation

What This Subpart Covers

§ 63.7880 What is the purpose of this subpart?

This subpart establishes national emissions limitations and work practice standards for hazardous air pollutants (HAP) emitted from site remediation activities. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emissions limitations and work practice standards.

§ 63.7881 Am I subject to this subpart?

(a) This subpart covers remediation activities within the site remediation source category, which excludes remediation at gasoline stations, farm sites and residential sites.

(b) This subpart applies to you if you meet all of the criteria listed in paragraphs (b)(1) and (2) of this section:

(1) You own or operate a site remediation activity that is collocated within a facility with other sources that are individually or collectively a major source of HAP emissions; and

(2) A MACT activity, as defined in § 63.7942, is performed at the facility.

(c) Remediation means the cleanup of remediation material. For the purposes of this subpart, monitoring or measuring contamination levels through wells, or by sampling, is not considered to be remediation.

(d) A major source of HAP 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 (10 tons) or more per year or any combination of HAP at a rate of 22.68 megagrams (25 tons) or more per year. A source that is not a major source is an area source.

(e) You are not subject to the requirements of this subpart if any of the criteria in paragraphs (d)(1) through (7) of this section apply.

(1) Your facility is an area source; or

(2) A MACT activity is not performed at your facility; or

(3) You are not conducting a remediation activity at your facility; or

(4) You do not have an affected source involved in any remediation activity conducted at the facility; or

(5) Your facility is a research and development facility, consistent with section 112(b)(7) of the CAA.

(6) The remediation is performed under the authority of the Comprehensive Environmental Response and Compensation Liability Act.

(7) Your remediation activity is a corrective action:

(i) At a Resource Conservation and Recovery Act (RCRA) Treatment, Storage and Disposal facility (TSDF) permitted either by the U.S. Environmental Protection Agency (EPA) or under a state program authorized by EPA under RCRA section 3006;

(ii) At an interim status TSDF conducted under an order imposed by EPA or a state program authorized for corrective action under RCRA section 3006; or

(iii) at any facility as required by orders authorized under RCRA section 7003.

(f) You are not subject to the requirements of this subpart, except for the recordkeeping requirements in § 63.7933, if all remediation activities at your facility subject to this subpart are completed and you have notified the Administrator in writing that all remediation activities subject to this subpart are completed. All future remediation activity meeting the applicability criteria in paragraph (b) of this section must comply with the requirements of this subpart.

§ 63.7882 What activities at my facility does this subpart cover?

(a) This subpart applies to each new, reconstructed, or existing remediation affected source. The emissions sources listed in paragraphs (b)(1) through (3) of this section located at a facility meeting the criteria specified in § 63.7881(a) constitute the affected source:

(b)(1) *Process vents.* The affected source is the entire group of process vents associated with both in situ and ex situ remediation.

(2) *Remediation material management units.* The affected source is the entire group of tanks, surface impoundments, containers, oil/water separators, organic/water separators and transfer systems involved in remediation. For the purpose of implementing the standards under this subpart, a unit that meets the definition of a tank or container that is also equipped with a vent that serves as a process vent for processes including, but not limited to, air stripping and solvent extraction, as defined in § 63.7942, is not a remediation material management unit, but instead is a process vent and is to be included in the appropriate affected source group under paragraph (b)(1) of this section.

(3) *Equipment leaks.* The affected source is the entire group of equipment components (pumps, valves, etc.) involved in remediation, meeting both of the conditions specified in paragraphs (b)(3)(i) and (ii) of this section. If either of these conditions do not apply to an equipment component, then that component is not part of the affected source for equipment leaks.

(i) The equipment component contains or contacts remediation material having a total HAP concentration equal to or greater than 10 percent by weight; and

(ii) The equipment component is intended to operate for 300 hours or more during a calendar year in remediation material service, as defined in § 63.7942.

(c) *Exceptions.* (1) *Facility-wide exemption.* You are exempt from the requirements of this subpart where the total annual quantity of HAP contained in all extracted remediation material at the facility (including HAP emitted from process vents) is less than 1 megagram per year. For your facility to be exempt under the provisions of this paragraph, you must meet the requirements in paragraphs (c)(1)(i) through (iii) of this section.

(i) You must prepare an initial determination of the total annual HAP quantity in the extracted remediation material at the facility. This determination is based on the total quantity of HAP in Table 1 of this subpart as determined at the point-of-extraction for each remediation material component. The quantity of HAP contained in vent streams from in situ remediation operations must be included in the determination of the total annual organic HAP quantity in Table 1 of this subpart. The HAP quantity in the vent streams must be determined prior to any control devices.

(ii) You must prepare a new determination whenever the extent of changes to the quantity or composition of the remediation material extracted at the facility could cause the total annual HAP quantity in Table 1 of this subpart in the extracted remediation material to exceed 1 megagram per year.

(iii) You must maintain documentation to support your determination of the total annual HAP quantity in the extracted remediation material. This documentation must include the basis and data used for determining the HAP content of the extracted remediation material.

(2) *Affected source exemption.* Any affected source that is also subject to another subpart under 40 CFR part 61 or 40 CFR part 63, where you are controlling the HAP in Table 1 of this subpart that are emitted from the source in compliance with the provisions specified in the other applicable subpart under part 61 or 63, is exempt from the requirements of §§ 63.7883 through 63.7933.

(3) *Process vents.* You are exempt from the requirements of §§ 63.7890 through 63.7933 for process vents if any of the criteria listed in paragraphs (c)(3)(i) through (iv) of this section are met, except that the records of the determination of these criteria must be maintained as required in § 63.7932(a)(4):

(i) Affected process vents where the emissions of HAP in Table 1 of this subpart from all vents at the facility involved in remediation are below 1.4 kilograms per hour (3 pounds per hour) and 2.8 megagrams per year (3.1 tons per year) as determined by the procedures specified in § 63.7912(f).

(ii) Individual process vents associated with ex situ remediation operations that manage remediation material with a Table 1 (of this subpart) HAP concentration less than 10 parts per million by weight (ppmw). The HAP concentration must be determined in accordance with the procedures specified in § 63.7912(a). Documentation must be prepared by the owner or operator and maintained at the facility to support the determination of the remediation material concentration. This documentation must include identification of each process vent exempted under this paragraph and any test results used to determine the HAP concentration.

(iii) Individual process vents where you determine that the process vent stream flow rate is less than 6.0 cubic meters per minute (m^3/min) at standard conditions (as defined in 40 CFR 63.2) and the total HAP concentration is less than 20 parts per million by volume (ppmv). The process vent stream flow rate and total HAP concentration must be determined in accordance with the procedures specified in § 63.694(m). For the purposes of this subpart, when you read the term ''HAP listed in Table 1 of this subpart'' in 40 CFR Subpart DD, you should refer to Table 1 of this Subpart. Documentation must be prepared by the owner or operator and maintained at the facility to support the

determination of the process vent stream flow rate and total HAP concentration. This documentation must include identification of each process vent exempted under this paragraph and the test results used to determine the process vent stream flow rate and total HAP concentration. You must perform a new determination of the process vent stream flow rate and total HAP concentration when the extent of changes to operation of the unit on which the process vent is used could cause either the process vent stream flow rate to exceed the limit of 6.0 m^3/min or the total HAP concentration to exceed the limit of 20 ppmv.

(iv) Individual process vents where you determine that the process vent stream flow rate is less than 0.005 m^3/min at standard conditions (as defined in 40 CFR 63.2). The process vent stream flow rate must be determined in accordance with the procedures specified in § 63.694(m). Documentation must be prepared by the owner or operator and maintained at the facility to support the determination of the process vent stream flow rate. This documentation must include identification of each process vent exempted under this paragraph and the test results used to determine the process vent stream flow rate.

(4) *Remediation material management units.* You are exempt from the requirements of §§ 63.7890 through 63.7932 for units where any of the criteria listed in paragraphs (c)(4)(i) or (ii) of this section are met, except that the records of the determination of these criteria must be maintained as required in § 63.7932(a)(4):

(i) The volatile organic HAP (VOHAP) concentration of the remediation material managed in the unit is less than 500 ppmw. You must follow the requirements in § 63.7912(a) to demonstrate that the VOHAP concentration of the remediation material is less than 500 ppmw. Once the VOHAP concentration has been determined to be less than 500 ppmw, all management units downstream from the point of determination are exempt from the control requirements of this subpart unless a remediation process is used that concentrates all, or part of, the remediation material being managed in the unit such that the VOHAP concentration equals or exceeds 500 ppmw (e.g., free-product separation).

(ii) At your discretion, one or a combination of remediation material management units may be exempted from the requirements in this subpart when the quantity of total annual HAP in Table 1 of this subpart placed in the units exempted under this paragraph is less than 1 megagram per year. For the units to be exempted from the requirements of this subpart, you must meet the requirements in § 63.683(b)(2)(ii)(A) and (B). You may change the units selected to be exempted under this paragraph by preparing a new designation for the exempt units as required by § 63.683(b)(2)(ii)(A) and performing a new determination as required by § 63.683(b)(2)(ii)(B).

(5) *Tanks and surface impoundments.* You are exempt from the requirements of §§ 63.7890 (excluding § 63.7890(a)) through 63.7932 for any tank or surface impoundment used for biological treatment processes where the requirements of § 63.683(b)(2)(iii)(A) or (B) and monitored in accordance with § 63.684(e)(4) are met, except that the records of the determination of these criteria must be maintained as required in § 63.7932(a)(4).

(6) Cleanup of any contamination where removal or treatment of the material begins within seven days from the time that the contamination occurs. The cleanup process should be continuous (i.e., performed every workday) and typically completed in 30 days or less.

(7) Radioactive mixed waste managed in accordance with all applicable regulations under the Atomic Energy Act and the Nuclear Waste Policy Act authorities.

(d) An affected source is a new affected source if you commenced construction of the affected source after July 30, 2002 and you meet the applicability criteria in § 63.7881 at the time you commenced construction.

(e) An affected source is reconstructed if you meet the criteria as defined in § 63.2 of subpart A of this part.

(f) An affected source is existing if it is not new or reconstructed.

§ 63.7883 When do I have to comply with this subpart?

(a) If you have a new or reconstructed affected source, you must comply with this subpart according to the guidance in paragraphs (a)(1) and (2) of this section.

(1) If you startup your affected source before the effective date of the subpart, then you must comply with the emissions limitations and work practice standards in this subpart no later than the effective date of the subpart. If you startup your affected source before the effective date of the subpart, but the affected source will not operate on or after the effective date of the subpart, then that affected source is not subject to any of the requirements contained in this subpart.

(2) If you startup your affected source after the effective date of the subpart, then you must comply with the emissions limitation and work practice standards in this subpart upon startup of your affected source.

(b) If you have an existing affected source, you must comply with the emissions limitations and work practice standards for existing sources no later than 3 years after [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**]. If you have an existing affected source that will not be in operation on or after 3 years after [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**], then the affected source is not subject to any of the requirements contained in this subpart.

(c) If you have an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP, paragraphs (c)(1) and (2) of this section apply:

(1) Any portion of the existing facility that is a new affected source or a new reconstructed source must be in compliance with this subpart upon startup.

(2) All other parts of the source must be in compliance with this subpart by no later than 3 years after it becomes a major source.

(d) You must meet the notification requirements in § 63.7931(a) according to the schedule in § 63.7931(b) and in subpart A of this part. Some of the notifications must be submitted before you are required to comply with the emissions limitations and work practice standards in this subpart.

Emissions Limitations and Work Practice Standards

§ 63.7890 What emissions limitations and work practice standards must I meet?

(a) You must meet each emissions limitation for process vent affected sources in Table 2 of this subpart that applies to you.

(b) You must meet each emissions limitation for remediation material management unit affected sources in Table 3 of this subpart that applies to you.

(c) You must meet each operating limit in Table 4 of this subpart that applies to you. In lieu of the operating limits in Table 4 of this subpart, you may choose to establish an operating limit based on total organic or HAP emissions concentration using a continuous emissions monitoring system (CEMS). In this case, the average outlet total organic or HAP

concentration in any 24-hour period must not exceed the average concentration established during the performance test (see § 63.7913(f)).

(d) You must meet each work practice standard in Table 5 of this subpart that applies to you.

(e) As provided in § 63.6(g), you may request approval from the EPA to use an alternative to the work practice standards in this section. If you apply for permission to use an alternative to the work practice standards in this section, you must submit the information described in § 63.6(g)(2).

General Compliance Requirements

§ 63.7900 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emissions limitations (including operating limits) and the work practice standards in this subpart at all times, except during periods of startup, shutdown, and malfunction.

(b) You must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i).

(c) You must develop and implement a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

(d) For each monitoring system required in this section, you must develop and make available for inspection by the permitting authority, upon request, a site-specific monitoring plan that addresses the following:

(1) Installation of the continuous monitoring system (CMS) sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (e.g., on or downstream of the last control device);

(2) Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer, and the data collection and reduction system; and

(3) Performance evaluation procedures and acceptance criteria (e.g., calibrations).

(e) In your site-specific monitoring plan, you must also address the following:

(1) Ongoing operation and maintenance procedures in accordance with the general requirements of § 63.8(c)(1), (3), (4)(ii), (7), and (8);

(2) Ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d); and

(3) Ongoing recordkeeping and reporting procedures in accordance with the general requirements of § 63.10(c), (e)(1), and (e)(2)(i).

(f) You must conduct a performance evaluation of each CMS in accordance with your site-specific monitoring plan.

(g) You must operate and maintain the CMS in continuous operation according to the site-specific monitoring plan.

§ 63.7901 What requirements must I meet if I transfer remediation material to another party, another facility or receive remediation material from another facility?

(a) You may elect to transfer remediation material to an on-site remediation operation not owned or operated by the owner or operator of the remediation material, or to an off-site treatment operation. If you manage remediation material meeting the criteria in § 63.7882 you must comply with the requirements in paragraphs (a)(1) through (4) of this section.

(1) The owner or operator transferring the remediation material must:

(i) Comply with the provisions specified in §§ 63.7890 through 63.7933 of this subpart for each affected source that manages remediation material prior to shipment or transport.

(ii) Include a notice with the shipment or transport of each remediation material item. The notice must state that the remediation material contains organic HAP that are to be treated in accordance with the provisions of this subpart. When the transport is continuous or ongoing (for example, discharge to a publicly owned treatment works), the notice must be submitted to the treatment operator initially and whenever there is a change in the required treatment.

(2) You may not transfer the remediation material unless the transferee has submitted to the EPA a written certification that the transferee will manage and treat the remediation material received from a source subject to the requirements of this subpart in accordance with the requirements of §§ 63.7890 through 63.7933. The certifying entity may revoke the written certification by sending a written statement to the EPA and the owner or operator providing at least 90 days notice that the certifying entity is rescinding acceptance of responsibility for compliance with the regulatory provisions listed in this paragraph. Upon expiration of the notice period, you may not transfer the remediation material to the treatment operation.

(3) By providing this written certification to the EPA, the certifying entity accepts responsibility for compliance with the regulatory provisions listed in paragraph (a)(2) of this section with respect to any shipment of remediation material covered by the written certification. Failure to abide by any of those provisions with respect to such shipments may result in enforcement action by the EPA against the certifying entity in accordance with the enforcement provisions applicable to violations of these provisions by owners or operators of sources.

(4) Written certifications and revocation statements to the EPA from the transferees of remediation material must be signed by the responsible official of the certifying entity, provide the name and address of the certifying entity, and be sent to the appropriate EPA Regional Office at the addresses listed in 40 CFR 63.13. Such written certifications are not transferable by the treater.

Testing and Initial Compliance Requirements

§ 63.7910 By what date must I conduct performance tests or other initial compliance demonstrations?

(a) For existing sources, you must conduct performance tests within 180 calendar days after the compliance date that is specified for your source in § 63.7883(b).

(b) For new sources, you must conduct initial performance tests and other initial compliance demonstrations according to the provisions in § 63.7(a)(2)(i) and (ii).

§ 63.7911 When must I conduct subsequent performance tests?

For non-flare control devices, you must conduct the performance testing required in Table 6 of this subpart at any time the EPA requires you to in accordance with section 114 of the CAA.

§ 63.7912 What tests, design evaluations, and other procedures must I use?

(a) *Determination of average VOHAP concentration of material prior to, or at, the point of management or treatment.* This section specifies the testing methods and procedures required for determining the average VOHAP concentration for remediation material.

(1) These methods may be used to determine the average VOHAP concentration of any material listed in (a)(1)(i) through (iii) of this section.

(i) A single remediation material stream; or

(ii) Two or more remediation material streams that are combined prior to, or within, a management or treatment unit or operation; or

(iii) Remediation material that is combined with one or more non-

remediation material streams prior to, or within, a management or treatment operation or unit.

(2) The average VOHAP concentration of a material must be determined using either direct measurement as specified in paragraph (a)(3) of this section or by knowledge as specified in paragraph (a)(4) of this section.

(3) *Direct measurement* to determine VOHAP concentration.

(i) *Sampling.* Samples of each material stream must be collected from the container, pipeline, or other device used to deliver each material stream prior to entering the treatment or management unit in a manner such that volatilization of organics contained in the sample is minimized and an adequately representative sample is collected and maintained for analysis by the selected method.

(A) The averaging period to be used for determining the average VOHAP concentration for the material stream on a mass-weighted average basis must be designated and recorded. The averaging period can represent any time interval that the owner or operator determines is appropriate for the material stream but must not exceed 1 year. For streams that are combined, an averaging period representative for all streams must be selected.

(B) No less than four samples must be collected to represent the complete range of HAP compositions and HAP quantities that occur in each material stream during the entire averaging period due to normal variations in the material stream(s). Examples of such normal variations are variation of material HAP concentration within a contamination area or seasonal variations in non-remediation material quantity.

(C) All samples must be collected and handled in accordance with written procedures prepared by the owner or operator and documented in a site sampling plan. This plan must describe the procedure by which representative samples of the material stream(s) are collected such that a minimum loss of organics occurs throughout the sample collection and handling process and by which sample integrity is maintained. A copy of the written sampling plan must be maintained on site in the facility operating records. An example of an acceptable sampling plan includes a plan incorporating sample collection and handling procedures in accordance with the requirements specified in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication No. SW–846 or Method 25D in 40 CFR part 60, appendix A.

(ii) *Analysis.* Each collected sample must be prepared and analyzed in accordance with either one of the methods listed in § 63.694(b)(2)(ii), or any current EPA Contracts Lab Program method (or future revisions) capable of identifying all the HAP in Table 1 of this subpart.

(iii) *Calculations.* The average VOHAP concentration $\overline{C}$ on a mass-weighted basis must be calculated by using the results for all samples analyzed in accordance with paragraph (a)(3)(ii) of this section and Equation 1 of this section as follows:

$$\overline{C} = \frac{1}{Q_T} \times \sum_{i=1}^{n} \left(Q_i \times C_i \right) \qquad \text{(Eq. 1)}$$

where:

$\overline{C}$ = Average VOHAP concentration of the material on a mass-weighted basis, ppmw.

i= Individual sample ''i'' of the material.

n = Total number of samples of the material collected (at least 4 per stream) for the averaging period (not to exceed 1 year).

Q_i = Mass quantity of material stream represented by C_i, kilograms per hour (kg/hr).

Q_T = Total mass quantity of all material during the averaging period, kg/hr.

C_i = Measured VOHAP concentration of sample ''i'' as determined in accordance with the requirements of (a)(3)(ii) of this section, ppmw.

(4) *Knowledge of the material* to determine VOHAP concentration.

(i) Documentation must be prepared that presents the information used as the basis for the owner's or operator's knowledge of the material stream's average VOHAP concentration. Examples of information that may be used as the basis for knowledge include: material balances for the source(s) generating each material stream; species-specific chemical test data for the material stream from previous testing that are still applicable to the current material stream; test data for material from the contamination area(s) being remediated; or other knowledge based on information included in manifests, shipping papers, or waste certification notices.

(ii) If test data are used as the basis for knowledge, then the owner or operator must document the test method, sampling protocol, and the means by which sampling variability and analytical variability are accounted for in the determination of the average VOHAP concentration. For example, an owner or operator may use HAP concentration test data for the material stream that are validated in accordance with Method 301 in 40 CFR part 63, appendix A of this part as the basis for knowledge of the material. This information must be provided for each material stream where streams are combined.

(iii) An owner or operator using species-specific chemical concentration test data as the basis for knowledge of the material may adjust the test data to the corresponding average VOHAP concentration value which would be obtained had the material samples been analyzed using Method 305. To adjust these data, the measured concentration for each individual HAP chemical species contained in the material is multiplied by the appropriate species-specific adjustment factor (f_{m305}) listed in Table 1 of this subpart.

(iv) In the event that the Administrator and the owner or operator disagree on a determination of the average VOHAP concentration for a material stream using knowledge, then the results from a determination of VOHAP concentration using direct measurement as specified in paragraph (a)(3) of this section must be used to establish compliance with the applicable requirements of this subpart. The Administrator may perform or request that the owner or operator perform this determination using direct measurement.

(b) You must conduct either each performance test in Table 6 of this subpart that applies to you or each design analysis specified in § 63.693(d)(2)(ii), (e)(2)(ii), (f)(2)(ii), or (g)(2)(i)(B) that applies to you.

(c) You must conduct each performance test according to the requirements in § 63.7(e)(1) and under the specific conditions that this subpart specifies in Table 6 of this subpart.

(d) You must conduct three separate test runs for each performance test required in this section, as specified in § 63.7(e)(3). Each test run must last at least 1 hour. During the performance test conducted according to this section, you must collect the appropriate operating parameter monitoring system data (see Table 4 of this subpart), average the operating parameter data over each test run, and set operating limits, whether a minimum or maximum value, based on the average of values for each of the three test runs. If you use a control device design analysis to demonstrate control device performance, then the minimum or maximum operating parameter value must be established based on the control device design analysis and supplemented, as necessary, by the control device manufacturer

recommendations or other applicable information.

(e) *Compliance with control device percent reduction requirement.* You must use Equations 2, 3 and 4 of this section to determine initial and ongoing compliance with the control device percent reduction limit in Table 2 of this subpart for the combination of all affected process vents at the facility. You must use Equations 2, 3 and 5 of this section to determine initial and ongoing compliance with the control device percent reduction limit in Table 3 of this subpart for remediation material management units, except that the references to uncontrolled vents for Equations 2 and 3 of this section do not apply.

(1) To calculate control device inlet and outlet concentrations use Equations 2 and 3 as follows:

$$E_i = K_2\left(\sum_{j=1}^{n} C_{ij}M_{ij}\right)Q_i \qquad \text{(Eq. 2)}$$

$$E_o = K_2\left(\sum_{j=1}^{n} C_{oj}M_{oj}\right)Q_o \qquad \text{(Eq. 3)}$$

Where:

C_{ij}, C_{oj} = Concentration of sample component j of the gas stream at the inlet and outlet of the control device, dry basis, parts per million by volume. For uncontrolled vents, $C_{ij} = C_{oj}$ and equal the concentration exiting the vent;

E_i, E_o = Mass rate of total organic compounds (TOC) (minus methane and ethane) or total HAP, from Table 1 of this subpart, at the inlet and outlet of the control device, respectively, dry basis, kilogram per hour. For uncontrolled vents, $E_i = E_o$ and equal the concentration exiting the vent;

M_{ij}, M_{oj} = Molecular weight of sample component j of the gas stream at the inlet and outlet of the control device, respectively, gram/gram-mole. For uncontrolled vents, $M_{ij} = M_{oj}$ and equal the gas stream molecular weight exiting the vent;

Q_i, Q_o = Flowrate of gas stream at the inlet and outlet of the control device, respectively, dry standard cubic meters per minute (dscm/min). For uncontrolled vents, $Q_i = Q_o$ and equals the flowrate exiting the vent;

K_2 = Constant, 2.494×10^{-6} (parts per million)$^{-1}$(gram-mole per standard cubic meter)(kilogram/gram)(minute/hour, where standard temperature (gram-mole per standard cubic meter) is 20°C;

n = the number of components in the sample.

(2) To calculate control device emissions reductions for process vents use Equation 4 of this section as follows:

$$R_V = \frac{\sum_{j=1}^{n} E_i - \sum_{j=1}^{n} E_o}{\sum_{j=1}^{n} E_i} \times 100 \qquad \text{(Eq. 4)}$$

Where:

R_v = Overall emissions reduction for all affected process vents, percent

E_i = Mass rate of TOC (minus methane and ethane) or total HAP, from Table 1 of this subpart, at the inlet to the control device, or exiting the vent for uncontrolled vents, as calculated in this section, kilograms TOC per hour or kilograms HAP per hour;

E_o = Mass rate of TOC (minus methane and ethane) or total HAP, from Table 1 of this subpart, at the outlet to the control device, or exiting the vent for uncontrolled vents, as calculated in this section, kilograms TOC per hour or kilograms HAP per hour. For vents without a control device, $E_o = E_i$;

n = number of affected source process vents.

(3) To calculate control device emissions reductions for remediation material management units use Equation 5 of this section as follows:

$$R_{cd} = \frac{E_i - E_o}{E_i} \times 100 \qquad \text{(Eq. 5)}$$

Where:

R_{cd} = Control efficiency of control device, percent.

E_i = Mass rate of TOC (minus methane and ethane) or total HAP at the inlet to the control device as calculated under paragraph (e)(1) of this section, kilograms TOC per hour or kilograms HAP per hour.

E_o = Mass rate of TOC (minus methane and ethane) or total HAP at the outlet of the control device, as calculated under paragraph (e)(1) of this section, kilograms TOC per hour or kilograms HAP per hour.

(4) If the vent stream entering a boiler or process heater is introduced with the combustion air or as a secondary fuel, the weight-percent reduction of total HAP or TOC (minus methane and ethane) across the device must be determined by comparing the TOC (minus methane and ethane) or total HAP in all combusted vent streams and primary and secondary fuels with the TOC (minus methane and ethane) or total HAP exiting the device, respectively.

(f) *Compliance with the total organic mass emissions rate.*

(1) The requirements of paragraphs (f)(2) through (4) of this section must be used to determine compliance with the emissions rate limits in Table 2 of this subpart.

(2) Initial and ongoing compliance with the total organic mass flow rates specified in Table 2 of this subpart must be determined using Equation 6 of this section as follows:

$$E_h = Q_{sd}\left\{\sum_{i=1}^{n} C_i MW_i\right\}\left[0.0416\right]\left[10^{-6}\right] \qquad \text{(Eq. 6)}$$

Where:

E_h = Total organic mass flow rate, kg/h;

Q_{sd} = Volumetric flow rate of gases entering or exiting control device (or exiting the process vent if no control device is used), as determined by Method 2, dscm/h;

n= Number of organic compounds in the vent gas;

C_i = Organic concentration in ppm, dry basis, of compound i in the vent gas, as determined by Method 18;

MW_i = Molecular weight of organic compound i in the vent gas, kg/kg-mol;

0.0416 = Conversion from molar volume, kg-mol/m^3 (@ 293 K and 760 mm Hg);

10^{-6} = Conversion from ppm, ppm^{-1}.

(3) Ongoing compliance with the annual total organic emissions rate specified in Table 2 of this subpart must be determined using Equation 7 of this section as follows:

$$E_A = (E_h)(H) \qquad \text{(Eq. 7)}$$

Where:

E_A = Total organic mass emissions rate, kilograms per year;

E_h = Total organic mass flow rate for the process vent, kg/h;

H = Total annual hours of operation for the affected unit, h.

(4) Ongoing compliance with the total organic emissions limit from all affected process vents at the facility in Table 2 of this subpart must be determined by:

(1) summing the total hourly organic mass emissions rates (E_h as determined in Equation 6 of this section); and

(ii) summing the total annual organic mass emissions rates (E_A, as determined in Equation 7 of this section) for all affected process vents at the facility.

(g) *Compliance with HAP concentration limit.*

(1) To determine compliance with the enclosed combustion device total HAP concentration limits specified in Table 2 of this subpart, you must use either Method 18, 40 CFR part 60, appendix A, or Method 25A, 40 CFR part 60, appendix A, to measure either TOC (minus methane and ethane) or total HAP. Alternatively, any other method or data that have been validated according to Method 301 of appendix A of this part, may be used. The following procedures must be used to calculate ppmv concentration, corrected to 3 percent oxygen:

(2) The minimum sampling time for each run must be 1 hour, in which either an integrated sample or a minimum of four grab samples must be taken. If grab sampling is used, then the samples must be taken at approximately equal intervals in time, such as 15-minute intervals during the run.

(3) The TOC concentration or total HAP concentration must be calculated according to paragraph (g)(3)(i) or (ii) of this section.

(i) The TOC concentration is the sum of the concentrations of the individual components and must be computed for each run using Equation 8 of this section as follows:

$$C_{TOC} = \sum_{i=1}^{X} \frac{\sum_{i=1}^{n} C_{ji}}{X} \qquad \text{(Eq. 8)}$$

Where:

C_{TOC} = Concentration of total organic compounds minus methane and ethane, dry basis, parts per million by volume.

C_{ji} = Concentration of sample component j of sample i, dry basis, parts per million by volume.

n = Number of components in the sample.

X = Number of samples in the sample run.

(ii) The total HAP concentration must be computed according to Equation 8 in paragraph (g)(3)(i) of this section, except that only HAP listed in Table 1 of this subpart must be summed.

(4) The TOC concentration or total HAP concentration must be corrected to 3 percent oxygen according to paragraphs (g)(4)(i) and (ii) of this section.

(i) The emissions rate correction factor or excess air, integrated sampling and analysis procedures of Method 3B, 40 CFR part 60, appendix A, must be used to determine the oxygen concentration. The samples must be taken during the same time that the samples are taken for determining TOC concentration or total HAP concentration.

(ii) The TOC and HAP concentration must be corrected for percent oxygen by using Equation 9 of this section as follows:

$$C_c = C_m\left(\frac{17.9}{20.9 - \%O_{2d}}\right) \qquad \text{(Eq. 9)}$$

Where:

C_c = TOC concentration or total HAP concentration corrected to 3 percent oxygen, dry basis, parts per million by volume.

C_m = TOC concentration or total HAP concentration, dry basis, parts per million by volume.

$\%O_{2d}$ = Concentration of oxygen, dry basis, percent by volume.

(h) You must conduct each design evaluation of a control device according to the specific requirements for the control device in § 63.693(c) through (h). For the purposes of this subpart, when you read the term ''HAP listed in Table 1 of this subpart'' in 40 CFR Subpart DD, you should refer to Table 1 of this subpart.

(i) You may not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 63.7(e)(1).

(j) When conducting testing to comply with a HAP or TOC reduction efficiency limit, you must conduct simultaneous sampling at the inlet and outlet of the control device. You must conduct inlet sampling after the final product recovery device. If a vent stream is introduced with the combustion air or as an auxiliary fuel into a boiler or process heater, the location of the inlet sampling sites must be selected to ensure that the measurement of total HAP concentration or TOC concentration includes all vent streams and primary and secondary fuels introduced into the boiler or process heater.

(k) When complying with the emissions rate limit in row (1)(b) of Table 2 of this subpart or a HAP or TOC emissions concentration limit in Table 3 of this subpart, you must conduct sampling at the outlet of the control device.

(l) If you use Method 18, 40 CFR part 60, appendix A, either an integrated sample or a minimum of four grab samples must be taken. If you use grab sampling, then you must take the grab samples at approximately equal intervals in time (such as 15 minutes) during the run. Also, you must first determine which HAP are present in the inlet gas stream using knowledge of the remediation material or the screening procedure described in Method 18, 40 CFR part 60, appendix A, quantify the emissions for all HAP identified as present in the inlet gas stream for both the inlet and outlet gas streams of the control device.

(m) If you use Method 25A, 40 CFR part 60, appendix A, you must calibrate the instrument in accordance with the monitoring plan of § 63.7900 using the single organic HAP representing the largest percent by volume of the emissions. The Method 25A, 40 CFR part 60, appendix A, results are acceptable if: (1) the response from the high level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on its most sensitive scale, and (2) the span value of the analyzer must be less than 100 ppmv.

(n) You must conduct each CMS performance evaluation according to the requirements in § 63.8(e).

§ 63.7913 What are my monitoring installation, operation, and maintenance requirements?

(a) You must install, operate, and maintain each CMS according to the requirements in § 63.695(a) through (d), (e)(1) and (e)(2). In addition, you must collect and analyze temperature, flow, pressure, or pH data according to the requirements in paragraphs (a)(1) through (4) of this section:

(1) To calculate a valid hourly value, you must have at least three of four equally spaced data values (or at least two, if that condition is included to allow for periodic calibration checks) for that hour from a CMS that is not out of control according to the monitoring plan referenced in § 63.7900.

(2) To calculate the average emissions for each averaging period, you must have at least 75 percent of the hourly averages for that period using only block hourly average values that are based on valid data (i.e., not from out-of-control periods).

(3) Determine the hourly average of all recorded readings.

(4) Record the results of each inspection, calibration, and validation check.

(b) For each temperature monitoring device, you must meet the requirements in paragraph (a) of this section and also meet the requirements in paragraphs (b)(1) through (8) of this section:

(1) Locate the temperature sensor in a position that provides a representative temperature.

(2) For a noncryogenic temperature range, use a temperature sensor with a minimum measurement sensitivity of 2.2° C or 0.75 percent of the temperature value, whichever is larger.

(3) For a cryogenic temperature range, use a temperature sensor with a minimum measurement sensitivity of 2.2° C or 2 percent of the temperature value, whichever is larger.

(4) Shield the temperature sensor system from electromagnetic interference and chemical contaminants.

(5) If a chart recorder is used, it must have a sensitivity in the minor division of at least 20° F.

(6) 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 16.7° C of the process temperature sensor's reading.

(7) Conduct calibration and validation checks any time the sensor exceeds the manufacturer's specified maximum operating temperature range or install a new temperature sensor.

(8) At least monthly, inspect all components for integrity and all electrical connections for continuity, oxidation, and galvanic corrosion.

(c) For each flow measurement device, you must meet the requirements in paragraphs (a)(1) through (4) and paragraphs (c)(1) through (5) of this section:

(1) Locate the flow sensor and other necessary equipment such as straightening vanes in a position that provides a representative flow.

(2) Use a flow sensor with a minimum measurement sensitivity of 2 percent of the flow rate.

(3) Reduce swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(4) Conduct a flow sensor calibration check at least semi-annually.

(5) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(d) For each pressure measurement device, you must meet the requirements in paragraph (a)(1) through (4) and paragraphs (d)(1) through (7) of this section.

(1) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure.

(2) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(3) Use a gauge with a minimum measurement sensitivity of 0.5 inch of water or a transducer with a minimum measurement sensitivity of 1 percent of the pressure range.

(4) Check pressure tap pluggage daily.

(5) Using a manometer, check gauge calibration quarterly and transducer calibration monthly.

(6) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range or install a new pressure sensor.

(7) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(e) For each pH measurement device, you must meet the requirements in paragraph (a)(1) through (4) and paragraphs (e)(1) through (4) of this section:

(1) Locate the pH sensor in a position that provides a representative measurement of pH.

(2) Ensure the sample is properly mixed and representative of the fluid to be measured.

(3) Check the pH meter's calibration on at least two points every 8 hours of process operation.

(4) At least monthly, inspect all components for integrity and all electrical connections for continuity.

(f) *Alternative to parametric monitoring for any control device.* As an alternative to the parametric monitoring required in paragraphs (a) through (e) of this section, you may install, calibrate, and operate a CEMS to measure the control device outlet total organic emissions or organic HAP emissions concentration. The CEMS used on combustion control devices must include a diluent gas monitoring system (for O_2 or CO_2) with the pollutant monitoring system in order to correct for dilution (e.g., to 0 percent excess air). You must verify the performance of the CEMS initially according to the procedures in Performance Specification 8 (for a total organic emissions CEMS) or Performance Specification 9 (for a HAP emissions CEMS) and Performance Specification 3 (for an O_2 or CO_2 CEMS) of appendix B of 40 CFR part 60. The relative accuracy provision of Performance specification 8, sections 2.4 and 3 need not be conducted. You must prepare a site-specific monitoring plan for operating, calibrating, and verifying the operation of your CEMS in accordance with the requirements in §§ 63.8(c), (d), and (e). You must establish the emissions concentration operating limit according to paragraphs (f)(1),(2), and (3) of this section.

(1) During the performance test required by § 63.7912, you must monitor and record the total organic or HAP emissions concentration at least once every 15 minutes during each of the three test runs.

(2) Use the data collected during the performance test to calculate and record the average total organic or HAP emissions concentration maintained during the performance test. The average total organic or HAP emissions concentration, corrected for dilution as appropriate, is the maximum operating limit for your control device.

(3) Use the CEMS data to verify that the daily (24-hour) average total organic or HAP emissions concentration remain below the established operating limit.

§ 63.7914 How do I demonstrate initial compliance with the emissions limitations and work practice standards?

(a) You must demonstrate initial compliance with each emissions limitation and work practice standard that applies to you according to Tables 7 and 8 of this subpart.

(b) You must establish each site-specific operating limit in Table 4 of this subpart that applies to you according to the requirements in § 63.7912 and Table 6 of this subpart.

(c) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.7931(e).

Continuous Compliance Requirements

§ 63.7920 How do I monitor and collect data to demonstrate continuous compliance?

(a) You must monitor and collect data according to this section and the monitoring plan of § 63.7900.

(b) Except for monitor malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), you must monitor continuously (or collect data at all required intervals) at all times that the affected source is operating.

(c) You may not use data recorded during monitoring malfunctions, associated repairs, out of control periods and required quality assurance or control activities in data averages and calculations used to report emissions or operating levels, nor may such data be used in fulfilling a minimum data availability requirement, if applicable. You must use all the data collected during all other periods in assessing the operation of the control device and associated control system.

§ 63.7921 How do I demonstrate continuous compliance with the emissions limitations, operating limits and work practice standards?

(a) You must demonstrate continuous compliance with each emissions limitation, operating limit and work practice standard in Tables 2 through 5 of this subpart that applies to you according to methods specified in Tables 9, 10, and 11 of this subpart.

(b) You must report each instance in which you did not meet each emissions limitation and each operating limit in Tables 9 and 10 of this Subpart that apply to you. This includes periods of startup, shutdown, and malfunction. You must also report each instance in which you did not meet the requirements in Table 11 of this subpart that apply to you. These instances are deviations from the emissions limitations and work practice standards in this subpart. These deviations must be reported according to the requirements in § 63.7931.

(c) During periods of startup, shutdown, and malfunction, you must operate in accordance with the startup, shutdown, and malfunction plan.

(d) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the startup, shutdown, and malfunction plan. We will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

Notification, Reports, and Records

§ 63.7930 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.7(b) and (c), 63.8(e), 63.8(f)(4) and (6), and 63.9(b) through (h) that apply to you.

(b) As specified in § 63.9(b)(2), if you start up your affected source before [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**], you must submit an Initial Notification not later than 120 calendar days after [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**].

(c) As specified in § 63.9(b)(3), if you start up your new or reconstructed affected source on or after the effective date, you must submit an Initial Notification no later than 120 calendar days after initial startup.

(d) If you are required to conduct a performance test, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin as required in § 63.7(b)(1).

(e) If you are required to conduct a performance test, design evaluation, or other initial compliance demonstration as specified in Tables 6, 7, or 8 of this subpart, you must submit a Notification of Compliance Status according to § 63.9(h)(2)(ii).

(1) For each initial compliance demonstration required in Tables 7 or 8 of this subpart that does not include a performance test, you must submit the Notification of Compliance Status before the close of business on the 30th calendar day following the completion of the initial compliance demonstration.

(2) For each initial compliance demonstration required in Tables 6, 7 or 8 of this subpart that includes a performance test conducted according to the requirements in Table 6 of this subpart, you must submit the Notification of Compliance Status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test according to § 63.10(d)(2).

§ 63.7931 What reports must I submit and when?

(a) You must submit each report in Table 12 of this subpart that applies to you.

(b) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report by the date in Table 12 of this subpart and according to the requirements in paragraphs (b)(1) through (5) of this section:

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.7883 and ending on June 30 or December 31, whichever date is the first date following the end of the first calendar half after the compliance date that is specified for your source in § 63.7883.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date follows the end of the first calendar half after the compliance date that is specified for your affected source in § 63.7883.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(5) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (b)(1) through (4) of this section.

(c) The compliance report must contain the information in paragraphs (c)(1) through (7) of this section:

(1) Company name and address.

(2) Statement by a responsible official, including that official's name, title, and signature, certifying the truth, accuracy and completeness of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) Any changes to the information listed in paragraph (d) of this section that have occurred since the last report.

(5) If you had a startup, shutdown or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the information in § 63.10(d)(5)(i).

(6) If there are no deviations from any emissions limitations (emissions limit or operating limit) that applies to you and there are no deviations from the requirements for work practice standards in Table 11 of this subpart, a statement that there were no deviations from the emissions limitations or work practice standards during the reporting period.

(7) If there were no periods during which the CMS and operating parameter monitoring systems were out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during the which the CMS was out-of-control during the reporting period.

(d) For each deviation from an emissions limitation (emissions limit,

operating limit) and for each deviation from the requirements for work practice standards in Table 11 of this subpart that occurs at an affected source where you are not using a CMS to comply with the emissions limitations or work practice standards in this subpart, the compliance report must contain the information in (c)(1) through (4) of this section, and paragraphs (d)(1) and (2) of this section. This includes periods of startup, shutdown, and malfunction.

(1) The total operating time of each affected source during the reporting period.

(2) Information on the number, duration, and cause of deviations (including unknown cause, if applicable), as applicable, and the action taken to correct the cause of the deviation.

(e) For each deviation from an emissions limitation (emissions limit, operating limit) occurring at an affected source where you are using a CMS in accordance with the monitoring plan of § 63.7900 to comply with the emissions limitation in this subpart, you must include the information in paragraphs (c)(1) through (4), and paragraphs (e)(1) through (12) of this section. This includes periods of startup, shutdown, and malfunction.

(1) The date and time that each malfunction started and stopped.

(2) The date and time that each CMS was inoperative, except for zero (low-level) and high-level checks.

(3) The date, time and duration that each CMS was out-of-control, including the information in § 63.8(c)(8).

(4) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(5) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(6) A breakdown of the total duration of the deviations during the reporting period into those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(7) A summary of the total duration of CMS downtime during the reporting period and the total duration of CMS downtime as a percent of the total source operating time during that reporting period.

(8) An identification of each hazardous air pollutant that was monitored at the affected source.

(9) A brief description of the process units.

(10) A brief description of the CMS.

(11) The date of the latest CMS certification or audit.

(12) A description of any changes in CMS, processes, or controls since the last reporting period.

(f) Each affected source that has obtained a title V operating permit pursuant to 40 CFR part 70 or 40 CFR part 71 must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If an affected source submits a compliance report pursuant to Table 12 of this subpart along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the compliance report includes all required information concerning deviations from any emissions limitation(including any operating limit), or work practice requirement in this subpart, submission of the compliance report must be deemed to satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submission of a compliance report must not otherwise affect any obligation the affected source may have to report deviations from permit requirements to the permit authority.

§ 63.7932 What records must I keep?

(a) You must keep records as described in paragraphs (a)(1) through (4) of this section:

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted, according to the requirements in § 63.10(b)(1) and (b)(2)(xiv).

(2) The records in § 63.6(e)(3)(iii) through (v) related to startups, shutdowns, and malfunctions.

(3) Results of performance tests.

(4) The records of initial and ongoing determinations for affected sources that are exempt from control requirements under this subpart.

(b) For each CMS, you must keep the records as described in paragraphs (b)(1) and (2) of this section:

(1) Records described in § 63.10(b)(2)(vi) through (xi) that apply to your CMS.

(2) Performance evaluation plans, including previous (i.e., superseded) versions of the plan as required in § 63.8(d)(3).

(c) You must keep the records required in Tables 9, 10, and 11 of this subpart to show continuous compliance with each emissions limitation and work practice standard that applies to you.

§ 63.7933 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep your files of all information (including all reports and notifications) for 5 years following the date of each occurrence, measurement, maintenance, action taken to correct the cause of a deviation, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You can keep the records offsite for the remaining 3 years.

(d) If, after the remediation activity is completed, there is no other remediation activity at the facility, and you are no longer the owner of the facility, you may keep all records for the completed remediation activity at an offsite location provided you notify the Administrator in writing of the name, address and contact person for the offsite location.

Other Requirements and Information

§ 63.7940 What parts of the General Provisions apply to me?

Table 13 of this subpart shows which parts of the General Provisions in § 63.1–§ 63.15 apply to you.

§ 63.7941 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the EPA, or a delegated authority such as your State, local, or tribal agency. If the EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency, in addition to the EPA, has the authority to implement and enforce this subpart. You should contact your EPA Regional Office (see list in § 63.13) to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this Subpart to a State, local, or tribal agency under section 40 CFR part 63, Subpart E, the authorities contained in paragraph (c) of this section are retained by the Administrator of EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as follows.

(1) Approval of alternatives to the non-opacity emissions limitations and

work practice standards in § 63.7890(a) through (d) under § 63.6(g).

(2) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.7942 What definitions apply to this subpart?

Terms used in this subpart are defined in the CAA, in 40 CFR 63.2, the General Provisions of this part, and in this section. If the same term is defined in another subpart and in this section, it will have the meaning given in this section for purposes of this subpart.

Air stripping means a desorption operation employed to transfer one or more volatile components from a liquid mixture into a gas (air) either with or without the application of heat to the liquid. Packed towers, spray towers and bubble-cap, sieve, or valve-type plate towers are among the process configuration used for contacting the air and a liquid.

Boiler means an enclosed combustion device that extracts useful energy in the form of steam and is not an incinerator or a process heater.

Closed-vent system means a system that is not open to the atmosphere and is composed of hard-piping, ductwork, connections, and, if necessary, fans, blowers, or other flow-inducing device that conveys gas or vapor from an emissions point to a control device.

Closure device means a cap, hatch, lid, plug, seal, valve, or other type of fitting that prevents or reduces air pollutant emissions to the atmosphere by blocking an opening in a cover when the device is secured in the closed position. Closure devices include devices that are detachable from the cover (e.g., a sampling port cap), manually operated (e.g., a hinged access lid or hatch), or automatically operated (e.g., a spring-loaded pressure relief valve).

Container means a portable unit used to hold material. Examples of containers include, but are not limited to drums, dumpsters, roll-off boxes, bulk cargo containers commonly known as portable tanks or totes, cargo tank trucks, dump trucks and tank rail cars.

Continuous record means documentation of data values measured at least once every 15 minutes and recorded at the frequency specified in this subpart.

Continuous recorder means a data recording device that either records an instantaneous data value at least once every 15 minutes or records 15-minutes or more frequent block averages.

Continuous seal means a seal that forms a continuous closure that completely covers the space between the edge of the floating roof and the wall of a tank. A continuous seal may be a vapor-mounted seal, liquid-mounted seal, or metallic shoe seal. A continuous seal may be constructed of fastened segments so as to form a continuous seal.

Control device means equipment used for recovering or oxidizing organic vapors. Examples of such equipment include but are not limited to carbon adsorbers, condensers, vapor incinerators, flares, boilers, and process heaters.

Cover means a device that prevents or reduces air pollutant emissions to the atmosphere by forming a continuous barrier over the remediation material managed in a unit. A cover may have openings (such as access hatches, sampling ports, gauge wells) that are necessary for operation, inspection, maintenance, and repair of the unit on which the cover is used. A cover may be a separate piece of equipment which can be detached and removed from the unit (such as a tarp) or a cover may be formed by structural features permanently integrated into the design of the unit.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emissions limitation (including any operating limit), or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emissions limitation, (including any operating limit), or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Emissions limitation means any emissions limit, opacity limit, operating limit, or visible emissions limit.

Emissions point means an individual tank, surface impoundment, container, oil/water, organic/water separator, transfer system, vent, or enclosure.

Enclosure means a structure that surrounds a tank or container, captures organic vapors emitted from the tank or container, and vents the captured vapor through a closed vent system to a control device.

Equipment means each pump, pressure relief device, sampling connection system, valve, and connector used in remediation material service at a facility.

External floating roof means a pontoon-type or double-deck type cover that rests on the liquid surface in a tank with no fixed roof.

Facility means all contiguous or adjoining property that is under common control including properties that are separated only by a road or other public right-of-way. Common control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, or any combination thereof. A unit or group of units within a contiguous property that are not under common control (e.g., a wastewater treatment unit located at the facility but is owned by a different company) is a different facility.

Fixed roof means a cover that is mounted on a unit in a stationary position and does not move with fluctuations in the level of the liquid managed in the unit.

Flame zone means the portion of the combustion chamber in a boiler or process heater occupied by the flame envelope.

Floating roof means a cover consisting of a double deck, pontoon single deck, or internal floating cover which rests upon and is supported by the liquid being contained, and is equipped with a continuous seal.

HAP means hazardous air pollutants.

Hard-piping means pipe or tubing that is manufactured and properly installed in accordance with relevant standards and good engineering practices.

Individual drain system means a stationary system used to convey wastewater streams or residuals to a remediation material management unit or to discharge or disposal. The term includes hard-piping, all drains and junction boxes, together with their associated sewer lines and other junction boxes (*e.g.,* manholes, sumps, and lift stations) conveying wastewater streams or residuals. For the purpose of this subpart, an individual drain system is not a drain and collection system that is designed and operated for the sole purpose of collecting rainfall runoff (*e.g.,* stormwater sewer system) and is segregated from all other individual drain systems.

Internal floating roof means a cover that rests or floats on the liquid surface (but not necessarily in complete contact with it inside a tank that has a fixed roof).

Light-material service means the container is used to manage remediation material for which both of the following conditions apply: the vapor pressure of one or more of the organic constituents in the remediation material is greater than 0.3 kilopascals (kPa) at 20° C and the total concentration of the pure organic constituents having a vapor pressure greater than 0.3 kPa at 20° C is equal to or greater than 20 percent by weight.

Liquid-mounted seal means a foam- or liquid-filled continuous seal mounted in contact with the liquid in a unit.

MACT activity means a non-remediation activity that is covered by a category of major sources listed pursuant to section 112(c) of the CAA. An activity is a MACT activity whether or not it is subject to the control requirements of its appropriate MACT standard(s).

Maximum HAP vapor pressure means the sum of the individual HAP equilibrium partial pressure exerted by remediation material at the temperature equal to either: the monthly average temperature as reported by the National Weather Service when the remediation material is stored or treated at ambient temperature; or the highest calendar-month average temperature of the remediation material when the remediation material is stored at temperatures above the ambient temperature or when the remediation material is stored or treated at temperatures below the ambient temperature. For the purpose of this subpart, maximum HAP vapor pressure is determined using the procedures specified in § 63.694(j). For the purpose of this subpart, when you read the term ''Table 3 or Table 4 of this subpart'' in § 63.694(j) you should refer to Table 3 of this subpart.

Media means materials found in the natural environment such as soil, ground water, surface water, and sediments, or a mixture of such materials with liquids, sludges, or solids which is inseparable by simple mechanical removal processes and is made up primarily of media. This definition does not include debris (as defined in 40 CFR 268.2).

Metallic shoe seal means a continuous seal that is constructed of metal sheets which are held vertically against the wall of the tank by springs, weighted levers, or other mechanisms and is connected to the floating roof by braces or other means. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

No detectable organic emissions means no escape of organics to the atmosphere as determined using the procedure specified in 63.694(k).

Oil/water separator means a separator as defined for this subpart that is used to separate oil from water.

Operating parameter value means a minimum or maximum value established for a control device or treatment process parameter which, if achieved by itself or in combination with one or more other operating parameter values, determines that an owner or operator has complied with an applicable emissions limitation or standard.

Organic/water separator means a separator as defined for this subpart that is used to separate organics from water.

Point-of-extraction means the point where you first extract the remediation material prior to placing the remediation material in a management unit or other unit, but before the first point where the organic constituents in the remediation material have the potential to volatilize and be released to the atmosphere. For the purpose of applying this definition to this subpart, the first point where the organic constituents in the remediation material have the potential to volatilize and be released to the atmosphere is not a fugitive emissions point due to an equipment leak from any of the following equipment components: pumps, compressors, valves, connectors, instrumentation systems, or safety devices.

Process heater means an enclosed combustion device that transfers heat released by burning fuel directly to process streams or to heat transfer liquids other than water.

Process vent means any open-ended pipe, stack, duct, or other opening intended to allow the passage of gases, vapors, or fumes to the atmosphere and this passage is caused by mechanical means (such as compressors, vacuum-producing systems or fans) or by process-related means (such as volatilization produced by heating). For the purposes of this subpart, a process vent is neither a safety device (as defined in this section) nor a stack, duct or other opening used to exhaust combustion products from a boiler, furnace, heater, incinerator, or other combustion device.

Remediation material means material, including contaminated media, which is managed as a result of implementing remedial activities required under Federal, State or local authorities, or voluntary remediation activity.

Remediation material management unit means a tank, container, surface impoundment, oil/water separator, organic/water separator or transfer system used to manage remediation material.

Remediation material service means any time when a pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, or instrumentation system contains or contacts remediation material.

Responsible official means responsible official as defined in 40 CFR 70.2.

Safety device means a closure device such as a pressure relief valve, frangible disc, fusible plug, or any other type of device which functions exclusively to prevent physical damage or permanent deformation to a unit or its air emissions control equipment by venting gases or vapors directly to the atmosphere during unsafe conditions resulting from an unplanned, accidental, or emergency event. For the purpose of this subpart, a safety device is not used for routine venting of gases or vapors from the vapor headspace underneath a cover such as during filling of the unit or to adjust the pressure in this vapor headspace in response to normal daily diurnal ambient temperature fluctuations. A safety device is designed to remain in a closed position during normal operations and open only when the internal pressure, or another relevant parameter, exceeds the device threshold setting applicable to the air emissions control equipment as determined by the owner or operator based on manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, combustible, explosive, reactive, or hazardous materials.

Separator means a remediation material management unit, generally a tank, used to separate oil or organics from water. A separator consists of not only the separation unit but also the forebay and other separator basins, skimmers, weirs, grit chambers, sludge hoppers, and bar screens that are located directly after the individual drain system and prior to any additional treatment units such as an air flotation unit clarifier or biological treatment unit. Examples of a separator include, but are not limited to, an API separator, parallel-plate interceptor, and corrugated-plate interceptor with the associated ancillary equipment.

Single-seal system means a floating roof having one continuous seal. This seal may be vapor-mounted, liquid-mounted, or a metallic shoe seal.

Sludge means sludge as defined in § 260.10 of this chapter.

Soil means unconsolidated earth material composing the superficial geologic strata (material overlying bedrock), consisting of clay, silt, sand, or gravel size particles (sizes as classified by the U.S. Soil Conservation Service), or a mixture of such materials with liquids, sludges, or solids which is inseparable by simple mechanical removal processes and is made up primarily of soil.

Solvent extraction means an operation or method of separation in which a solid or solution is contacted with a liquid solvent (the two being mutually insoluble) to preferentially dissolve and transfer one or more components into the solvent.

Stabilization process means any physical or chemical process used to either reduce the mobility of contaminants in media or eliminate free liquids as determined by Test Method 9095—Paint Filter Liquids Test in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication No. SW–846, Third Edition, September 1986, as amended by Update I, November 15, 1992. (As an alternative, you may use any more recent, updated version of Method 9095 approved by the EPA). A stabilization process includes mixing remediation material with binders or other materials, and curing the resulting remediation material and binder mixture. Other synonymous terms used to refer to this process are fixation or solidification. A stabilization process does not include the adding of absorbent materials to the surface of remediation material, without mixing, agitation, or subsequent curing, to absorb free liquid.

Surface impoundment means a unit that is a natural topographical depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquids. Examples of surface impoundments include holding, storage, settling, and aeration pits, ponds, and lagoons.

Tank means a stationary unit that is constructed primarily of nonearthen materials (such as wood, concrete, steel, fiberglass, or plastic) which provide structural support and is designed to hold an accumulation of liquids or other materials.

Temperature monitoring device means a piece of equipment used to monitor temperature and having an accuracy of ±1 percent of the temperature being monitored expressed in degrees Celsius (°C) or ±1.2 degrees °C, whichever value is greater.

Transfer system means a stationary system for which the predominant function is to convey liquids or solid materials from one point to another point within waste management operation or recovery operation. For the purpose of this subpart, the conveyance of material using a container (as defined of this subpart) or self-propelled vehicle (*e.g.,* a front-end loader) is not a transfer system. Examples of a transfer system include but are not limited to a pipeline, an individual drain system, a gravity-operated conveyor (such as a chute), and a mechanically-powered conveyor (such as a belt or screw conveyor).

Treatment process means a process in which remediation material is physically, chemically, thermally, or biologically treated to destroy, degrade, or remove hazardous air pollutants contained in the material. A treatment process can be composed of a single unit (*e.g.,* a steam stripper) or a series of units (*e.g.,* a wastewater treatment system). A treatment process can be used to treat one or more remediation material streams at the same time.

Vapor-mounted seal means a continuous seal that is mounted such that there is a vapor space between the liquid in the unit and the bottom of the seal.

Volatile organic hazardous air pollutant concentration or *VOHAP concentration* means the fraction by weight of the HAP listed in Table 1 of this subpart that are contained in the remediation material as measured using Method 305, 40 CFR part 63, appendix A and expressed in terms of parts per million (ppm). As an alternative to using Method 305, 40 CFR part 63, appendix A, you may determine the HAP concentration of the remediation material using any one of the other test methods specified in § 63.694(b)(2)(ii). When a test method specified in § 63.694(b)(2)(ii) other than Method 305 in appendix A of this part is used to determine the speciated HAP concentration of the contaminated material, the individual compound concentration may be adjusted by the corresponding f_{m305} listed in Table 1 of this subpart to determine a VOHAP concentration.

Work practice standard means any design, equipment, work practice, or operational standard, or combination thereof, that is promulgated pursuant to section 112(h) of the CAA.

As stated in §§ 63.7882 (c)(1)(i) and (ii), (c)(2), (c)(3)(i) through (iii); 63.7912(a)(3)(ii), (g)(3)(ii), (h); and 63.7942; you must use the information in the following table to determine the total annual HAP quantity in the extracted remediation material at the facility:

TABLE 1 TO SUBPART GGGGG OF PART 63—HAZARDOUS AIR POLLUTANTS

CAS No.[a]	Compound Name	$f_{m\ 305}$
75070	Acetaldehyde	1.000
75058	Acetonitrile	0.989
98862	Acetophenone	0.314
107028	Acrolein	1.000
107131	Acrylonitrile	0.999
107051	Allyl chloride	1.000
71432	Benzene (includes benzene in gasoline)	1.000
98077	Benzotrichloride (isomers and mixture)	0.958
100447	Benzyl chloride	1.000
92524	Biphenyl	0.864
542881	Bis(chloromethyl)ether[b]	0.999
75252	Bromoform	0.998
106990	1,3-Butadiene	1.000
75150	Carbon disulfide	1.000
56235	Carbon Tetrachloride	1.000
43581	Carbonyl sulfide	1.000
133904	Chloramben	0.633
108907	Chlorobenzene	1.000
67663	Chloroform	1.000
107302	Chloromethyl methyl ether[b]	1.000

TABLE 1 TO SUBPART GGGGG OF PART 63—HAZARDOUS AIR POLLUTANTS—Continued

CAS No.[a]	Compound Name	$f_{m\ 305}$
126998	Chloroprene	1.000
98828	Cumene	1.000
94757	2,4-D, salts and esters	0.167
334883	Diazomethane[c]	0.999
132649	Dibenzofurans	0.967
96128	1,2-Dibromo-3-chloropropane	1.000
106467	1,4-Dichlorobenzene(p)	1.000
107062	Dichloroethane (Ethylene dichloride)	1.000
111444	Dichloroethyl ether (Bis(2-chloroethyl ether)	0.757
542756	1,3-Dichloropropene	1.000
79447	Dimethyl carbamoyl chloride[c]	0.150
57147	1,1-Dimethyl hydrazine.	
64675	Diethyl sulfate	0.0025
77781	Dimethyl sulfate	0.086
121697	N,N-Dimethylaniline	0.0008
51285	2,4-Dinitrophenol	0.0077
121142	2,4-Dinitrotoluene	0.0848
123911	1,4-Dioxane (1,4-Diethyleneoxide)	0.869
106898	Epichlorohydrin (1-Chloro-2,3-epoxypropane)	0.939
106887	1,2-Epoxybutane	1.000
140885	Ethyl acrylate	1.000
100414	Ethyl benzene	1.000
75003	Ethyl chloride (Chloroethane)	1.000
106934	Ethylene dibromide (Dibromoethane)	0.999
107062	Ethylene dichloride (1,2-Dichloroethane)	1.000
151564	Ethylene imine (Aziridine)	0.867
75218	Ethylene oxide	1.000
75343	Ethylidene dichloride (1,1-Dichloroethane)	1.000
	Glycol ethers[d] that have a Henry's Law constant value equal to or greater than 0.1 Y/X(1.8 X 10–6 atm/gm-mole/m^3) at 25°C.	[e]
118741	Hexachlorobenzene	0.97
87683	Hexachlorobutadiene	0.88
67721	Hexachloroethane	0.499
110543	Hexane	1.000
78591	Isophorone	0.506
58899	Lindane (all isomers)	1.000
67561	Methanol	0.855
74839	Methyl bromide (Bromomethane)	1.000
74873	Methyl chloride (Choromethane)	1.000
71556	Methyl chloroform (1,1,1-Trichloroethane)	1.000
78933	Methyl ethyl ketone (2-Butanone)	0.990
74884	Methyl iodide (Iodomethane)	1.000
108101	Methyl isobutyl ketone (Hexone)	0.979
624839	Methyl isocyanate	1.000
80626	Methyl methacrylate	0.999
1634044	Methyl tert butyl ether	1.000
75092	Methylene chloride (Dichloromethane)	1.000
91203	Naphthalene	0.994
98953	Nitrobenzene	0.394
79469	2-Nitropropane	0.989
82688	Pentachloronitrobenzene (Quintobenzene)	0.839
87865	Pentachlorophenol	0.0898
75445	Phosgene[c]	1.000
123386	Propionaldehyde	0.999
78875	Propylene dichloride (1,2-Dichloropropane)	1.000
75569	Propylene oxide	1.000
75558	1,2-Propylenimine (2-Methyl aziridine)	0.945
100425	Styrene	1.000
96093	Styrene oxide	0.830
79345	1,1,2,2-Tetrachloroethane	0.999
127184	Tetrachloroethylene (Perchloroethylene)	1.000
108883	Toluene	1.000
95534	o-Toluidine	0.152
120821	1,2,4-Trichlorobenzene	1.000
71556	1,1,1-Trichloroethane (Methyl chlorform)	1.000
79005	1,1,2-Trichloroethane (Vinyl trichloride)	1.000
79016	Trichloroethylene	1.000
95954	2,4,5-Trichlorophenol	0.108
88062	2,4,6-Trichlorophenol	0.132
121448	Triethylamine	1.000
540841	2,2,4-Trimethylpentane	1.000
108054	Vinyl acetate	1.000

TABLE 1 TO SUBPART GGGGG OF PART 63—HAZARDOUS AIR POLLUTANTS—Continued

CAS No.[a]	Compound Name	$f_{m\ 305}$
593602	Vinyl bromide	1.000
75014	Vinyl chloride	1.000
75354	Vinylidene chloride (1,1-Dichloroethylene)	1.000
1330207	Xylenes (isomers and mixture)	1.000
95476	o-Xylenes	1.000
108383	m-Xylenes	1.000
106423	p-Xylenes	1.000

Notes:
$f_{m\ 305}$ = Fraction measure factor in Method 305, 40 CFR part 63, appendix A of this part.
[a] CAS numbers refer to the Chemical Abstracts Services registry number assigned to specific compounds, isomers, or mixtures of compounds.
[b] Denotes a HAP that hydrolyzes quickly in water, but the hydrolysis products are also HAP chemicals.
[c] Denotes a HAP that may react violently with water.
[d] Denotes a HAP that hydrolyzes slowly in water.
[e] The $f_{m\ 305}$ factors for some of the more common glycol ethers can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711.

As stated in §§ 63.7890(a) and 63.7912(e), (f)(1) through (4), (g)(1), and (k), you must meet each emissions limitation for process vent affected sources in the following table that applies to you:

TABLE 2 TO SUBPART GGGGG OF PART 63.—EMISSIONS LIMITATIONS FOR PROCESS VENT AFFECTED SOURCES

For . . .	You must meet the following emissions limitation . . .
1. All new and existing affected source process vents associated with remediation activities.	a. For each 24-hour period, reduce emissions of HAP, listed in Table 1 of this subpart, or TOC (minus methane and ethane) from all affected process vents by 95 weight-percent by venting emissions through a closed-vent system to any combination of control devices meeting the requirements of § 63.693. Instead of achieving the performance specifications listed in § 63.693(d) through (g), you must meet a performance level for each control device necessary to achieve the 95% control level for all process vents combined; or b) For each period specified, reduce emissions of TOC (minus methane and ethane) from all affected source process vents at the facility below 1.4 kg/h (3.0 lb/h) and b. 8 mg/yr (3.1 tons/yr). Instead of achieving the performance specifications listed in § 63.693(d) through (g), you must meet a performance level for each control device necessary to achieve the overall emissions rate limit for all process vents (whether controlled or uncontrolled) combined.

As stated in §§ 63.7890(b), 63.7912 (e) and (k), and 63.7942, you must meet each emissions limitation for remediation material management unit affected sources in the following table that applies to you:

TABLE 3 TO SUBPART GGGGG OF PART 63.—EMISSIONS LIMITATIONS FOR REMEDIATION MATERIAL MANAGEMENT UNIT AFFECTED SOURCES

For each . . .	Where . . .	Then you must . . .
1. New and existing tank that is an affected source with a design capacity less than 38 cubic meters (m^3) (10,000 gallons).	a. The maximum HAP vapor pressure of the remediation material in the tank is less than 76.6 kilopascals (kPa) (11.1 psia).	i. For each 24-hour period, reduce emissions of HAP, listed in Table 1 of this subpart, or TOC (minus methane and ethane) by 95 weight-percent (or, for combustion devices, to an exhaust concentration of 20 parts per million by volume, on a dry basis, corrected to 3% oxygen) by venting emissions through a closed-vent system to any combination of control devices meeting the requirements of § 63.693; or ii. Comply with one of the work practice standards (control level 1 or 2) specified in Table 5, item 1 of this subpart.
2. New and existing tank that is an affected source with a design capacity greater than or equal to 38 m^3 and less than 151 m^3 (40,000 gallons).	a. The maximum HAP vapor pressure of the remediation material in the tank is less than 13.1 kPa (1.9 psia).	Same as Table 3, items 1(a) of this subpart;
3. New and existing tank that is an affected source with a design capacity greater than or equal to 38 m^3 and less than 151 m^3 (40,000 gallons).	a. The maximum HAP vapor pressure of the remediation material in the tank is greater than or equal to 13.1 kPa (1.9 psia).	i. Same as Table 3, item 1(a) of this subpart; or ii. Comply with the work practice standards (for control level 2) specified in Table 5, item 2 of this subpart.
4. New and existing tank that is an affected source with a design capacity greater than or equal to 151 m^3.	a. The maximum HAP vapor pressure of the remediation material in the tank is less than 0.7 kPa (0.1 psia).	Same as Table 3, item 1(a) of this subpart.

TABLE 3 TO SUBPART GGGGG OF PART 63.—EMISSIONS LIMITATIONS FOR REMEDIATION MATERIAL MANAGEMENT UNIT AFFECTED SOURCES—Continued

For each . . .	Where . . .	Then you must . . .
5. New and existing tank that is an affected source with a design capacity greater than or equal to 151 m^3.	a. The maximum HAP vapor pressure of the remediation material in the tank is greater than or equal to 0.7 kPa (0.1 psia).	i. Same as Table 3, item 1(a) of this subpart; or ii. Comply with the work practice standards (for control level 2) specified in Table 5, item 2 of this subpart.
6. New and existing container that is an affected source.	a. The design capacity is greater than 0.1 m^3 (26 gallons) and less than or equal to 0.46 m^3 (119 gallons).	i. Same as Table 3, item 1(a) of this subpart; or ii. Comply with one of the work practice standards (control level 1, 2 or 3) specified in Table 5, items 3 or 4 of this subpart.
7. New and existing container that is an affected source.	a. The design capacity is greater than 0.46 m^3 and the container is not in light-material service as defined in § 63.7942.	i. Same as Table 3, item 1(a) of this subpart; or ii. Comply with one of the work practice standards (control level 1, 2 or 3) specified in Table 5, item 3 or 4 of this subpart.
8. New and existing container that is an affected source.	a. The design capacity is greater than 0.46 m^3 and the container is in light-material service as defined in § 63.7942.	i. Same as Table 3, item 1(a) of this subpart; or ii. Comply with one of the work practice standards (control level 2 or 3) specified in Table 5, item 4 or 5 of this subpart.
9. New and existing container that is an affected source.	a. The design capacity is greater than 0.1 m^3 and the container is used for a stabilization process.	i. Comply with one of the following whenever the remediation material is exposed to the atmosphere: (1) The requirements of Table 3, item 1(a) of this subpart; or (2) The work practice standards (for control level 3) specified in Table 5, item 4 of this subpart.
10. New and existing surface impoundment that is an affected source.	i. Same as Table 3, item 1(a) of this subpart; or.	ii. Comply with one of the work practice standards specified in Table 5, items 6 or 7 of this subpart.
11. New and existing oil/water separator and organic/water separator.	i. Same as Table 3, item 1(a) of this subpart, or.	ii. Comply with one of the work practice standards specified in Table 5, items 8 or 9 of this subpart.

As stated in §§ 63.7890(c), 63.7912(d), 63.7914(b) and 63.7942, you must meet each operating limit in the following table that applies to you:

TABLE 4 TO SUBPART GGGGG OF PART 63.—OPERATING LIMITS AND ASSOCIATED WORK PRACTICES FOR CONTROL DEVICES

For . . .	You must . . .
1. Each existing and each new affected source using a thermal incinerator to comply with an emissions limit in Table 2 and 3 of this subpart.	a. Maintain the daily average firebox temperature greater than or equal to the temperature established during the design evaluation or performance test. b. Maintain the daily average total organic or HAP concentration at the outlet less than or equal to the concentration established during the performance test (applies for CEMS only).
2. Each existing and each new affected source using a catalytic incinerator to comply with an emissions limit in Table 2 and 3 of this subpart.	a. replace the existing catalyst bed with a bed that meets the replacement specifications established during the design evaluation or performance test before the age of the bed exceeds the maximum allowable age established during the design evaluation or performance test; and b. Maintain the daily average temperature at the inlet of the catalyst bed greater than or equal to the temperature established during the design evaluation or performance test. c. Maintain the daily average total organic or HAP concentration at the outlet less than or equal to the concentration established during the performance test (applies for CEMS only).

TABLE 4 TO SUBPART GGGGG OF PART 63.—OPERATING LIMITS AND ASSOCIATED WORK PRACTICES FOR CONTROL DEVICES—Continued

For . . .	You must . . .
3. Each existing and each new affected source using a condenser to comply with an emissions limit in Table 2 and 3 of this subpart.	a. Maintain the daily average condenser exit temperature less than or equal to the temperature established during the design evaluation or performance test. b. Maintain the daily average total organic or HAP concentration at the outlet less than or equal to the concentration established during the performance test (applies for CEMS only).
4. Each existing and each new affected source using a carbon adsorption system with adsorbent regeneration to comply with an emissions limit in Table 2 and 3 of this subpart.	a. Replace the existing adsorbent in each segment of the bed with an adsorbent that meets the replacement specifications established during the design evaluation or performance test before the age of the adsorbent exceeds the maximum allowable age established during the design evaluation or performance test in accordance with § 63.693(d)(2) through (4); and b. Maintain the frequency of regeneration greater than or equal to the frequency established during the design evaluation or performance test in accordance with § 63.693(d)(2) through (4); and c. Maintain the 1-hour average total regeneration stream mass flow during the adsorption bed regeneration cycle greater than or equal to the stream mass flow established during the design evaluation or performance test in accordance with § 63.693(d)(2) through (4); and d. Maintain the 1-hour average temperature of the adsorption bed during regeneration (except during the cooling cycle) greater than or equal to the temperature established during the design evaluation or performance test in accordance with § 63.693(d)(2) through (4); and e. Maintain the 1-hour average temperature of the adsorption bed after regeneration (and within 15 minutes after completing any cooling cycle) less than or equal to the temperature established during the design evaluation or performance test in accordance with § 63.693(d)(2) through (4). f. Maintain the daily average total organic or HAP concentration at the outlet less than or equal to the concentration established during the performance test in accordance with § 63.693(d)(2) (applies for CEMS only).
5. Each existing and each new affected source using a carbon adsorption system without adsorbent regeneration to comply with an emissions limit in Table 2 and 3 of this subpart.	a. Replace the existing adsorbent in each segment of the bed with an adsorbent that meets the replacement specifications established during the design evaluation or performance test before the age of the adsorbent exceeds the maximum allowable age established during the design evaluation or performance test in accordance with § 63.693(d)(2); and b. Maintain the 1-hour average temperature of the adsorption bed less than or equal to the temperature established during the design evaluation or performance test in accordance with § 63.693(d)(2). c. Maintain the daily average total organic or HAP concentration at the outlet less than or equal to the concentration established during the performance test (applies for CEMS only).
6. Each existing and each new affected source using a boiler or process heater to comply with an emissions limit in Table 2 and 3 of this subpart.	a. Maintain the daily average firebox temperature within the operating level established during the performance test. b. Maintain the daily average total organic or HAP concentration at the outlet less than or equal to the concentration established during the performance test (applies for CEMS only).
7. Each existing and each new affected source using a flare to comply with an emissions limit in Table 2 and 3 of this subpart.	a. Operate the flare at all times when emissions may be vented to it and with no visible emissions in accordance with § 63.11(b)(4); and b. Maintain the presence of a flame at all times inaccordance with § 63.11(b)(5); and c. Meet the heat content specification in § 63.11(b)(6)(ii) and the maximum tip velocity specifications in § 63.11(b)(8) or (7), or meet the requirements in § 63.11(b)(6)(i). d. Maintain the daily average total organic or HAP concentration at the outlet less than or equal to the concentration established during the performance test (applies for CEMS only).

As stated in § 63.7890(d), you must meet each work practice standard in the following table that applies to you:

TABLE 5 TO SUBPART GGGGG OF PART 63.—WORK PRACTICE STANDARDS

For each . . .	You must . . .
1. New or existing tank that is an affected source meeting any set of capacity and vapor pressure limits specified in Table 3, items 1, 2 or 4 of this subpart.	a. As an alternative to the emissions limit in Table 3 of this subpart, comply with the requirements of subpart OO (control level 1) of this part; or b. Comply with the requirements of § 63.685(d) (control level 2) of this part.
2. New or existing tank that is an affected source meeting any set of capacity and vapor pressure limits specified in Table 3, items 3 or 5 of this subpart.	As an alternative to the emissions limit in Table 3 of this subpart, comply with the requirements of § 63.685(d) (control level 2) of this part.
3. New or existing container that is an affected source {meeting any set of capacity limits specified in Table 3, items 6 or 7 of this subpart} that is not vented to a control device.	a. As an alternative to the emissions limit in Table 3 of this subpart, comply with the requirements of § 63.922 (control level 1); or b. Comply with the requirements of § 63.923 (control level 2).
4. New or existing container that is an affected source {meeting any set of capacity limits specified in Table 3, items 6, 7, 8 or 9 of this subpart} that is vented to a control device.	As an alternative to the emissions limit in Table 3 of this subpart, comply with the requirements of § 63.924 (control level 3).
5. New or existing container that is an affected source {meeting the capacity limits specified in Table 3, item 8 of this subpart} that is not vented to a control device.	As an alternative to the emissions limit in Table 3 of this subpart, comply with the requirements of § 63.923 (control level 2).
6. New or existing surface impoundment that is an affected source that is not vented to a control device.	Install a floating membrane cover designed to meet specifications in § 63.942(a) through (c). The membrane must float on the surface at all times during normal operations.
7. New or existing surface impoundment that is an affected source that is vented through a closed vent system to a control device.	a. Install a cover meeting the requirements in § 63.943(b) and (c); and b. Design and operate the closed vent system in accordance with the requirements of § 63.693.
8. New and existing oil/water separator, or organic/water separator that is an affected source that is not vented to a control device.	Follow the requirements of §§ 63.1042 (fixed roof), 63.1043 (floating roof), or 63.1045 (pressurized roof), as appropriate.
9. New and existing oil/water separator, or organic/water separator that is an affected source that *is* vented through a closed vent system to a control device.	a. Follow the requirements of § 63.1044; and b. design and operate the closed vent system in accordance with the requirements of § 63.693.
10. New and existing equipment component that is an affected source	Comply with the requirements of subpart TT (control level 1); or subpart WW (control level 2).
11. New and existing transfer system that is an affected source	a. For individual drain systems, as defined in this subpart, comply with the requirements of subpart RR; and b. For transfer systems, other than individual drain systems, comply with the requirements of § 63.689(c).

As stated in §§ 63.7911(a), 63.7912(b) and (c), 63.7914(b), and 63.7930(e)(2), you must conduct the performance testing required in the following table at any time the EPA requires for non-flare control devices in accordance with section 114 of the CAA:

TABLE 6 TO SUBPART GGGGG OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS

For . . .	You must . . .	Using . . .	According to the following requirements . . .
1. New and existing affected source process vents, tanks, containers, surface impoundments, oil/water separators, and organic/water separators complying with a HAP or TOC reduction efficiency limit in Table 2 or 3 of this subpart, an emissions rate limit in Table 2 of this subpart, or an emissions concentration limit in Table 3 of this subpart.	Select sampling port locations and the number of traverse points.	Method 1 or 1A of 40 CFR part 60, appendix A of § 63.7(d)(1)(i).	Sampling sites must be located at the inlet (if emissions reduction or destruction efficiency testing is required) and outlet of the control device and prior to any releases to the atmosphere.
2. New and existing affected source process vents, tanks, containers, surface impoundments, oil/water separators, and organic/water separators complying with a HAP or TOC reduction efficiency limit in Table 2 or 3 of this subpart or an emissions rate limit in Table 2 of this subpart.	Determine velocity and volumetric flow rate.	Method 2, 2A, 2C, 2D, 2F, or 2G of appendix A to part 60 of this chapter.	For HAP or TOC reduction efficiency or emissions rate testing; not necessary for determining compliance with 20 ppmv concentration limit.

TABLE 6 TO SUBPART GGGGG OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	You must . . .	Using . . .	According to the following requirements . . .
3. New and existing affected source process vents, tanks, containers, surface impoundments, oil/water separators, complying with a HAP or TOC reduction efficiency limit in Table 2 or 3 of this subpart or an emissions rate limit in Table 2 of this subpart.	Conduct gas molecular weight analysis.	Method 3, 3A, or 3B in appendix A to part 60 of this chapter.	For flow rate determination only.
4. New and existing affected source process vents, tanks, containers, surface impoundments, oil/water separators, and organic/water separators complying with an emissions concentration limit in Table 3 of this subpart.	Measure O_2 concentration	Method 3A or 3B in appendix A to part 60 of this chapter.	For correcting HAP and TOC concentrations measured from combustion control device to 3% O_2 for comparing to 20 ppmv concentration limit. See § 63.7912(f)(4).
5. New and existing affected source process vents, tanks, containers, surface impoundments, oil/water separators, and organic/water separators complying with a HAP or TOC reduction efficiency limit in Table 2 or 3 of this subpart, an emissions rate limit in Table 2 of this subpart, or an emissions concentration limit in Table 3 of this subpart.	Measure moisture content of the stack gas.	Method 4 in appendix A to part 60 of this chapter.	For flow rate determination and correction to dry basis.
6. New and existing affected source process vents, tanks, containers, surface impoundments, oil/water separators, and organic water separators complying with a HAP or TOC reduction efficiency limit in Table 2 or 3 of this subpart.	a. Measure organic HAP concentration at inlet and outlet locations. b. Measure TOC concentration at inlet and outlet locations.	i. Method 18 in appendix A to part 60 of this chapter. i. Method 18 or Method 25A or Method 25 in appendix A to part 60 of this chapter.	(1) The organic HAP used for the calibration gas for Method 25A must be the single organic HAP representing the largest percent by volume of emissions; and (2) during the performance test or a design evaluation, you must establish the operating parameter limits within which total organic HAP emissions are reduced by 95 weight-percent (or to the level necessary to meet the emissions rate limits in Table 2 of this subpart) or to 20 ppmv exhaust concentration.
7. All affected source process vents associated with remediation activities complying with the emissions rate limit in item (1)(b) of Table 2 of this subpart.	Measure organic HAP at the outlet location.	Method 18 in appendix A to part 60 of this chapter.	
8. New and existing affected source tanks, containers, surface impoundments, oil/water separators, and organic/water separators complying with a HAP or TOC emissions concentration limit in Table 3 of this subpart.	a. Measure organic HAP at the outlet location. b. Measure TOC at the outlet location.	i. Method 18 in appendix A to part 60 of this chapter. i. Method 18 in appendix A to part 60 of this chapter, or. ii. Method 25A in appendix A to part 60 of this chapter.	

Use the following table to determine if you have demonstrated initial compliance for each affected source in Table 2 or 3 of this subpart and for process vents in Table 2 of this subpart:

TABLE 7 TO SUBPART GGGGG OF PART 63.—INITIAL COMPLIANCE WITH EMISSIONS LIMITATIONS

For . . .	For the following emissions limitation . . .	You have demonstrated initial compliance if . . .
1. Each affected source listed in Table 2 or 3 of this subpart.	Reduce total organic HAP, listed in Table 1 of this subpart, or TOC emissions by at least 95 weight-percent.	Total organic HAP, listed in Table 1 of this subpart, or TOC emissions, based on the results of the performance testing specified in Table 6 of this subpart, are reduced by at least 95 weight-percent; and you have a record of the operating requirement(s) listed in Table 4 of this subpart for the process unit over the performance test during which emissions did not exceed 95 weight-percent.
2. Each affected source listed in Table 3 of this subpart.	Limit emissions of total HAP, listed in Table 1 of this subpart, or TOC concentration to ≤20 ppmv.	The average total HAP, listed in Table 1 of this subpart, or TOC emissions, measured using the methods in Table 6 of this subpart over the 3-hour initial performance test, do not exceed 20 ppmv; and you have a record of the operating requirement(s) listed in Table 4 of this subpart for the process unit over the performance test during which emissions did not exceed 20 ppmv.
3. Affected source process vents listed in Table 2 of this subpart.	Reduce total HAP, listed in Table 1 of this subpart, or TOC emissions below 1.4 kg/h (3.0 lb/hr) and 2.8 Mg/yr (3.1 ton/yr).	The average total HAP, listed in Table 1 of this subpart, or TOC emissions, measured using the methods in Table 6 of this subpart over the 3-hour initial performance test, do not exceed 1.4 kg/h (3.0 lb/hr); and you have a record of the operating requirement(s) listed in Table 4 of this subpart for the process unit(s) over the performance test during which emissions did not exceed 1.4 kg/h (3.0 lb/hr).

Use the following table to determine if you have demonstrated initial compliance for tanks; containers; surface impoundments; oil/water separators or organic/water separators; equipment; closed-vent systems; and transfer systems:

TABLE 8 TO SUBPART GGGGG OF PART 63.—INITIAL COMPLIANCE WITH WORK PRACTICE STANDARDS

For each * * *	For the following work practice standard * * *	You have demonstrated initial compliance if * * *
1. Tank complying with the requirements of subpart OO (control level 1) of this part.	Install a fixed roof designed and operated in accordance with § 63.902.	You have met the work practice standard and as part of the Notification of Compliance Status, you submit a signed statement that you have installed a fixed roof that meets the specifications in § 63.902, you have performed the initial inspection following installation of the roof in accordance with § 63.906, and you have a record documenting the roof design and inspection results.
2. Tank complying with the requirements of § 63.685(d) (control level 2) of this part.	Operate a fixed-roof tank with an internal floating roof (IFR) in accordance with § 63.685(e).	You have met the work practice standard and as part of the Notification of Compliance Status, you submit a signed statement that you have installed an IFR that meets the applicable specifications in § 63.685(e), you have performed the initial inspection following installation of the IFR in accordance with § 63.695(b)(1), and you have a record documenting the IFR design and inspection results.

TABLE 8 TO SUBPART GGGGG OF PART 63.—INITIAL COMPLIANCE WITH WORK PRACTICE STANDARDS—Continued

For each * * *	For the following work practice standard * * *	You have demonstrated initial compliance if * * *
3. Tank complying with the requirements of § 63.685(d) (control level 2) of this part.	Install an external floating roof (EFR) designed and operated in accordance with § 63.685(f).	You have met the work practice standard and as part of the Notification of Compliance Status, you submit a signed statement that you have installed an EFR that meets the specifications in § 63.685(f), you have performed the initial inspection following installation of the EFR in accordance with § 63.695(b)(2)(i), and you have a record documenting the EFR design and inspection results.
4. Tank complying with the requirements of § 63.685(d) (control level 2) of this part.	Vent the tank to a control device in accordance with § 63.685(g).	You have met the work practice standard and as part of the Notification of Compliance Status, you submit a signed statement that you have installed a fixed roof that meets the applicable specifications in § 63.685(g)(1) and (b), you have performed the initial inspection following installation of the fixed roof in accordance with § 63.695(b)(3), and you have a record documenting the fixed roof design and inspection results.
5. Tank complying with the requirements of § 63.685(d) (control level 2) of this part.	Use a pressure tank designed and operated in accordance with § 63.685(h).	You have met the work practice standard and as part of the Notification of Compliance Status, you submit a signed statement that you have designed a pressure tank meeting the applicable specifications in § 63.685(h), and you have a record documenting the tank design.
6. Tank complying with the requirements of § 63.685(d) (control level 2) of this part.	A tank located inside an enclosure in accordance with § 63.685(i).	You have met the work practice standard and as part of the Notification of Compliance Status, you submit a signed statement that the enclosure meets the applicable specifications in § 63.685(i), you have performed the initial inspection in accordance with § 63.685(i)(1), and you have a record documenting the enclosure design and inspection results.
7. Container complying with § 63.922 (level 1 controls).	Install a cover meeting the requirements of § 63.922 whenever remediation material is in the container.	You have met the work practice standard and as part of the Notification of Compliance Status, you submit a signed statement that the cover meets § 63.922 and you have visually inspected the container and its cover and closure devices for visible cracks, holes, gaps, or other open spaces within 24 hours after the material is placed in the container and maintain a record of the inspection.
8. Container complying with § 63.923 (level 2 controls).	Install a cover meeting the requirements of § 63.923 and be installed whenever remediation material is in the container.	You have met the work practice standard and as part of the Notification of Compliance Status, you submit a signed statement that the cover meets § 63.923 and you have visually inspected the container and its cover and closure devices for visible cracks, holes, gaps, or other open spaces within 24 hours after the material is placed in the container and maintain a record of the inspection.

TABLE 8 TO SUBPART GGGGG OF PART 63.—INITIAL COMPLIANCE WITH WORK PRACTICE STANDARDS—Continued

For each * * *	For the following work practice standard * * *	You have demonstrated initial compliance if * * *
9. Container complying with § 63.924 (level 3 controls).	Vent the container through a closed-vent system (CVS) to a control device according to the specifications of § 63.924(b).	You have met the work practice standard, and for containers vented inside an enclosure, as part of the Notification of Compliance Status, you submit a signed statement that, you meet the requirements of § 63.924(c)(1). Note: see item number 17 of this table for work practice requirements for closed-vent systems.
10. Surface impoundment subject to § 63.940 that is not vented to a control device.	Install a floating membrane cover designed in accordance with specifications in § 63.942(a) through (c).	You have met the work practice standard and as part of the Notification of Compliance Status, you submit a signed statement that you have installed a floating membrane cover the meets the specifications in § 63.942(b), you have performed the initial inspection following installation of the cover in accordance with § 63.946(a)(2), and you have a record documenting the cover design and inspection results.
11. Surface impoundment subject to § 63.940 that is vented to a control device.	Install a cover designed in accordance with specifications in § 63.943(b).	You have met the work practice standard and as part of the Notification of Compliance Status, you submit a signed statement that you have installed a cover the meets the specifications in § 63.943(b), you have performed the initial inspection following installation of the cover as required by § 63.946(b)(1)(ii), and you have a record documenting the cover design and inspection results.
12. Oil/water separator, or organic/water separator complying with § 63.1042.	Install a fixed roof designed in accordance with the specifications in § 63.1042(b).	You have met the work practice standard and as part of the Notification of Compliance Status, you submit a signed statement that you have installed a fixed roof that meets the specifications in § 63.1042(b), you have performed the initial inspection following installation of the fixed roof as required by § 63.1047(a), and you have a record documenting the fixed roof design and inspection results.
13. Oil/water separator, or organic/water separator complying with § 63.1043.	Install a floating roof designed in accordance with the specifications in § 63.1043(b).	You have met the work practice standard and as part of the Notification of Compliance Status, you submit a signed statement that you have installed a floating roof that meets the specifications in § 63.1043(b), you have performed the initial inspection following installation of the floating roof as required by § 63.1047(b), and you have a record documenting the floating design and inspection results.
14. Oil/water separator, or organic/water separator complying with § 63.1044.	Install a fixed roof designed in accordance with the specifications in § 63.1044(b) and vent headspace to a control device through a CVS.	You have met the work practice standard and as part of the Notification of Compliance Status, you submit a signed statement that you have installed a fixed roof that meets the specifications in § 63.1044(b), you have performed the initial inspection following installation of the fixed roof as required by § 63.1047(c), and you have a record documenting the fixed roof design and inspection results.

TABLE 8 TO SUBPART GGGGG OF PART 63.—INITIAL COMPLIANCE WITH WORK PRACTICE STANDARDS—Continued

For each * * *	For the following work practice standard * * *	You have demonstrated initial compliance if * * *
15. Oil/water separator, or organic/water separator that is complying with § 63.1045.	Operate the separator as a closed system in accordance with the specifications in § 63.1045(b).	You have met the work practice standard and as part of the Notification of Compliance Status, you submit a signed statement that the separator operates as a closed-system, you have performed the no detectable organic emissions test required in § 63.1046, and you have a record documenting the separator design and inspection results.
16. Item of equipment	Carry out a leak detection and repair program to comply with the requirements of subpart TT (control level 1); or subpart WW (control level 2)..	You have met the work practice standard and as part of the Notification of Compliance Status, you submit a signed statement that equipment subject to the work practice requirements has been identified and you make available written specifications for the leak detection and repair program or equivalent control approach.
17. Closed-vent system (CVS) conveying emissions to a control device.	Design and operate the CVS in accordance with the specifications in § 63.693.	You have met the work practice standard and as part of the Notification of Compliance Status, you submit a signed statement that CVS meets the specifications in § 63.695(c) and you perform the initial inspection required by § 63.695(c)(1)(i) and have a record documenting the design and inspection results.
18. Transfer system that is an individual drain system complying with the applicable requirements in subpart RR.	Meet the design and operating requirements in § 63.962(a).	You have met the work practice standard and as part of the Notification of Compliance Status, you submit a signed statement that you have designed the applicable controls in accordance with § 63.962(a) and (b) and performed the initial inspection requirements in § 63.964(a)(1)(iv) and have a record documenting the design and inspection results. Systems conveying emissions through a CVS to a control device should meet the requirements in item 17 of this table.
19. Transfer system that is not an individual drain system and complies with the requirements in § 63.689(c).	Design and operate a transfer system using covers in accordance with § 63.689(d).	You have met the work practice standard and as part of the Notification of Compliance Status, you submit a signed statement that you have designed and installed the covers as required by § 63.689(d)(1) through (5), performed the inspection requirements in § 63.695(d)(2) and have a record documenting the design and inspection results.
20. Transfer system that is not an individual drain system and complies with the requirements in § 63.689(c).	Design and operate a transfer system using hard piping in accordance with § 63.689(c)(2).	You have met the work practice standard and as part of the Notification of Compliance Status, you submit a signed statement that you have installed the hard piping as specified in § 63.689(c)(2).

Use the following table to determine if you have demonstrated continuous compliance for each unit in Table 2 or 3 of this subpart:

TABLE 9 TO SUBPART GGGGG OF PART 63.—CONTINUOUS COMPLIANCE WITH EMISSIONS LIMITATIONS

For* * *	For the following emissions limitation * * *	You have demonstrated continuous compliance by * * *
1. Each unit listed in Table 2 or 3 of this subpart.	a. Reduce total organic HAP, listed in Table 1 of this subpart, or TOC emissions by at least 95 weight-percent,	i. Performing CMS monitoring and collecting data according to §§ 63.7914, 63.7921, and 63.7930; ii. Maintaining the site-specific operating limits within the ranges established during the design evaluation or performance test; and iii. Continuously monitoring and recording the total organic or HAP concentration at least every 15 minutes, reducing the CEMS data to 1-hour and then 24-hour block averages, and maintaining the 24-hour block average total organic or HAP concentration less than or equal to the concentration established during the performance test; and iv. Keeping the applicable records required in § 63.10.
2. Each unit listed in Table 3 of this subpart...	Limit emissions of total HAP, listed in Table 1 of this Subpart, or TOC concentration of ≤20 ppmv.	Same as in item 1 of Table 9 of this Subpart
3. Each unit listed in Table 2 or 3 of this subpart.	Limit emissions of total HAP, listed in Table 1 of this subpart, to below 1.4 kg/hr (3.0 lb/hr) and 2.8 Mg/yr (3.1 ton/yr).	Same as in item 1 of Table 9 of this subpart.

Use the following table to determine if you have demonstrated continuous compliance for each affected source unit in Table 2 or 3 of this subpart:

TABLE 10 TO SUBPART GGGGG OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS

For * * *	For the following operating limit * * *	You must demonstrate continuous compliance by * * *
1. Affected source using a thermal oxidizer to comply with an emissions limit in Table 2 or 3 of this subpart.	a. Maintain the hourly average firebox temperature greater than or equal to the temperature established during the design evaluation or performance test.	i. Continuously monitoring and recording firebox temperature every 15 minutes and maintaining the hourly average firebox temperature greater than or equal to the temperature established during the design evaluation or performance test; and ii. Keeping the applicable records required in § 63.10.
2. Affected source using a catalytic oxidizer to comply with an emissions limit in Table 2 or 3 of this subpart.	a. Replace the existing catalyst bed with a catalyst bed that meets the replacement specifications established during the design evaluation or performance test before the age of the bed exceeds the maximum allowable age established during the design evaluation or performance test.	i. Replacing the existing catalyst bed with a catalyst bed that meets the replacement specifications established during the design evaluation or performance test before the age of the bed exceeds the maximum allowable age established during the design evaluation or performance test; and ii. Keeping the applicable records required in § 63.10.
	b. Maintain the hourly average temperature at the inlet of the catalyst bed greater than or equal to the temperature established during the design evaluation or performance test.	i. Continuously monitoring and recording the temperature at the inlet of the catalyst bed at least every 15 minutes and maintaining the hourly average temperature at the inlet of the catalyst bed greater than or equal to the temperature established during the design evaluation or performance test; and ii. Keeping the applicable records required in § 63.10.
	c. Maintain the hourly average temperature difference across the catalyst bed greater than or equal to the minimum temperature difference established during the design evaluation or performance test.	i. Continuously monitoring and recording the temperature at the outlet of the catalyst bed every 15 minutes and maintaining the hourly average temperature difference across the catalyst bed greater than or equal to the minimum temperature difference established during the design evaluation or performance test; and ii. Keeping the applicable records required in § 63.10.

TABLE 10 TO SUBPART GGGGG OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS—Continued

For * * *	For the following operating limit * * *	You must demonstrate continuous compliance by * * *
3. Affected source using a condenser to comply with an emissions limit in Table 2 or 3 of this subpart.	a. Maintain the hourly average condenser exit temperature less than or equal to the temperature established during the design evaluation or performance test.	i. Continuously monitoring and recording the temperature at the exit of the condenser at least every 15 minutes and maintaining the hourly average condenser exit temperature less than or equal to the temperature established during the design evaluation or performance test; and ii. Keeping the applicable records required in § 63.10.
4. Affected source using an adsorption system with adsorbent regeneration to comply with an emissions limit in Table 2 or 3 of this subpart.	a. Replace the existing adsorbent in each segment of the bed with an adsorbent that meets the replacement specifications established during the design evaluation or performance test before the age of the adsorbent exceeds the maximum allowable age established during the design evaluation or performance test.	i. Replacing the existing adsorbent in each segment of the bed with an adsorbent that meets the replacement specifications established during the design evaluation or performance test before the age of the adsorbent exceeds the maximum allowable age established during the design evaluation or performance test; and ii. Keeping the applicable records required in § 63.10.
	b. Maintain the frequency of regeneration greater than or equal to the frequency established during the design evaluation or performance test.	i. Maintaining the frequency of regeneration greater than or equal to the frequency established during the design evaluation or performance test; and ii. Keeping the applicable records required in § 63.10.
	c. Maintain the total regeneration stream mass flow during the adsorption bed regeneration cycle greater than or equal to the stream mass flow established during the design evaluation or performance test.	i. Continuously monitoring and recording the total regeneration stream mass flow during the adsorption bed regeneration cycle and maintaining the flow greater than or equal to the stream mass flow established during the design evaluation or performance test; and ii. Keeping the applicable records required in § 63.10.
	d. Maintain the hourly temperature of the adsorption bed during regeneration (except during the cooling cycle) greater than or equal to the temperature established during the design evaluation or performance test.	i. Continuously monitoring and recording the hourly temperature of the adsorption bed during regeneration (except during the cooling cycle) and maintaining the hourly temperature greater than or equal to the temperature established during the design evaluation or performance test; and ii. Keeping the applicable records required in § 63.10.
	e. Maintain the hourly temperature of the adsorption bed after regeneration (and within 15 minutes after completing any cooling cycle) less than or equal to the temperature established during the design evaluation or performance test.	i. Continuously monitoring and recording the hourly temperature of the adsorption bed after regeneration (and within 15 minutes after completing any cooling cycle) and maintaining the hourly temperature less than or equal to the temperature established during the design evaluation or performance test; and ii. Keeping the applicable records required in § 63.10.
5. Affected source using an adsorption system without adsorbent regeneration to comply with an emissions limit in Table 2 or 3.	a. Replace the existing adsorbent in each segment of the bed with an adsorbent that meets the replacement specifications established during the design evaluation or performance test before the age of the adsorbent exceeds the maximum allowable age established during the design evaluation or performance test.	i. Replacing the existing adsorbent in each segment of the bed with an adsorption that meets the replacement specifications established during the design evaluation or performance test before the age of the adsorbent exceeds the maximum allowable age established during the design evaluation or performance test; and ii. Keeping the applicable records required in § 63.10.

TABLE 10 TO SUBPART GGGGG OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS—Continued

For * * *	For the following operating limit * * *	You must demonstrate continuous compliance by * * *
	b. Maintain the hourly temperature of the adsorption bed less than or equal to the temperature established during the design evaluation or performance test.	i. Continuously monitoring and recording the hourly temperature of the adsorption bed and maintaining an hourly temperature less than or equal to the temperature established during the design evaluation or performance test; and ii. Keeping the applicable records required in § 63.10.
6. Affected source using a flare to comply with an emissions limit in Table 2 or 3 of this subpart.	a. Maintain a pilot flame present in the flare at all times that vapors are not being vented to the flare (§ 63.11(b)(5)).	i. Continuously operating a device that detects the presence of the pilot flame; and ii. Keeping the applicable records required in § 63.695(e).
	b. Maintain a flare flame at all times that vapors are being vented from the emissions source (§ 63.11(b)(5)).	i. Maintaining a flare flame at all times that vapors are being vented from the emissions; and ii. Keeping the applicable records required in § 63.10.
	c. Operate the flare with no visible emissions, except for up to 5 minutes in any 2 consecutive hours (§ 63.11(b)(4)).	i. operating the flare with no visible emissions exceeding the amount allowed; and ii. Keeping the applicable records required in § 63.10
	d. Operate the flare with an exit velocity that is within the applicable limits in § 63.11(b)(6), (7), and (8).	i. Operating the flare within the applicable exit velocity limits; and ii. Keeping the applicable records required in § 63.10.
	e. Operate the flare with a net heating value of the gas being combusted greater than the applicable minimum value in § 63.11(b)(6)(ii).	i. Operating the flare with the gas net heating value within the applicable limit; and ii. Keeping the applicable records required in § 63.10.

Use the requirements in the following table to demonstrate continuous compliance for tanks; containers; surface impoundments; oil/water separators or organic/water separators; equipment; closed-vent systems; and transfer systems:

TABLE 11 TO SUBPART GGGGG OF PART 63.—CONTINUOUS COMPLIANCE WITH WORK PRACTICE STANDARDS

For each * *	For the following work practice standard * * *	You must demonstrate continuous compliance by * * *
1. Tank complying with subpart OO (control level 1) of this part.	a. install a fixed roof designed and operated in accordance with the applicable specifications in § 63.902.	i. following the inspection and repair procedures in § 63.906(a) and (b); and ii. keeping the records required in § 63.907.
2. Tank complying with the requirements of § 63.685(d) (control level 2) of this part.	a. operate a fixed-roof tank with an internal floating roof (IFR) in accordance with § 63.685(e).	i. following the inspection and repair requirements in § 63.695(b)(1) and (4); and ii. keeping the records required in § 63.696.
3. Tank complying with the requirements of § 63.685(d) (control level 2) of this part.	a. install an external floating roof (EFR) designed and operated in accordance with § 63.685(f).	i. following the inspection and repair requirements in § 63.695(b)(2) and (4); and ii. keeping the records required in § 63.696(d).
4. Tank complying with the requirements of § 63.685(d) (control level 2) of this part.	a. vent the tank through a closed vent system (CVS) to a control device in accordance with § 63.685(g).	i. following the inspection and repair requirements in § 63.695(b)(3) and (4); and ii. following the inspection and monitoring requirements for the CVS in § 63.695(c)(1)–(3); and iii. keeping the records required in § 63.696(e).
5. Tank complying with the requirements of § 63.685(d) (control level 2) of this part.	use a pressure tank designed and operated in accordance with § 63.685(h).	operating the pressure tank at all times in accordance with the specifications in § 63.685(h).
6. Tank complying with the requirements of § 63.685(d) (control level 2) of this part.	a. a tank located inside an enclosure in accordance with § 63.685(i).	i. meeting the recordkeeping requirements of § 63.696(f); and ii. meeting the requirements for a closed-vent system specified in item 19 of this table.
7. Container complying with § 63.922 (level 1 controls).	install a cover meeting the requirements of § 63.922 whenever remediation material is in the container.	following the inspection and repair requirements in § 63.926(a)(2) and (3).

TABLE 11 TO SUBPART GGGGG OF PART 63.—CONTINUOUS COMPLIANCE WITH WORK PRACTICE STANDARDS—Continued

For each * *	For the following work practice standard * * *	You must demonstrate continuous compliance by * * *
8. Container complying with § 63.923 (level 2 controls).	install a cover meeting the requirements of § 63.923 whenever remediation material is in the container.	following the inspection and repair requirements in § 63.926(c)(2) and (3).
9. Container complying with § 63.924 (level 3 controls).	a. vent the container through a closed-vent system (CVS) to a control device according to the specifications of § 63.924(b).	i. following the inspection and monitoring requirements for the CVS in § 63.695(c)(1)–(3); and ii. keeping the records required in § 63.927.
10. Surface impoundment complying with the applicable requirements in subpart QQ that is not vented to a control device.	install a floating membrane cover designed according to the specifications in § 63.942(a)–(b) and maintain the membrane floating on the liquid surface at all times.	maintaining the membrane floating on the liquid surface and visually inspecting the membrane at least once every year, making a first attempt at repair of any defects within 5 calendar days of detection, completing repair within 45 calendar days of detection, and keeping the records required in § 63.947(a).
11. Surface impoundment that is a new or existing affected source subject to subpart QQ that is vented to a control device.	install a cover designed to meet the applicable specifications in § 63.943(b); and vent the emissions through a closed-vent system (CVS) to a control device.	maintaining a cover on the surface impoundment in accordance with the specifications in § 63.943(c), visually inspecting the cover in accordance with § 63.946(b), repairing any defects as specified in § 63.946(c), and keeping a record of the inspection as required in § 63.947; Note: see item no. 19 in this Table for CVS requirements.
12. Oil/water separator, or organic/water separator complying with § 63.1042.	install a fixed roof designed to meet specifications in § 63.1042(b).	performing the inspection required by § 63.1047(a) once every calendar year, and maintaining the records required by § 63.1048.
13. Oil/water separator, or organic/water separator complying with § 63.1043.	install a floating roof designed to meet specifications in § 63.1043(b).	performing the inspections required by § 63.1047(b), and maintaining the records required by § 63.1048.
14. Oil/water separator, or organic/water separator that is complying with § 63.1044.	install a fixed roof designed to meet the specifications in § 63.1044(b) and vent headspace to a control device through a CVS.	performing a visual inspection of the fixed roof at least once every calendar year under § 63.1047(c)(1)(ii), operating, inspecting and monitoring the CVS in accordance with the requirements in § 63.693, and keeping the records required by § 63.1048.
15. Oil/water separator, or organic/water separator that is complying with § 63.1045.	operate the separator as a closed system in accordance with the specifications in § 63.1045(b).	operating the separator as a closed-system and performing the no detectable organic emissions test required by § 63.1046.
16. Piece of equipment complying with either subpart TT or WW of this part.	carry out a leak detection and repair program complying with the requirements of subpart TT (control level 1) or subpart WW (control level 2).	meeting the monitoring, repair and record-keeping requirements of either subpart TT or subpart WW.
17. Affected source conveying emissions to a control device using a closed-vent system (CVS).	a. design and operate the CVS in accordance with the specifications in § 63.693.	i. following the inspection, repair and monitoring requirements in § 63.695(c)(1) through (3); and ii. keeping the records required by § 63.696(a). For the purposes of this subpart, the term ''Table 2 of this subpart'' in 40 CFR Part 63 Subpart DD means ''Table 13''.
18. Transfer system that is an individual drain system complying with the applicable requirements in subpart RR.	a. meet the design and operating requirements in § 63.962(a).	i. following the operating requirements in § 63.962(b), the inspection and repair requirements in § 63.964(a)and (b); and ii. keeping the records required by § 63.965(a). iii. systems conveying emissions through a CVS to a control device should meet the requirements in item 19 of this table.

TABLE 11 TO SUBPART GGGGG OF PART 63.—CONTINUOUS COMPLIANCE WITH WORK PRACTICE STANDARDS—Continued

For each * *	For the following work practice standard * * *	You must demonstrate continuous compliance by * * *
19. Transfer system that is not an individual drain system and complies with the requirements in § 63.689(c).	a. transfer system using covers in accordance with § 63.689(d).	i. following the operating requirements in § 63.689(d)(5) and the inspection and repair requirements in § 63.695(d); and ii. keeping the records required by § 63.696.

Use the following table to determine which reports to submit:

TABLE 12 TO SUBPART GGGGG OF PART 63.—REQUIREMENTS FOR REPORTS

You must submit a(n) * * *	The report must contain * * *	You must submit the report * * *
1. Compliance report	a. A statement that there were no deviations from the emissions limitations and work practice standards during the reporting period if there are no deviations from any emissions limitations (emissions limit, operating limit, opacity limit, and visible emissions limit) that applies to you, and there are no deviations from the requirements for work practice standards in Table 11 of this subpart that apply to you. If there were no periods during which the CMS, including CEMS, COMS, and operating parameter monitoring systems, was out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during the which the CMS was out-of-control during the reporting period; and.	i. Semiannually according to the requirements in § 63.7931(b).
	b. The information in § 63.7931(c) and (d) if you have a deviation from any emissions limitation (emissions limit, operating limit, opacity limit, and visible emissions limit) or work practice standard during the reporting period; and.	i. Semiannually according to the requirements in § 63.7931(b).
	c. The information in § 63.7931(c) and (d) if there were periods.	i. Semiannually according to the requirements in § 63.7931(b).
2. immediate startup, shutup, shutdown, and malfunction report if you had a startup, shutdown, or malfunction during the reporting period that is not consistent with your startup, shutdown, and malfunction plan.	a. Actions taken for the event	i. by fax or telephone within 2 working days after starting actions inconsistent with the plan.
	b. The information in § 63.10(d)(5)(ii)	i. by letter within 7 working days after the end of the event unless you have made alternative arrangements with the permitting authority.

As stated in § 63.7940, you must comply with the applicable General Provisions requirements according to the following table:

TABLE 13 TO SUBPART GGGGG OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART GGGGG

Citation	Subject	Brief description	Applies to subpart GGGGG
§ 63.1	Applicability	Initial Applicability Determination; Applicability After Standard Established; Permit Requirements; Extensions, Notifications.	Yes
§ 63.2	Definitions	Definitions for part 63 standards	Yes.
§ 63.3	Units and Abbreviations	Units and abbreviations for part 63 standards	Yes.
§ 63.4	Prohibited Activities	Prohibited Activities; Compliance date; Circumvention, Severability.	Yes.
§ 63.5	Construction/Reconstruction	Applicability; applications; approvals	Yes.

TABLE 13 TO SUBPART GGGGG OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART GGGGG—Continued

Citation	Subject	Brief description	Applies to subpart GGGGG
§ 63.6(a)	Applicability	GP apply unless compliance extension GP apply to area sources that become major.	Yes.
§ 63.6(b)(1)–(4)	Compliance Dates for New and Reconstructed sources.	Standards apply at effective date; 3 years after effective date; upon startup; 10 years after construction or reconstruction commences for 112(f).	Yes.
§ 63.6(b)(5)	Notification	Must notify if commenced construction or reconstruction after proposal.	Yes.
§ 63.6(b)(6)	[Reserved]	.	
§ 63.6(b)(7)	Compliance Dates for New and Reconstructed Area Sources That Become Major.	Area sources that become major must comply with major source standards immediately upon becoming major, regardless of whether required to comply when they were an area source.	Yes.
§ 63.6(c)(1)–(2)	1. Compliance Dates for Existing Sources.	a. Comply according to date in subpart, which must be no later than 3 years after effective date.	
		b. For 112(f) standards, comply within 90 days of effective date unless compliance extension.	Yes.
§ 63.6(c)(3)–(4)	[Reserved]	.	
§ 63.6(c)(5)	Compliance Dates for Existing Area Sources That Become Major.	Area sources that become major must comply with major source standards by date indicated in subpart or by equivalent time period (for example, 3 years).	Yes.
§ 63.6(d)	[Reserved]	.	
§ 63.6(e)(1)–(2)	1. Operation & Maintenance	a. Operate to minimize emissions at all times	Yes.
		b. Correct malfunctions as soon as practicable	Yes.
		c. Operation and maintenance requirements independently enforceable; information Administrator will use to determine if operation and maintenance requirements were met.	Yes.
§ 63.6(e)(3)	1. Startup, Shutdown, and malfunction Plan (SSMP).	a. Requirement for SSM and startup, shutdown, and Malfunction plan.	Yes
		b. Content of SSMP	Yes.
§ 63.6(f)(1)	Compliance Except During SSM.	You must comply with emissions standards at all times except during SSM.	Yes.
§ 63.6(f)(2)–(3)	Methods for Determining Compliance.	Compliance based on performance test, operation and maintenance plans, records, inspection.	Yes.
§ 63.6(g)(1)–(3)	Alternative Standard	Procedures for getting an alternative standard	Yes.
§ 63.6(h)	Opacity/Visible Emissions (VE) Standards.	Requirements for opacity and visible emissions limits	Yes. However, there are no opacity standards.
§ 63.6(h)(1)	Compliance with opacity/VE Standards.	You must comply with Opacity/VE emissions limitations at all times except during SSM.	Yes. However, there are no opacity standards.
§ 63.6(h)(2)(i)	Determining Compliance with Opacity/VE Standards.	If standard does not state test method, use Method 9 for opacity and Method 22 for VE.	Yes. However, there are no opacity standards.
§ 63.6(h)(2)(ii)	[Reserved].		
§ 63.6(h)(2)(iii)	Using Previous Tests to Demonstrate Compliance with Opacity/VE Standards.	Criteria for when previous opacity/VE testing can be used to show compliance with this rule.	Yes. However, there are no opacity standards.

TABLE 13 TO SUBPART GGGGG OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART GGGGG—Continued

Citation	Subject	Brief description	Applies to subpart GGGGG
§ 63.6(h)(3)	[Reserved].		
§ 63.6(h)(4)	Notification of Opacity/VE Observation Date.	Must notify Administrator of anticipated date of observation ..	Yes. However, there are no opacity standards.
§ 63.6(h)(5)(i), (iii)-(v)	Conducting Opacity/VE Observations.	Dates and Schedule for conducting opacity/VE observations	Yes. However, there are no opacity standards.
§ 63.6(h)(5)(ii)	Opacity Test Duration and Averaging Times.	Must have at least 3 hours of observation with thirty, 6-minute averages.	No.
§ 63.6(h)(6)	Records of Conditions During Opacity/VE observations.	Must keep records available and allow Administrator to inspect.	Yes. However, there are no opacity standards.
§ 63.6(h)(7)(i)	Report COMS Monitoring Data from Performance Test.	Must submit COMS data with other performance test data	No.
§ 63.6(h)(7)(ii)	Using COMS instead of Method 9.	Can submit COMS data instead of Method 9 results even if rule requires Method 9, but must notify Administrator before performance test.	No.
§ 63.6(h)(7)(iii)	Averaging time for COMS during performance test.	To determine compliance, must reduce COMS data to 6-minute averages.	No.
§ 63.6(h)(7)(iv)	COMS requirements	Owner/operator must demonstrate that COMS performance evaluations are conducted according to §§ 63.8(e), COMS are properly maintained and operated according to 63.8(c) and data quality as § 63.8(d).	No.
§ 63.6(h)(7)(v)	Determining Compliance with Opacity/VE Standards.	COMS is probative but not conclusive evidence of compliance with opacity standard, even if Method 9 observation shows otherwise. Requirements for COMS to be probative evidence-proper maintenance, meeting PS 1, and data have not been altered.	Yes. However, there are no opacity standards.
§ 63.6(h)(8)	Determining Compliance with Opacity/VE Standards.	Administrator will use all COMS, Method 9, and Method 22 results, as well as information about operation and maintenance to determine compliance.	Yes. However, there are no opacity standards.
§ 63.6(h)(9)	Adjusted Opacity Standard	Procedures for Administrator to adjust an opacity standard ...	No.
§ 63.6(i)(1)–(14)	Compliance Extension	Procedures and criteria for Administrator to grant compliance extension.	Yes.
§ 63.6(j)	Presidential Compliance Exemption.	President may exempt source category from requirement to comply with rule.	Yes.
§ 63.7(a)(1)–(2)	Performance Test Dates	Dates for Conducting Initial Performance Testing and Other Compliance Demonstrations. Must conduct 180 days after first subject to rule.	Yes.
§ 63.7(a)(3)	Section 114 Authority	Administrator may require a performance test under CAA Section 114 at any time.	Yes.
§ 63.7(b)(1)	Notification of Performance Test.	Must notify Administrator 60 days before the test	Yes.
§ 63.7(b)(2)	Notification of Rescheduling ...	If rescheduling a performance test is necessary, must notify Administrator 5 days before scheduled date of rescheduled date.	Yes.
§ 63.7(c)	1. Quality Assurance/Test Plan.	a. Requirement to submit site-specific test plan 60 days before the test or on date Administrator agrees with:.	Yes.
		i. Test plan approval procedures	Yes.

TABLE 13 TO SUBPART GGGGG OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART GGGGG—Continued

Citation	Subject	Brief description	Applies to subpart GGGGG
		ii. Performance audit requirements	Yes.
		iii. Internal and External QA procedures for testing	Yes.
§ 63.7(d)	Testing Facilities	Requirements for testing facilities	Yes.
§ 63.7(e)(1)	Conditions for Conducting Performance Tests.	Performance tests must be conducted under representative conditions. Cannot conduct performance tests during SSM. Not a violation to exceed standard during SSM.	Yes.
§ 63.7(e)(2)	Conditions for Conducting Performance Tests.	Must conduct according to rule and EPA test methods unless Administrator approves alternative.	Yes.
§ 63.7(e)(3)	1. Test Run Duration	a. Must have three test runs of at least one hour each	Yes.
		b. Complaince is based on arithmetic mean of three runs	Yes.
		c. Conditions when data from an additional test run can be used.	Yes.
§ 63.7(f)	Alternative Test Method	Procedures by which Administrator can grant approval to use an alternative test method.	Yes.
§ 63.7(g)	1. Performance Test Data Analysis.	a. Must include raw data in performance test report	Yes.
		b. Must submit performance test data 60 days after end of test with the Notification of Compliance Status.	Yes.
		c. Keep data for 5 years	Yes.
§ 63.7(h)	Waiver of Tests	Procedures for Administrator to waive performance test	Yes.
§ 63.8(a)(1)	Applicability of Monitoring Requirements.	Subject to all monitoring requirements in standard	Yes.
§ 63.8(a)(2)	Performance Specifications	Performance Specifications in appendix B of part 60 apply	Yes.
§ 63.8(a)(3)	[Reserved].		
§ 63.8(a)(4)	Monitoring with Flares	Unless your rule says otherwise, the requirements for flares in 63.11 apply.	Yes.
§ 63.8(b)(1)	Monitoring	Must conduct monitoring according to standard unless Administrator approves alternative.	Yes.
§ 63.8(b)(2)–(3)	1. Multiple Effluents and Multiple Monitoring Systems.	a. Specific requirements for installing monitoring systems	Yes.
		b. Must install on each effluent before it is combined and before it is released to the atmosphere unless Administrator approves otherwise.	Yes.
		c. If more than one monitoring system on an emissions point, must report all monitoring system results, unless one monitoring system is a backup.	Yes.
§ 63.8(c)(1)	Monitoring System Operation and Maintenance.	Maintain monitoring system in a manner consistent with good air pollution control practices.	Yes.
§ 63.8(c)(1)(i)	Routine and Predictable SSM	Follow the SSM plan for routine repairs. Keep parts for routine repairs readily available. Reporting requirements for SSM when action is described in SSM plan.	Yes.
§ 63.8(c)(1)(ii)	SSM not in SSMP	Reporting requirements for SSM when action is not described in SSM plan.	Yes.
§ 63.8(c)(1)(iii)	1. Compliance with Operation and Maintenance Requirements.	a. How Administrator determines if source complying with operation and maintenance requirements.	Yes.
		b. Review of source O&M procedures, records, Manufacturer's instructions, recommendations, and inspection of monitoring system.	Yes.
§ 63.8(c)(2)–(3)	1. Monitoring System Installation.	a. Must install to get representative emissions and parameter measurements.	Yes.
		b. Must verify operational status before or at performance test.	Yes.

TABLE 13 TO SUBPART GGGGG OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART GGGGG—Continued

Citation	Subject	Brief description	Applies to subpart GGGGG
§ 63.8(c)(4)	Continuous Monitoring System (CMS) Requirements.	CMS must be operating except during breakdown, out-of-control, repair, maintenance, and high-level calibration drifts.	No.
§ 63.8(c)(4)(i)–(ii)	Continuous Monitoring System (CMS) Requirements.	COMS must have a minimum of one cycle of sampling and analysis for each successive 10-second period and one cycle of data recording for each successive 6-minute period. CEMS must have a minimum of one cycle of operation for each successive 15-minute period.	Yes. However, COMS are not applicable. Requirements for CPMS are listed §§ 63.7900 and 63.7913.
§ 63.8(c)(5)	COMS Minimum Procedures	COMS minimum procedures	No.
§ 63.8(c)(6)	CMS Requirements	Zero and High level calibration check requirements	Yes. However requirements for CPMS are addressed in §§ 63.7900 and 63.7913.
§ 63.8(c)(7)–(8)	CMS Requirements	Out-of-control periods, including reporting	Yes.
§ 63.8(d)	CMS Quality Control	Requirements for CMS quality control, including calibration, etc. Must keep quality control plan on record for 5 years. Keep old versions for 5 years after revisions.	Yes.
§ 63.8(e)	CMS Performance Evaluation	Notification, performance evaluation test plan, reports	Yes.
§ 63.8(f)(1)–(5)	Alternative Monitoring Method	Procedures for Administrator to approve alternative monitoring.	Yes.
§ 63.8(f)(6)	Alternative to Relative Accuracy Test.	Procedures for Administrator to approve alternative relative accuracy tests for CEMS.	No.
§ 63.8(g)(1)–(4)	Data Reduction	COMS 60-minute averages Calculated over at least 36 evenly spaced data points. CEMS 1-hour averages computed over at least 4 equally spaced data points.	Yes. However, COMS are not applicable. Requirements for CPMS are addressed in §§ 63.7900 and 63.7913.
§ 63.8(g)(5)	Data Reduction	Data that can't be used in computing averages for CEMS and COMS.	No.
§ 63.9(a)	Notification Requirements	Applicability and State Delegation	Yes.
§ 63.9(b)(1)–(5)	1. Initial Notifications	a. Submit notification 120 days after effective date. b. Notification of intent to construct/reconstruct; Notification of commencement of construct/reconstruct; Notification of startup. c. Contents of each	Yes. Yes. Yes.
§ 63.9(c)	Request for Compliance Extension.	Can request if cannot comply by date or if installed BACT/LAER.	Yes.
§ 63.9(d)	Notification of Special Compliance Requirements for New Source.	For sources that commence construction between proposal and promulgation and want to comply 3 years after effective date.	Yes.
§ 63.9(e)	Notification of Performance Test.	Notify Administrator 60 days prior	Yes.

TABLE 13 TO SUBPART GGGGG OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART GGGGG—Continued

Citation	Subject	Brief description	Applies to subpart GGGGG
§ 63.9(f)	Notification of VE/Opacity Test	Notify Administrator 30 days prior	No.
§ 63.9(g)	Additional Notifications When Using CMS.	Notification of performance evaluation; notification using COMS data; notification that exceeded criterion for relative accuracy.	Yes. However, there are no opacity standards.
§ 63.9(h)(1)–(6)	Notification of Compliance Status.	Contents; Due 60 days after end of performance test or other compliance demonstration, except for opacity/VE, which are due 30 days after; when to submit to Federal vs. State authority.	Yes.
§ 63.9(i)	Adjustment of Submittal Deadlines.	Procedures for Administrator to approve change in when notifications must be submitted.	Yes.
§ 63.9(j)	Change in Previous Information.	Must submit within 15 days after the change	Yes.
§ 63.10(a)	1. Recordkeeping/Reporting	a. Applies to all, unless compliance extension b. When to submit to Federal vs. State authority c. Procedures for owners of more than 1 source	Yes. Yes. Yes.
§ 63.10(b)(1)	1. Recordkeeping/Reporting	a. General Requirements b. Keep all records readily available c. Keep for 5 years	Yes.. Yes. Yes.
§ 63.10(b)(2)(i)–(iv)	1. Records related to Startup, Shutdown, and Malfunction.	a. Occurrence of each of operation (process equipment) b. Occurrence of each malfunction of air pollution equipment c. Maintenance on air pollution control equipment d. Actions during startup, shutdown, and malfunction	Yes. Yes. Yes. Yes.
§ 63.10(b)(2)(vi) and (x)–(xi)	1. CMS Records	a. Malfunctions, inoperative, out-of-control b. Calibration checks c. Adjustments, maintenance	Yes. Yes. Yes.
§ 63.10(b)(2)(vii)–(ix)	1. Records	a. Measurements to demonstrate compliance with emissions limitations. b. Performance test, performance evaluation, and visible emissions observation results. c. Measurements to determine conditions of performance tests and performance evaluations.	Yes. Yes. Yes.
§ 63.10(b)(2)(xii)	Records	Records when under waiver	Yes.
§ 63.10(b)(2)(xiii)	Records	Records when using alternative to relative accuracy test	No.
§ 63.10(b)(2)(xiv)	Records	All documentation supporting Initial Notification and Notification of Compliance Status.	Yes.
§ 63.10(b)(3)	Records	Applicability Determinations	Yes.
§ 63.10(c)	Records	Additional Records for CMS	No.
§ 63.10(d)(1)	General Reporting Requirements.	Requirement to report	Yes.
§ 63.10(d)(2)	Report of Performance Test Results.	When to submit to Federal or State authority	Yes.
§ 63.10(d)(3)	Reporting Opacity or VE Observations.	What to report and when	No.
§ 63.10(d)(4)	Progress Reports	Must submit progress reports on schedule if under compliance extension.	Yes.
§ 63.10(d)(5)	Startup, Shutdown, and Malfunction Reports.	Contents and submission	Yes.

TABLE 13 TO SUBPART GGGGG OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART GGGGG—Continued

Citation	Subject	Brief description	Applies to subpart GGGGG
§ 63.10(e)(1)–(2)	Additional CMS Reports	Must report results for each CEM on a unit; written copy of performance evaluation; 3 copies of COMS performance evaluation.	Yes. However, COMS are not applicable.
§ 63.10(e)(3)	Reports	Excess Emissions Reports	No.
§ 63.10(e)(3)(i)–(iii)	Reports	Schedule for reporting excess emissions and parameter monitor exceedance (now defined as deviations).	No.
§ 63.10(e)(3)(iv)–(v)	1. Excess Emissions Reports	a. Requirement to revert to quarterly submission if there is an excess emissions and parameter monitor exceedance (now defined as deviations)..	No.
		b. Provision to request semiannual reporting after compliance for one year.	No.
		c. Submit report by 30th day following end of quarter or calendar half.	No.
		d. If there has not been an exceedance or excess emissions (now defined as deviations), report contents is a statement that there have been no deviations.	No.
§ 63.10(e)(3)(iv)–(v)	Excess Emissions Reports	Must submit report containing all of the information in § 63.10(c)(5–13), § 63.8(c)(7–8).	No.
§ 63.10(e)(3)(vi)–(viii)	Excess Emissions Report and Summary Report.	Requirements for reporting excess emissions for CMSs (now called deviations). Requires all of the information in § 63.10(c)(5–13), § 63.8(c)(7–8).	No.
§ 63.10(e)(4)	Reporting COMS data	Must submit COMS data with performance test data	No.
§ 63.10(f)	Waiver for Recordkeeping/Reporting.	Procedures for Administrator to waive	Yes.
§ 63.11	Flares	Requirements for flares	Yes.
§ 63.12	Delegation	State authority to enforce standards	Yes.
§ 63.13	Addresses	Addresses where reports, notifications, and requests are sent.	Yes.
§ 63.14	Incorporation by Reference	Test methods incorporated by reference	Yes.
§ 63.15	Availability of Information	Public and confidential information	Yes.

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Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 413, 415, and 417
Licensing and Safety Requirements for Launch; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 413, 415, and 417

[Docket No. FAA–2000–7953; Notice No. 02–12]

RIN 2120–AG37

Licensing and Safety Requirements for Launch

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: The Federal Aviation Administration (FAA) is amending an earlier proposal to amend the commercial space transportation regulations governing licensing and safety requirements for launch. The FAA takes this action to propose certain changes, respond to comments on the earlier proposal, and clarify assumptions underlying the costs analysis associated with the original proposal. The intended effect of this action is to allay commenters' concerns that the costs of launching from a federal launch range will increase as a result of this rulemaking.

DATES: Send your comments on or before October 28, 2002. The FAA will host a public meeting in Washington, DC at 800 Independence Avenue, SW., on September 6, 2002 from 8:30 a.m. to 4 p.m.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You may also submit and review comments through the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For technical information: Michael Dook, (202) 385–4707. For legal information: Laura Montgomery, (202) 267–3150. If you would like to present a statement at the public meeting, or if you have questions about the logistics of the meeting, contact Brenda Parker, (202) 385–4713 before August 23, 2002.

SUPPLEMENTARY INFORMATION:

I. Comments Invited
II. Background
III. Changes to October 2000 Proposal
  A. Grandfathering
  B. Risk Limit for Each Hazard
  C. Debris Thresholds for Use in Flight Safety Analysis
IV. Issues of Concern to Commenters
  A. Authority and Need for Rulemaking
  B. Cost Impacts on Licensed Launches from Federal Launch Ranges
  C. FAA and Air Force Process for Relief from Common Launch Safety Requirements
V. Section-by-Section Analysis of the SNPRM
VI. Procedural Matters

I. Comments Invited

You may participate in this rulemaking by submitting written data, views, or arguments. We also invite comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket number and be submitted in duplicate to the DOT Rules Docket address specified above.

You may also present comments at the public meeting. The FAA will prepare an agenda of speakers, which will be available at the meeting. If we receive your request after the date specified above, your name may not appear on the written agenda. To accommodate as many speakers as possible, the amount of time allocated to each speaker may be less than the amount of time requested. Persons requiring audiovisual equipment should notify the FAA when requesting to be placed on the agenda.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking, will be filed in the docket. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The DOT Rules Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. We will consider all comments received on or before the closing date before taking action on this proposed rulemaking. Late-filed comments will be considered to the extent practicable, and consistent with statutory deadlines. The proposals in this document may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this document must include a pre-addressed, stamped postcard with those comments on which the following statement is made: ''Comments to Docket No. FAA–2000–7953.'' The postcard will be date stamped and mailed to the commenter.

Public Meeting Procedures

The FAA will present a description of the SNPRM at the public meeting. The FAA will use the following procedures to facilitate the meeting:

(1) The meeting is designed to give interested parties an overview of the contents of the SNPRM to facilitate the public comment process. Therefore, the meeting will be informal and non-adversarial. No individual will be subject to cross-examination by any other participant; however, FAA representatives may ask questions to clarify a statement and to ensure a complete and accurate record. Participants will also have the opportunity to ask questions about the SNPRM.

(2) There will be no admission fee or other charge to attend or to participate in the meeting. The meeting will be open to all persons who are scheduled to present statements or who register between 8:30 a.m. and 9 a.m. on the day of the meeting. While we will make every effort to accommodate all persons wishing to participate, admission will be subject to availability of space in the meeting room. The meeting may adjourn early if scheduled speakers complete their statements in less time than is scheduled for the meeting.

(3) Speakers may be limited to a 10-minute statement. If possible, we will notify speakers if additional time is available.

(4) We will try to accommodate all speakers. If the available time does not permit this, we will generally schedule speakers on a first-come-first-served basis. However, we reserve the right to exclude some speakers if necessary to present a balance of viewpoints and issues.

(5) Sign and oral interpretation can be available at the meeting, as well as an assistive listening device, if requested at least 10 calendar days before the meeting.

(6) Representatives of the FAA will chair the meeting. A panel of FAA personnel involved in this proposal will be present.

(7) We will make a transcript of the meeting using a court reporter. We will include in the public docket a transcript of the meeting and any material accepted by the FAA representatives during the meeting. Any person who is interested in buying a copy of the transcript should contact the court reporter directly. Additional transcript purchase information will be available at the meeting.

(8) The FAA will review and consider all material presented by participants at the meeting. Position papers or material presenting views or arguments related to the SNPRM may be accepted at the discretion of the presiding officer and subsequently placed in the public

docket. We request that persons participating in the meeting provide six copies of all materials presented for distribution to the FAA representatives. You may provide other copies to the audience at your discretion.

(9) Statements made by FAA representatives are intended to facilitate discussion of the issues or to clarify issues. Any statement made during the meeting by an FAA representative is not intended to be, and should not be construed as, an official position of the FAA.

Availability of SNPRM

You can get an electronic copy of this SNPRM using the Internet through the FAA's web page at *http://www.faa.gov/avr/arm/nprm/nprm.htm* or the Government Printing Office's web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this SNPRM.

II. Background

Under existing regulations, the FAA evaluates, on an individual basis, a launch operator seeking an FAA license to launch from a non-federal launch site. A non-federal launch site is not located at a federal launch range. We issue a safety approval when we determine that the launch demonstrates an equivalent level of safety to that provided by a launch from a federal launch range. *See* 14 CFR part 415, subpart F for more details. For a licensed launch operator launching from a federal launch range, 14 CFR part 415, subpart C applies. For launch from a federal launch range, the FAA issues a safety approval if an applicant satisfies subpart C and has contracted with a federal launch range for safety-related launch services and property whose provision and use are within the experience of the federal launch range. 14 CFR 415.31.

On October 25, 2000, the FAA proposed licensing and safety requirements for the conduct of a launch. *Licensing and Safety Requirements for Launch; Notice of Proposed Rulemaking,* 65 FR 63921 (Oct. 25, 2000) (''October 2000 NPRM'' or ''NPRM''). The FAA proposed requirements for obtaining a license for a launch from a non-federal launch site. The proposed requirements for obtaining a license would not, however, apply to any launch from a non-federal launch site where a federal launch range performed the safety functions. For this type of launch, the licensing requirements of 14 CFR part 415, subpart C apply. The FAA proposes no revisions to subpart C of part 415.

The October 2000 NPRM also proposed to codify the safety requirements that a launch operator must satisfy to protect the public from the hazards of launch. The safety requirements would apply to all licensed launches of expendable launch vehicles, whether from a federal launch range or a non-federal launch site.

The FAA received comments to the original proposal on April 23, 2001.[1] Comments on the October 2000 NPRM generally fall into three categories: comments that caused the FAA to propose changes to the NPRM here; comments that did not cause changes, but did cause the FAA to address commenters' concerns in this preamble; and comments that the FAA is still considering and will address in the final rule. The next two sections of this preamble address the first two categories of comments. Interested readers should also see the section-by-section analysis portion later in this preamble for a description of the specific changes. The changes to the October 2000 NPRM proposed in this SNPRM include addressing how and when the proposed regulations would apply to pre-existing launch systems, changes to the measure of acceptable risk, and changes to the debris thresholds that would be used in flight safety analysis. The FAA is, through this supplemental notice of proposed rulemaking (''SNPRM''), also revising and reorganizing its proposed regulations regarding flight safety analysis. The FAA is still reviewing and considering the many technical comments and suggestions, which will be addressed in the final rule.

Since 1998[2], the FAA and the Air Force ranges have been working together to achieve common safety standards that may be universally applied to licensed and government launches. The FAA anticipates that for licensed launches that are conducted at federal launch ranges, the ranges will continue to implement these requirements. As explained in past rulemakings, the FAA conducts a baseline assessment of the adequacy of the federal launch ranges to determine whether the FAA may rely on the safety requirements of the ranges and on their implementation of those requirements.[3] The FAA's baseline assessments document the capabilities, safety program, standards and policies of each federal launch range. The FAA recognizes, of course, that the federal launch ranges of the Department of Defense and National Aeronautics and Space Administration have their own missions separate from the support of commercial or otherwise licensed launches. Accordingly, the FAA proposes to codify the ranges' safety requirements to fulfill, in part, the FAA's own responsibilities for safety. Codification identifies those requirements upon which the FAA relies for licensed launch operators to achieve safety, and, in the unlikely

[1] *Aircraft Owners and Pilots Association,* Apr. 13, 2001; The Boeing Company, Int'l Launch Services, Lockheed Martin Corporation, Orbital Sciences Corporation, and Sea Launch Company (the ''Joint Commenters'') in *Consolidated Industry Response to FAA NPRM, Licensing and Safety Requirements for Launch, October 25, 2000,* Vol.s 1 and 2 (Apr. 23, 2000) (''JC Vol. I'' and ''JC Vol. II''); Comments, Hugh Q. Cook, (Mar. 13, 2001); *Comments to Licensing and Safety Requirements for Launch; Notice of Proposed rulemaking October 25, 2000,* Kistler Aerospace Corporation, (Apr. 23, 2001); Letter from Tom Marsh, Lockheed Martin Corporation, (Apr. 6, 2001); *Comments on DOT NPRM Licensing and Safety Requirements for Launch, Docket No. FAA–2000–7953,* Lou Gomez, NMOSC (undated); Orbital Sciences Corporation (Apr. 23, 2001); Sea Launch Company, L.L.C (Apr. 20, 2001); *XCOR Aerospace Comments in Response to FAA Notice of Proposed Rulemaking on Licensing and Safety Requirements for Launch* (undated) (''XCOR Comments''). Under separate cover, a number of commenters filed cost impact assessments: *Boeing Proprietary Cost Impact Analysis in Response to NPRM on Licensing and Safety Requirements (Docket No. FAA–2000–7953),* (April 20, 2001) (''Boeing Costs''); *Lockheed Martin Cost Impact Analysis* (''Lockheed Cost Estimates'') (proprietary); *Orbital NPRM Cost Impact Assessment,* Orbital Sciences Corporation (Apr. 23, 2001)(''Orbital Cost Impact Assessment'') (proprietary); Sea Launch Company, L.L.C. (Apr. 20, 2001) (''Sea Launch Costs'') (proprietary).

[2] In recognition of the efforts of the FAA and the ranges to achieve common safety standards, an interagency working group led by the Office of Science and Technology Policy and the National Security Council of the White House recommended, among other things, that the FAA and the U.S. Air Force ''continue their cooperative development of common safety requirements to be applied to government and commercial launches at federal and non-federal launch sites.'' White House Office of Science and Technology Policy and National Security Council, *The Future Management and Use of the Space Launch Bases and Ranges,* 38 (Feb. 8, 2000). At the same time, the working group recommended that the FAA and the U.S. Air Force formalize their respective responsibilities for the safety of space launches through a memorandum of agreement. *Id.* at 39. The report urged that the federal ranges retain current responsibilities for the safety of government activities, and retain safety of commercial flight activities at the Eastern and Western Ranges. On January 16, 2001, the FAA Administrator and the Assistant Secretary of the Air Force entered into a Memorandum of Agreement Between Department of the Air Force and Federal Aviation Administration on Safety for Space Transportation and Range Activities. A copy of the MOA is available on AST's Web site (*http://ast.faa.gov).*

[3] *See Commercial Space Transportation Licensing Regulations,* 64 FR 19586, 19596–97 (Apr. 21, 1999).

event that either of the ranges can no longer provide support on a non-interference basis for commercial launch, ensures that a launch operator is informed of the safety requirements with which it must comply. Because the different ranges experience different meteorological, geographical and population environments, the ranges do not always implement their requirements in the same manner. The FAA attempted, in the NPRM, to identify the underlying intent shared by the ranges' safety requirements, and then presented those principles in the NPRM, in a more generally applicable and abstract form, which may be unfamiliar to those accustomed to launching from a particular range.

III. Changes to October 2000 Proposal

A. Grandfathering

Although the proposed requirements are derived from existing range requirements, there are, for any number of different reasons, launch vehicles and launch operators who would not comply with the requirements as proposed in the NPRM. For example, in the NPRM, the FAA noted that there might be instances where the ranges had granted waivers to the requirements of Eastern and Western Range 127–1, Range Safety Requirements (''EWR 127–1''). NPRM, 65 FR 63941. Additionally, the FAA recognizes that there are launch operators operating under older versions of EWR 127–1 who would not meet current federal range standards or, therefore, the proposed FAA requirements. In the NPRM, the FAA noted that launch operators might experience cost impacts from bringing their operations into compliance with the proposed requirements, and requested comments on the FAA's plan not to ''grandfather'' such noncompliances.

The FAA received comments suggesting that, in addition to existing waivers, other candidates for grandfathering exist. JC Vol. I at 9. The comments noted that the ranges grandfather sub-systems on launch vehicles that become non-compliant when the ranges implement new safety requirements. Additionally, comments called the FAA's attention to the ranges' ''tailoring'' process, by which a range determines whether a launch operator's proposed alternative, although not compliant with the letter of the range requirements, nonetheless meets the intent behind the requirement. Commenters urged the FAA to accept existing tailoring agreements. For all these scenarios, including waivers, tailoring and existing range grandfathering arrangements, launch operators urged that the FAA ''grandfather'' current launch systems. Launch operators urged cost and range practice as the reasons for grandfathering. The FAA is considering adopting some of the suggestions contained in the comments to this rulemaking, but requests additional comment and information in light of the considerations discussed below.

1. Applicability and Effective Dates of Requirements

Commenting launch operators requested that the FAA provide more detail regarding how and whether grandfathering would work. The FAA specifies an effective date for each rule promulgated. There are a number of options for determining an effective date. A rule might apply, for example, to all launches that took place after a certain date, regardless of when the launch vehicle was designed or built. Usually, for such a decision an agency would provide a fairly lengthy lead-time. Alternatively, a rule might apply to all launch vehicle components manufactured after a certain date. Again, a lengthy lead-time might be necessary to allow a licensee to incorporate any changes into its design and subsequently manufactured hardware. Finally, in accordance with Department of Transportation and FAA usage, the FAA's proposed regulatory requirements will not employ the term ''grandfather,'' but will, instead, describe how and when part 417 would or would not apply.

For a meets intent certification or noncompliance to qualify under the FAA's proposed version of grandfathering, the federal range approval of such relief from a safety requirement would have to exist as of the effective date of proposed part 417. The FAA intends to allow sufficient time between the issuance of the final rule and the date that part 417 would become effective for federal ranges to make decisions on pending requests for relief that might be in work at the time a final FAA rule is issued. For launches from Air Force ranges, the Air Force and the FAA intend to have the joint relief process, discussed in section IV.C of this supplemental notice, in place prior to the effective date of part 417. This will allow for a smooth transition from pre-existing Air Force relief approvals that would qualify for the FAA's proposed version of grandfathering, to the joint process that will be used to resolve future requests for relief from launch safety requirements.

2. Range Approach to Implementing new Safety Requirements

At the Air Force's launch ranges, EWR 127–1 governs. The Air Force's range safety organizations periodically update these requirements, and determine the extent to which those updates will affect existing launch vehicles and systems. Commenting launch operators noted that ''the existence of such new requirements does not necessarily make an existing system unsafe or expose the public to greater safety risks.'' JC Vol. I at 9. EWR 127–1 recognizes this, and grandfathers and maintains the approvals of previously approved systems unless the Chief of Safety or the launch operator determines one of the following:

a. Existing programs make major modifications or include the use of currently approved components, systems, or subsystems in new application (through tailoring if desire[d]) Exception: Previously approved existing components, systems, or sub-systems that do not increase the risks, do not degrade safety, or can survive new environments [that] are equivalent to or lower [less severe] than the originally approved qualification levels shall be honored and do not have to meet new requirements [do not have to be upgraded] as long as data and analyses show that the criteria have been met.

b. The Range User has determined that it is economically and technically feasible to incorporate new requirements into the system.

c. The system has been or will be modified to the extent safety approvals no longer apply. **Note:** Risk and hazard analyses developed jointly by Range Safety and the Range User shall be used to determine applicability of the safety approvals.

d. A previously unforeseen or newly discovered safety hazard exists that is deemed by either Range Safety or the Range User to be significant enough to warrant the change.

e. The system does not meet the requirements existing when the system was originally accepted. **Note:** This category includes systems that were previously approved, but when obtaining the approval, the noncompliances to the original requirement were not identified.

f. A system or procedure is modified and a new requirement reveals that a significant risk exists.

g. Accident and incident investigations and reports may dictate compliance with the document.

EWR 127–1, Appendix 1C, 1C.1.4, 1–35 (Dec. 31, 1999).

As review of the above range exceptions shows, a host of possibilities may trigger a requirement for a launch operator to change its launch vehicle or systems to conform to the latest safety requirements. These possibilities may be divided into two general conditions: where a launch operator is implementing other changes to its launch vehicle, and where the safety considerations are so overriding that a change is required. Accordingly, although grandfathering may be automatic under the range regime, grandfathering is not unlimited.

The issue of grandfathering highlights how the Air Force has successfully dealt with the issue of providing for appropriate public safety while taking into consideration the issues of cost, schedule, and mission assurance. The FAA recognizes that there are parallels that can be drawn between the Air Force's approach to ensuring public safety, including the use of grandfathering, and the FAA's regulatory focus on ensuring public safety without placing undue burden on the launch industry. Since publishing the NPRM, the FAA has considered further the Air Force's approach to grandfathering and how the Air Force has successfully implemented its grandfathering policies to ensure public safety without placing undue burden on the launch industry. Upon the urging of the commenters, the FAA proposes to adopt a similar approach to determining when non-compliance with a particular requirement may be permitted to continue.

3. Applicability of Proposed Requirements to Pre-Existing Range Meets Intent Certifications

Under this SNPRM, proposed section 417.1(b) would permit a launch operator not to have to demonstrate an equivalent level of safety to the FAA for certain range ''meets intent'' determinations if the launch operator was licensed by the FAA and launched from a federal range. In the NPRM the FAA, while proposing not to grandfather noncompliances with the proposed requirements, was silent with respect to how it would treat meets intent certifications. This meant that all launch operators would be required to satisfy all the FAA's proposed launch safety requirements once those requirements went into effect. To satisfy a requirement, a launch operator would have to meet the requirement as stated in the FAA's proposed regulations or demonstrate that an alternative approach provided an equivalent level of safety. For existing launch vehicles operating from federal ranges, the federal range safety organizations have granted ''meets intent certifications'' for substitutes preferred by the launch operators to some of the current range safety requirements. Because the current federal range safety requirements provide the basis for the FAA's proposed requirements, any grant by a federal launch range of a meets intent certification creates the possibility that the launch operator would not necessarily comply in a literal sense with a proposed FAA requirement.

The federal ranges have granted meets intent certifications when they found that a launch operator's proposed approach, although literally non-compliant with a requirement, complied with the overall intent of the requirement. To obtain meets intent approval from a federal range, a launch operator's proposed substitute has to maintain an equivalent level of safety despite not meeting the exact requirement. *EWR 127–1* at 1–vii (Dec. 31, 1999). For all intents and purposes, a range safety meets intent certification constitutes one form of the FAA's equivalent level of safety. Additionally, a federal range's tailoring of launch safety requirements for specific launch vehicle programs often includes meets intent certifications that apply to a launch vehicle program on a permanent basis.

The FAA now proposes through section 417.1(b) that a launch operator would not need to demonstrate an equivalent level of safety to the FAA for satisfying an FAA requirement for a licensed launch from a federal range, if two conditions were met. The first condition would be that the launch operator would have to have a license from the FAA to launch from the federal launch range and the license would have to be in effect as of the effective date of part 417. This is reasonable because, to date, through its baseline assessments, the FAA has relied on the federal range determinations that a particular substitute to a range requirement met the intent of that same requirement. In the context of meets intent certifications, the FAA sees no need to revisit or second-guess that past reliance. Under this SNPRM, the possessor of ''meets intent certification'' could continue to rely on the range's determination, where a future or different licensee could not. Additionally, even the same licensee would not be able to rely on a pre-existing meets intent certification for any other vehicle or application other than the one for which it was originally granted.

Thus, the second condition would be for the launch operator to have a written pre-existing ''meets intent certification'' for the requirement from the federal launch range from which the launch will take place, or a substitute that the same range approved during tailoring of the range safety requirements for that launch operator. This proposal is consistent with the ranges' own approach to ''grandfathering.'' Under current practice, range grandfathering applies only at one launch site. *See* Appendix 1C, 1C.1.4 a (permitting grandfathering unless a currently approved component, system or subsystem is to be used in a ''new application''). If a launch operator has launched a vehicle from one range and proposes to launch from a different range, the other range will review the substitution for acceptability.

Review due to a change in launch site is necessary because different conditions at different launch sites may dictate different decisions. If, for example, not performing an environmental test is acceptable at one range, different environments at a different launch site may require that the test be conducted. Environmental factors such as salt, fog and temperature may vary from site to site, as may the potential for extreme environments, such as earthquakes on the west coast and hurricanes on the east coast, thus changing the need for and requirements governing component testing. Similarly, with a change in trajectory profile brought about by launching from a different site, vibrations could occur at different times of flight. The ranges see a need to address and consider these changes and determine whether a substitution acceptable at one launch site is acceptable at another. The FAA agrees with this reasoning and proposes to maintain this practice.

Under this SNPRM, the ''meets intent certification'' would have to exist as of the effective date of part 417 and the duration of the ''meets intent certification'' would have to include the licensed launch in question. If a pre-existing meets intent certification did not apply to a future licensed launch, the launch operator would have to demonstrate an equivalent level of safety to the FAA. For example, the ranges have granted some launch operators meets intent certifications that allowed them to fly without a flight termination system on an upper stage of their launch vehicles. Such range approvals are highly dependent on launch specific conditions and do not necessarily apply outside of certain launch azimuths. The FAA recognizes, however, that even for a meets intent certification granted only for a specific launch there may be a possibility that

the reasons that merited grant of a meets intent certification will apply again and the FAA will be able to find an equivalent level of safety. However, just as the ranges reserve the right to make that determination for a different set of circumstances, so, too, will the FAA. For future FAA-licensed launches from federal ranges, launch specific decisions such as these will be handled through a coordinated FAA and federal range review process as discussed in section IV.C of this SNPRM.

4. Pre-existing Range Waivers and Non-Compliances That Satisfy Range Grandfathering Practices

Under proposed section 417.1(b)(1) of this SNPRM, the FAA would not apply a requirement of proposed part 417 to a licensed launch if the launch operator is currently licensed by the FAA to launch from a federal range, and if the range has either previously approved a waiver for the requirement or if the noncompliance is in accordance with federal range ''grandfathering'' practices. Unlike a meets intent certification where a launch operator satisfies a requirement through an alternative that provides an equivalent level of safety, a launch operator at a federal range might not satisfy a current range safety requirement and, therefore, would not satisfy one of the FAA's proposed launch safety requirements. A federal range may have approved such non-compliances as specific waivers or the non-compliance may have resulted from the launch vehicle program being initiated under an earlier version of the range safety requirements and being subject to Air Force grandfathering policies.

In the NPRM the FAA proposed not to grandfather non-compliances, but requested public comments on the issue. Upon consideration of input from industry and the federal range safety organizations, the FAA now believes that it would be appropriate to provide a form of grandfathering that is nearly identical to the Air Force's grandfathering policy. The FAA's version of grandfathering, namely, partially limiting the reach of its requirements, would apply to federal range waivers and other noncompliances that have been grandfathered by a federal range. Since the NPRM was published, the FAA has considered further how grandfathering is implemented in current practice at the federal ranges, including recognizing that there is a degree of safety assurance that can be derived from the demonstrated flight history of an existing vehicle.

The FAA now proposes to permit, with some exceptions, that a requirement of this part would not apply to a licensed launch from a federal range, if certain conditions were met. These conditions would be the same as those the FAA is proposing for pre-existing meets intent certifications, as discussed above. The first condition would be that the launch operator would have to have a license from the FAA to launch from the federal launch range and the license would have to be in effect as of the effective date of proposed part 417. A launch operator who had a launch license on the day that part 417 became effective would satisfy this condition. Although the possessor of the waiver will be able to rely on the range determination, a future or different licensee will not. Additionally, the same licensee would not be able to rely on a pre-existing waiver for any vehicle or application other than the one for which it was originally granted.

The second condition would be that the launch operator, as of the effective date of proposed part 417, had, for that requirement, a written waiver from the federal launch range, or a pre-existing noncompliance that satisfied the federal launch range grandfathering criteria. The FAA intends this provision to encompass noncompliances regardless of the avenue through which they arise. In the first instance, a range may grant a waiver. In the second, a range may have approved a launch vehicle or system under requirements in place some time previously. Although the range requirements may change, a launch operator is not always required to upgrade the launch vehicle or system as discussed above. This provision would apply to both forms of pre-existing non-compliance.

The condition that a range approval be in writing would apply to range waivers. *See EWR 127–1* at 1–38, Appendix IC, IC.2.4 (describing required range approvals). For a launch vehicle that has been grandfathered, the range maintains a version of the range safety requirements that apply to the vehicle. These are the requirements that are ''tailored for that vehicle.'' For any new safety requirement that the range determines must apply to an existing launch vehicle, the range will update the tailored set of range safety requirements.

Just as with the FAA's proposed approach to pre-existing meets intent certifications, the FAA would condition not applying a requirement for a licensed launch on an existing non-compliance being already approved for the licensed launch in question. If the range approval of a pre-existing non-compliance did not apply to a future licensed launch, the launch operator would have to meet the requirement as written or demonstrate an equivalent level of safety to the FAA and the Air Force in the joint relief process discussed in section IV.C of this notice. Because waivers are granted for situations where an equivalent level of safety is not achieved, the FAA considers it even more important than with pre-existing meets intent certifications that the FAA review the acceptability of a waiver when there are differences from the circumstances that warranted grant of the waiver in the first place. As with the meets intent certification, the FAA recognizes that the reasons for a waiver may exist again. However, just as the ranges reserve the right to make that determination for a different set of circumstances, so, too, will the FAA.

5. Limits to Grandfathering

As discussed previously, range grandfathering is not necessarily guaranteed under current practice at the federal ranges. Depending on the criticality of an issue and, given time and opportunity, a federal launch range will strive to bring a launch operator's vehicle and operations into compliance with current safety requirements. Accordingly, the FAA proposes to codify that practice as well in proposed section 417.1(b)(2).

Like the ranges, even if the launch operator were to satisfy the conditions of proposed section 417.1(b)(1) for a specific requirement of proposed part 417, the FAA proposes that a launch operator must comply with proposed part 417, including by providing a demonstration of an equivalent level of safety, whenever the launch operator makes modifications that affect the launch vehicle's operation or safety characteristics. As with the Air Force's current practice, proposed § 417.1(b)(2) would require a launch operator to upgrade if the FAA or the launch operator determined that a previously unforeseen or newly discovered safety hazard existed that was a source of significant risk to public safety, or if a federal range previously accepted a component, system, or subsystem, but did not identify a noncompliance to an original federal range requirement. In the past, this meant that a launch operator making a major change to its launch vehicle had to upgrade the launch vehicle to satisfy current safety requirements. For example, modifications made to a launch vehicle to allow the use of strap-on solid rocket boosters where none were originally

approved would be considered major modifications that could affect the vehicle's operation and safety characteristics. As a result, many aspects of the original flight termination system would have to be upgraded to comply with the most current requirements. This change would have the effect of codifying the federal launch ranges' current practice.

The FAA also proposes, as under current practice, that a launch operator bring its launch vehicle or launch into compliance with a requirement when it uses the launch vehicle or a component, system, or subsystem in a new application. A new application may include launching the vehicle from a new launch site or using a safety component on a different stage of the vehicle other than the stage for which it was originally approved.

6. Grandfathering of a Launch Vehicle Program at an Air Force Range

The FAA recognizes that the Air Force and licensed launch operators at Air Force ranges often consider a launch vehicle program as a whole grandfathered. The FAA's proposed grandfathering provisions would govern the applicability of individual safety requirements. As is current practice in implementing the Air Force's requirements, the FAA's proposed requirements may be applied to a launch vehicle program such that all aspects of the existing program are grandfathered without the need to upgrade to satisfy the safety requirements of proposed part 417. The Air Force and the FAA are involved in an extensive effort to identify and maintain common launch safety requirements through an interagency group consisting of both Air Force and FAA personnel, called the Common Standards Working Group.[4] The Common Standards Working Group worked to ensure that the FAA's proposed requirements are consistent with the Air Force's grandfathering requirements and can be implemented without duplication of effort. A launch vehicle program that is fully compliant with the Air Force's grandfathering requirements could be fully compliant under the FAA's proposed requirements. This would be possible in the event that all the non-compliances or meets intent certifications for a particular launch vehicle satisfied the FAA's proposed criteria.

B. Risk Limit for Each Hazard

1. Changes to NPRM Proposal

In proposed section 417.107 of the NPRM, the FAA proposed to aggregate the risks attributable to all mission hazards and set a cap on the total mission risk of all hazards at an expected average casualty of 30×10^{-6}. The FAA received comments in opposition to this proposal from the public, and addressed the concerns with the other members of the Common Standards Working Group. The changes proposed here constitute the results of the consensus reached between the FAA and the U.S. Air Force through the Common Standards Working Group. In summary, the FAA, with the agreement of the U. S. Air Force, now proposes through this rulemaking to adopt the current practice at the 45th Space Wing and to set a cap on the risk presented by each hazard. Because of the differences in underlying assumptions and methodologies for assessing the risk of each hazard, the FAA will not require or consider a limit on the total mission risk created by all the hazards of launch. For any given launch, the risk attributable to the whole mission tends to arise out of one hazard. Accordingly, as a general matter, the FAA still expects the aggregated risk of most launches to remain near an E_c of 30×10^{-6}.

In the NPRM, the FAA proposed to require that an aggregate of the hazards created by a particular launch not exceed an E_c of 30×10^{-6}. *NPRM,* 65 FR 63921, 63981 (proposed section 417.107(b)). This meant that a launch operator would have had to account for all hazards, including, but not limited to, the risks associated with debris, toxic releases and far field blast overpressure. The FAA proposed this limit after consultations with Air Force safety personnel at the 30th and 45th Space Wings. Both wings were receptive to this approach because it supported a theoretical goal of launch risk management, which is to quantify all hazards in a single, normalized risk measure. As noted in the NPRM, the 30th Space Wing found that one hazard typically served as the source of the risk attributable to a mission. *NPRM,* 65 FR 63921, 63936. Conditions that are conducive to driving up the risk associated with one hazard usually make another hazard less significant. Accordingly, representatives of the 30th Space Wing advised that launch availability would not be jeopardized at Vandenberg Air Force Base with a total mission risk cap of 30×10^{-6}. Thus, although the 30th Space Wing advised that it did not, in practice, set a ceiling for aggregate risk at 30×10^{-6}, launches from Vandenberg could meet the standard.

As discussed in the NPRM, the experience of the 45th Space Wing differed. The current practice of the Eastern Range, as described in the NPRM, was to cap two hazards, debris and far field blast overpressure, at an E_c of less than or equal to 30×10^{-6}. *NPRM,* 65 FR 63921, 63936. Although the Eastern Range estimates that it accepts a risk at an E_c of 233×10^{-6} for the risk attributable to a launch's potential toxic releases, its analysis does not account for a variety of factors that may reduce risk but are difficult to quantify. A review of licensed launches between September 4, 1997, and August 23, 2000, shows that only two out of 39 licensed launches took place with an E_c for toxic releases in excess of 30×10^{-6}. *Eastern Range Aggregate Risk Study,* RTI Int'l (Oct. 2, 2001). One occurred on May 4, 1999, with an E_c for toxics of 57×10^{-6} for the launch of a Delta III. The other occurred on July 10, 1999, with an E_c for toxics of 114×10^{-6} for a Delta II launch vehicle. Because all indications pointed to the ability of Western Range launches to continue to satisfy an aggregated risk criteria, and because the Eastern Range stated that most of the higher toxic risk numbers applied only to federal government launches, such as the Shuttle and Titan vehicles[5], both ranges and the FAA agreed to propose the aggregated mission risk cap in the October 2000 NPRM.

The FAA received comments opposed to aggregating mission risk. Launch operators commenting on the October 2000 NPRM stated they expect the E_c values from downrange debris risk *alone* to be close to or surpass the 30×10^{-6} criteria with flight azimuths entailing African or European overflight. JC Vol. I at 8 (emphasis in original); *accord* Boeing Cost Impact at 2. The launch operators therefore believed that a single, collective E_c at the proposed level would restrict launch availability and cause launch delays, both of which increase launch costs.[6]

[4] The Common Standards Working Group consists of, in addition to FAA representatives, Air Force representatives from Air Force Space Command, the Air Force Space and Missile Center, Air Force Safety Center, safety personnel from both the Eastern and Western Ranges, and each of their contractors working in support of this joint effort.

[5] The Air Force advises the FAA that it will accommodate this discrepancy to the common standards through its own granfathering or waiver process.

[6] The FAA would like to clarify a misunderstanding on the part of the launch operators commenting about how risk is calculated. In the Joint Comments, the launch operators argue that ''[t]he fact is, that the actual public risk can only be realized at one given point in the launch timeline. If a launch vehicle is terminated during

Continued

In light of the concerns raised by launch operators, the FAA again revisited current practice at the ranges through consultations with the Common Standards Working Group. The working group explored in detail the philosophies and limits behind current risk assessment approaches and what was proposed in the NPRM. Air Force current requirements permit different aggregation practices. *See* EWR 127–1, 1–41, Appendix 1D, 1D.1b (''The overall risk levels *may or may not* be an additive value that includes risks resulting from debris, toxic and blast overpressure exposures.'' (Emphasis added))(cited in *NPRM,* 65 FR at 63936). The current practices at each of the two ranges remain as described in the NPRM. Results of the study conducted in 2001 indicated that there were only a few commercial launches in the past five years that would not have satisfied the aggregation criteria. Having explored a number of alternatives, the FAA now proposes to codify a less restrictive practice of not aggregating risks as proposed by the Common Standards Working Group.

Although the Common Standards Working Group agrees that a risk assessment that determines the total risk due to all hazards associated with a single launch would be an ideal approach, the group also agrees that there are a number of reasons not to codify such an approach at this time. The Common Standards Working group proposes separate risk criteria for each hazard because it is current practice for the 45th Space Wing, the range from which the majority of commercial launches take place, and because it reflects the disparate approaches to and abilities in modeling the risks of each hazard. Currently, the differences between the hazards create differences in how to measure the risks attributable to each of those hazards. A risk measure accounts for a number of things, including the probability of the undesired event occurring (usually related to the launch vehicle's probability of failure), the characteristics of the hazard, and the characteristics of any exposed populations. At this most general level, both ranges assess risk to account for each of these factors. When it comes to addressing each hazard, however, differences arise. Although the models of the two Air Force ranges tend to account for similar factors, the input to those models differs at each coast.

Because the FAA and the Air Force intend for their methodologies to account for the same factors, such as serious injury, population and the like, the Common Standards Working Group had to review the current practice underlying the risk assessment for each hazard. That review demonstrates how difficult it is to normalize among hazards.

Population characteristics are, at the most abstract level, treated similarly in that the methodologies and models attempt to describe the location or other attributes of an exposed population in a reasonably conservative manner. But what constitutes a reasonably conservative estimate for one hazard may differ for another hazard, which makes assessing each hazard through a separate inquiry a reasonable exercise. For example, when assessing the risks posed by far field blast overpressure, the conservative approach, in the absence of data detailing true locations, would be to assume all the population is located inside buildings and thus exposed to the danger of flying glass. When assessing the risk posed by a release of toxic substances, on the other hand, the conservative approach would be to assume that at least a portion of the exposed population was outdoors, thus increasing the likelihood of harm from the release. The characteristics of a population relevant to an assessment will also vary depending on the hazard at issue. For example, age will play a role in whether a person is harmed by a toxic release: a toxic exposure that fails to injure a healthy adult may seriously injure an infant or the infirm. Age is a much less important parameter for penetration injuries due to flying glass shards. Accordingly, age characteristics may be necessary for one assessment but not another.

In analyzing how a particular hazard may cause an injury, the elements of the risk assessments also diverge. Each hazard causes a different kind and degree of serious injury, so that employing separate methodologies and models to address each is reasonable for purposes of analyzing what harms a person. For example, inert debris causes injuries of penetration, blunt trauma or crushing. Explosive debris may cause knockdown and blast injuries, including, for example, ''blast lung,'' gastrointestinal blast injury, damage to the inner ear, and eardrum rupture. Air blast loading caused by far field blast overpressure may break windows and pose a threat of laceration to building occupants or those nearby. Toxic releases may result in damage to the respiratory system, skin, and eyes.

These different injuries are produced by different causes and the thresholds and measures for serious injury from each hazard will vary. For inert debris, risk assessments tend to account for such characteristics as the mass of the debris, the impact velocity of the debris, debris orientation or the projected area of the debris or a combination of any of these characteristics. The threat posed by a gaseous toxic release is generally characterized by the concentration levels, described in parts per million, and the duration of exposure. An assessment of the far field blast overpressure risk will account for a variety of window characteristics, including window types, fragment sizes, velocities, distances propelled, or impacts per unit area.

The result of this review is that it is reasonable to perform separate risk assessments and employ separate criteria because of the difficulty in normalizing risk across all the different hazards. The current models for estimating risk used at the Air Force ranges represent the state of the art. Nonetheless, current techniques still cannot aggregate the risk across all hazards in a consistent manner without introducing additional uncertainty. This is due to differences in how the hazards are modeled and the nature and quantification of the serious injuries that result from each hazard.

2. Alternatives Considered

The Common Standards Working Group explored a number of alternatives before settling on the proposal described above. Those alternatives and their benefits and drawbacks are discussed here. The Common Standards Working Group sought to identify risk assessment procedures that would best protect the general public and reflect current practice without unduly burdening the launch community. In doing so, the working group considered several options both individually and in combination. Chief among the concepts considered were various forms of risk aggregation and risk accumulation. Aggregation requires the risk assessment to combine and limit the total risk

up-range flight, there is no threat to the down-range public. Conversely, by the time down-range public is potentially endangered, the up-range public is clear of risk.'' JC Vol. I at 9. Risk calculations must assess the risk for the entire launch. When making risk calculations to determine whether the pubic risk criterion is satisfied for a launch, risk is not calculated during the launch but before the flight takes place and accumulated for all stages of flight. The risk calculation must account for all stages of flight if it is to be used to determine whether flight should be initiated, which is the intended use of the public risk criterion. The mutual exclusivity of failure scenarios has long been recognized and appropriately accounted for in the risk analyses performed at the Air Force ranges. When calculating risk, one of the important variables, namely, the probability of the launch vehicle's failure (Pf), is proportioned as a failure rate over each phase of flight so that there is some mathematical accounting for the fact that a launch vehicle can only fail once during flight.

associated with the three main hazard categories. Aggregation would ensure that a single risk measure capped the combined risk due to the three main hazard categories. Accumulation combines the risk in the launch area with risk incurred downrange. The group also considered options related to increasing the maximum allowable expected casualty level and imposing different expected casualty limits on new and mature vehicles.

In addition, the Common Standards Working Group considered a third option that would have required the same risk assessment as the original aggregation and accumulation option outlined in the NPRM. The only difference between the two proposals would have been an increase in the maximum allowable E_c value under this option. Aggregating and accumulating with an increased E_c limit could have prevented the risk assessment from becoming overly conservative by adjusting the acceptable risk criterion. However, the main difficulty with this option would have been that choosing a new expected casualty limit would have been difficult to justify in the absence of historical data on which to base it. This difficulty could be mitigated, however, through a focused scientific study dedicated to logically determining an expected casualty limit. In fact, the Department of Defense's Range Commander's Council has previously conducted a similar study that could be used as a baseline for any future research.

A fourth option would have required a launch operator to aggregate risks across the three main categories of hazards without accumulating the flight risks incurred in the launch area with those incurred downrange. The result would have been two separate casualty expectation values for each licensed mission. One value would have represented the aggregate risk in the launch area while the other would have represented the risk downrange. In a departure from the current practice as outlined in EWR 127–1, this option would have imposed individual caps on aggregate risk in both areas but would not have imposed a total hazard cap on any single launch. This option may have had less of an impact on launch operators than the NPRM proposal to aggregate, but would have recognized the different methods used to calculate launch area hazards compared to downrange hazards. These differences include variations in the nature of necessary data and the fidelity of the analyses. Such variations reflect the fact that the ranges typically are not concerned with toxic releases or distant focusing of blast overpressure downrange because most or all of the fuel on board the vehicle would have been consumed en route, or lost on reentry due to the break up and dispersion of liquid fuels. Also, data regarding meteorological conditions tends to be unavailable for most downrange far field blast overpressure concerns. As a result, downrange risk would consist almost entirely of the debris risk, whereas launch area risks would also include overpressures and toxic releases. However, the underlying premise of this option is flawed by the fact that separating launch area risks from downrange risks is contrary to pure risk assessment philosophy in that it considers a launch in discrete parts instead of as a single continuous event. For missions involving multiple distinct periods of population overflight, assessing the risk to each region of overflight separately could result in missions with a very high expected casualty even though the mission met the risk criteria for each overflight area. In other words, such an approach would mask the true risk of the whole mission. Another disadvantage is that, like with other proposals in favor of aggregation, it might be difficult to define and calculate a consistent methodology that normalized the effects of each of the hazards. This particular disadvantage arises from the fact that the same expected casualty value may reflect two different things when applied to two different hazard categories. For example, an E_c of 30×10^{-6} for toxic releases means something different than 30×10^{-6} for debris because, in most cases, more people would have to be exposed to a toxic release to inflict the same number of casualties as a debris impact. Similarly, the potential for fatalities is much higher for a launch with an E_c of 30×10^{-6} for debris than an E_c of 30×10^{-6} for a toxic release due to the nature of the two different hazards. In other words, with debris hazards, a higher percentage of the casualties are fatalities than with toxic hazards. The final and crucial shortcoming of this option is the difficulty in distinguishing between where the launch area ends and the downrange segment begins. This question might not be critical for a coastal range where the physical boundary between land and sea makes for a logical divider. However, no such physical partition exists for an inland launch site.

Under a fifth option, a launch operator would have been required to aggregate overall risks into a single maximum E_c while also capping the maximum allowable risk associated with any one hazard category. Since this option would not have required accumulation, a risk assessment would have required six separate E_c calculations for each licensed launch. Launch operators would have needed to calculate an E_c value for each of the three hazard categories for the launch area and an E_c value for each of the three hazard categories for the downrange portion of the launch resulting in a total of six E_c values. This plan would have required each of the six E_c values to meet the individual cap while requiring the sum of the six values to meet the total allowable aggregate E_c value. The major benefit of this option would have been the ability to recognize the differences between the three main hazard categories while still capping the maximum allowable overall risk level. Unfortunately, not accumulating risks could lead to problems in defining the point in flight where the launch area ends and the downrange segment begins as discussed under the previous option.

The risk assessment proposed under a sixth option would have been very similar to those outlined in the preceding paragraph in that it would have aggregated overall risks into a single maximum E_c, as well as capping the risk of each hazard separately; however, the cap on the maximum allowable risk associated with any one hazard category would have been on the accumulation of launch area and downrange risks for each hazard. This option would have effectively reduced the number of separate expected casualty values from six to three. This option would not have offered any significant benefit over the other options considered and involves the shortcomings associated with aggregation.

Under a seventh option, one set of risk criteria would have been developed for new vehicles while a separate set would have been developed for mature vehicles. This option would have allowed the FAA and the launch operators to recognize the role that operational experience with a particular launch system plays in reducing the level of uncertainty involved in calculating the risk associated with launching a particular vehicle. However, the differences between new and mature vehicles are already addressed under current practice by accounting for the demonstrated reliability of different launch vehicles. Currently, there are no accepted definitions for new and mature launch vehicles.

In summary, the FAA proposes to adopt the Common Standards Working Group determination that, for the reasons discussed above, risk should be limited by hazard. The FAA would limit the risk permitted for debris, far field blast overpressure and toxic release to an E_c of 30×10^{-6} for each hazard rather than an E_c of 30×10^{-6} for a total of all three hazards as proposed in the NPRM.

C. Debris Thresholds for Use in Flight Safety Analysis

Based on comments received, the FAA is proposing different thresholds for inert and explosive debris from those proposed in the October NPRM. The October 2000 NPRM would have required that certain probability analyses account for debris with a ballistic coefficient of three or greater. Under 417.107(c) of this SNPRM, the probability analyses would have to account for debris with a kinetic energy of 11 ft-lbs or greater at impact. For explosive debris, such as solid propellant fragments that will explode upon impact, the FAA is changing its proposal from 3.0 psi blast overpressure to blast overpressure of 1.0 psi or greater. The proposed debris thresholds would be applied when demonstrating that a launch satisfies the risk criteria for collective and individual risk of casualties to the public and the criteria for probability of impact for ships and aircraft.

In proposing requirements governing the calculations that are part of a launch operator's demonstration of compliance with the public risk criteria, the FAA's intent is to protect against casualties, the proposed definition in section 417.3 of the NPRM of which is ''death or serious injury.'' Not all pieces of debris have the potential to be lethal or cause a person a serious injury. Accordingly, the FAA does not intend that a probability analysis account for all debris, only that which has the potential to cause serious injury or death.

In proposed sections 417.225 and 417.227 and appendices A and B of the NPRM, the FAA proposed a methodology for conducting a debris risk analysis and analyses for defining hazard areas used to ensure compliance with the individual risk and ship and aircraft impact criteria. *See NPRM,* 65 FR 64017, 14 CFR 417.225 and 227 and appendixes A and B (proposed). The NPRM proposed that these analyses account for debris with a ballistic coefficient of 3.0 or more, and the analysis would have had to account for a 3.0-psi blast overpressure radius and projected debris effects for all potentially explosive debris. At the time the NPRM was drafted, the FAA believed that these thresholds were consistent with the FAA's definition of casualty, but would not be as conservative as any such thresholds currently used at the federal ranges. However, Air Force members of the Common Standards Working Group raised the concern that any analysis that was limited to these thresholds would not account for significant potential casualties, particularly serious injuries that could result from launch vehicle debris. The FAA has come to agree with the Air Force's concern and has been working with the Air Force as part of the Common Standards Working Group and have identified appropriate thresholds for debris.

The Common Standards Working Group is continuing to explore what measures of concern are most appropriate for distinguishing casualty due to launch vehicle accidents. Improvements in modeling may provide room for better measures of what inert or explosive debris might cause a casualty. Recent models suggest that a change in the proposed measure for inert debris from ballistic coefficient to kinetic energy would be appropriate. Overpressure remains the most appropriate casualty measure for explosive debris; however, a change in the pressure level that presents a hazard would be appropriate. The FAA is proposing new thresholds that reflect the latest thresholds for inert and explosive debris that are being considered by the Common Standards Working Group. The FAA specifically requests comments on the debris thresholds proposed in this SNPRM, including any proposals for alternative approaches to estimating casualties.

The FAA is proposing that a launch operator's demonstration of compliance with the public risk criteria incorporate one of two approaches when applying the proposed thresholds for inert and explosive debris. The more sophisticated of the two approaches, and the one which would result in the more accurate casualty estimate, would require the use of probabilistic human vulnerability models. These models account for the probability of casualty to any person exposed to the threshold levels or greater for inert and explosive debris. The simpler of the two approaches would count all members of the public exposed to the threshold levels or greater as casualties. The simpler approach would result in a relatively conservative casualty estimation, which may be sufficient for a launch operator, depending on the specifics of a proposed launch. Any probabilistic casualty model used for a launch would have to be approved by the FAA during the licensing process or, if the launch is from a federal range, accepted as part of the FAA's baseline assessment of the federal launch range, as is current practice.

Probabilistic human vulnerability models estimate the likelihood of a casualty as a function of specific parameters that describe the contact with the hazard. The parameters may include kinetic energy, kinetic energy per unit area, overpressure, or toxic concentration. Probabilistic human vulnerability models possess greater fidelity than analysis approaches that employ simple conservative assumptions, such as counting every person exposed to the debris thresholds or greater as a casualty. These models possess greater fidelity because they typically account for the variability in how debris may harm different people such as infants, adults or the elderly to account for age, body weight and physical health. Probabilistic human vulnerability models also account for the variability associated with different injury mechanisms such as blunt trauma, crushing and penetration, as well as the variability of response associated with different parts of the body and body positions, such as whether a person is standing, sitting or supine. These models may account for the variability associated with fragment shape, weight and density and the inherent mathematical uncertainties associated with any probabilistic analysis. A human vulnerability model that reasonably accounts for these factors will produce more accurate casualty estimations than would the use of simple conservative assumptions. Accordingly, the use of a probabilistic human vulnerability model may prove to increase launch availability without jeopardizing public safety.

It must be noted that there are expenses associated with employing probabilistic human vulnerability models that can be avoided if the specifics of a proposed launch allow the use of a simple conservative approach. These models may possess significant development costs, including the highly specialized and knowledgeable personnel that would be involved. Such models would typically require more detailed input data. For example, in addition to knowing the number of people in a given area, the input to a probabilistic human vulnerability model could require statistics on the physical characteristics of the people and whether they are expected to be in the open or sheltered, and if sheltered, the characteristics of the shelters. A launch operator would have to weigh the costs associated with developing and using a

probabilistic human vulnerability model against the potential for increased launch availability.

Some of the probabilistic human vulnerability models currently used by the Air Force use the Abbreviated Injury Scale (AIS) of the Association for the Advancement of Automotive Medicine to define casualties, and to distinguish between serious injuries and those of lesser severity. The AIS is an anatomical scoring system that provides a means of ranking the severity of an injury and is widely used by emergency medical personnel. Within the AIS system, injuries are ranked on a scale of 1 to 6, with 1 being a minor injury, 2 moderate, 3 serious, 4 severe, 5 critical, and 6 a non-survivable injury. A scaling committee monitors the AIS evolution. A review of the current Air Force models found that they count an injury that qualifies as AIS Level 3, 4, 5, or 6 as a casualty. The Common Standards Working Group has recommended that any future casualty models used to satisfy Air Force and FAA requirements incorporate AIS Level 3 or greater as the standard for distinguishing casualties from injuries of lessor severity. When using the AIS for the purpose of casualty modeling, any injury that, due to its severity, qualifies as AIS Level 3, 4, 5, or 6 would be counted as a casualty. The FAA agrees that the use of AIS Level 3 or greater is appropriate for describing a medical condition sufficiently to allow modeling of casualties for purposes of determining whether a launch satisfies the public risk criteria.

The FAA recognizes that the 45th Space Wing conducts risk assessment of debris with a kinetic energy of less than 11 ft-lbs for blunt trauma on occasion, but the FAA does not currently plan to codify that practice. The circumstances surrounding that approach currently appear unique to the 45th Space Wing and constitute a response to the crowds of visitors that the Eastern Range must protect for launches. Numerous debris pieces with expected impact kinetic energies of less than 11 ft-lbs may significantly contribute to the risk of a launch when population density is sufficiently high. Also, the criterion of 11 ft-lbs of expected kinetic energy at impact does not ensure protection from serious injuries due to potential penetration wounds. For the time being, however, the FAA will not address this issue. The Common Standards Working Group considered a proposal for a threshold level near 40 ft-lb/in ^{2} to protect against serious penetration injuries from inert debris impacts. However, the Common Standards Working Group needs more time to evaluate an appropriate debris characteristic to protect against serious penetration injuries. The FAA invites public comments on this subject.

1. Inert debris

This SNPRM reflects two changes to the debris measure proposed in the NPRM: a change of the parameter measured to establish the probability of a casualty due to debris from ballistic coefficient to kinetic energy and a possible increase in conservatism, depending on the characteristics of a debris piece, of the threshold from a ballistic coefficient of three to a kinetic energy of 11 ft-lbs. The FAA proposed, throughout the NPRM, using ballistic coefficient as a metric for human vulnerability to estimate risk from inert debris impacts. Comments received from the Air Force and its contractor, ACTA Inc., as part of the Common Standards Working Group highlighted the pitfalls of relying on that metric. These comments have persuaded the FAA that defining hazardous debris as all pieces with a ballistic coefficient (often referred to as beta) of three or greater may fail to adequately protect the public in some cases. The FAA is now changing its proposal to use kinetic energy as the metric for estimating risk to the public from inert debris at a threshold level of 11 ft-lbs.

Specifying ballistic coefficient as a criterion ignores many important factors. The velocity of a debris piece at impact is an important factor in establishing whether an injury would result, but the terminal velocity of a debris piece at impact can vary significantly depending on the altitude at impact and its ballistic coefficient. Therefore, using ballistic coefficient as a casualty measure for inert debris would not indicate the velocity of impacting debris. Additionally, a debris fragment's ballistic coefficient does not indicate its mass, which is another important factor in establishing injury potential due to impact. A heavy fragment with a large area may be lethal, even though its ballistic coefficient is less than three. Similarly, a light fragment with a small area may be harmless even though its ballistic coefficient is greater than three. For example, consider a 30 pound debris piece, such as a rocket motor case fragment, that behaves like a tumbling plate, with an aerodynamic reference area of 11 square feet and a subsonic drag coefficient of 0.9. This piece has a ballistic coefficient of about three. The terminal velocity for this piece is about 50 feet per second, or 34 miles per hour. This piece would have a kinetic energy of about 1,164 ft-lbs at impact. The NPRM asserts that ''a ballistic coefficient of three correlates approximately to a hazardous debris piece possessing 58 ft-lbs of kinetic energy.'' *NPRM,* 65 FR 63935. The above example shows, however, that the kinetic energy of debris with a beta of three can be significantly greater than 58 foot-pounds. Accordingly, it is appropriate to consider other factors for determining whether a fragment would produce a casualty.

Inert launch vehicle debris of concern to the FAA typically threatens humans primarily from blunt trauma due to nearly vertical impact. The debris piece's potential to cause a serious injury upon impact with a person depends primarily on the mass and shape of the debris and the velocity at which it impacts. Because kinetic energy on impact accounts for these three factors, the FAA believes it to be the appropriate metric for gauging the potential for blunt trauma.

Recently published human vulnerability model results examined by the Common Standards Working Group suggest that for the general public, a kinetic energy of 11 ft-lbs at impact would be a reasonable threshold level for any analysis intending to account for virtually all serious injuries from blunt trauma. When applied as a threshold, 11 ft-lbs would represent the kinetic energy level for debris that could, depending on the specifics of an impact with a person, cause a casualty. As an example, 11 ft-lbs at impact corresponds to a one-quarter inch thick square aluminum plate with an edge length of about two inches and a weight of about 1.5 ounces impacting at a velocity of approximately 60 mph.

One must note that not every impact of debris at 11 ft-lbs or greater will necessarily result in a casualty. The probability of casualty due to such an impact is further dependent on a number of other factors specific to the debris and the impact scenario. Probabilistic human vulnerability models are often used to account for these other factors, and an analysis that employs these models will produce a more realistic casualty estimate than a deterministic analysis that counts all expected impacts of 11 ft-lbs or greater as casualties.

The choice of 11 ft-lbs as a threshold also has practical benefits. The FAA realizes that there is no standard threshold currently in use, and the human vulnerability models used at the federal ranges today may vary depending on the launch vehicle and other factors. The Air Force members of the Common Standards Working Group have indicated that the models currently used at Air Force ranges satisfy the

proposed 11-ft-lb threshold. For example, the debris model used for a Atlas IIAS launch from Cape Canaveral Air Force Station accounts for inert debris with kinetic energy at impact greater than or equal to 7 ft-lbs. A standard threshold would facilitate the development and application of more standardized models with associated efficiencies. For these reasons, the FAA is proposing to use kinetic energy as the metric for estimating the risk of casualties due to blunt trauma from inert debris impacts at a threshold level of 11 ft-lbs.

This SNPRM would require any risk analysis for blunt trauma due to launch vehicle debris to account for all potential debris with 11 ft-lbs or greater of kinetic energy at impact. The analysis would apply the relatively sophisticated approach using probabilistic models to assess the probability of casualty due to any debris with kinetic energy at impact of 11 ft-lbs or greater, or it could apply a more simple approach where each expected impact of a person with kinetic energy of 11 ft-lbs or greater would be counted as a casualty.

2. Explosive Debris

In sections 417.225 and 417.227 of the October 2000 NPRM, the FAA proposed that a flight safety analysis, a flight hazard area analysis, and a debris risk analysis had to account for a 3.0-psi blast overpressure radius or greater and projected debris effects for all potentially explosive debris. Explosive debris is debris with the potential to explode upon surface impact. At the time the NPRM was drafted, the FAA believed that this threshold was consistent with the FAA's definition of casualty and would not be more conservative than any such thresholds currently used at the federal ranges. However, comments received from the Air Force and its contractor, ACTA Inc., as part of the Common Standards Working Group indicated that there is a significant potential for casualties at blast pressures below 3.0 psi. The FAA has reviewed this issue with the Common Standards Working Group and now proposes to reduce its threshold for explosive debris to 1.0 psi.

Many factors complicate the determination of threshold blast loads from explosive debris that could cause serious injury. These factors include the substantial difference in vulnerability of people in the open and people in buildings, the substantial variability of protection afforded by various building types, the complex nature of blast wave propagation through groups of buildings or hilly terrain, the potential for far field window breakage due to atmospheric focusing of a blast wave under special conditions, and the general lack of data on casualty-blast load relationships for occupants of various building types. In addition to the direct effect that blast overpressure can have on a person, blast may cause serious injury by breaking glass that may strike a person, by blowing people down, or by collapsing a structure with people in or near it.

People in the open are generally less vulnerable to serious injury from blast loads than occupants of typical buildings, particularly if ear damage is discounted as a serious injury. However, persons standing in the open can be seriously injured as a result of being blown-down by overpressure. Blow-down potential is a function of both blast overpressure and impulse. For an explosive yield of 10,000 pounds TNT, the threshold for serious injury due to blow-down for a 70-kg person is near 1.4 psi.

The FAA recognizes that blast thresholds used currently at federal ranges may vary depending on the analysis being performed and the specifics associated with the people and property being protected. The October 2000 NPRM's proposal to address the risk associated with 3.0-psi overpressure would have addressed risks only to someone standing outside in the open, a typical assumption for overflight risk analysis. The ranges pointed out that this failed to account for risks to persons in or near a building or other structures. Glass can break at 1.0 psi—or even less—which means that a person in a building is at risk from flying glass shards or other secondary hazards and may be more at risk than a person in the open. The current practice at the ranges accounts for such secondary hazards of explosive debris. The Department of Defense Explosive Safety Board (DDESB) approves the siting of buildings that may be subject to approximately 1 psi over pressure level in the event of an accident. Additionally, the Air Force launch ranges use 1.0 psi to determine a hit to ships for probability of impact calculations. Accordingly, the Common Standards Working Group has reviewed the casualty models and analysis processes used at the Air Force ranges and concluded that the use of 1.0 psi as a threshold for explosive debris would be consistent overall with current practice at those ranges and in the explosive safety community at large.

Although the FAA is proposing overpressure as a threshold parameter, blast effects on humans, especially building occupants, are generally sensitive to the positive phase impulse, as well as the peak overpressure, of a blast load. For example, an explosion with a 50,000-lb TNT equivalent from a launch accident would produce on the order of a 1% probability of serious injury for occupants of typical buildings in the United States located at the 1.0-psi overpressure radius from the source of the blast. However, a more typical explosion (1000-lb TNT equivalent) from a launch accident would produce less than a 0.01% probability of serious injury in the same circumstances. It is important to note that these estimates account for the probability of serious injury due to broken glass shards propelled by the blast and assumes the occupants are equally likely to be anywhere in the building. The difference in the probability of serious injury in the two examples is primarily due to the greater impulse of a large explosion compared to one with a lesser yield. However, the probability of serious injury in both cases at the 1.0-psi overpressure radius is relatively small. Most typical impacts of explosive launch vehicle debris would result in small yields, far below a 50,000-lb TNT equivalent; therefore using a 1.0-psi peak incident overpressure level as a threshold in a simple explosive overpressure vulnerability model would, the FAA believes, capture any overpressure which would cause serious injury while at the same time account for the role played by the impulse of the blast as well.

When applying the 1.0-psi threshold, any probability analysis would have to account for a 1.0-psi blast overpressure radius for all potentially explosive impacting debris. The analysis may apply a relatively sophisticated approach that uses probabilistic models to determine casualty due to any blast overpressures of 1.0-psi or greater or apply a simpler approach that counts all people within the 1.0-psi overpressure radius as a casualty. When using the simple approach, the peak incident overpressure would be computed with the Kingery-Bulmash relationship, without regard to sheltering, reflections, or atmospheric effects. For persons located in buildings, the peak incident overpressure would be computed at the shortest distance between the building and the blast source. A person would be considered a casualty when located anywhere in a building subjected to peak incident overpressure equal to or greater than 1.0 psi.

The FAA anticipates that launch operators launching smaller vehicles, such as Pegasus Taurus, will be able to take advantage of the simple approach. Launch operators conducting launches of larger vehicles would likely resort to use of probabilistic models. The FAA

requests comments on the proposed debris thresholds and their application, which allows for both simple and sophisticated analysis methods. Because the FAA considers the proposed debris thresholds and their application to be consistent with current practices at the federal ranges it does not anticipate cost impacts, but requests comments on this point.

IV. Issues of Concern to Commenters

A. Authority and Need for Rulemaking

Some commenters questioned the FAA's authority to conduct this rulemaking, and whether it was consistent with Congressional intent. They also questioned its necessity. The FAA has the authority to conduct this rulemaking,[7] and codification of the safety requirements is necessary. The statute and the legislative history support the proposed codification of launch safety requirements. The rulemaking is necessary to identify genuine and universal safety requirements, which includes identifying and codifying the intent behind existing range safety requirements. Currently, federal requirements consist of a mix of safety and mission requirements. Some are available readily to the public. Others are typically only in the possession of range analysts. This rulemaking identifies those requirements with which a launch operator must comply under current practice. The FAA intends that streamlined performance requirements offer the same high level of safety and the flexibility of current practice. Finally, the FAA is concerned that adopting the suggestion to only apply proposed part 417 to non-federal launch sites could result in confusion regarding safety requirements at the federal ranges. This discussion describes the reasons for the FAA's position that it has the authority to conduct this rulemaking, that the rulemaking is consistent with Congressional intent, and that it is necessary for public safety.

1. Authority for Rulemaking

The Joint Commenters assert that the FAA's regulation of launch safety is not statutorily mandated, and is inconsistent with the Act's ''finding that private sector launch and associated services should be regulated only to the extent necessary to protect, among other things, the public health and safety.'' JC Vol. I at ii. In support of this argument, the commenters point to the FAA's authority to accept the assistance of other executive agencies in carrying out the Act, the Air Force's comprehensive safety requirements and the safety record achieved at the ranges. JC Vol. I at ii; Lockheed at 6. Lockheed Martin and other commenters suggest that the rulemaking is inconsistent with Congressional intent, as embodied in legislative history, to streamline the licensing process. JC Vol. I at iii; Lockheed at 6.

Congress found that the FAA should ''only to the extent necessary, regulate * * * launches, reentries and services to ensure compliance with international obligations of the United States and to protect the public health and safety, safety of property, national security and foreign policy interests of the United States.'' 49 U.S.C. 70101(a)(7). This rulemaking would identify and codify regulations containing the standards that protect public safety. Congress also found that the provision of launch services would be ''facilitated by stable, minimal, and appropriate regulatory guidelines that are fairly and expeditiously applied.'' 49 U.S.C. 70101(a)(6).

The commenters acknowledge that the FAA has the authority under 49 U.S.C. 70101–70121 (referred to as ''Chapter 701'' or ''the Act'') to issue safety regulations. JC Vol. I at iii; *accord* Lockheed at 2, 5. Accordingly, the commenters' position that the rulemaking fails to satisfy the Act appears to be based on the belief that the FAA's rulemaking may somehow be inconsistent with Congressional intent. As a preliminary matter, the FAA notes that intent becomes a matter of significance to statutory interpretation only when the statute itself is unclear. The Act is not unclear.

Chapter 701 authorizes the Department of Transportation and thus the FAA, through delegations, to oversee, license and regulate commercial launch and reentry activities and the operation of launch and reentry sites as carried out by U.S. citizens or within the United States. 49 U.S.C. 70103, 70104, 70105. The Act directs the FAA to exercise this responsibility consistent with public health and safety, safety of property, and the national security and foreign policy interests of the United States. 49 U.S.C. 70105.

2. Congressional Intent

Despite the commenters' claims to the contrary, review of legislative history shows that the FAA's rulemaking would satisfy Congressional intent. Review of the commenters' proposed interpretation of Congressional intent shows that Congress did not attempt to foreclose this rulemaking. Instead, some of the comments take legislative history out of context and argue that observations offered for a different day apply to the current situation. The comments attempt to portray Congressional intent as opposing a rulemaking—such as this—that codifies safety requirements. As explained below, the FAA does not share this interpretation.

Even if intent were an issue, the best expression of Congressional intent is contained in the language of the Act itself. This meaning may be discerned by analyzing the design of the statute as a whole. The Act itself specifically created a civilian regulatory regime for safety. Congress in 1984 neither foresaw nor forbade the conduct of this rulemaking. Instead, Congress gave the FAA responsibility for safety and authority to conduct rulemakings. Where Congress intended to bar duplication of responsibilities in the Act, it did so explicitly. *See, e.g.,* 49 U.S.C. 70117(b); S. Rep. No. 98–656, 15 (1984)(explaining that because regulatory regimes for communications satellites and land remote sensing satellites already exist, a duplicative process would be unnecessary). The regulatory regime for launch safety is that of the FAA. Had Congress viewed the Air Force's safety oversight as sufficient to require no codification of safety standards, Congress could have done so as explicitly as it ensured against duplication of the roles of the Federal Communications Commission and the National Oceanic and Atmospheric Administration.[8] Moreover, Congress could have failed to vest safety responsibility in the FAA. Congress did neither of these things.

Lockheed Martin separately urges reliance on a Senate report that accompanied passage of the original Commercial Space Launch Act to support its claim that this rulemaking runs counter to Congressional intent. Lockheed at 6. The cited legislative history does not go as far as Lockheed recommends. Lockheed states, that ''Congress stated unambiguously that the Act, and implementation of the Act, should reduce the regulatory burden for commercial launch operators and that the authority of * * * the

[7] *Accord* JC Vol. I at iii (''the FAA has the flexibility under the CSLA to develop and issue its own rules''), Lockheed at 2, 5.

[8] That the FAA may seek the assistance of the head of another executive agency does not accomplish nearly as much as the commenters suggest. Given the FAA's continued reliance on the federal launch ranges, now and for the foreseeable future, it is certainly a statutory provision of which the FAA is aware, but not one that stands in the way of the FAA identifying safety standards through rulemaking.

Secretary* * * to issue additional requirements and regulations must conform with the Congress' expressed desire to streamline the licensing process for commercial launch * * *.'' Lockheed at 6. The FAA first notes that what Lockheed cites in support of its assertion is not the language of the statute itself, but the regulatory impact statement of the Senate Report. S. Rep. No. 656, 98th Cong., 2d Sess., 5 (1984), *reprinted in* 1984 U.S.C.C.A.N. 5328, 5332. More significant, however, is the fact that Lockheed has added a word, the word ''must,'' to the cited language, thereby changing the meaning of the statement from one of description to one of admonition. Accordingly, the Senate report does not have the meaning that Lockheed would ascribe to it. Instead, in discussing the new authority conferred upon the Secretary, the report notes that the Secretary's authority ''to issue additional requirements and regulations conforms with the Committee's desire to streamline the commercial launch and launch operations process and to facilitate compliance with the required regulations.'' Sen. Rep. No. 656 at 5. A better interpretation is that the Committee thought that the new authority streamlined the existing situation.

Indeed, the situation at that time was a difficult one for a launch operator. Prior to passage of the Act, a launch operator, for example, had to obtain an export license under the International Traffic in Arms Regulations. Sen. Rep. No. 656 at 37. This was why the legislation gave the Secretary ''exclusive licensing authority'' for commercial launch. Sen. Rep. No. 656 at 5, 37. The FAA's interpretation is also more consistent than Lockheed's with the Committee's other statement to the effect that ''the legislation would provide for a more stable regulatory environment than that which currently exists.* * *'' Sen. Rep. No. 656 at 6. The regulatory environment that existed at the time would have required a launch operator to satisfy the requirements of numerous federal agencies.[9]

Likewise, although Lockheed does accurately describe Congressional encouragement to avoid duplicative and unnecessary regulation, (Lockheed at 6 (citing Sen. Rep. No. 656 at 3, 19)), the FAA's work with the Air Force in achieving common standards is designed to attain that very goal. In summary, the history at the time indicates, and the actual words used by the Committee demonstrate that Congress intended to streamline the existing regulatory process, not to argue against the possible future codification of safety requirements.

3. Necessity for This Rulemaking

Although some commenters assert that this rulemaking is not necessary to protect public safety, Chapter 701 directs the FAA to regulate to the extent necessary to protect public safety. The FAA believes that if a launch operator is to be expected to satisfy safety requirements, those requirements must be clear, open and published. In the October 2000 NPRM, the FAA announced that it considered the range safety requirements necessary because they were the requirements with which the ranges had achieved their level of safety. The FAA continues to find that the proposed requirements are necessary to achieving safety. The following discussion provides the reasons for the FAA's position.

Launch operators should achieve the same level of safety, regardless of whether they launch from a federal launch range or a non-federal launch site. Safety standards should be common between the FAA and the ranges. Most significantly, the FAA must identify the standards by which it judges safety; and, having identified those standards, the FAA must provide full disclosure that those standards apply at both federal launch ranges and at non-federal launch sites. Not only has the FAA identified its own proposed standards, in doing so, it has provided the additional benefit of identifying what the federal launch ranges themselves in fact require, and the standards they impose on launch operators through their own internal requirements.

a. Genuine and Universal Safety Requirements

Different federal launch ranges have implemented different approaches to achieving the same safety goals. The FAA proposes to codify the intent behind these different requirements where possible. In the interest of achieving universal applicability, namely, requirements that can apply regardless of differences in geography, mission, meteorological conditions and other factors, the FAA worked with the ranges to identify the underlying intent. Additionally, some of the range requirements documents require a launch operator to provide data that the range, in turn, subjects to standards contained in internal range documents. The internal standards are available upon request and provide greater insight into the intent behind particular information or safety requirements. This rulemaking would codify those as well.

Although, generally, Lockheed Martin maintains that the proposed requirements are new and different from EWR 127–1, Lockheed Martin stated that it would object as well to the proposed requirements, even if it thought that the FAA could succeed in codifying the Air Force requirements, on the grounds that those requirements are not the ''real, ultimate requirements'' of public safety, which the Air Force is able to accept through ''tailoring.'' [10] Lockheed at 3. The FAA's intent, however, has been to determine what those ''real, ultimate requirements'' are, so that they may be shared and codified as performance standards.[11] For example, the standards governing the creation of impact limit lines are not contained in EWR 127–1, but may be found instead in a flight safety analysis handbook, *Flight Control and Analysis General Reference Handbook,* RTI Rep. No. RTI/6762/03–02F (Apr. 24, 1997). This rulemaking attempts to unveil those requirements. Indeed, the Administrative Procedure Act directs that an agency's requirements be public. 5 U.S.C. 552(a)(1)(D).

The FAA's requirements may appear different from EWR 127–1 because they attempt to capture both the written requirements of EWR 127–1 and how the ranges have implemented those requirements. The FAA, aware of the safety expertise resident at the federal launch ranges, consulted with the ranges and reviewed the ranges' own requirements, as embodied in the EWR 127–1 and in NASA's Range Safety Manual for Goddard Space Flight Center (GSFC)/Wallops Flight Facility (WFF), RSM–93. Range safety personnel advised the FAA that not all of their requirements were enforced in a standardized manner because the ranges

[9] Contemporaneous and historical accounts describe the regulatory environment with which a launch operator had to comply as consisting of 18 federal agencies and 22 federal statutes. Kay, W.D., ''Space Policy Redefined: The Reagan Administration and the Commercialization of Space,'' *Business and Economic History,* 237–247 (Fall 1998); ''Industry Observer,'' *Av. Week & Space Technology,* 15 (Oct. 22, 1984).

[10] ''Tailoring,'' as explained by EWR 127–1, permits the preparation of an individually ''tailored'' requirements document to ensure that only applicable or alternative equivalent requirements are levied upon a launch vehicle program.'' EWR 127–1, 1–21, 1.6.3 (Oct. 31, 1997).

[11] An unintended consequence of translating some of the details of EWR 127–1 into performance requirements has been to appear to create new requirements. *See, e.g.,* discussion of surveillance requirements, IV.B. Additionally, as described in the NPRM and elsewhere here, the FAA has proposed more detailed requirements to serve as a roadmap for what the FAA considers demonstrates satisfaction of those performance requirements, and against which alternatives might be measured.

had granted waivers, deviations and ''meets intent certifications'' to launch operators in response to the requests of the launch operators for relief. The ranges have also used ''tailoring.'' Typically, this involves not imposing requirements that do not apply, and rewriting any requirement where the intent of the requirement is satisfied through other means. *EWR 127–1,* Appendix 1A, 1–23 (Dec. 31, 1997).

The FAA is building in similar flexibility by recognizing where the ranges have been willing to grant relief and incorporating those determinations into the requirements as proposed through this rulemaking so that particular non-compliances would no longer require waivers. For example, the lot acceptance and qualification test requirements for percussion activated device (PAD) primer charges used in a flight termination system that were proposed in the FAA's October 2000 NPRM (proposed 14 CFR E417.31) are relaxed in comparison to the Air Force's current version of EWR 127–1. The NPRM proposes to reduce the number of units to be tested and to reduce the types of tests to be conducted. These proposed changes from current Air Force requirements are based on lessons learned over the past few years and earlier decisions made by Air Force range safety to waive or tailor such requirements for existing launch vehicle systems. One launch operator that currently launches from Air Force ranges, having seen the proposed PAD requirements in the FAA NPRM has since approached the Air Force with a request to apply the FAA requirements to its launch vehicle. These improvements and others identified during the development of the October 2000 NPRM are now being incorporated into the Air Force's new Space Command manual that will replace 127–1. Thus, in many ways, particularly with respect to the particulars of the flight safety system requirements, the FAA believes that this rulemaking may provide a more comprehensive and streamlined version of the ranges' own requirements.

During the discussions between the ranges and the FAA regarding safety requirements for non-federal launch sites, the FAA attempted to identify the common underpinnings of the range requirements to achieve more universal applicability, particularly in the area of flight safety analysis. Flight safety analyses that the Air Force ranges apply on each coast are directed toward each coast's geography, meteorological conditions, and mission profiles. As the FAA worked to make the range requirements more general so that they might apply wherever a launch took place, the question arose as to why the safety requirements for licensed launch operators should differ from site to site. No good reason was evident. Moreover, with the goal of achieving universal applicability of as many of the requirements as possible by identifying the common intent underlying different approaches to similar safety questions, permitting different standards seemed unnecessary.

In the course of these discussions, the ranges and the FAA saw a number of benefits to having common standards. Common standards would provide launch operators certainty in planning. Common standards would permit a body of expertise to support those standards. In the unlikely event that the Air Force ever pulled back from its oversight of commercial activity, a step the Air Force has contemplated within past years, standards will already be in place for FAA licensed launches from a federal range. Also, it might be difficult to justify imposing different standards of safety on licensed launch operators based merely on whether the launch took place from a non-federal launch site or from a federal launch range.

In summary, the applicability of part 417 to all licensed launches, regardless of their launch location is necessary. Universality ensures a single standard of safety. Publication of the requirements currently in place permits a launch operator to know and plan for the requirements with which it must comply. The comments' suggestion that part 417 only apply to non-federal launch sites is based on a misperception that the FAA has proposed ''significant changes,'' in the form of new, more conservative requirements, JC Vol. I at 8, 12, to a proven process, when, to the contrary, this rulemaking only identifies and proposes to codify the intent underlying existing requirements in a performance standard format.[12] This is not to say that there were no problems with the regulations proposed in the October 2000 NPRM. The commenters identified certain areas of the FAA's proposed regulatory text that might be interpreted as more conservative than current practice at the federal ranges. This was not the FAA's intent and the FAA is working to make the appropriate adjustments, some of which are presented in this SNPRM.

b. Identification of Standards and Resulting Application

Commenters' suggestion that the FAA refrain from applying part 417 to launch from a federal launch range does not address the need to identify safety standards, fails to recognize that this exercise has identified those standards, and falls prey to the law of unintended consequences. Having identified its standards, the FAA does not believe that it would be helpful to claim that they do not apply. The logic of how the FAA evaluates the acceptability of the federal launch ranges should alleviate concerns over any seeming duplication between the FAA and the Air Force. The Joint Commenters proposed that the FAA apply part 417 only to non-federal launch sites. For the FAA to agree that part 417 would only apply at non-federal launch sites would, however, be confusing at best and misleading at worst.

Part 417 would contain the standards by which the FAA would assess the adequacy of both a licensee and a federal launch range. The FAA assesses a launch operator through the licensing process and a federal launch range through a baseline assessment. Because the FAA obtained the standards in part 417 from the federal launch ranges own standards and practices, the FAA, of course, anticipates that the federal launch ranges will satisfy proposed part 417. Nonetheless, whether through changes in Air Force or NASA policy or because of the failure of a range safety system, it is conceivable that some element of range safety might not satisfy the ranges' own current requirements. In fact, the ranges advise that they may, from time to time, waive requirements for their own equipment, and a launch operator may remain unaware of this waiver.

Even if the FAA acquiesced in the commenters' proposal and declared that part 417 only applied at non-federal launch sites, it would still have to use some set of standards against which to measure the continued adequacy of the federal launch ranges whenever the FAA updated its baseline assessments. Those standards would be found in part 417. Accordingly, to say that part 417 did not ''apply'' at the federal launch ranges might confuse some into thinking that part 417 had no applicability whatsoever, even in the baseline assessment context. Others might believe that the FAA was misleading them regarding the applicability of part 417 at federal launch ranges given that the FAA would assess the adequacy of

[12] The presence of design requirements shows what the FAA proposes to find acceptable. Launch operators should note that the opportunity to provide a clear and convincing demonstration of an equivalent level of safety is embedded in each design oriented requirement. *See also* NPRM, 65 FR 63940–41 (discussing reasons for acceptability of Sea Launch's comparable flight safety system).

the ranges against part 417. The FAA does not consider it advisable to create such confusion. None of the points raised by the comments address this fundamental issue, and the FAA invites the public to take this additional opportunity to present alternatives that take this consideration into account. It is one that the FAA does not believe it can ignore, but recognizes that those with a different perspective may be able to offer insights currently unavailable to the FAA.

Because the range safety requirements are part of how the ranges have achieved their high level of safety, the FAA considers those requirements necessary for continuing to achieve that same level of safety for FAA-licensed launches at both non-federal launch sites and federal launch ranges. The FAA and the commenters take away different lessons from the past safety records. Although the Joint Commenters point to the safety record of the past as justification for not requiring further regulation, the FAA looks to the safety record of the past and attributes that successful record, in some measure, to the launch safety requirements themselves. Accordingly, when the FAA began its own attempt to codify requirements that would govern launch safety at non-federal launch sites, it looked first to the ranges' own requirements and the FAA has continually worked with the Air Force to ensure that in the future the two agencies' requirements are consistent and do not conflict.

c. Implementation

Other comments received in response to the NPRM include concerns about how the FAA would implement the proposed requirements at the federal launch ranges, whether the FAA would grant waivers as readily as the ranges, and whether FAA oversight would result in reduced flexibility, both in meeting the intent rather than the letter of the requirement and in terms of operational flexibility. Because the Act directs the FAA to encourage, facilitate and promote private sector launches, 49 U.S.C. 70103(b), the Joint Commenters indicate that the FAA should streamline its licensing and regulating regime by continuing to rely on the ranges for the implementation of launch safety requirements. JC Vol. I at ii.

One of the reasons the commenters argue that this rulemaking is not necessary is because they fear that the FAA's identification of the safety standards would constitute duplication of oversight. This is not so much a concern regarding the necessity of having safety standards as a concern with their implementation. The comments recommend that a single entity be responsible for the safety of licensed launches.

A review of what the FAA proposed in the NPRM should allay these concerns. Of first and foremost importance, the commenters should note that the FAA intends no duplication of oversight. The proposed standards themselves, which were derived from range requirements and practices, will apply to all licensed launches, regardless of the location of the launch site. Applicability of standards is different, however, from duplication of oversight. Oversight means inspection, monitoring and otherwise checking whether a licensee is in compliance with the requirements of the Act, the FAA's regulations and its license. As the FAA noted in the October 2000 NPRM, the FAA does not now and does not intend through this rulemaking to duplicate the work, evaluation, inspection and monitoring conducted by the federal launch ranges. NPRM, 65 FR 63924. The FAA relies on its baseline assessments of the ranges, and those baseline assessments have found the ranges safety requirements acceptable. NPRM, 65 FR 63924. Likewise, the FAA has found acceptable the ranges' implementation of those requirements. There are situations, however, where the ranges may, for reasons of their own, change their support for licensed launches. In such a case, the launch operator would likely have to perform its safety work itself. Also, as noted, if ''a documented range safety service has changed significantly or has experienced a recent failure'' the burden of demonstrating safety at a range shifts to the launch operator. NPRM, 65 FR 63924. The FAA sees little change from current practice in this regard.

The FAA does not agree that this rulemaking will result in loss of flexibility. The NPRM would allow for flexibility through the use of performance requirements, where appropriate. The FAA worked extensively with federal range safety personnel to develop common launch safety requirements that refine and adapt many of the current federal range standards into performance requirements.

For each specific safety issue, the NPRM may contain different levels of performance requirements as needed to respond to the complexity of space launch systems and the potential for negative consequences to public safety. For example, a flight termination system is one of the most critical systems on a launch vehicle for ensuring public safety. Hence, to ensure flight termination system reliability the NPRM contains comprehensive design and test performance requirements for the systems, components and piece parts. Also, the FAA does not attempt to mandate requirements related to achieving the success of the mission, and will permit the launch operator to accept its own risks on that score, where there is no impact on public safety. For example, where safety is ensured by the working of the flight safety system, the NPRM calls for a launch operator to provide for launch vehicle tracking without specifying detailed requirements to ensure reliable tracking. Aside from some general performance requirements, the reliability of the tracking system is left to the launch operator with the understanding that if all tracking data is lost during flight the flight termination system will be used to destroy the vehicle. For a licensed launch from a federal range, the launch operator typically relies on the range to provide reliable launch vehicle tracking. The FAA's proposed requirements do not dictate a change from such practices.

In addition to the use of performance requirements, the FAA proposes to allow flexibility by permitting a license or a license modification applicant to demonstrate an equivalent level of safety for a proposed alternative approach. Although the proposed regulations would provide the requirements with which a licensee must comply, the FAA anticipated that a launch operator might wish to employ alternative means of achieving an equivalent level of safety. In that case, if a launch operator clearly and convincingly demonstrated an equivalent level of safety, the FAA would accept the alternative. Once accepted, an alternative approach would become part of the terms of the license, and the FAA would consider making the substitute available for the benefit of others through the advisory circular process or some other means. The FAA has also demonstrated its flexibility with the licensing of launches such as those of Sea Launch, where there are a number of aspects that do not conform to current practice at U.S. launch ranges. Also, the FAA recognizes that the NPRM represents only a version of current practice: the safety methods used at the U.S. ranges often differ from one another. The FAA has worked with the federal range organizations to develop common launch safety requirements that present a more generalized description of the current practices at the ranges. Where there may

be differences between the methodologies defined in the NPRM and those used at a federal range, the current practices at the federal ranges typically do provide an equivalent level of safety to the NPRM.

The Joint Commenters expressed concern that if the NPRM were implemented as drafted, launch operators on federal ranges would have to demonstrate compliance with two sets of requirements overseen and administered by two separate and independent government agencies. The commenters believe that this would be cumbersome and inevitably would lead to costly and duplicative safety efforts with no appreciable increase in public safety. The FAA is continuing to work with the federal ranges to eliminate these concerns. Under current regulations, the FAA issues a license to an applicant proposing to launch from a federal launch range if the applicant satisfies the requirements of part 415, subpart C, of the licensing regulations and has contracted with the federal launch range for the provision of safety-related launch services and property, as long as the safety related launch services and proposed use of property are within the experience of the federal launch range. The NPRM does not propose to change this overall approach. The FAA does not duplicate analyses performed by the federal launch ranges or routinely review those analyses during the launch safety review. Instead, the FAA relies on its knowledge of the range processes as documented in the FAA's baseline assessments. The FAA's baseline assessments document each federal launch range's capabilities, safety program, standards and policies. The January 16, 2001 Memorandum of Agreement between the FAA and the U.S. Air Force explains the roles and responsibilities of the Air Force and the FAA for overseeing safety of commercial space launch and reentry.

The Joint Commenters expressed doubt that the Air Force and the FAA would be able to work together in an efficient way toward a common goal. The commenters indicated that if the FAA NPRM were implemented, it would result in competing safety requirements at the Air Force ranges. These concerns are unfounded. The Air Force and the FAA remain committed to the partnership outlined in the MOA and to ensuring that competing safety requirements do not exist. The MOA calls for developing common launch safety requirements and for coordinating the common requirements. The Common Standards Working Group is continuing to participate in developing the FAA's final rule and a revised Air Force range safety requirements document. The common standards will be contained in the Code of Federal Regulations and Air Force documents. FAA rules appear in the Code of Federal Regulations. The Air Force range safety requirements, which must address a broader range of issues, will encompass the same common launch safety requirements as well as other issues unrelated to launch safety. When the final Air Force and FAA documents are in place, a licensed launch operator at an Air Force range, in day-to-day practice would only need to work from the Air Force's range safety document so long as the FAA's launch safety requirements are contained there as well. This would be no different from the process in place for licensed launch operators today. The FAA and the Air Force are also working under the MOA to develop processes for implementing the common launch safety requirements together, including coordinated review and disposition of requests for relief from common requirements, as explained in section IV.C of this discussion. Although part 417 would contain the legal requirements with which a licensee must comply, when launching at a federal range, a licensed launch operator's primary day-to-day interface would continue to be the federal range. A unified launch safety community that includes FAA representatives will address any issues that may arise to ensure that all federal launch range and FAA licensing concerns are addressed.

B. Cost Impacts on Licensed Launches From Federal Launch Ranges

Comments in response to the October 2000 NPRM indicate that the launch industry has concerns about how the proposed rule would work, and how the FAA and the Air Force work together. The concerns have led to a perception that this rulemaking will result in significantly increased costs for the launch operators. To address some of these concerns, the FAA is proposing changes to the October 2000 NPRM in this SNPRM, as described earlier in this preamble. The FAA also hopes to clarify some of these issues. Some possible cost impacts identified by the commenters have led the FAA to revisit whether its proposed requirements actually captured current practice. The majority of the concerns underlying the costs the launch operators attribute to this rulemaking are, however, unfounded. The following discussion explains why.

1. Commenters believed some of the proposed requirements were new. Commenters may not be fully familiar with the precise nature of the safety services the ranges provide, and thus believe that some of the proposed requirements in the October 2000 NPRM are new, but, in fact, those requirements are already in place. Similarly, launch operators believe that a number of the more abstract expressions of different range requirements are new. Instead, a number of them are the FAA's proposed attempt to describe the common standards underlying different approaches taken at different federal launch ranges.

2. The launch operators believe that this rulemaking changes their legal responsibility for safety. They are, however, already responsible for safety under the statute and their licenses, and they would not be required to duplicate the work of the federal ranges as a result of this rulemaking.

3. Some of the commenters think that the more onerous requirements governing how to obtain a license apply to federal range launches. The licensing requirements proposed in this rulemaking, however, would apply to an applicant obtaining a license to launch from a non-federal launch site.

4. Commenters expressed concern over a loss of flexibility. These concerns should be allayed by the FAA's proposal to permit a demonstration of an equivalent level of safety, the grandfathering proposal and waiver coordination.

5. Although not a concern raised by the commenters, the FAA requests comment on the neighboring launch operator issue addressed below.

All this is not to say that the comments lack merit. There are a number of instances where the FAA wishes to make changes based upon the comments received. To determine whether it captures current practice, the FAA will revisit the issues raised by such comments. Some changes have already been proposed through this SNPRM, and the FAA requests views on whether the commenters still assign costs to these matters.[13] As one example, commenters attributed an array of costs to the FAA's original proposal not to grandfather. If the launch operators satisfy the FAA's proposed conditions, these same launch operators may be eligible for the FAA's

[13] *See* Boeing Costs at 2, 3, 4 (first and second comments), 9 (first comment), 11 (fifth comment), 12 (first and second comments), 22 (second comment), 23 (fourth comment), 24 (first and sixth comments), 25 (first and second comments), 27 (second comment), 28 (first comment), 29 (first and third comments), 33 (second and third comments), 37 (first and third comments), 40 (all comments); Lockheed Costs Estimates 2, 19 and 26; Orbital Cost Impact Assessment at 6 (item 2 regarding aggregation, items 4, 5 and 7); Sea Launch Costs at 23, 24 (second comment labeled a, b and c).

version of ''grandfathering'' and need no longer anticipate costs associated with making changes in their operations.

In addressing these cost issues, the FAA found several comments that it does not understand. Because this SNPRM provides an opportunity through its additional comment period to obtain clarity, the FAA urges those commenters who provided the cited comments to assist the FAA in better understanding their differences.[14]

1. ''New'' Requirements

Some launch operators attributed costs to their launches from federal launch ranges in the belief that the FAA proposed new requirements that the launch operators would not be able to satisfy. The confusion appears to stem from several sources, including the FAA's more generalized description of different range practices, and unfamiliar requirements contained in Air Force handbooks. For instance, in the NPRM, the FAA proposed a number of requirements that attempted to reconcile the different approaches of the Eastern and Western Ranges and thus restated the requirements in a more abstract or generalized fashion. Additionally, the comments appear to indicate a lack of familiarity with some of the particulars of the range's analyses requirements and existing FAA requirements. The last category of seemingly new requirements appears to consist, to the best of the FAA's ability to interpret them, of misreadings of the proposal.

Commenters attributed a number of costs to generalized expressions of different range practices. For example, in the NPRM, proposed sections 417.113(b)(2), 417.121(f), 417.225, and appendix C, 417.5(g), (h) and (i) would determine whether downrange surveillance was needed on the day of launch. To protect ship traffic down range of the launch area, the FAA proposed that a launch operator identify where its launch vehicle's stages or other planned ejected debris would impact, determine the corresponding hazard area or areas [15], use statistical ship density data to determine whether the launch operator needed to survey the downrange hazard areas for ships, and if downrange surveillance was necessary, determine whether risks at the time of flight required that the launch operator wait until any ships departed from downrange ship hazard areas before initiating flight. *See* 14 CFR 417.107(b)(3), 417.121, 417.225, and appendix C, C417.5(g) (proposed), 65 FR 63931 (discussion accompanying proposed regulations). A launch operator would be permitted to initiate flight only if the collective probability of impacting any ship in the downrange hazard areas with planned debris would be less than or equal to 1×10^{-5}. 65 FR 63931. If a launch operator demonstrated, using statistical ship density data and the formula provided in the NPRM, that the collective ship-hit probability in the downrange flight hazard areas was less than or equal to 1×10^{-5}, the launch operator would not have to survey the downrange hazard areas on the day of flight. *Id.* In their comments, launch operators expressed concern over this proposed standard.

Commenters claimed that the proposed requirement was new and would mean that launch operators would have to survey downrange impact areas for launches from the Eastern Range. JC Vol. II at 50, 83; *see* JC Vol. I at 8. The FAA does not agree with either of these assertions. When preparing the NPRM, the FAA consulted extensively with both the Eastern and Western Ranges to ensure that the FAA would capture current requirements. The FAA also considered its own experience with the launches of Sea Launch. As far as the FAA is aware, the overwhelming majority of licensed launches conducted from federal launch ranges today would satisfy the FAA's proposed requirements without having to survey downrange hazard areas located in broad ocean waters.

The Joint Commenters stated that if the FAA considers the surveillance efforts of the federal launch ranges sufficient, then the FAA should not change or add the requirements. JC Vol. II at 50. According to the commenters, surveillance of multiple downrange impact hazard areas for a single launch could require multiple aircraft. JC Vol. II at 50. Mechanical problems on the surveillance craft and weather could require a scrub of the launch with resulting cost impacts.

Currently, a range surveys its launch area (which correlates to the FAA's proposed flight hazard area) for the presence of ships and aircraft prior to launch. The ranges do not typically survey downrange stage impact areas located in broad ocean waters. This does not, however, mean that the proposed requirement is new or that the ranges would not currently survey downrange impact areas if it were determined necessary to protect the public.[16] To the contrary, both the Eastern and Western Ranges have advised the FAA that range analysts have addressed the issue. The ranges have not needed to survey downrange impact areas because of the low density of ship traffic and the nature of the traffic, in broad ocean waters, where spent stages currently land. For example, unlike the recreational craft closer to shore, much of the shipping downrange for a typical launch from Cape Canaveral is commercial in nature and the ranges anticipate that those ships monitor the notices to mariners that advise of the presence of hazard areas. However, if a stage impact area proved to be located near a greater density of ship traffic that did not monitor notices to mariners as closely as commercial shipping pilots do, a range could well require surveillance at that stage impact hazard area. Downrange hazard area surveillance is often performed for launches from Wallops Flight Facility. These launches typically involve small rockets with downrange stage impacts that are relatively close to shore where there are significant numbers of pleasure craft and fishing vessels. The FAA proposes to formalize the analysis process that the ranges have been implementing, and would establish a proposed formula and threshold for determining when surveillance of down range impact areas would be necessary. The FAA believes that typical orbital launches from the federal launch ranges meet the FAA's proposed criteria, and that downrange surveillance would continue not to be required for typical launches from those ranges. The comments to the NPRM indicate that the launch operators believe the contrary. Accordingly, the FAA requests that, through the comment period, the launch

[14] *See* Boeing at 10 (fifth comment); 23 (second, third and fourth comments); 24 (second comment); 27 (first comment); 28 (second comment); Orbital Cost Impact Assessment at 6 (items 3b, 9 and 13–16); Sea Launch Costs at 2 (first and second comments), 7, 10 (first comment), 11, 18–19, 22, 36.

[15] For both ships and aircraft, the FAA proposed in the NPRM and proposes in appendix A of this SNPRM section A417.23(k) and (1) that an impact hazard area for ships down range of the launch site would consist of an area centered on the planned impact point and defined by the larger of the three-sigma impact dispersion ellipse or an ellipse with the same semi-major and semi-minor axis ratio as the impact dispersion,w here, if a ship were located on the boundary of the ellipse, the probability of hitting the ship would be less than or equal to 1 $\times 10^{-5}$. Each aircraft hazard area downrange of the launch site would encompass an air space region, from an altitude of 60,000 feet to impact on the Earth's surface, that contains the larger of the three-sigma drag impact dispersion or an ellipse with the same semi-major and semi-minor axis ratio as the impact dispersion,w here, if an aircraft were located on the boundary of the ellipse the probability of hitting the aircraft would be less than or equal to 1×10^{-8}.

[16] The commenters' assertion, *see* JC Vol. II at 83, that the ranges do not conduct downrange surveillance for reasons of impracticality is not consistent with what the ranges have advised the FAA. The range do not, in most cases, conduct downrange surveillance because a safety analysis shows that it is not currently necessary.

operators share the reasoning underlying their conclusion.

After discussion with some of the launch operators, the FAA believes that the launch operators did not recognize that the FAA, to identify requirements that can be applied to the majority of licensed launch activity, wherever it might occur, was merely articulating a more generalized, abstract version of what the ranges are already doing in order to identify the underlying intent. Accordingly, where some of the commenters attributed costs to this requirement,[17] the FAA does not, either for launches from a federal launch range or from a non-federal launch site. The surveillance issue constitutes one example of the tendency to characterize as new what were, in fact, generalized expressions of different range requirements. The commenters attributed other costs on the basis of this misconception as well.[18]

Additionally, the comments appear to assume that many of the ranges' own internal requirements, when proposed in the NPRM, were new. A range conducts its own flight safety analyses based upon raw data provided by a launch operator. Because the launch operators may only be familiar with the data that they themselves provide the ranges, they worried that the standards that the FAA identified were new.[19] In fact, the federal ranges have been performing the analyses and satisfying these requirements on behalf of the launch operators under current practice.

The FAA has grouped remaining concerns regarding proposed requirements that are only seemingly new into two categories. The one category consists of comments that attribute costs to existing FAA requirements.[20] The other category consists of comments that attribute costs where the commenter misread the proposed requirement.[21]

[17] *See, e.g.,* LM Cost Impact Analysis at 3, 13, 23, 26 (proprietary).

[18] *See* Lockheed Cost Estimates 5 and 7; Orbital Cost Items 2, 3, 5 and 8; Sea Launch Costs at 15–16, 22.

[19] *See* Boeing Costs at 14 (first comment), 15, 16, 17 (first comment), 18, 38 (first comment); Lockheed Cost Estimates 11 and 13; Orbital Cost Impact Assessment at 6 (items 1 and 2a).

[20] *See* Boeing Costs at 6 (first, second and third comments), 12 (third comment), 30 (second comment); Lockheed Cost Estimate 6; Sea Launch Costs at 1 (first and second comment), 4–5 (comments labeled a, j, k, n) 7 (first comment), 8 (first, second and third comments), 10 (first comment), 13 (second comment), 17 (comment labeled a) and 20.

[21] *See* Boeing Costs at 19 (fourth comment), 29 (fourth comment), 34 (fifth comment), 37 (second comment) and 38 (second comment); Sea Launch Costs at 2 (second comment), 5 (comments labeled 1 and m), 7 (second comment), 9 (first comment), 21 (first full comment).

2. No Change in Responsibility

As a separate issue, commenting launch operators stated that this rulemaking would change their responsibility for safety, and thus increase their costs. This was not an issue that the FAA addressed in the NPRM because the FAA already considers a launch operator responsible for safety under the statute, the regulations and its launch license. *See* 14 CFR 415.71. The FAA recognizes, however, that this comment may arise from a belief that the launch operator must use its own employees, rather than continue to rely on the services provided by a federal launch range.[22] If that is the case, the FAA believes that it can set that concern to rest. Under existing 14 CFR 415.31, the FAA grants a safety approval to a launch operator proposing to launch from a federal launch range if the applicant satisfies the requirements of subpart C and has contracted with the range for the provision of safety related services. The Commercial Space Operations Support Agreement and its annex constitutes such a contract. The FAA is proposing to codify the safety requirements of the range and anticipates that the ranges will continue to satisfy those requirements. Nonetheless, to ensure that there is no remaining confusion on this score, the FAA is revising its current proposal to include a provision in proposed 14 CFR 417.203(d) that if a launch operator has contracted with a federal launch range for the provision of any flight safety analysis for a licensed launch, and the FAA has assessed the range and found that the range's analysis methods satisfy the requirements of this subpart, the FAA will treat the federal launch range's analysis as that of the launch operator. For any such analysis, the launch operator need not provide the FAA any further demonstration of compliance. The FAA hopes that this clarifies that licensed launch operators may continue their existing arrangements with the federal launch ranges, and that the primary interface for a launch operator launching from a federal launch range remains the range.

3. Operational or Licensing Changes

Commenting launch operators raised concerns grounded in the notion that the October 2000 NPRM would result in large changes for licensed launch operators operating at federal launch ranges. Specifically, they feared that the requirements for obtaining and maintaining a license would change. JC Vol. I at 3. The FAA requests that in light of the following discussion, the launch operators revisit whether they should ascribe costs to these perceived changes.

On the basis of information provided by the comments, it appears to the FAA that some commenters assigned costs to what they saw as proposed changes in maintaining license compliance if they launched from a federal launch range.[23] Many of these purported costs arise out of the belief that the proposed requirements would subject a launch operator at a range to dual administrative requirements. In the NPRM, however, the FAA proposed that the administrative requirements for submitting material to the FAA contained in part 417 applied in total to all licensed launches from a non-federal launch site. *NPRM,* 65 FR 63977 (proposed 14 CFR 417.1). Accordingly, unless a range changed its processes, the FAA does not anticipate that this rulemaking would require a launch operator launching from a federal range to demonstrate satisfaction of a part 417 requirement twice. Other costs in this category of concern appear to arise out of the launch operators' fear that the federal ranges will not obtain a satisfactory baseline assessment from the FAA for one requirement or another. Given that the FAA proposes these requirements in coordination with the Air Force through the Common Standards Working Group, the FAA has every reason to expect that the federal ranges will continue to satisfy the requirements.

Similarly, commenters assigned costs to a perceived change in the requirements for obtaining a license to launch from a federal launch range. Commenting launch operators, apparently referring to proposed 14 CFR part 415, subpart F, contended that the new requirements for obtaining a license would be unduly burdensome and unwieldy. JC Vol. I at 10–11. They believe they will be required to

[22] *See, e.g.,* Boeing Costs at 1, 20, 30 (first comment), 38 (first comment); Lockheed Martin Estimate 8 (attributing costs to requirement that launch operator conduct flight safety analyses now provided by the range); Orbital Cost Impact Assessment at 6 (Items 2 and 10: attributing costs to dual safety approval submittals and shif to FAA oversight).

[23] Boeing Costs at 1 (second comment), 5 (all comments), 7 (all comments), 8 (all comments), 9 (second, third and fourth comments), 10 (first, second and fourth comments), 11 (first and fourth comments), 12 (second comment), 13 (first, second, third and fourth comment), 14 (second comment), 15, 16, 17 (first second and third comments), 18, 19 (first, second and third comments), 21, 22, 23 (first comment), 26 (second and third comments) 27 (third comment), 28 (first and third comment), 30 (second comment), 31 (first and second comment) and 38 (first comment); Lockheed Cost Estimates 3, 4, 9, 10, 11, 12, 13, 14, 20, 23, 24, and 25(b).

demonstrate compliance with two sets of requirements when launching from a federal range. JC Vol. I at 3. The FAA can, however, reassure launch operators who launch from federal launch ranges that proposed subpart F would not apply to them. Existing part 415, subpart C (Safety Review and Approval for Launch from a Federal Launch Range), which governs safety reviews for launch license applications from a federal launch range, will continue to apply. Proposed subpart F, (Safety Review and Approval for Launch of an Expendable Launch Vehicle from a Non-Federal Launch Site), applies to license applications for launch from outside of a federal launch range. *See* NPRM, 65 FR 63944, 63965 (proposed section 415.101 and accompanying discussion). Indeed, as stated in the NPRM, not only would proposed subpart F not apply to a license governing a launch from a federal launch range, but ''the proposed regulations for obtaining a license would not * * * apply to any launch from a non-federal launch site where a federal launch range performs the safety functions.'' *Id.* at 63922.

In the event that the Joint Commenters meant to warn that proposed subpart F would be unduly burdensome for obtaining a license for launch from a non-federal launch site, the FAA notes that, for such launches, it must require the same level of safety at non-federal launch sites as the ranges have achieved in the operation of their federal launch sites. Accordingly, information demonstrating that the current standards, as proposed in part 417, are satisfied is necessary.

4. Flexibility and Performance and Design Requirements

Commenters claimed costs on account of a perceived loss of flexibility.[24] The Joint Commenters stated that the October 2000 NPRM contained additional detailed design and testing requirements that will increase operating costs for all launch programs. Promulgating new requirements is not the FAA's intent, and should not be the effect of the FAA's final rule. Instead, the FAA's provision of a route for a launch operator to demonstrate an equivalent level of safety for a proposed alternative, willingness to grandfather and coordination on a waiver process should demonstrate that the FAA will be flexible.

The commenters believe that the regulatory language used in the NPRM would reduce flexibility in implementing the requirements and that the FAA has changed standards that are currently goals and presented them as hard requirements. The FAA recognized early in the development of the NPRM that it was not always possible to adopt the range safety standards as written in current federal range safety documents because regulations must contain only that which is actually required. *EWR 127–1* contains both guidance and requirements. Recommended FAA approaches may appear in guidance documents, such as FAA advisory circulars. Alternatives may be approved through the licensing process.

When faced with a current standard that was in the form of a goal or preferred approach, the FAA, in coordination with federal range personnel, often had to either rewrite the standard as a performance requirement that described the intent of the original goal or omit it from the NPRM if it was determined to be unnecessary. For example, the federal launch ranges have a reliability goal of a minimum of 0.999 at the 95% confidence level for the flight termination system onboard a launch vehicle. Such a goal does not directly translate into a regulatory requirement for which compliance must be demonstrated. A 0.999 reliability at a 95% confidence level can be demonstrated only through a large number of launches or tests of the complete system while exposed to flight environments. The FAA worked with the federal ranges to understand the intent of the goal and how it has actually been implemented. As a result, the FAA's proposed regulations would require each flight termination system and command control system to have a reliability *design* of 0.999 at a confidence level of 95% to be demonstrated through an analysis of the design. The FAA is not proposing that this reliability be demonstrated through testing because it is not always practical to require the thousands of system level tests necessary to demonstrate compliance with the confidence level. Instead, the FAA is proposing an approach that has been developed in close coordination with the federal launch ranges, and that incorporates performance oriented design requirements for components coupled with comprehensive qualification and acceptance testing of components and preflight confidence tests of the entire system. The design and test requirements together with the required reliability analysis should ensure the reliability of the flight termination system.

In their discussion on the highly detailed requirements of the NPRM, the Joint Commenters referenced the FAA's licensing of Sea Launch and stated their belief that if Sea Launch had sought FAA approval under a regulatory regime as set forth in the NPRM, the process would have been far slower and more expensive for the launch operator. JC Vol. I at 7. The FAA disagrees. In licensing Sea Launch, the FAA used the current range safety requirements as the basis for evaluating the safety of the proposed launch vehicle and operations: the same requirements used as the basis for the October 2000 NPRM. It was during the evaluation of Sea Launch that the FAA developed various approaches for allowing flexibility in implementing specific requirements, including demonstrating an equivalent level of safety. These requirements and provisions for flexibility were refined and included in the NPRM. The FAA's conclusion was that Sea Launch could satisfy the requirements in the NPRM with no greater effort than was expended during its initial licensing. In effect, Sea Launch was held to the FAA's current requirements. Published requirements, however, with an appropriate level of detail should provide for a consistent, open and fair licensing process for all launch operators.

5. Neighboring Launch Operators

The FAA has learned that each Air Force launch range treats a portion of the public differently. For a launch conducted by a licensed launch operator, the FAA considers other launch operators at a launch site members of ''the public.'' Historically the Eastern Range and the Western Range did not consider anyone who operated at the range to be a member of the public. For approximately the past five years, however, the Eastern Range has been applying the FAA definition of the public when calculating the public risk associated with a licensed launch. At the Western Range other launch operators are not counted to ascertain their contribution to the collective risk to the general public. Some few personnel of other launch operators, at the request of those launch operators, are subjected to a higher level of risk than the rest of the public, which may include allowing them inside impact limit lines or hazard areas during the flight of a launch vehicle.

For the FAA, this approach has both safety and financial responsibility

[24] Boeing Costs at 25 (third comment), 26 (fourth comment), 29 (third and fourth comments), 34 (first comment), 35 (fourth and seventh comments); Lockheed Cost Estimate 21; Oribital Cost Impact Assessment at 6 (items 1, 2a, 5, 6, 11 and 12); Sea Launch Costs at 2 (first and second comments), 5 (comments labeled 1 and m), 8 (first and second comments), 16 (lightning), 22 (alternate flight safety system), 26–35, 38, 40–42.

implications. A launch operator may face issues surrounding launch availability and possible increases in insurance premiums. Although the FAA currently proposes no changes from its current practice, the FAA wishes to bring this issue to the attention of the public to obtain comments regarding the impact of the current approach and possible alternatives. The FAA notes that it is willing to entertain alternatives and implementation proposals. The issue is discussed in greater depth below.

In addition to placing the general public at risk, a launch operator's activities may place its neighbors at risk. Different launch operators are each others' neighbors at a single launch site. When, for example, launch operator A launches from one launch pad, adjacent launch operator B may be located within the impact limit lines or a hazard area created by launch operator A's launch. Nonetheless, for reasons of safety, security, or mission assurance, launch operator B may wish to keep some of its personnel working at the second launch point, even during the hazardous activities, including the flight of launch operator A's launch vehicle. Launch operator B's pressure vessels may require tending. Launch operator B may need to maintain the security of the site. Launch operator B may be interested in meeting a tight schedule. Typically, because the location exposes people to greater risk, the range will require the neighboring launch operator to train, shelter and otherwise attempt to protect its people from the increased risks.

The launch operators in this example are engaged in activities in support of separate launches and do not contract with each other for the launch that is about to take place. For these reasons, the FAA treats them as ''the public'' with respect to each other.[25] In existing 14 CFR part 420, which governs licensing and safety requirements for the operation of a launch site, the FAA defines the ''public'' as ''people and property that are not involved in supporting a licensed launch, and includes those people and property that may be located within the boundary of a launch site, * * *, and any other launch operator and its personnel.'' 14 CFR 420.5. In the October 2000 NPRM at § 417.3, the FAA proposed a similar definition for ''public safety'' as the safety of other launch operators and their personnel.

Likewise, for determining financial responsibility under existing 14 CFR part 440, the FAA treats other launch operators and their personnel as third parties. A licensed launch operator does not sign cross waivers with neighboring launch operators, *see generally* 14 CFR 440.17, and the personnel of neighboring launch operators are treated as third parties in the maximum probable loss analysis that determines the amount of financial responsibility a licensee must shoulder. 14 CFR 440.3(15). The FAA, when calculating the maximum probable loss that may occur to members of the public, requires that a licensee demonstrate financial responsibility for those members of the public who have a chance of being harmed on the order of 1×10^{-7} or more. *See* 14 CFR 440.3(11)(i). This means that if any personnel of launch operator B are within the contours of an area where there is chance of an individual being harmed of 1×10^{-7} or more, the FAA will assess the contribution of those individuals to the final financial responsibility determination.

The 30th Space Wing takes a different approach. At the Western Range, the 30th Space Wing relies on the definitions in EWR 127–1 to treat certain identified personnel of neighboring launch operators as not being members of the public, or, in the parlance of EWR 127–1, as ''Wing-essential.'' EWR 127–1 defines ''mission-essential'' and ''non-essential'' personnel, and, by implication, Wing-essential personnel. For the first two categories, different levels of risk, protection and exposure are available. In the portion relevant to this discussion, EWR 127–1 defines mission-essential personnel as ''those persons necessary to successfully and safely complete a hazardous or launch operation and whose absence would jeopardize the completion of the operation.'' EWR 127–1 at 1–vii (Dec. 31, 1999). This category includes, among others, ''persons specifically authorized by the Wing Commander to perform scheduled activities.'' *Id.* The ranges have a different mission than that of the FAA. Being military installations, they include within their mission not only the successful launch of a given launch vehicle, but the continued operations of other vehicles and programs deemed essential to the mission of the wing by the Wing Commander. These activities include, for example, support of commercial launches, launch of national need payloads, strategic weapons testing, warfighter support, payload processing and other activities that promote the function of the range as a whole.

''Non-essential'' personnel, on the other hand, are persons who are not otherwise mission or Wing-essential, and include the general public, visitors, members of the media, and ''any persons who can be excluded from Safety Clearance Zones with no effect on the operation or parallel operations.'' *EWR 127–1* at 1–viii. EWR 127–1 does not contain a definition for Wing-essential, but the 30th Space Wing interprets the mention of Wing-essential personnel in the two definitions to permit a category of persons to be treated as mission-essential for purposes of calculating risk and requiring sheltering. This category may include personnel of neighboring launch operators who are present to perform safety, security or other tasks necessary to continue that second launch operator's operations at the launch site, but does not include anyone performing routine administrative, maintenance, or janitorial functions. Under the interpretation of the 30th Space Wing, when an employee of launch operator B is present within the impact limit lines or, albeit very infrequently, a hazard area for launch operator A's launch, that employee must be sheltered, and is included in a higher risk threshold. *See EWR 127–1* at 1–12, 1.4d (Oct. 31, 1997). In contrast to the permissible E_c of 30×10^{-6} for the general public, the workers of the launch operator conducting the launch may be exposed to a higher risk of 300×10^{-6}. Based on information from the 30th Space Wing, there may be, for a given licensed launch at the Western Range, over 100 people who are members of the public under the FAA's definitions, but who the FAA has not identified as such in its financial responsibility determinations due to the differences in definitions.

At the Eastern Range, the 45th Space Wing treats other launch operators as members of the public when calculating public risk due to a licensed launch. The Eastern Range may permit the personnel of neighboring launch operators to remain within the impact limit lines or the flight hazard area in approved hardened structures for a launch. The Eastern Range, when assessing collective risk to the public, counts the neighboring launch operator's personnel as members of the public. In other words, the presence of too many of such people may produce an E_c in excess of 30×10^{-6}. Accordingly, their numbers are limited for that reason.

The FAA and the Air Force now confront the question of whether to

[25] Although the FAA does not regulate or oversee the safety of the workers of a licensee, the workers of a neighboring launch operator are members of the public and the FAA has always intended that they be protected as such.

continue the FAA and 45th Space Wing approach, or to adopt a variation on the approach of the 30th Space Wing. The Air Force intends to standardize these approaches at its ranges. The former is current practice for the bulk of licensed launches, but the latter was the practice at both ranges prior to the adoption by the 45th Space Wing of the FAA's definition of ''the public,'' and may provide greater operational flexibility, both for the launch operator conducting the launch and for the neighboring launch operator who wants to continue operations during the hazardous activities of the first launch operator. Greater operational flexibility may come with a price, however. Although the FAA could, through rulemaking, permit some members of the public to be exposed to greater risk than others, especially if they are protected,[26] the FAA must point out that the launch operator conducting the launch would have to demonstrate sufficient financial responsibility under part 440 to protect financially against loss to those members of the public. In other words, where a neighboring launch operator's personnel are exposed to risk sufficient to trigger a requirement for financial responsibility coverage, the insurance premiums of the launch operator who is about to launch may increase. Conversely, that first launch operator may find the increased flexibility in its own operations worth the potential increase in premiums.[27]

The FAA and the Common Standards Working Group intend to explore this issue further so as to ensure a common approach. Before the FAA conducts any rulemaking on this issue, the FAA requests comments on the public's experience with the impacts of the two approaches that have been in practice to date. Are there cost impacts associated with either approach? Do the benefits of one outweigh the advantages of the other? Do concerns for worker safety of the neighboring launch operator suggest that no one other than the participants in that launch be allowed in the areas of greater risk? In other words, even with the benefits of increased operational flexibility, would launch operator B not want its employees exposed to greater risk than the general public? Additionally, implementation raises issues. Were the FAA and the ranges to adopt the Western Range's approach, the ranges could oversee and coordinate the presence of different launch operators and their personnel. At a launch site operated by a licensed launch site operator, the FAA already requires that a launch site operator schedule its customers. 14 CFR 420.55. However, the launch site operator does not assess risk under current requirements. The FAA requests comments on the advisability of imposing such a requirement on a launch site operator.

C. FAA and Air Force Process for Relief From Common Launch Safety Requirements

Launch operators commenting on the October 2000 NPRM expressed concern for problems they believe will arise if both the Air Force and the FAA oversee the safety of launches from Air Force ranges. JC Vol. I at 1; Lockheed at 3. In response, the Air Force and the FAA have established a permanent safety working group to develop common launch safety standards and implementation processes. This working group has drafted a process for coordinated review of requests for relief from launch safety requirements as well as tailoring of requirements for future programs. This process is outlined in a draft *Memorandum of Understanding (MOU) between Air Force Space Command and the FAA Office of the Associate Administrator for Commercial Space Transportation for Resolving Requests for Relief from Common Launch Safety Requirements.* The MOU will provide for Air Force and FAA coordination on issues that may arise for a specific launch. For day-to-day operations at an Air Force range, the Air Force will remain the primary point of contact for the launch operators. For a licensed launch, when a request for relief from a common requirement is made to either agency, each agency will ensure notification of the other, and the two agencies will coordinate activities with the launch operator to ensure an efficient and timely resolution.

The draft coordination process contains provisions to address issues ''prior to day of launch,'' when there is time to coordinate and formally document the resolution of an issue before launch, and ''day-of-launch'' (flight minus 24 hours, often called ''real-time'') coordination on issues that arise, albeit infrequently, during a launch countdown prior to flight. The Air Force and the FAA will also jointly participate with launch operators in tailoring of common launch safety requirements during the development of launch vehicle systems to be used for licensed launches from Air Force ranges. The coordination process between the Air Force and the FAA will provide for sharing of data to avoid duplication of effort. This coordination will allow for joint resolution of issues regarding common launch safety requirements while ensuring that both agencies' requirements and concerns are addressed without placing undue burden on launch operators. A copy of the draft Air Force/FAA MOU is available on AST's Web site at *http://ast.faa.gov.*

The agencies will continue to administer their own waiver processes. In conjunction with the Air Force/FAA Common Standards Working Group, the two agencies addressed whether the FAA could baseline the Air Force's waiver process. The group determined that the FAA, once its requirements became final, could not baseline the Air Force's waiver process. The FAA cannot delegate its responsibility for safety. The FAA has the authority to waive its own requirements. 49 U.S.C. 70105(c)(3). As the January 2001 Safety MOA between the FAA and the Air Force recognized, neither agency may waive the requirements of the other. Although Chapter 701 allows another agency to assist the FAA, and the FAA plans to continue to accept the assistance of the Air Force, Chapter 701 does not permit the FAA to delegate its ultimate statutory responsibility for safety to another agency. Accordingly, although the FAA will continue to rely on the Air Force to ensure compliance with the codified standards so long as the baseline assessments show that the Air Force continues to maintain the common standards, the FAA will not be able to accept the Air Force ''non-compliance'' process through the FAA's baseline assessment. Non-compliances signify a break from the baseline assessment, and they require the appropriate amount of scrutiny from both agencies. Once the common standards are codified, they will be FAA requirements and require FAA approval of a waiver. The FAA's waiver requirements are contained in 14 CFR part 404.

On a practical level, the FAA and the Air Force perceive benefits in the FAA's involvement in the waiver process. The 45th Space Wing has over the course of

[26] The Eastern and Western Ranges advice that risk assessments account for any sheltering of the neighboring launch operator's personnel.

[27] The FAA notes that it has not been aware, in the course of conducting its maximum probable loss analyses in accordance with 14 CFR part 440, that some of the personnel identified as mission essential at the ranges were, in fact, what the FAA considers members of the public, and should therefore have been considered at the 10^{-7} threshold instead of the 10^{-5} threshold. Because of this possible confusion, the FAA may not have addressed third parties who should have been considered in financial responsibility determinations for licensed launches from both the Eastern and the Western Range. If the FAA determines that their presence requires an increase in the financial responsibility for which a licensee must prepare, that increase would be mandated by existing requirements and would be a decision that was independent of this rulemaking.

the past two years invited FAA participation in the range's waiver decisions. Members of the Common Standards Working Group have suggested that coordination between the agencies would be eased by an FAA presence at the ranges, both so that the FAA has greater familiarity with the different launch programs and so that the FAA will be accessible to range and launch operator personnel. The FAA is considering this option.

Legal considerations surrounding waivers and equivalent level of safety determinations result, in part, in the protection of the launch operator. For the FAA, approval of a request for relief may create precedent: for example, if one launch operator receives a waiver because it satisfies certain conditions, a similarly situated launch operator might also expect, absent relevant differences, to receive the same waiver. The FAA, whether through its log of decisions required by the Freedom of Information Act, 5 U.S.C. 552(a)(2), or through advisory circulars must allow access to its waiver decisions, and, in so doing, permit others interested in obtaining a decision to grant a request for relief to see how one might be obtained, taking into account proprietary considerations as appropriate. Although the FAA recognizes that the federal ranges make every effort to treat range users equally, the FAA, unlike the federal ranges, is required by the APA to treat similarly situated persons in a similar manner. The Air Force advises that it has generally found that circumstances surrounding every waiver are sufficiently different that a waiver applies only to the program requesting it. The FAA must have a rational basis for distinguishing between different waiver applicants requesting similar waivers. There are implications to this. The requirement for a rational basis creates an incentive for the FAA to carefully consider all possible implementations when developing a requirement so that the agency can identify exceptions where possible during the rulemaking process. Additionally, after a rule goes into effect, the FAA must fully scrutinize any waiver request so that granting one waiver does not result in the grant of so many others that the requirement is effectively nullified. This approach should also ensure fair treatment between launch operators. As discussed below, the FAA and the Air Force have developed plans to coordinate their determinations. Although that coordination is a matter internal to the workings of the government, both agencies designed the process to minimize disruption on the launch operator, and a description of it follows.

An area of particular concern to launch operators appears to be how the agencies would handle a request for relief from launch safety requirements. On January 16, 2001, the Department of the Air Force and the Federal Aviation Administration signed a Memorandum of Agreement (MOA) on Safety for Space Transportation and Range Activities. The MOA directs the Air Force and the FAA to work together to achieve common launch safety requirements and to establish a process for communication with respect to interpretations of the common safety requirements as they apply to U.S. Government and FAA-licensed launches. The MOA further directs the two agencies to coordinate on the resolution of requests for relief from any common launch safety requirement.

The FAA understands that the complex nature of launch vehicle system safety causes occasional situations where strict compliance with requirements may be difficult, impossible or impractical. In these situations, the launch operator may seek ''relief'' from the requirement. Relief from a launch safety requirement at an Air Force range typically takes the form of a waiver, or ''meets-intent'' certification. The Air Force may permit a waiver when the mission objectives of a launch operator cannot otherwise be achieved. The launch operator must obtain a waiver when proposing an activity that does not satisfy an Air Force requirement or when that activity results in greater risk. For the Wing Commander to make an informed decision, personnel responsible for range safety will typically attempt to describe any increase in risk either quantitatively using formal risk analysis techniques or qualitatively based on the specifics of the launch. In some cases the Air Force may waive the public risk criterion. Typically, this would require a significant effort to mitigate risk, such as by increasing reliability of the launch vehicle, and there would have to be a critical national need for the launch. A ''meets intent'' certification is used when it can be successfully shown that a launch operator's proposed approach, although non-compliant with a requirement in a literal sense, complies with the overall intent of the requirement. To obtain a ''meets intent'' certification, a launch operator's proposed approach must provide for an ''equivalent level of safety.'' Tailoring of requirements is typically performed when it can be shown that a requirement is not applicable to a given launch vehicle program. Tailoring also typically includes meets intent approvals that apply to a program on a permanent basis. A ''meets intent'' certification may also be obtained outside of the tailoring process.

There are many similarities between the way the FAA approaches relief from safety requirements and the Air Force approach. FAA regulations permit waivers to safety requirements; however, the FAA's focus on the public safety aspects of licensed launches restricts consideration of mission objectives, including cost or schedule considerations, as justification for approval. The range safety organizations within the Air Force do this as well. Although cost, schedule, and mission assurance are range safety considerations, they are considered secondary to public safety. For government launches, the Air Force Wing Commander may grant a waiver based on national need. Typically, these decisions do not involve FAA-licensed launches. The FAA may grant a waiver if it decides that the waiver is in the public interest and will not jeopardize the public health and safety, safety of property, and national security and foreign policy interests of the United States. 49 U.S.C. § 70105(c)(3). Preferably, a launch operator subject to FAA regulations would demonstrate an equivalent level of safety to obtain relief from an FAA launch safety requirement. The October 2000 NPRM proposed in each part that a launch operator either meet the launch safety requirements as written or, for any proposed alternative, demonstrate an ''equivalent level of safety.'' For all intents and purposes, a range safety ''meets intent'' certification constitutes one form of the FAA's equivalent level of safety. The Common Standards Working Group has agreed upon common terminology and definitions of these relief categories to minimize the overall impact on launch operators while maintaining the current flexibility.

Commenting launch operators expressed concern that the process of clearly and convincingly demonstrating to the FAA that an alternative approach provides an equivalent level of safety would prove unduly burdensome, and in some instances, unworkable, compared to the tailoring process with the federal ranges. JC Vol. I at 5. The FAA does not foresee an increase in the level of effort on the part of a launch operator to obtain an equivalent level of safety determination and believes that industry's concerns in this area have been addressed. The Common Standards Working Group does not anticipate that FAA involvement will increase the difficulty or lengthen the

tailoring process. The FAA has reviewed a sampling of meets intent certifications and tailoring granted by federal ranges in the past and finds that they would satisfy the FAA equivalent level of safety criterion. In addition, the FAA has demonstrated on numerous occasions its willingness and ability, within the context of its regulations and processes, to be flexible in the implementation of its requirements. The FAA has taken into account the unique aspects of the program of each current licensee as the FAA worked with that licensee to achieve its goals while meeting everyone's mutual public safety responsibilities. For launches from a non-federal launch site, the October 2000 NPRM proposes that the FAA and a launch license applicant use the license application process to identify requirements that are not applicable and to ensure that any alternative approach that provides an equivalent level of safety becomes part of the terms of the license. For future launch vehicle programs that will conduct licensed launches at a federal range, the launch operators will continue to follow the Air Force process with participation from the FAA. The FAA and the Air Force will work in a coordinated effort with the launch operator to tailor the common launch safety requirements and make equivalent level of safety decisions for the launch operator's systems.

V. Section-by-Section Analysis of the SNPRM

Part 415—Launch Licensee

Subpart F—Safety Review and Approval for Launch of an Expendable Launch Vehicle from a Non-Federal Launch Site

The only changes that this SNPRM proposes to make to subpart F of part 415 involve references made to sections of proposed subpart C of part 417. This SNPRM modifies and reorganizes proposed subpart C of part 417. As a result, a number of references in proposed subpart F of part 415 to sections in subpart C of part 417 must be changed.

Part 417—Launch Safety

This SNPRM would revise the table of contents for proposed subpart C of part 417 to reflect the modifications that this SNPRM makes to that subpart.

Subpart A—General

This SNPRM modifies § 417.1 of the October 2000 NPRM to include provisions for existing launch vehicle systems to which some of the safety requirements proposed in part 417 would not apply. These changes represent a form of grandfathering as discussed in section III.A of this SNPRM.

The title of § 417.1 has been changed to ''scope and applicability.'' The NPRM's § 417.1, which provides the scope of part 417, is now paragraph § 417.1(a), General. This paragraph contains the same language as the October 2000 NPRM except for the second, fourth and fifth sentences. The second sentence now reads: ''The safety requirements contained in this part apply to all licensed launches of expendable launch vehicles unless paragraph (b) of this section applies.'' The fourth and fifth sentences now read: ''For a licensed launch from a federal launch range, the administrative requirements contained in this part do not apply if the FAA, through its baseline assessment of the range, finds that the range satisfies the requirements of part 417. For a licensed launch from a federal range where the range does not satisfy one or more or the requirements of part 417, the FAA will identify the administrative requirements that apply to the launch during the licensing process.'' The new proposed fourth and fifth sentences provide clarification for whether the proposed administrative requirements in part 417 would apply for a proposed launch from a federal range. As indicated in the new proposed second sentence, the SNPRM proposes to add paragraph § 417.1(b), which would contain provisions for determining whether a specific requirement would apply to a licensed launch operator at a federal range. Unless one or more of the conditions of paragraph (b)(2) of proposed section 417.1 occurs, if a launch operator has a license from the FAA to launch from a federal launch range as of the effective date of part 417 and, for a specific requirement of this part and launch, if the launch operator employs an alternative to the requirement for which the federal range has granted a written meets intent certification as of the effective date of part 417, the launch operator would not be required to demonstrate to the FAA that its alternative provided an equivalent level of safety. If the launch operator had, as of the effective date of part 417, a written waiver from the federal launch range or a pre-existing noncompliance that satisfied the federal launch range's grandfathering criteria, the requirement would not be applicable to the launch. A discussion on the issue of grandfathering and the FAA's reasons for proposing these changes from the October 2000 NPRM is provided in paragraph III.A of this SNPRM.

Paragraph § 417.1(b)(2) would contain criteria for when a requirement would be applicable to a launch operator even if the launch operator satisfied the provisions of § 417.1(b)(1). Even if a launch operator satisfied paragraph (b)(1) for a specific requirement of part 417, the launch operator would be required to bring its launch and launch vehicle, components, systems, and subsystems into compliance with the requirement, including any demonstration of equivalent level of safety, whenever one or more of the following conditions occurred: (i) The launch operator makes modifications that affect the launch vehicle's operation or safety characteristics; (ii) the launch operator uses the launch vehicle, component, system, or subsystem in a new application; (iii) the FAA or the launch operator determines that a previously unforeseen or newly discovered safety hazard exists that is a source of significant risk to public safety; or (iv) the federal range previously accepted a component, system, or subsystem, but, at that time, a noncompliance to an original federal range requirement was not identified. For all intents and purposes these are the same criteria currently used by the Air Force for determining when range safety grandfathering expires.

The Common Standards Working Group has developed a number of definitions to help ensure common interpretation and implementation of launch safety requirements. For any term with a common definition that the FAA uses in its launch safety regulations, the FAA proposes to include the common definition in § 417.3. The SNPRM proposes to replace or insert the definitions into § 417.3 in alphabetical order as follows:

Equivalent level of safety would mean an ''approximately equal'' level of safety. ''Approximately equal'' has mathematical meaning, and is clarified by the fact that an equivalent level of safety determination could involve a change to the level of expected risk that was not statistically or mathematically significant as determined by qualitative or quantitative risk analysis.

Explosive debris would mean solid propellant fragments or other pieces of a launch vehicle or payload that result from break up of the launch vehicle during flight and that explode upon impact with the Earth's surface and cause overpressure.

Meets intent certification would mean a decision by a federal launch range to accept a substitute means of satisfying a safety requirement where the substitute provides an equivalent level of safety to that of the original requirement.

Normal flight would mean the flight of a properly performing launch vehicle whose real-time instantaneous impact point does not deviate from the nominal instantaneous impact point by more than the sum of the wind effects and the three-sigma guidance and performance deviations in the uprange, downrange, left-crossrange, or right-crossrange directions.

Normal trajectory would mean a trajectory that describes normal flight.

Risk would mean a measure that accounts for both the probability of occurrence and the consequence of a hazard to persons or property.

Although the FAA proposed to include its definition of ''serious injury'' in proposed part 417, it is withdrawing that definition because it is better suited to the reporting requirements for which is was originally intended. *See* 14 CFR 415.41(b) (reporting requirements for an accident investigation plan). For purposes of determining whether exposure to a given quantity of a hazard could create a serious injury, the proposed definition was not adequate, and the FAA does intend to employ it in proposed part 417. The reporting definition was not adequate because it does not provide the information necessary for realistic modeling of casualties and is not always consistent with the models currently used to estimate potential casualties due to a proposed launch. The FAA notes that the Abbreviated Injury Scale discussed earlier in this SNPRM provides a useful means of distinguishing between serious injuries and those of lessor severity.

Waiver would mean a decision that allows a launch operator to continue with a launch despite not satisfying a specific safety requirement where the launch operator is not able to demonstrate an equivalent level of safety. A waiver may apply where a failure to satisfy a safety requirement involves a statistically or mathematically significant increase in expected risk as determined through quantitative or qualitative risk analysis, and where the activity may or may not exceed the public risk criteria.

Part 417 subpart B—Launch Safety Requirements

417.107 Flight safety.

This SNPRM modifies the FAA's proposed public risk criteria in paragraph § 417.107(b) of the original NPRM to reflect understandings reached in the Common Standards Working Group in consideration of public comments. The primary change being proposed in this SNPRM in the area of risk is that the FAA proposes to limit the risk attributable to each hazard rather than to limit an aggregate of the risk for all hazards as was proposed in the original NPRM. A detailed discussion on the modified public risk criteria proposal is contained in paragraph III.B of this SNPRM.

Paragraph § 417.107(b) of the October 2000 NPRM proposed that a launch operator would be required to conduct all launches in accordance with the proposed public risk criteria. This SNPRM changes the wording of paragraph § 417.107(b) to clarify that a launch operator's flight safety analysis must demonstrate that any proposed launch satisfies the public risk criteria. This modification is meant as a clarification and does not represent a change to the proposed requirements.

Paragraph § 417.107(b)(1) has been modified and would require that a launch operator initiate the flight of a launch vehicle only if the total risk associated with the flight to all members of the public, excluding those members of the public in waterborne vessels and aircraft, does not exceed an expected average number of 0.00003 casualties ($E_C \leq 30 \times 10^{-6}$) from hazards due to impacting inert and explosive debris, ($E_C \leq 30 \times 10^{-6}$ for toxic hazards, and $E_C \leq 30 \times 10^{-6}$ for far field blast overpressure hazards. The FAA proposes in this SNPRM that a launch operator may initiate flight only if the total risk associated with the flight satisfies the criteria. The FAA proposes to add the term ''total'' to clarify that the risk criteria applies to all phases of flight, including both the uprange and downrange portions. *See also* 14 CFR 415.35. The FAA proposes to identify both types of impacting debris with specificity because it wants to avoid confusion regarding what kinds of debris a debris risk assessment has always addressed. The FAA proposes to specify both because it is possible that either type of debris or a combination could exceed the expected casualty risk criteria, and the FAA wants to ensure that both are addressed. The FAA proposes here to change the name of the hazard from distant focus overpressure to far field blast overpressure to better reflect that a flight safety analysis must account for any potential source of overpressure due to explosions during launch vehicle flight that may cause window breakage, not just that caused by debris impacts, which is typically described as distant focus overpressure. The FAA proposes to determine whether to approve public risk due to any other hazard associated with the proposed flight of a launch vehicle on a case-by-case basis. The E_C criterion for each hazard would apply to each launch from lift-off through orbital insertion, including each planned impact, for an orbital launch, and through final impact for a suborbital launch.

Proposed § 417.107(b)(2) has been modified to change the individual risk criterion from probability of casualty (P_C) $P_C \leq 1 \times 10^{-6}$, to clarify that the criterion would be applied to each hazard, and would exclude persons in waterborne vessels and aircraft. This proposed change would delete all but the first sentence of § 417.107(b)(2) as proposed in the NPRM. Comments received from the Air Force indicated that the use of P_C as a risk criterion is not consistent with the definition of risk. The changes do not represent any new requirements. They are being proposed to improve clarity and to achieve consistent terminology with the ranges. The proposed addition of the flight safety analysis requirement at the beginning of § 417.107(b) eliminates the need to state anything further in § 417.107(b)(2).

The SNPRM changes the NPRM proposed paragraph § 417.107(b)(3) by deleting all but the first sentence. The addition of the flight safety analysis reference in § 417.107(b) eliminates the need to state anything further in § 417.107(b)(3). A launch operator would initiate flight only if, the probability of debris impact to all waterborne vessels (P^{iv}) that are not operated in direct support of the launch does not exceed 0.00001 ($P_{iv} \leq 1 \times 10^{-5}$) in each debris impact hazard area of § 417.223. To achieve commonality with the Air Force, the SNPRM eliminates the use of the term ''collective risk'' and states the proposed criterion in terms of probability of debris impact to all waterborne vessels to express the collective risk concept. For example, if there were five vessels in the vicinity of the launch, in order to initiate flight, a launch operator would have to demonstrate that if each vessel's individual probability of impact at the time of flight were calculated and those five probabilities were added together, the total would satisfy the criterion. The reference to the requirements for impact hazard areas has been changed to ''each debris impact hazard area of § 417.223'' to reflect organizational changes and the performance level flight hazard area analysis requirements proposed in the SNPRM.

Paragraph § 417.107(b)(4) in the SNPRM remains the same, minor editorial changes aside, as proposed in the NPRM. A launch operator would initiate flight only if the probability of debris impact to any individual aircraft (P_{ia}) not operated in direct support of the launch does not exceed 0.00000001

($P_{ia} \leq 1 \times 10^{-8}$ in each debris impact hazard area of § 417.223. The reference to the requirements for impact hazard areas has been changed to ''each debris impact hazard area of § 417.223'' to reflect organizational changes and the performance level flight hazard area analysis requirements proposed in the SNPRM.

The FAA is requesting public comment on an alternative requirement to protect individual aircraft not operated in direct support of the launch. The FAA and Air Force Common Standards Working Group is considering a change in the proposed requirements of paragraph § 417.107(b)(4) such that the probability of impact to any individual aircraft (P_{ia}) not operated in direct support of the launch does not exceed 0.0000001 ($P_{ia} \leq 1 \times 10^{-7}$ in each debris impact hazard area. This would relax the FAA's proposed aircraft probability of impact standard from 10^{-8} to 10^{-7}. Such a change would be consistent with the current Range Commander Council Standard 321–00 and the FAA's ''Supplemental Application Guidance for Unguided Suborbital Launch Vehicles.'' Such a change would not affect the currently proposed § 417.107(c)(4) which would require that the aircraft impact analysis account for all debris with the potential to impact an aircraft with 11 ft-lbs of kinetic energy or greater and account for the aircraft velocity.

The SNPRM proposes new paragraph § 417.107(c) that would require a launch operator's flight safety analysis to account for any inert debris impact with a mean expected kinetic energy at impact greater than or equal to 11 ft-lbs and, except for the far field blast overpressure effects analysis of § 417.229, a peak incident overpressure greater than or equal to 1.0 psi due to any explosive debris. The 11 ft-lbs threshold for inert debris would apply when determining expected casualties due to blunt trauma. The 1.0 psi threshold for explosive debris would apply when determining expected casualties due to overpressure effects. The far field blast overpressure effects analysis of proposed § 417.229 would account for overpressure levels below 1.0 psi that could cause window breakage and related casualties due to falling or projected glass shards. The SNPRM also proposes that, when using the debris thresholds to determine potential casualties, a flight safety analysis would use either probabilistic models or a more simple and conservative approach. The FAA and Air Force Common Standards Working Group is considering these debris thresholds as proposed common launch safety requirements. The FAA is requesting public comment on the proposed use of these thresholds. A complete discussion on the proposed thresholds and their applicability is provided in section III.C of this SNPRM.

In addition, § 417.107(c) would clarify that a flight safety analysis would be required to apply the thresholds for inert and explosive debris to demonstrate whether a launch satisfied the probability of impact criterion for water-borne vessels of § 417.107(b)(3) and the probability of impact criterion for aircraft of § 417.107(b)(4). Proposed § 417.107(c)(4) would require the analysis to account for the aircraft velocity. Accounting for the aircraft velocity is important when determining the kinetic energy of a potential debris impact with the aircraft. Accounting for the aircraft's velocity is not a new proposal. It was included in appendix A of the NPRM and is being added to proposed § 417.107(c)(4) to clarify that it is an important part of the criterion.

The SNPRM proposes a new paragraph § 417.107(d), which would require that a probabilistic casualty model used by a launch operator must be based on accurate data and scientific principles and be statistically valid. A launch operator would be required to obtain FAA approval of any probabilistic casualty model that is used in the flight safety analysis. If the launch takes place from a federal launch range, the analysis would be allowed to employ any probabilistic casualty model that is accepted as part of the FAA's baseline assessment of the federal launch range's safety process. The proposed provisions for the use of probabilistic models as part of a launch operator's flight safety analysis are intended to provide greater flexibility in demonstrating that a proposed launch satisfies the public risk criteria and to provide greater consistency with the current practices at federal ranges. A complete discussion on the use of probabilistic models as part of flight safety analysis in provided in conjunction with the discussion on casualty thresholds in paragraph III.C of this SNPRM.

The SNPRM re-letters § 417.107(c), (d), (e) and (f) as proposed in the NPRM to (e), (f), (g), and (h) respectively. The title of proposed § 417.107(e) has been changed from ''Conjunction on launch assessment'' to ''Collision avoidance.'' This change is being made to reflect common terminology used at the federal ranges. The references to subpart C and appendix A in the last sentence of proposed paragraph § 417.107(e) have been modified to be consistent with the other changes made by this SNPRM.

The second and third sentences of proposed paragraph § 417.107(f) have been replaced with a reference to § 417.203(d) that contains provisions for when a flight safety analysis performed by a federal range for a licensed launch may be treated as the licensed launch operator's analysis. This change is meant to clarify that at a federal range, licensed launch operators need not perform analysis ordinarily performed by the range. This is consistent with the FAA's current practice of accepting the federal range process through its baseline assessments. The public comments on the original NPRM indicated that there was significant misunderstanding with regard to this issue, and this change is intended to clear up that misunderstanding.

This SNPRM changes the title of proposed paragraph 417.121(c) from ''Conjunction of launch'' to ''Collision avoidance'' to reflect common terminology used at the federal ranges.

The remaining changes that this SNPRM proposes to make to subpart B of part 417 involve references made to sections of proposed subpart C of part 417. This SNPRM modifies and reorganizes proposed subpart C of part 417. As a result, a number of references made in proposed subpart B of part 417 to sections in subpart C of part 417 must be changed accordingly.

Subpart C—Flight Safety Analysis

Subpart C contains proposed requirements governing performance of flight safety analysis to demonstrate a launch operator's capability to manage risk to the public from normal and malfunctioning launches. As originally proposed, subpart C in the NPRM contained both performance level flight safety analysis requirements and additional detailed requirements regarding how to satisfy the performance standards. Comments received from the public as well as the Common Standards Working Group indicated that subpart C of the original NPRM contained detail beyond the performance level, and not all the detail described flight safety analysis methods used by the ranges. In addition, commenters were concerned that proposed subpart C rigidly mandated an approach to performing some of the flight safety analyses, even though more than one acceptable approach might exist. Accordingly, to reflect the Common Standards Working Group understandings regarding common flight safety analysis performance requirements, the FAA now proposes to separate the performance standards

from the more detailed methodology requirements, which are now proposed in appendix A. Although the NPRM provided that the FAA would accept alternate analyses if a launch operator provided a clear and convincing demonstration of an equivalent level of safety, 14 CFR § 417.203(f) (proposed in the October 2000 NPRM), the FAA made this organizational change to promote the understanding that it has the ability to accept alternate approaches. A launch operator who satisfied the subpart C requirements with an alternate analysis would not need to use appendix A. This is the FAA's intent for licensed launches that take place at a federal launch range where the FAA baseline safety assessment of the federal range will document the range's implementation of the subpart C requirements. Appendix A requirements would typically apply for licensed launches from non-federal launch sites. As part of the effort to develop common launch safety requirements, the FAA worked with the federal ranges to develop the performance level requirements for flight safety analysis presented in this SNPRM.

This SNPRM proposes a rewritten subpart C that only contains performance requirements for flight safety analysis developed by the Common Standards Working Group (CSWG). The intent is for each section of subpart C to contain common performance requirements agreed to by the Air Force and the FAA that apply to flight safety analysis, regardless of who performs the analysis, with the understanding that the methodologies implemented to satisfy the performance requirements may vary. The public comments on the original NPRM also indicated that there was significant misunderstanding with regard to the proposed administrative requirements associated with flight safety analysis. The revised subpart C in this SNPRM contains modifications to clarify when a launch operator would be required to perform analyses and submit analysis products to the FAA and when the launch operator would not, depending on whether a launch is from a federal range or a non-federal launch site.

There are criteria that apply to the methodologies used to perform flight safety analysis that are necessary to define the acceptable level of fidelity and, when satisfied, ensure consistent analysis results from one launch to the next. Where the federal ranges typically strive to ensure that their analysis methodologies are the state of the art, the FAA's regulations must include methodology requirements that ensure consistent analysis results for launches from non-federal launch sites. Therefore, the analysis methodology requirements that were in the original subpart C of the October 2000 NPRM have been streamlined and are now contained in appendix A with only a few material changes to better reflect current practice. In addition, the requirements for analysis products that would have to be submitted to the FAA, depending on whether the analysis was performed by a federal range or the launch operator and in accordance with any specific terms of the license, have been revised and moved to appendix A (see discussion on revised appendix A).

The title of § 417.201 is now proposed as ''scope and applicability.'' Subpart C would contain performance requirements for a flight safety analysis to be performed as required by § 417.107(d). As was proposed in the original NPRM, the flight safety analysis requirements of § 417.233 would apply to the flight of any unguided suborbital launch vehicle that uses a wind weighting safety system. All other analyses required by subpart C would apply to the flight of any launch vehicle that is required to use a flight safety system in accordance with § 417.107(a). A major concern raised in the public comments to the original NPRM was that many of the analysis requirements in subpart C may not apply depending on the specifics of an alternative flight safety system. The last sentence of revised § 417.201 would clarify that for any alternative flight safety system approved by the FAA in accordance with 417.107(a)(3), the applicability of the analysis requirements in subpart C would be determined during the licensing process, which is current practice.

Section 417.203 now contains proposed requirements related to how a launch operator would demonstrate compliance with the flight safety analysis requirements. The requirements of § 417.203(a) and (b) were taken from § 417.203(a) of the original NPRM. A new sentence was added to the end of 417.203 (a) to clarify that a launch operator's flight safety analysis may rely on a previously accepted analysis for an identical or similar launch if the analysis still applies to the later launch. This change was made in response to comments expressing concern that a launch operator might be required to unnecessarily repeat analyses, which was not the intent of the FAA original proposal in the NPRM.

Proposed section 417.203(c) reflects the fact that the FAA anticipates that different launch operators will employ different methods for satisfying the requirements of proposed subpart C. In the course of the licensing process the FAA would approve an alternate flight safety analysis if a launch operator provided a clear and convincing demonstration that its proposed analysis provided an equivalent level of safety to that required by proposed subpart C. A launch operator would be required to demonstrate that an alternate flight safety analysis was based on accurate data and scientific principles and was statistically valid. The FAA would not find the launch operator's application for a license or license modification sufficiently complete to begin review until the FAA approved the alternate flight safety analysis. Accordingly, a launch operator may not change its methods for conducting a flight safety analysis without FAA approval. A launch operator would have to submit any change to its flight safety analysis methods to the FAA as a request for license modification prior to proceeding with the proposed launch. § 417.203(c) in the SNPRM was taken from § 417.203(f) of the October 2000 NPRM and provides for flexibility by allowing for alternate flight safety analysis methods.

Proposed § 417.203(d) has been added to address the issue of licensed launches that involve federal ranges. The FAA would accept an alternate flight safety analysis used by a federal launch range for a licensed launch, if the FAA documented and approved the alternate flight safety analysis in the FAA baseline safety assessment of that federal launch range. In this case the FAA would treat the federal launch range's analysis as that of the launch operator and the launch operator would not need to provide any further demonstration of compliance. Licensees are advised to remember that there are different procedures for complying with part 417, depending on whether a launch takes place from a federal launch range or from a non-federal launch site. For a licensee proposing to launch from a federal launch range where an FAA assessment shows that the safety services of that range are acceptable, the licensee would not need to provide the FAA any additional information to comply with subpart C. Only if one of the range safety analysis methods did not satisfy a subpart C requirement would a launch operator have to demonstrate satisfaction to the FAA. Additionally, if an FAA baseline assessment showed that a proposed licensed launch from a federal range was in some way outside the experience of the range, the licensee would also have to address any outstanding issues

with the FAA, which is current practice under the FAA's current regulations. Thus, although the part 417 requirements apply to a licensee proposing to launch from a federal launch range, this rulemaking does not require the licensee to change its practices at the range. Only changes in range practice would result in a change for the launch licensee. A licensee proposing to launch from a launch site for which no federal launch range provides safety services would, of course, have to demonstrate compliance with all applicable requirements to the FAA.

Proposed § 417.203(e) would now contain the timing requirements for submitting analysis products to the FAA as were proposed in the original NPRM. § 417.203(e) would further clarify that the requirements for submitting analysis products apply for licensed launches that do not qualify for the provisions of paragraph (d) of this section, that is, the requirements for submitting analysis products would apply to analyses that have not been performed by a federal range. The analysis products that were in the various sections of subpart C of the original NPRM have been streamlined and moved to appendix A as discussed below. The license application analysis submittal requirements in § 417.203(e)(1) are repeated without change from § 417.203(c)(1) of the original NPRM. The six-month submittal requirements of § 417.203(e)(2) are unchanged from § 417.203(c)(2) of the original NPRM; however, paragraph (iii) was added to clarify that if an analysis product has not changed since the launch operator's license application submittal, the launch operator's six-month submittal need not repeat the data. The thirty-day submittal requirements remain unchanged from § 417.203(c)(3) of the original NPRM; however the second sentence was added to clarify that if an analysis product has not changed since the six-month analysis submittal, the launch operator's thirty-day submittal need not repeat the data. Proposed § 417.203(e)(4) has been added to provide clarification on how a programmatic flight safety analysis would be treated. A launch operator would not be required to submit the 6-month analysis or 30-day analysis update for a launch if the launch operator submitted complete analysis products during the licensing process and demonstrated that all parts of the analysis applied to each launch to be conducted under the license and that the analysis did not need to be updated to account for launch specific factors.

Proposed § 417.205 would now contain general performance requirements that apply to all the various sub-analyses that make up a flight safety analysis. The first sentence of paragraph § 417.205(a) contains the same requirement for controlling risk to the public as the first sentence in § 417.203(a) of the original NPRM, except that the requirements are now placed on the flight safety analysis regardless of who performs the analysis. The FAA intends this editorial change to clarify that the analysis may be performed by the launch operator or a federal range. The remainder of § 417.205(a) of the SNPRM proposes new performance requirements for how an analysis demonstrates control of risk by employing risk assessment or hazard isolation or a combination of both. The ranges have historically preferred the use of hazard isolation over risk assessment as the safer approach to the extent practicable. The FAA does recognize that most launches from the ranges reflect a combination of hazard isolation and risk assessment. The FAA agrees that hazard isolation is preferable; however, because a regulation must identify the acceptable limit for purposes of safety, admonitions to use the safer of two acceptable options are not readily codified. The FAA does, however, expect hazard isolation to be the method of choice whenever practical while permitting a combination or choice of either approach. Hazard isolation not only offers the safer approach, it also tends to be analytically easier to demonstrate satisfaction of the requirements. Risk assessment may, however, while requiring more analysis to prove satisfaction of the requirements, also provide greater operational flexibility on the day of launch.

Proposed paragraph § 417.205(b) contains performance requirements for the input and output of dependent analyses to be compatible to ensure accuracy of the analysis products and is essentially the same as § 417.203(e) of the original NPRM.

Proposed section 417.207 of the SNPRM contains the performance requirements that would apply to any trajectory analysis. § 417.207 does not contain any new requirements as compared to the October 2000 NPRM. § 417.207 combines § 417.205(a) of the October 2000 NPRM with the general requirements that were in other paragraphs of § 417.205 of the NPRM and reflects input from the CSWG to better capture current practice at the Air Force ranges. The remaining trajectory analysis methodology requirements that were proposed by § 417.205 of the October 2000 NPRM have been streamlined and moved to A417.7 of appendix A of part 417. Many of the other analyses, such as those performed to establish flight safety limits and hazard areas, would use the products of the trajectory analysis as input. § 417.207 would require that a trajectory analysis determine, for any time after lift-off, the limits of a launch vehicle's normal flight. Normal flight is defined as proposed in section 417.103 the flight of a properly performing launch vehicle whose real-time instantaneous impact point does not deviate from the nominal instantaneous impact point by more than the sum of the wind effects and the three-sigma performance deviations in the uprange, downrange, left-crossrange, or right-crossrange directions. In § 417.205(f) of the October 2000 NPRM, the FAA proposed that a launch operator use a six-degree-of-freedom trajectory model to generate each required three-sigma trajectory. The FAA now proposes to require that only the final trajectory analysis must employ a six-degree of freedom trajectory model because the CSWG concluded that three-degree of freedom trajectory models may satisfy preliminary trajectory analysis requirements. The FAA proposes to delete the use of instantaneous impact point distance from its nominal location as a reference because specifying the reference might appear to rule out other acceptable alternatives. The FAA is making this change to allow for greater flexibility.

Proposed section 417.209 of the SNPRM contains the performance requirements that would apply to any malfunction turn analysis. Proposed section 417.209 combines § 417.207(a) of the October 2000 NPRM with the more general requirements that were in other paragraphs of § 417.207 of the NPRM and reflects input from the CSWG to better capture current practice at the Air Force ranges. The remaining malfunction turn analysis methodology requirements that were proposed in § 417.207 of the October 2000 NPRM have been streamlined and moved to A417.9 of appendix A of part 417. A malfunction turn analysis would be required to determine a launch vehicle's turning capability using sets of malfunction turn curves, consistent with current practice. The FAA has deleted ''greatest turning capability'' from the first sentence of § 417.207(a) of the October 2000 NPRM, which is now in § 417.209 of the SNPRM. This change is being made to clarify that the products of a malfunction turn analysis are not limited to just the greatest

turning capability. The greatest turning capability of the launch vehicle, which would be defined by the envelope of a set of turn curves, would be used for establishing flight safety limits.

The FAA is now proposing that a malfunction turn analysis account for the relative probability of occurrence of each malfunction turn. Although not proposed in the October 2000 NPRM, this performance requirement is consistent with current practice at the federal ranges and is necessary to facilitate use of risk analysis, which is an option that may provide a launch operator greater flexibility. Malfunction turns are typically described in terms of either their cause or effect. The FAA proposes that a malfunction turn analysis account for the cause in order for probabilities to be assigned, and the effects in order to assess debris impact probabilities. Typical causes of malfunction turns include thrust offset and burn through. Thrust offset may include failures in the gimbals or in the flow of thrust vector control fluid. A nozzle burn through may result in an imbalance in the thrust. If a nozzle breaks off, the loss may produce an imbalance in the thrust of the launch vehicle and consequent changes in its velocity vector. Launch vehicle systems such as the examples discussed above and others that could be the cause of a malfunction turn may fail in many ways. If a flight safety analysis is to make greater use of risk analysis the causes of possible malfunction turns need to be identified and their probabilities determined.

Proposed section 417.211 of the SNPRM contains the performance requirements that would apply to any debris analysis. § 417.211 does not contain any new requirements as compared to the October 2000 NPRM; however, the provisions of the NPRM have been reorganized, and modifications are proposed to better reflect current practice at the federal ranges. § 417.211 combines § 417.209(a) of the October 2000 NPRM with some general requirements from other paragraphs of § 417.209 of the NPRM. The remaining debris analysis methodology requirements that were in § 417.209 of the October 2000 NPRM have been streamlined and moved to A417.11 of appendix A to part 417.

Section 417.211 would require a debris analysis to identify the inert, explosive, and other hazardous launch vehicle debris that results from normal and malfunctioning launch vehicle flight. A debris model would consist of lists of the debris fragments that are planned as part of a launch or that result from breakup of the launch vehicle. The lists would account for and describe all debris fragments and their physical characteristics. These debris lists would be necessary as input to other flight safety analyses such as those performed to establish flight safety limits and hazard areas and to determine if the launch satisfies the public risk criteria.

Proposed section 417.213 of the SNPRM contains the performance requirements that would apply to flight safety limits analysis and would capture current practice at the federal ranges. § 417.213 does not contain any new requirements as compared to the October 2000 NPRM; however, the provisions of the NPRM have been reorganized. § 417.213 combines § 417.213(a) of the October 2000 NPRM with the performance requirements from other paragraphs of § 417.213 of the NPRM. The remaining flight safety limits analysis methodology requirements that were in § 417.213 of the NPRM have been streamlined and moved to A417.13 of appendix A to part 417. § 417.213 also combines specific flight control lines analysis requirements from § 417.211 of the October 2000 NPRM. The SNPRM would eliminate the requirement for a separate flight control line analysis. The flight control lines analysis was proposed in the NPRM to identify the protected areas and account for map and tracking errors. The FAA now proposes to include the identification of protected areas and accounting for map and tracking errors as part of the flight safety limits analysis.

Proposed section 417.213 would require a flight safety limits analysis to identify the location of populated or other protected areas and establish flight safety limits that define when a flight safety official must terminate a launch vehicle's flight to prevent the hazardous effects of the resulting debris impacts from reaching any populated or other protected area and ensure that the launch satisfies the public risk criteria of § 417.107(b). The public risk management requirements of proposed § 417.205(a), in general, allow a flight safety analysis to employ risk assessment or hazard isolation, or a combination of risk assessment and partial isolation of the hazards to demonstrate control of the risk to the public. Because flight safety limits are to be implemented for the specific situation when a malfunctioning launch vehicle is heading for a protected area, the FAA proposes that the flight safety limits should provide for a measure of isolation from impacting debris hazards. Were risk the sole measure used to establish flight safety limits, a low probability of launch vehicle failure might result in flight safety limits that would not represent the boundaries of safe flight in the event of a failure.

Although flight safety limits provide a form of hazard isolation, they must also reflect and support how a launch satisfies the public risk criterion for debris. Current practice provides a good example of how this approach works. At the Eastern Range, the 45th Space Wing establishes destruct lines, which constitute one kind of flight safety limit, to prevent debris with a ballistic coefficient of three [28] or more from reaching protected areas. Nonetheless, debris with a ballistic coefficient of less than three may still reach protected areas and may cause casualties, as discussed previously. A flight safety analysis would assess the ''residual risk,'' risk due to any hazard not isolated from the public, to determine whether the public risk criterion is satisfied. The FAA proposes in this SNPRM to require that the debris risk assessment of proposed section 417.225 account for the risk due to debris with kinetic energy at impact of 11 ft-lbs. With this measure of what may cause a casualty, the risk assessment may show that flight safety limits designed to isolate debris with a ballistic coefficient of three still permit too much risk due to more wind sensitive debris pieces with ballistic coefficients of less than three. For example, a large number of small pieces of debris or large crowds at the edge of the flight safety limits might increase risk to unacceptable levels. In that case, the FAA's proposed requirements would mandate that the flight safety limits be adjusted to ensure that the launch satisfied the public risk criteria of proposed section 417.107(b). If the flight safety limits were designed to isolate debris with a kinetic energy of 11 ft-lbs at impact, there would be no need to assess the residual risk due to debris outside of the flight safety limits. Of course, a flight safety analysis would still need to assess the risk due to the potential for flight termination system failure.

Proposed section 417.215 of the SNPRM contains the performance requirements that would apply to any straight-up time analysis and captures current practice at the federal ranges. § 417.215 does not contain any new requirements as compared to the October 2000 NPRM; however, the provisions of the October 2000 NPRM have been reorganized. Proposed section 417.215 combines § 417.215(a) of the October 2000 NPRM with the top-level

[28] As proposed in Appendix A of part 417 of this SNPRM, the FAA proposes to rely on a ballistic coefficient of three to establish flight safety limits.

requirements that were in other paragraphs of § 417.215 of the October 2000 NPRM. The remaining straight-up time analysis methodology requirements that were in § 417.215 of the October 2000 NPRM have been streamlined and moved to A417.15 of appendix A to part 417. A straight-up time analysis would be required to establish the straight-up time as the latest time after liftoff, assuming a launch vehicle malfunctions and flies in a vertical or near vertical direction above the launch point, at which activation of the launch vehicle's flight termination system or breakup of the launch vehicle would not cause hazardous debris or critical overpressure to affect any populated or other protected area. Straight-up time is a special type of flight safety limit used to address this specific type of failure. In the event of such a failure, the flight safety official would terminate flight at the straight-up time to ensure that hazardous debris effects do not extend to populated or other protected areas.

Proposed section 417.217 of the SNPRM contains the performance requirements that would apply to any no longer terminate gate analysis and captures current practice at the federal ranges. § 417.217 does not contain any new requirements as compared to the October 2000 NPRM; however, the provisions of the October 2000 NPRM have been reorganized. Section 417.217 combines § 417.219(a) of the October 2000 NPRM with the performance requirements that were in other paragraphs of § 417.219 of the October 2000 NPRM. The remaining analysis methodology requirements that were in § 417.219 of the October 2000 NPRM have been streamlined and moved to A417.17 of appendix A to part 417.

A no longer terminate gate analysis would be required to determine the portion, referred to as a gate, of a flight safety limit, through which a launch vehicle's tracking icon is allowed to proceed without a launch operator being required to terminate flight. A tracking icon is the representation of a launch vehicle's position in flight available on a flight safety official console during real-time tracking of the launch vehicle's flight. The products of a no longer terminate gate analysis are necessary for establishing flight termination rules for any planned launch vehicle flight over a populated or other protected area. Once a launch vehicle traversed a gate, flight would not be terminated while the vehicle's debris impact dispersion footprint was over the protected area.

Proposed section 417.219 of the SNPRM contains the performance requirements that would apply to any data loss flight time analysis and captures current practice at the federal ranges. § 417.219 does not contain any new requirements as compared to the October 2000 NPRM; however, the provisions of the October 2000 NPRM have been reorganized and some modifications have been made to better reflect current practice at the federal ranges. § 417.219 combines § 417.221(a) of the October 2000 NPRM with the performance requirements that were in other paragraphs of § 417.221 of the October 2000 NPRM. The remaining analysis methodology requirements that were in § 417.221 of the October 2000 NPRM have been streamlined and moved to A417.19 of appendix A to part 417.

Proposed section 417.219 would require a flight safety analysis to establish data loss flight times and a no longer terminate time for use in establishing flight termination rules that apply when launch vehicle tracking data is not available to the flight safety official. A data loss flight time would be the shortest elapsed thrusting time during which a launch vehicle could move from its normal trajectory to a condition where the launch vehicle's hazardous debris impact dispersion extended to any protected area. A flight safety official uses data loss flight times as the longest time he would wait before terminating flight when launch vehicle tracking data became unavailable. Current practice recognizes that loss of tracking data does not necessarily mean that a launch vehicle failure has occurred. The launch may continue in the absence of tracking data, but only for the period of time that the launch vehicle debris impact dispersion could not reach a protected area. The analysis would assume that a malfunction occurred when the tracking data was lost and that the launch vehicle headed for the nearest protected area. If tracking was not restored before the launch vehicle debris impact dispersion could reach the protected area, the flight would have to be terminated. Although the October 2000 NPRM proposed that the time describe the shortest elapsed time in which public endangerment could become possible, because current practice only accounts for debris as a hazard for purposes of determining flight safety limits, the FAA proposes to modify this provision to reflect the true nature of the concern: namely, debris impacts. Because the earliest destruct time is in fact the first data loss flight time, the SNPRM eliminates as redundant all references to the earliest destruct time. A flight safety analysis would also determine the no longer terminate time for a launch, which would replace the term ''no longer endanger time.'' The CSWG recommended that the FAA propose this change in terminology because no longer endanger time has different uses at different ranges and in some cases may be somewhat of a misnomer. No longer terminate time is a more generally applicable term that better reflects its actual implementation. The SNPRM proposes to provide streamlined definitions and requirements for data loss flight times and the no longer terminate time that are consistent with current practice. The analysis for no longer terminate time would establish the time after liftoff that a launch vehicle's hazardous debris impact dispersion could no longer reach any protected area from that time forward to final impact or orbital insertion as the no longer terminate time for the launch. Different federal ranges use different terminology for data lose flight times and no longer terminate time. The FAA is proposing the use of generic terms and requirements that, for all intents and purposes, are consistent with current practice at the federal ranges.

The SNPRM contains a modification to better reflect current practice at the federal ranges for launches where a gate permits overflight of a protected area and where orbital insertion occurs after reaching the gate. In such cases, the no longer terminate time would be the time after liftoff when the time for the launch vehicle's instantaneous impact point to reach the gate is less than the time for the instantaneous impact point to reach any flight safety limit. Current practice embraces this approach for at least two reasons. If a launch vehicle performs normally until that point in its trajectory, it will almost certainly enter the gate. If flight were terminated after that time, there would be a greater likelihood of debris impacting the protected area than if the flight were allowed to continue.

Proposed section 417.221 of the SNPRM contains the performance requirements that would apply to any time delay analysis and captures current practice at the federal ranges. § 417.221 does not contain any new requirements as compared to the October 2000 NPRM; however, the provisions of the October 2000 NPRM have been reorganized. § 417.221 combines § 417.223(a) of the October 2000 NPRM with the requirements that were in other paragraphs of § 417.223 of the October 2000 NPRM. The remaining analysis methodology requirements that were in § 417.223 of the October 2000 NPRM

have been streamlined and moved to A417.21 of appendix A to part 417.

Proposed section 417.221 would require a time delay analysis to determine the mean elapsed time between the violation of a flight termination rule and the time when the flight safety system is capable of terminating flight so that flight termination would occur. A time delay analysis would have to account for all sources of time delay that could have an effect on identifying when a launch vehicle malfunction occurred and how quickly flight could be terminated once a malfunction was identified. Proposed § 417.221 would clarify that a time delay analysis would be required to account for the variance of time delays for each potential failure scenario, including but not limited to, the range of malfunction turn characteristics and the time of flight when the malfunction occurred.

Proposed section 417.223 of the SNPRM contains the performance requirements that would apply to any hazard area analysis and captures current practice at the federal ranges. § 417.223 does not contain any new requirements as compared to the October 2000 NPRM; however, the provisions of the October 2000 NPRM have been reorganized. § 417.223 contains the requirements that were in § 417.225(a) of the October 2000 NPRM. The remaining analysis methodology requirements that were in § 417.225 of the October 2000 NPRM have been streamlined and moved to A417.23 of appendix A to part 417.

The FAA would require a flight hazard area analysis to identify any regions of land, sea, or air that must be monitored, publicized, controlled, or evacuated to control the risk to the public from debris impact hazards. The risk management requirements of § 417.205(a) would apply. Proposed section 417.225(a) of the October 2000 NPRM stated that hazard areas must be implemented to ''ensure public safety.'' The requirements for satisfying the various public risk criteria were spread throughout other paragraphs in § 417.225 of the October 2000 NPRM. In keeping with the intent of defining the performance requirements, the new proposed section 417.223 now states that the risk management requirements of proposed § 417.205(a) would apply. Managing the risk to the public, which involves employing risk assessment or hazard isolation, or a combination of risk assessment and partial isolation of the hazards to demonstrate control of the risk to the public and that the public risk criteria are satisfied as required by proposed § 417.205(a), in effect, provides for the necessary assurance of public safety. Consistent with current practice at the federal ranges, the analysis would account for, but need not be limited to, regions of land potentially exposed to debris resulting from normal flight events and events resulting from any potential malfunction, regions of sea and air potentially exposed to debris from normal flight events, including planned impacts, and in the vicinity of the launch site, any waterborne vessels or aircraft exposed to debris from events resulting from any potential abnormal flight events, including launch vehicle malfunction.

For sea and air regions beyond the vicinity of the launch site, a typical flight hazard area analysis would only account for normal flight events, including planned impacts. Historically, the probability of impacts to aircraft and waterborne vessels due to potential launch vehicle malfunctions has been significant only during the initial stages of flight that take place in the vicinity of the launch site. Typically, once a launch vehicle is beyond the vicinity of the launch site the impact dispersions are large enough and the instantaneous impact point moves fast enough that the probability of impacts to aircraft and waterborne vessels due to potential launch vehicle malfunctions is negligible in comparison to those in the vicinity of the launch site. Furthermore, the probability of a launch vehicle malfunction is typically at its highest during the initial stages of flight, which generally includes the point where the vehicle experiences the maximum dynamic pressure. Once a launch vehicle has completed the initial stages of flight and is beyond the vicinity of the launch site, aerodynamic forces on the launch vehicle are generally small due to the reduced atmospheric density at high altitudes. However, proposed § 417.205(a) would require the analysis to identify any regions of land, sea, or air that must be monitored, publicized, controlled, or evacuated in order to control the risk to the public from debris hazards and would not limit where flight hazard areas may need to be established.

Proposed section 417.225 of the SNPRM contains the performance requirements that would apply to any debris risk analysis and includes requirements for the debris thresholds to be applied when calculating debris risk. The current practice for debris risk analysis may vary from launch site to launch site and from vehicle to vehicle. Proposed section 417.225 of this SNPRM contains proposed common performance requirements that would apply to all launches at federal ranges and non-federal launch sites. Proposed section 417.225 combines § 417.227(a) of the October 2000 NPRM with the requirements from other paragraphs of § 417.227 of the October 2000 NPRM. The remaining analysis methodology requirements that were in § 417.227 of the October 2000 NPRM have been streamlined and moved to A417.25 of appendix A to part 417.

The FAA would require that a debris risk analysis would demonstrate that the risk to the public potentially exposed to inert and explosive debris hazards from any one flight of a launch vehicle satisfied the public risk criterion of proposed § 417.107(b)(1) for debris. A debris risk analysis would account for risk to populations on land, including regions under launch vehicle flight following passage through any gate in a flight safety limit established in accordance with § 417.217. A debris risk analysis would account for any potential casualties to the public in accordance with the debris thresholds and requirements of proposed § 417.107(c). The October 2000 NPRM provided that a debris risk analysis need not account for debris with a ballistic coefficient of less than three. The FAA realizes that ballistic coefficient may not be the best parameter to use as an indication of casualty. A casualty could result from debris with a ballistic coefficient of less than three. The reverse may also be true. An impact of debris with a ballistic coefficient just greater than three might not result in casualty. The FAA in coordination with the Air Force has reviewed the recent human vulnerability modeling results and believes that, for typical space launch vehicle debris masses and shapes, for the purposes of a debris risk analysis, it is reasonable to consider the potential for casualty due to blunt trauma when a human is subjected to any inert debris impact with a mean expected kinetic energy greater than or equal to 11 ft-lbs. Further discussion and results of the research on this issue are provided in paragraph III.C.1 of this notice. Proposed section 417.225 would now reference proposed § 417.107(c), which requires that an analysis account for inert debris impacts with mean expected kinetic energy at impact greater than or equal to 11 ft-lbs.

The October 2000 NPRM proposed that in a debris risk analysis, the effective casualty area of any explosive debris, such as solid propellant fragments that would result from break up of the launch vehicle during flight and that would explode upon impact with the Earth's surface, would account for a 3.0 psi blast overpressure radius.

This is typical of current practice for analysis of people in the open. However, using a 3.0-psi blast overpressure radius is generally inappropriate for analysis of people in typical buildings. The FAA in coordination with the Air Force has reviewed the recent human vulnerability modeling results and now proposes that a peak incident overpressure of 1.0 psi or greater due to any explosive debris impact as a practical threshold for explosive debris, excluding window breakage effects treated in the far field blast overpressure analysis. Further discussion and results of the research on this issue are provided in paragraph III.C.2 of this notice. Proposed section 417.225 would now reference proposed § 417.107(c), which requires that the analysis account for any public risk in populated areas potentially subject to peak incident overpressure of 1.0 psi or greater due to any explosive debris impact.

Proposed section 417.227 of the SNPRM contains performance requirements that would apply to any toxic release hazard analysis and captures current practice at the federal ranges. § 417.227 does not contain any new requirements as compared to the October 2000 NPRM; however, the provisions of the October 2000 NPRM have been reorganized. The requirements of § 417.227 were moved from § 417.229 of the October 2000 NPRM. The proposed analysis methodology requirements continue to be provided in appendix I to part 417, which remains unchanged from the October 2000 NPRM.

A toxic release analysis would be required to establish flight commit criteria that ensure compliance with the public risk criterion of § 417.107(b)(1). The analysis would account for any toxic release that would occur during normal or malfunctioning launch vehicle flight. The analysis would account for any operational constraints and emergency procedures that would provide protection from toxic release. The analysis would account for all members of the public on land and on any waterborne vessels and aircraft not operated in direct support of the launch.

Proposed section 417.229 of the SNPRM contains the performance requirements that would apply to any far-field overpressure blast effects analysis, which was referred to in the NPRM as distant focus overpressure blast effects analysis. Proposed section 417.229 combines § 417.231(a) of the October 2000 NPRM with the other performance requirements from other paragraphs of § 417.231 of the October 2000 NPRM. Section 417.229 of the SNPRM contains modified requirements with substantial streamlining and modifications made for clarity, to provide more flexibility, and to better capture current practice at the federal ranges. Section 417.229(a) combines paragraphs (a) and (c) from § 417.231 of the October 2000 NPRM. Section 417.229(a) now states that a flight safety analysis must establish flight commit criteria that ensure compliance with the public risk criterion. Thus, the SNPRM now proposes the option of performing a risk analysis to assess the potential for casualties due to window breakage consistent with the updated public risk criteria regarding blast risk. To provide greater consistency with current practice, paragraph (a) clarifies that a flight safety analysis must demonstrate that any potential source of far field blast overpressure due to explosions during launch vehicle flight, not just distant focus overpressure from debris impacts, will not cause window breakage. Alternatively, the analysis must demonstrate satisfaction of the risk criteria. The SNPRM emphasizes that the hazard of concern is ''far field blast overpressure due to explosions during launch vehicle flight,'' which excludes consideration of potential sonic boom effects due to normal flight in this analysis. Potential sonic boom effects are typically considered in the environmental review process. Given the proposed 1.0 psi threshold for debris risk analysis, the FAA proposes that the far field blast overpressure analysis must account for any potential source of far field blast overpressure to ensure adequate public protection from potential window breakage hazards and remain consistent with current practice. Past experience at the Eastern and Western Ranges demonstrates that debris impacts are the overwhelmingly dominant source of public risk due to far field blast overpressure (peak incident overpressures below 1.0 psi). However, improperly designed flight termination systems may produce propellant explosions at altitude with the potential to break windows in protected areas.

Section 417.229(b) would provide performance requirements that apply to any far-field blast overpressure analyses, in lieu of the prescriptive requirements proposed in the October 2000 NPRM. Although proposed paragraph (b)(5) would require an analysis to account for the characteristics of potentially affected windows, including size, location, orientation, glazing material, and condition, the FAA does not intend this to require a physical survey of potentially affected public areas. Instead, reasonable assumptions based on the building construction and characteristics typical of the affected public areas may be applied to account for the characteristics of potentially affected windows. For example, as described in A417.29 of appendix A of this SNPRM, the FAA foresees that a launch operator could demonstrate that far field blast overpressure due to potential explosions during launch vehicle flight will not cause windows to break based on the equations and assumptions of the American National Standard ''Estimating Air Blast Characteristics for Single Point Explosions in Air, with a Guide to Evaluation of Atmospheric Propagation and Effects,'' ANSI S2.20–1983. The remaining analysis methodology requirements of § 417.231 of the October 2000 NPRM have been streamlined and moved to A417.29 of appendix A to part 417.

Proposed section 417.231 of the SNPRM contains the performance requirements that would apply to collision avoidance analysis and captures current practice at federal ranges. Proposed section 417.231 does not contain any new requirements as compared to the October 2000 NPRM; however, the provisions of the October 2000 NPRM have been reorganized. Proposed section 417.231 contains the requirements that were in § 417.233(a) of the October 2000 NPRM. The title of § 417.233 in the NPRM was ''Conjunction on launch assessment, '' which is a term used by United States Space Command. The SNPRM changes the title of the proposed section to ''Collision avoidance analysis,'' to be more consistent with common terminology used at the federal ranges. The analysis methodology requirements that were in § 417.233 of the October 2000 NPRM have been moved to A417.31 of appendix A to part 417.

A federal launch range will typically perform a collision avoidance analysis for any launch from that range. If no federal range is involved in the launch, the launch operator would obtain a collision avoidance analysis from United States Space Command. A launch operator would implement any waits in the launch window, as identified by United States Space Command, during which flight must not be initiated in order to maintain a 200-kilometer separation from any habitable orbiting object.

Proposed section 417.233 of the SNPRM contains the performance requirements that would apply to the flight safety analysis for launch of an unguided suborbital rocket flown with a wind weighting safety system and

captures current practice at federal ranges. Proposed section 417.233 does not contain any new requirements as compared to the October 2000 NPRM; however, the provisions of the October 2000 NPRM have been reorganized. Proposed section 417.233 contains the requirements that were in § 417.235(a) of the October 2000 NPRM. The remaining analysis methodology requirements that were in § 417.235 of the October 2000 NPRM have been moved to A417.33 of appendix A to part 417. The analysis would be required to establish the launch commit criteria and other launch safety rules to control the risk to the public due to potential adverse effects resulting from normal and malfunctioning flight and ensure satisfaction of the public risk criteria. The analysis would establish any wind constraints under which launch could occur and include a wind weighting analysis that established the launcher azimuth and elevation settings that corrected for the windcocking and wind-drift effects on the unguided suborbital rocket..

Appendix A—Flight Safety Analyses Methodologies and Products

The SNPRM combines requirements that were in the original appendix A to part 417 of the October 2000 NPRM with requirements moved from part 417, subpart C of the October 2000 NPRM to create a comprehensive flight safety analysis methodologies and products appendix. A417.1 would provide the scope of the appendix. Appendix A would contain requirements for the methods used in performing flight safety analysis as required by § 417.107(d) and subpart C of part 417. The methodologies contained in appendix A would represent acceptable means of satisfying the analysis performance requirements of subpart C and provide a standard against which any proposed alternative analysis approach would be measured. Appendix A would also identify the analysis products that a launch operator would be required to submit to the FAA in accordance with § 417.203(e).

Comments received regarding the October 2000 NPRM indicated that there was confusion as to who had to perform various flight safety analyses and regarding when the various analysis methodology requirements applied, in particular with regard to licensed launches from federal ranges. A417.3 would clarify that the requirements of appendix A would apply to a launch operator and the launch operator's flight safety analysis unless the launch operator demonstrated that an alternative approach provided an equivalent level of safety. If a federal launch range performed the launch operator's analysis, § 417.203(d) would apply. Proposed appendix A section A417.33 would apply to the flight of any unguided suborbital launch vehicle that used a wind weighting safety system. All other sections of appendix A would apply to the flight of any launch vehicle required to use a flight safety system in accordance with proposed § 417.107(a). For any alternative flight safety system approved by the FAA in accordance with 417.107(a)(3), the FAA would determine the applicability of appendix A during the licensing process.

Proposed section A417.5 references important requirements of the new proposed § 417.205 that a launch operator would need to know when satisfying the requirements of appendix A. These requirements are the general performance requirements for public risk management and the requirements for the compatibility of the input and output of dependent analyses.

The remaining sections of appendix A do not contain any new requirements as compared to the October 2000 NPRM and current practice; however, the provisions of the October 2000 NPRM have been reorganized and in a number of cases, the requirements have been significantly streamlined in response to comments received on the NPRM and to provide greater consistency with current practice. Comments will be addressed in the final rule. Requirements that were in subpart C of part 417 of the October 2000 NPRM were streamlined where possible and moved to appendix A. For example, paragraph A417.7(a) references the new top level performance requirement, now in section 417.207. The rest of the material in A417.7 comes from section 417.205 of the original NPRM. The other sections in appendix A now follow this same approach. For each new performance requirement section in the revised part 417 subpart C, there is a section in appendix A. As another example, performance malfunction turn analysis requirements would now appear in § 417.211. The methodology requirements for calculating malfunction turn data and the requirements for analysis products that would apply to a launch operator's demonstration of compliance would now appear in A417.11. The flight hazard area analysis requirements that were in the original appendix A, have now been combined with the flight hazard area requirements that were in § 417.225 of the October 2000 NPRM and the combined requirements are now in A417.23. The FAA's goal is to have a single, all inclusive flight safety analysis appendix that contains detailed requirements necessary to demonstrate compliance with the flight safety analysis performance requirements that are now in subpart C of part 417.

Proposed section A417.7 contains trajectory analysis methodology requirements that were in § 417.205 of the October 2000 NPRM with some significant modifications. The NPRM would have allowed the use of annual or monthly composite wind profiles in a launch operator's trajectory analysis. Proposed A417.7(b) changes the proposed requirement to composite wind profiles for the month that a proposed launch will take place or winds that are as severe or more severe than the winds for the month that a proposed launch will take place. Annual winds may or may not represent worst case conditions. Use of annual winds in some cases can result in significant launch restrictions and in other cases may result in unsafe analysis results. Use of monthly wind profiles is current practice at both Air Force ranges and does not represent any increase in analysis effort. A launch operator would still be allowed to use ''worst case winds'' in a trajectory analysis.

The October 2000 NPRM would have required that the three-sigma trajectories be determined assuming a normal bivariate Gaussian distribution. The SNPRM contains changes that recognize that the distribution may in fact be something else. Paragraph A417.7(d) now proposes only that the trajectory analysis describe the distribution. The original requirements for a Gaussian distribution in the following paragraphs have been deleted and the paragraphs have been reworded to reflect the possibility of different distributions. These changes provide for greater flexibility and broader applicability of the requirements.

The proposed requirements for a fuel-exhaustion trajectory in SNPRM paragraph A417.7(d)(3) have been streamlined as compared to § 417.205(d)(3) of the October 2000 NPRM. As indicated by comments received on the NPRM the subparagraphs under § 417.205(d)(3) of the NPRM were in some ways repetitive. The SNPRM contains no new fuel-exhaustion trajectory requirements. Proposed paragraph A417.7(d)(3) in the SNPRM has been reworded and the subparagraphs have been deleted to eliminate repetitiveness. The SNPRM clarifies that the requirements for a fuel-exhaustion trajectory only apply to launch vehicles with a last suborbital stage that will terminate thrust nominally without burning to fuel exhaustion.

Proposed A417.7(e) of the SNPRM contains requirements for a straight-up trajectory that remain unchanged from § 417.205(e) of the October 2000 NPRM.

Proposed A417.7(f) of the SNPRM contains significantly streamlined requirements from § 417.205(f) of the October 2000 NPRM. The NPRM would have directed the use of a root-sum-square analysis method or equivalent and provided some detailed requirements that would apply only to the root-sum-square method. The revised proposed requirements of A417.7(f) of the SNPRM provide a more performance oriented approach that recognizes that there is more than one acceptable analysis approach. A417.7(f) would still require the use of a six degree of freedom trajectory model; however, the paragraph would now contain performance requirements for how the model was used. The root-sum-square and Monte Carlo methods are now only referred to as examples of approaches that would satisfy the performance requirements. The detailed requirements proposed in the NPRM for performing a root-sum-square analysis have been deleted. Proposed section A417.7(e)(1) now requires that the analysis identify the distribution of each performance parameter rather than its standard deviation in recognition that the distribution may be other than normal.

A417.7(g) of the SNPRM contains requirements for trajectory analysis products from § 417.205(g) of the October 2000 NPRM with some streamlining and modifications to remain consistent with changes made to other paragraphs in section A417.7. Paragraph (g)(2) now requires a description of the distribution of each performance error as discussed earlier. Consistent with current practice, the proposed altitude intervals for the required wind profiles in paragraph (g)(3) have been changed from 1000 feet to 5000 feet, which results in fewer data points without any negative effect on the analysis. The last sentence in paragraph (g)(3) has been deleted in the SNPRM as redundant. Paragraph (g)(7) was modified in the SNPRM to combine the original paragraph § 417.205(g)(7) with paragraphs § 417.205 (g)(8) and (9) of the October 2000 NPRM. The SNPRM clarifies the proposed requirement for total thrust paragraph (g)(7)(xi) is total vacuum thrust. The requirements for dynamic pressure and Coriolis displacement proposed in paragraph § 417.205(g)(7)(xiii) and (xiv) of the NPRM have been deleted in the SNPRM as redundant because they can be determined from, or are incorporated into, other data that would be submitted.

Proposed A417.9 of the SNPRM contains requirements for malfunction turn analysis from § 417.207 of the October 2000 NPRM with some streamlining and modifications made for clarity, flexibility, and consistency with current practice. Paragraph (b)(1) now clarifies that malfunction turn data must be provided for a duration of no less than 12 seconds or the product of 1.2 times the three-sigma upper bound time delay determined in accordance with A417.21, whichever is greater. New text in paragraph (b)(1) clarifies that these duration limits apply regardless of whether or not the vehicle would break up before the prescribed duration for the turn data. New text in paragraph (b)(2) states that the analysis must produce malfunction turn data for malfunctions initiated at intervals of no more than four seconds over the flight, instead of every trajectory time as proposed previously. The new text in paragraph (b)(2) is consistent with current 127–1 requirements. The definitions of the different types of malfunction turns that were in paragraph (b)(3) have been moved to paragraph (d). This change is purely an organizational change made to improve readability. Paragraph (b)(4) is revised to clarify that the first malfunction turn start time must correspond to lift-off. Paragraph (b)(4) is also revised to clarify that subsequent malfunction turns must be initiated at regular nominal trajectory time intervals not to exceed the greater of the three-sigma lower bound delay time or four seconds. Consistent with current Air Force requirements in EWR127–1, paragraph (b)(7) is modified to prescribe that gravity effect must be omitted from all malfunction turn data.

Proposed (d)(7)(ii) would require that if flying a trim turn is not possible even for a period of only a few seconds, the malfunction turn analysis would need only establish tumble turns. Otherwise, the malfunction turn analysis would be required to establish a series of trim turns, including the maximum-rate trim turn, and the family of tumble turns. During the part of launch vehicle flight where the maximum trim angle of attack is small, tumble turns may result in the greatest malfunction turn angles. If the maximum trim angle of attack is large, trim turns may lead to higher malfunction turn angles than tumble turns.

In proposed (d)(7)(iii), where a launch operator would be required to establish the maximum turning capability of the launch vehicle, a launch operator would have to account for a launch vehicle that was unstable at low angles attack but stable at some higher angles of attack. If both large and small constant engine deflections of the launch vehicle resulted in tumbling, regardless of how small the deflection might be, the analysis would have to use the malfunction turn capabilities achieved at the stability angle of attack, assuming no upsetting thrust moment, in addition to the turns achieved by a tumbling vehicle. This situation arises because the stability at high angles of attack is insufficient to arrest the angular velocity, which is built up during the initial part of a tumble turn where the launch vehicle is unstable. Although the launch vehicle cannot arrive at this stability angle of attack as a result of the constant engine deflection, there is some deflection behavior, such as the nozzle's rate of deflection, that will produce this result. If a launch operator did not elect to employ such a deflection program, the launch operator could simplify the analysis by assuming that the launch vehicle instantaneously rotated to the trim angle of attack and stabilized at this point. In such a case, tumble turn angles could be used during that part of launch vehicle flight for which the tumble turn envelope curve maintained a positive slope throughout the duration of the computation.

The phrase, ''if thrust augmenting rocket motors are used on a launch vehicle,'' is deleted from paragraph (e)(4)(iii) because the launch operator would be required to submit vehicle orientation data in all cases. This modification is consistent with current EWR 127–1 requirements and necessary because the potential for non-symmetric induced velocities exists irrespective of the presence of thrust augmenting rocket motors.

Proposed section A417.11 of the SNPRM contains requirements for debris analysis taken from § 417.227 of the October 2000 NPRM with some streamlining and modifications made for clarity, to provide more flexibility, and to remain consistent with current practice. This section streamlines the October 2000 NPRM in that the same debris analysis requirements now apply to both intentionally jettisoned debris and debris resulting from launch vehicle break-up. Paragraph (c)(1) clarifies that a debris model must provide debris fragment data for the number of temporal segments sufficient to meet the requirements for smooth and continuous contours used to define hazard areas as required by A417.23. Paragraph (c)(8) and sub-paragraphs to (c)(3) are now consistent with the current Air Force requirements of EWR 127–1. Debris analysis requirements proposed by the October 2000 NPRM in

paragraph (c)(9) were moved to the debris risk analysis section (A417.25) because computation of the effective casualty area for inert fragments depends on the path angle of the fragment trajectory at impact. Consistent with current Air Force requirements in EWR 127–1, paragraph (c)(10)(ii) now allows grouping of fragments with subsonic ballistic coefficients less than or equal to three within a class. Paragraph (c)(10)(iii) also proposes greater consistency with current Air Force requirements in EWR 127–1. Minor non-material changes were made to paragraph (d) and elsewhere to provide more clarity.

Section A417.13 of the SNPRM contains requirements for flight safety limits analysis from § 417.211 and § 417.213 of the October 2000 NPRM with some streamlining and modifications made for clarity, to provide more flexibility, and to remain consistent with current practice. As previously mentioned, the SNPRM eliminates the requirement for a separate flight control line analysis. The pertinent requirements to account for map and tracking errors that were part of the flight control lines analysis in the October 2000 NPRM are now included as part of the flight safety limits analysis. The October 2000 NPRM proposed that the flight safety limits ''must ensure that the launch vehicle's debris impact dispersion does not extend beyond the flight control lines.'' In keeping with current practice at the federal ranges, paragraph (b) of the SNPRM expands and clarifies that for a flight termination at any time during launch vehicle flight, the flight safety limits would: (1) Represent, but need to be limited to, the extent of the debris impact dispersion for all debris fragments with ballistic coefficient greater than or equal to three; and (2) ensure that the debris impact area on the Earth's surface that is bounded by the debris impact dispersion in the uprange, downrange and crossrange directions; does not extend to any populated or other protected area. Using flight safety limits to protect the public from debris with ballistic coefficient greater than or equal to three is consistent with current practice at the federal ranges. Any risk due to more wind sensitive debris with ballistic coefficients less than three are typically addressed using risk assessment. Paragraph (c) of the SNPRM presents the risk management options of employing flight safety limits that provide hazard isolation or defining flight safety limits that generally contain hazardous debris together with debris risk assessment to ensure the public risk criteria are satisfied.

Section A417.15 of the SNPRM contains requirements for straight-up time analysis from § 417.215 of the October 2000 NPRM with some streamlining. The SNPRM references sources of debris impact dispersion of A417.13(b)(4)(ii) through (xiii) instead of re-listing those. In addition, the SNPRM eliminates the requirement for a sample set of straight-up time calculations because a description of the methodology used will suffice.

The SNPRM does not contain a section dedicated to wind analysis requirements such as § 417.217 of the October 2000 NPRM. Instead, wind analysis elements have been incorporated into those sections that involve wind analysis products.

Section A417.17 of the SNPRM contains requirements for a no-longer terminate gate analysis from § 417.219 of the October 2000 NPRM with some streamlining. Paragraph (b)(4) was modified to clarify that the width of the gate must restrict a launch vehicle's normal trajectory ground trace. Because a ''normal trajectory'' means a trajectory within three-sigma of nominal with wind effects, the remainder of the (b)(4) was eliminated as redundant. Similarly, the definition of tracking representation was eliminated from (c)(1) since the SNPRM provides this definition in § 417.217.

Section A417.19 of the SNPRM contains requirements for the data loss flight time and no-longer terminate time analyses taken from § 417.221 of the October 2000 NPRM, with some streamlining and modifications made for clarity and to remain consistent with current practice. Paragraph (b) of the October 2000 NPRM was eliminated as redundant because the earliest destruct time is, in fact, the first data loss flight time. Paragraph A417.19(b) of the SNPRM modifies paragraph (c) of the October 2000 NPRM to provide requirements for the no-longer terminate time that are consistent with current practice. The SNPRM effectively replaces the term the no-longer endanger time in proposed section A417.19 with the more generic term ''no-longer terminate time'' to be consistent with the performance requirements of proposed § 417.219. Proposed paragraph (b) adds the clarification that when determining the no-longer terminate time the analysis would account for a launch vehicle malfunction that would direct the vehicle toward the nearest flight safety limit or protected area following the same requirements proposed for determining the data loss flight times. Proposed paragraph (c) of the SNPRM modifies paragraph (d) of the October 2000 NPRM to provide the streamlined definition and requirements for data loss flight times that are consistent with current practice.

Section A417.21 of the SNPRM contains requirements for the time delay analysis from § 417.223 of the October 2000 NPRM with some streamlining and modifications made for clarity and to remain consistent with current practice.

Section A417.23 of the SNPRM contains requirements for flight hazard area analysis from § 417.225 of the October 2000 NPRM with streamlining and substantial modifications made to enhance clarity, to provide greater flexibility, and to remain consistent with current practice. The SNPRM eliminates the reference to ''safety clear zones'' in paragraph (b) because no definition or requirements for such existed in the October 2000 NPRM with regard to flight safety analysis. However, the term was used in the proposed ground safety requirements of subpart E of the NPRM. In keeping with current practice, paragraph (b) was modified to present the options of employing a launch site flight hazard area that encompasses the flight safety limits when the hazard isolation option is employed in accordance A417.13(c) or encompasses all hazard areas established in accordance with paragraphs (d) through (i).

Proposed paragraph (d) of section A417.23 would now require that a debris impact hazard area account for the effects of impacting debris resulting from normal and malfunctioning launch vehicle flight, excluding toxic effects, and accounts for potential impact locations of all debris fragments. The October 2000 NPRM had required the debris hazard area to account for any toxic effects of debris, which is not consistent with current practice at the Eastern Range or Western Range. Paragraph (d)(1) and its sub-paragraphs would provide requirements that are consistent with current practice at the Eastern Range and Western Range for determination of an individual casualty contour. Specifically, the SNPRM clarifies that a debris hazard area must be bounded by an individual casualty contour that defines where the risk to an individual would exceed an expected casualty (E_C) criterion of 1×10^{-6} if one person were assumed to be in the open and inside the contour during launch vehicle flight. The SNPRM clarifies that an individual casualty contour would be determined using the blunt trauma and overpressure effects thresholds common to the Air Force and the FAA. Elements of the sub-paragraphs to (d) in the

October 2000 NPRM are re-organized for greater clarity. Also, the sub-paragraphs to (d) are revised to provide greater flexibility by specifying performance level requirements. In sub-paragraph (d)(5), the SNPRM now requires only that the analysis must account for the type of vehicle breakup, either by the flight termination system or by aerodynamic forces, eliminating the excess conservatism associated with the phrase ''whichever results in the greater debris dispersion'' that appeared in sub-paragraph (d)(4) of the October 2000 NPRM. In sub-paragraph (d)(6), the SNPRM now requires that the analysis use a probability of occurrence equal to one for the planned debris fragments produced by normal separation events during flight, consistent with current practice. This correction to the October 2000 NPRM provides positive public protection from planned jettison debris regardless of the probability of mission success.

Proposed paragraph (e) in section A417.23 of the SNPRM contains modified requirements for the near-pad blast hazard area that are more consistent with current practice than those in the October 2000 NPRM. The paragraph (e) would require a hazard area analysis to define a blast overpressure hazard area as a circle centered at the launch point with a radius equal to the 1.0-psi overpressure distance produced by the equivalent TNT commensurate with the explosive capability of the vehicle, in lieu of the 3.0 psi overpressure level specified in the October 2000 NPRM. This modification is generally consistent with current practice, although overpressure levels used to define near-pad blast hazard areas for flight vary significantly between ranges. The Eastern Range uses an overpressure level that is more conservative than 1.0 psi. Also consistent with current practice, the paragraph would require the establishment of a minimum near-pad blast hazard area to provide protection from hazardous fragments potentially generated and propelled by an explosion. These modifications to paragraph (e) are not expected to produce more restrictive hazard areas because the overall flight hazard area must envelope the near-pad blast hazard area, the individual casualty contour, any ship-hit contours, and any aircraft-hit contour. Typically, a near-pad blast hazard area established to meet the proposed requirements would not extend beyond the individual casualty contour.

Proposed paragraph (g) in section A417.23 of the SNPRM contains modified requirements for the flight hazard area ship-hit contours that are more consistent with current practice and provide greater flexibility by specifying performance level requirements. Whereas the NPRM of October 2000 specified that the ship-hit contour need not account for debris with a ballistic coefficient less than three, the SNPRM requires that the ship hit use the blunt trauma and overpressure effects thresholds common to the Air Force and the FAA. As previously discussed, these thresholds provide a level of protection commensurate with current practice.

Proposed section A417.25 of the SNPRM contains requirements for debris risk requirements from § 417.227 of the October 2000 NPRM with some streamlining and modifications made for clarity, to provide more flexibility, and to remain consistent with current practice. Paragraph (b)(3) would be streamlined by replacing ''planned launch vehicle events and breakup of a launch vehicle due to activation of a flight termination system or spontaneous breakup due to a launch vehicle failure during launch vehicle flight'' with ''normal and malfunctioning launch vehicle flight.'' Whereas the NPRM of October 2000 indicated that the debris risk analysis would not need to account for debris with a ballistic coefficient less than three, the SNPRM specifies that the debris risk analysis must use the blunt trauma and overpressure effects thresholds common to the Air Force and the FAA.

New text in paragraph (b)(4)(i) of section A417.25 clarifies the portion of trajectory time for which a debris risk analysis must account. The text, ''planned flight events and from launch vehicle failure'' is replaced with ''normal and malfunctioning launch vehicle flight'' in accordance with discussions with the Common Standards Working Group. Modifications in paragraph (b)(4)(ii) clarify that the factors accounted for in the dispersion for each debris class include the variance produced by break-up imparted velocities and the variance produced by aerodynamic properties for each debris class. Variance in the impact dispersion due to aerodynamic properties includes the effects of lift and drag, whereas the NPRM inadvertently omitted the influence of lift. Paragraph (b)(4)(iii) is streamlined to delete redundant text. The phrase, ''performs a survivability analysis and'' is deleted from the second sentence of this paragraph to allow an assumption of 100% survivability to substitute for a survivability analysis.

Paragraph (b)(8) of section A417.25 is modified to require the use the blunt trauma and overpressure effects thresholds common to the Air Force and the FAA. New text is added as (b)(8)(i) and (b)(8)(ii) to provide more flexibility in casualty area analysis for inert debris fragments. The SNPRM proposes a two-tier approach to the casualty area estimates that allows a simple and conservative estimate (that the effective casualty area equals seven times the maximum projected area of the fragment) to substitute for an analysis of the effective casualty area for each inert debris fragment that accounts for bounce, skip, slide, and splatter effects based on the path angle of the fragment trajectory at impact among other influences.

The first sentence of paragraph (b)(9) clarifies that ''traditional'' population growth rate equations are exponential in nature. The second sentence in this paragraph is deleted as unnecessarily prescriptive and inflexible. The population model requirements are streamlined and clarified to define population centers that are similar enough to be described and treated as a single average set of characteristics without degrading the accuracy of the debris risk estimate.

The second sentence in paragraph (b)(10)(iii) of section A417.25 is modified for clarity by deleting the word ''census.'' Population density information may come from other sources. Paragraph (c)(3) was reorganized and modified for clarity to include subparagraphs (i), (ii), and (iii). Paragraph (c)(3)(i) states, ''Flies within normal limits until some malfunction causes spontaneous breakup or results in a commanded flight termination.'' Paragraph (c)(3)(ii) is modified to read, ''Experiences malfunction turns.'' This new failure scenario text is consistent with current EWR 127–1 requirements. Paragraph (c)(3)(iii) is added to read, ''Flight safety system fails to function.'' The word ''cell'' in Paragraph (c)(4) is replaced with ''center'' to reflect current practice. New text is added to account for a population model containing a description of the shelter characteristics within the population center. The new text in paragraph (c)(4) identifies a population characteristic currently used in Range Safety population models.

The SNPRM proposes minor modifications to paragraph (c) form completeness, to enhance clarity, and to require that the debris risk analysis products are consistent with current practice as well as the proposed requirements. In sub-paragraph (7)(i), the SNPRM clarifies that the debris analysis products must describe the

propellant composition, instead of its ingredients. This correction indicates that the relevant information is the product of propellant formulation process. Whereas the October 2000 NPRM required simply that the debris analysis products must include a description of the ''thrust profile,'' the SNPRM clarifies this requirement by specifying the ''vacuum thrust profile'' in sub-paragraph (7)(ii). Because the SNPRM specifies that the ''vacuum thrust profile'' is used to describe the ''thrust profile,'' the FAA proposes to add sub-paragraph (7)(viii) to require description of the corresponding nozzle entrance and exit areas for completeness. Section A417.229 of the SNPRM contains modified requirements based on § 417.231 of the October 2000 NPRM with substantial streamlining and modifications made for clarity, to provide more flexibility, and to remain consistent with current practice. Paragraph (a) combines paragraphs (a) and (c) from § 417.231 of the October 2000 NPRM. Paragraph (a) now states that a flight safety analysis must account for distant focus overpressure and any overpressure enhancement to establish the potential for broken windows due to peak incident overpressures below 1.0 psi and related casualties due to falling or projected glass shards. Paragraph (a) also provides the option to perform a risk analysis to assess the potential for casualties due to window breakage consistent with the updated public risk criteria regarding blast risk. To provide greater consistency with current practice, paragraph (a) clarifies that a flight safety analysis must account for any potential source of far-field overpressure that may cause window breakage, not exclusively distant focus overpressure from debris impacts. Given the proposed 1.0 psi threshold for debris risk analysis, the FAA and Air Force concluded that the proposed far-field blast overpressure analysis must account for any potential source of far-field overpressure to ensure adequate public protection from potential window breakage hazards. Past experience at the ER and WR demonstrates that debris impacts are the overwhelmingly dominant source of public due risk due to far field overpressure (peak incident overpressures below 1.0 psi). Paragraph (b) now provides performance level requirements that apply to both hazard analysis and probabilistic far-field blast overpressure analyses, in lieu of the prescriptive requirements put forth in the October 2000 NPRM.

Section A417.31 of the SNPRM contains requirements for collision avoidance analysis taken from § 417.233 of the October 2000 NPRM with some streamlining and modifications made for clarity. The terms ''licensee'' and ''license applicant'' in A417.31 are now renamed ''launch operator'' to reflect similar terminology used throughout other sections. The second sentence in paragraph (b)(3) now states, ''If an updated conjunction on launch assessment is needed due to a launch delay, a launch operator must submit the request to United States Space Command at least 12 hours prior to the beginning of the new launch window.'' This clarifies the agency responsible for receiving collision avoidance analysis requests and the lead-time for such requests. The launch assessment worksheet, figure A417.31 1., in paragraph (c) is no longer necessary. All data requirements are described in the following text. Removal of the figure streamlines this section and eliminates the requirement to revise this section when the assessment worksheet format changes. The second sentence in paragraph (c)(5) originally read, ''The term 'vector at injection' is used to identify the position and velocity vectors after the thrust for a segment has ended.'' This is now changed to read, ''The term 'vector at injection' is used to identify the position and velocity of all orbital or suborbital segments after the thrust for a segment has ended.'' This is more technically correct. Paragraph (c)(5) is streamlined by deleting the third sentence. This sentence is unnecessary since it provides a previous definition to a term that is no longer used. Position and velocity information in paragraph (c)(5)(ii) is modified for the purposes of clarity to read, ''The position coordinates in the EFG coordinate system measured in kilometers and the EFG components measured in kilometers per second, of each launch vehicle stage or payload after any burnout, jettison, or deployment.''

Appendixes B Through I of Part 417

The only changes that this SNPRM makes to appendixes B though I of part 417 involve references made to sections of proposed subpart C of part 417. This SNPRM modifies and reorganizes proposed subpart C of part 417. As a result a number of references made in proposed appendixes B through I of part 417 to sections in subpart C of part 417 must be changed accordingly. The necessary reference changes are identified in this SNPRM.

VI. Procedural Matters

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, the Federal Aviation Administration has reviewed the information collection requirements of this supplemental notice of proposed rulemaking. The FAA has determined that this supplemental notice of proposed rulemaking does not alter the information collection requirements of the notice of proposed rulemaking issued October 25, 2000. With that notice of proposed rulemaking, the FAA determined that there would be no additional burden to respondents over and above that which the Office of Management and Budget has already approved under the existing rule titled, ''Commercial Space Transportation Licensing Regulations'' (OMB control number 2120–0608). Under the existing rule, the FAA considers license applications to launch from non-federal sites on a case-by-case basis. In conducting a case-by-case review, the FAA gives due consideration to current practices in space transportation, generally involving launches from federal sites. Accordingly, the FAA believes that, under the proposals of the NPRM and this SNPRM, there would be no additional information collection not already included in the previously approved information collection activity. This rule would eliminate the case-by-case review, thereby streamlining the licensing process, and would not place any additional burden on the respondent.

Regulatory Evaluation Summary; Introduction

Proposed and final rule changes to federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each federal agency propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment

of the costs, benefits, and other effects of proposed or final rules that include a federal mandate likely to result in the expenditure by state, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, the Federal Aviation Administration (FAA) has determined that the Supplement to the Notice of Proposed Rulemaking (SNPRM): (1) Is ''a significant regulatory action'' as defined in the Executive Order, and is ''significant'' as defined in the Department of Transportation's Regulatory Policies and Procedures; (2) will not have a significant impact on a substantial number of small entities; (3) will not reduce barriers to international trade; and (4) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. These analyses are available in the docket, and are summarized below.

Regulatory Background

The FAA's Associate Administrator for Commercial Space Transportation, on October 25, 2000, issued a Notice of Proposed Rulemaking (NPRM) that proposed to amend the commercial space transportation regulations by codifying the license application process for launches from non-federal launch-sites. The NPRM was also intended to codify the current safety requirements for launch operators regarding license requirements, criteria, and responsibilities in order to protect the public from hazards of launches from federal and non-federal sites. Comments received on the NPRM resulted in the development of the SNPRM, which offers clarifications and proposed changes to the NPRM based on certain comments to the NPRM. The SNPRM, together with the NPRM, would codify the Federal Aviation Administration's license application process for launch from non-federal launch sites, and would codify the safety requirements for licensed launch operators in order to protect the public from the hazards of launch from either a federal range or non-federal launch site.

Identification of Current Practice

Whether launching from a federal range, a launch site located on a federal range, or a non-federal launch site, a launch operator is responsible for ground and flight safety under its FAA license. At a federal launch range a launch operator is currently required to comply with the rules and procedures of the federal range. It is current practice for the FAA to accept federal range safety requirements for licensed launches from federal ranges, as current federal range procedures and practices satisfy the majority of the FAA's safety concerns. In the absence of federal launch range oversight, each launch operator would be required to demonstrate the adequacy of its ground and flight safety programs to the FAA in order to satisfy the FAA's statutory responsibility. Current practice for licensed launches from non-federal launch sites is for operators to achieve a level of safety equivalent to that at the federal ranges.

Regulatory Requirements

Two revisions to the NPRM—section 417.107(b), public risk criteria, and section 417.203, compliance—as presented in the SNPRM, would result in economic impacts. These two sections are the principal focus of this regulatory evaluation of the SNPRM. They contain the following regulatory proposals that have changed relative to the NPRM: (1) Applying the risk criteria of $E_c \leq 30 \times 10^{-6}$ to each hazard individually rather than aggregating the risk over all hazards as was proposed in the NPRM, and (2) requiring the FAA to perform more intensive and timely baseline assessments of federal range flight safety analyses in order to verify launch operator compliance with range safety.

Costs of the Supplement to the Notice of Proposed Rulemaking

The SNPRM would impose a total estimated cost of approximately $700,000 ($530,000 discounted), in 2001 dollars, on the commercial space transportation industry over the 5-year period from 2003 through 2007. The FAA would incur some costs to administer the SNPRM but there is insufficient information to quantify and develop an estimate at this time.

Commercial Space Transportation Industry Costs

Commercial space transportation launch operators would incur additional costs to comply with the requirements contained in Section 417.107(b) of the SNPRM only. This requirement proposes that the risk criteria be applied to each hazard individually, rather than aggregating the risk, as was proposed in the NPRM. The proposed limits and method of applying risk on a per hazard basis are less stringent than that of aggregating the risk for all hazards. Existing FAA regulations establish a risk criteria of $E_c \leq 30 \times 10^{-6}$ for the debris hazard. It is current practice for the FAA to accept the federal range requirements for launches from federal ranges, in accordance with an assessment performed by the FAA. The majority of licensed launches to date have taken place primarily from the Air Force's Eastern Range, which calculates risk and applies risk criteria on a per hazard basis without considering the aggregate risk. The Air Force's Western Range also calculates the risk due to each hazard; however, the Western Range does consider the aggregate risk in its decision-making process. Therefore, current practice could be either approach, depending on from which range the launch takes place.

The Eastern Range has allowed a launch when the toxic risk was 233×10^{-6} for expected casualty, which is less stringent than the 30×10^{-6} per hazard proposed in the SNPRM. While it is mainly government launches that rely on this risk ceiling for toxic hazards in excess of 30×10^{-6}, there have been few licensed launches that have exceeded this level. The regulatory evaluation associated with the NPRM did not address the probability that licensed launches from the Eastern Range would exceed 30×10^{-6} for toxic risk. Further evaluation and a better understanding of current range practice indicates that Eastern Range launches have proceeded with a significantly higher toxic risk criteria (i.e., up to 114×10^{-6} for a licensed launch) than that being proposed. Therefore, the FAA is now prepared to assume that there may be some future launches that would be delayed due to the proposed requirement.

There were 39 launches of commercial launch vehicles from the Eastern Range from the years 1997 to August 2001. Two of these 39 launches exceeded the toxic risk ceiling proposed by the SNPRM due to meteorological conditions, but were launched anyway because they fell within the acceptable range of the Eastern Range. If these precise meteorological launch conditions existed under the SNPRM, then the two launches, which took place under the current practice at the Eastern Range, would not have launched. Therefore, the proposed requirement, under the same meteorological launch conditions, would cause a commercial launch operator to delay a planned launch from the Eastern Range until more favorable weather prevailed. Launch delays from the Eastern Range would cause a launch operator to incur additional costs.

The FAA estimates that the average cost of a one-day delay to commercial space launch operators would be $380,000. Using the Air Force Eastern Range experience mentioned above—that two out of 39 launches might have to be delayed under the SNPRM—the

FAA estimates the probability of a launch delay in any given year during the 2003 to 2007 period would be five percent (calculated as 2÷39 = .051282). Accordingly, due to the proposed toxic risk ceiling requirement, as many as two of the 36 expected Eastern Range launches from 2003 through 2007 could be delayed (calculated as $.051282 \times 36 = 1.85$). It is important to note that the estimate of two delays attributable to this proposed requirement over the five-year period may be an overstatement. The likelihood of launch delays resulting from toxicity limits is expected to decrease, as future launch vehicle toxicity is expected to be reduced significantly, and future launches are likely to be conducted from launch complexes that are farther away from populated areas. Collectively, these launch characteristics will result in E_c values significantly lower than that experienced historically as well as the proposed ceiling.

Because it is not possible to ascertain with certainty when during the 2003 through 2007 period there will be a launch delay at the Eastern Range as a result of the toxic standard in the SNPRM, the probability of a delay based on past experience is multiplied by all projected launches per annum, yielding the expected number of launch delays. The average cost to a commercial space launch operator of a one-day delay (i.e., $380,000) is multiplied by the expected number of launch delays over the five year period, resulting in a cost of approximately $700,000 ($530,000 discounted) to commercial space transportation industry launch operators to comply with the proposed requirement at the Eastern Range.

This proposed amendment would codify and standardize this requirement for all launches regardless of launch site, and would not differ from current practice for launch operators seeking licenses to perform launches from non-federal launch sites. Accordingly, commercial launch operators would not incur additional costs to comply with this requirement as it pertains to non-federal launch sites.

Federal Aviation Administration Costs

The FAA would incur additional costs to administer the requirements contained in Section 417.203 of the SNPRM. It is a current, customary, and standard operating practice of the FAA to perform baseline assessments of federal range flight safety analyses. However, this proposed requirement creates some urgency in the frequency with which these assessments are performed (i.e., it is imperative that the baseline assessments be updated so as to be consistent with current federal range flight safety analyses, thereby permitting application of this proposed requirement). Further, the FAA believes that more extensive reviews of federal range flight safety programs would be required in order to keep abreast of the increasing number, diversity, and complexity of commercial launches from federal ranges and associated flight safety analyses. As a result of this proposed amendment, the FAA would expend additional effort and incur associated incremental costs to perform more rigorous and timely baseline assessments. Although the FAA believes that these incremental costs would not be substantial, there is insufficient information currently available to provide a supportable estimate of these costs at this time.

Additionally, federal organizations other than the FAA, such as DOD and NASA (i.e., federal personnel that are range operators), may be required to expend additional effort and incur incremental costs preparing for more rigorous, extensive, and frequent baseline assessments and cooperating with the FAA during their conduct. Additionally, federal range operating contractors may also be similarly affected by these activities. The FAA solicits comments and detailed information to help better address this subject in this regulatory evaluation.

Total Cost Impact of Supplement to Notice of Proposed Rulemaking

The FAA estimates that the total costs of the SNPRM would be approximately $700,000; these would be incurred entirely by the commercial space transportation launch operators to comply with the proposed requirements contained in the SNPRM. The incremental costs to the FAA to administer the SNPRM would not be substantial and there is insufficient information currently available to develop a supportable estimate.

Safety Benefits From the Supplement to the Notice of Proposed Rulemaking

The SNPRM would result in some additional safety benefits associated with licensed commercial launches from the Eastern Range only. This is due to the proposed requirement associated with section 417.107(b), public risk criteria. The positive safety benefits would be the accident costs avoided (i.e., the dollar value of fatalities, injuries, and property damage) due to applying the toxic risk criteria of 30×10^{-6} (which is less than the 114×10^{-6} that was the highest toxic risk allowed for a licensed launch at the Eastern Range in the past five years). Although the FAA has not quantified the accident prevention or damage limiting effects the proposed requirement would have on Eastern Range launches, it does believe that section 417.107(b) would yield some incremental safety benefits.

Qualitative Benefits From the Supplement to the Notice of Proposed Rulemaking

The proposed SNPRM offers a variety of impacts that would benefit both the commercial space transportation industry and the FAA that are not readily quantified. Formalizing and identifying licensing responsibilities by establishing a specific regulation would emphasize commercial launch operator responsibilities and FAA expectations, and would enhance launch operators' understanding of such. Consequently, the proposed requirement may yield some operating efficiencies and associated cost savings that the FAA has not quantified or estimated.

Further, as the number of applications for launch licensing increases, formality (in the way of a regulation) would also help ensure consistency in implementing the licensing process. This could lead to cost savings to the FAA as a result of economies of scale from repetitive operations. These cost savings would spill over to commercial space transportation entities by reducing the turnaround time between application submittal and licensing approval. Additionally, consistent application of the licensing process would help commercial space transportation entities gain familiarity with its requirements, leading to proficiency in their ability to interact with the process and the FAA. This in turn would lead to industry cost savings, possibly due to less rework or paperwork avoided.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) requires agencies to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions. Agencies are required to determine whether a proposed or final rule would have a significant economic impact on a substantial number of small entities. If the determination is that it will, then the agency must prepare a regulatory flexibility analysis. If an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial

number of small entities, then the head of the agency may so certify and a regulatory flexibility analysis is not required.

The FAA conducted the required review of the SNPRM and determined that it would not have a significant economic impact on a substantial number of small entities. To make this determination, the FAA has identified the commercial space transportation industry launch operators that would be affected by the SNPRM and found that only a small number of businesses that would be affected by the SNPRM could be considered a small entity. For manufacturers, a small entity is one with 1,500 or fewer employees.

The FAA has identified two companies, Astrotech Space Operations and Interorbital Systems, that have fewer than 1,500 employees. Astrotech Space Operations is a wholly owned subsidiary of Spacehab, which has average annual revenues of approximately $100 million. The total cost of the SNPRM to industry would be $700,000. This total cost for the industry is less than one percent of Spacehab's annual revenue. Hence, the cost of the SNPRM would not constitute a significant economic impact on a firm with revenues of this magnitude. The cost of a delayed launch might have a significant impact on Interorbital Systems. Even if delay costs are significant for this entity, one impacted entity is not considered a substantial number of small entities. Accordingly, on this basis and pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FAA certifies that the SNPRM would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments with regard to this certification and requests that supporting documentation be supplied.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from promulgating any standards or engaging in any related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards.

In accordance with the above statute and policy, the FAA has assessed the potential effect of the SNPRM and has determined that it would impose the same costs on domestic and international entities, and thus has a neutral trade impact.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action will not have a substantial direct effect on the states, on the relationship between the national U.S. Government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this final rule does not have federalism implications.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), enacted as Pub. L. 104–4 on March 22, 1995, is intended among other things, to curb the practice of imposing unfunded federal mandates on state, local, and tribal governments.

Title II of the Act requires each federal agency to prepare a written statement assessing the effects of any federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more (adjusted annually for inflation) in any one year by state, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.''

The SNPRM does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Environmental Assessment

The FAA has determined that the proposed amendments to the commercial space transportation licensing and safety rules are categorically excluded from environmental review under 102(2)(C) of the National Environmental Policy Act (NEPA). The proposed rules, which address obtaining and maintaining a license, are administrative and procedural in nature and are therefore categorically excluded under FAA Order 1050.1D, appendix 4, paragraph 4(i). In addition, part 415 already requires an applicant to submit sufficient environmental information for the FAA to comply with NEPA and other applicable environmental laws and regulations during the processing of each license application, thereby ensuring that any significant adverse environmental impacts from licensing commercial launches will be considered during the application process. Accordingly, the FAA has determined that this rule is categorically excluded because no significant impacts to the human environment will result from finalization or implementation of its administrative and procedural provisions for licensing commercial launches.

Energy Impact

The energy impact of the rulemaking action has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94–163, as amended (42 U.S.C. 6362). It has been determined that it is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR 415

Rockets, Space transportation and exploration.

14 CFR 417

Aviation safety, Reporting and recordkeeping requirements, Rockets, Space transportation and exploration.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 415 and 417 of Chapter III Title 14, Code of Federal Regulations (as proposed to be revised at 65 FR 63922, Oct. 25, 2000) as follows:

PART 415—LAUNCH LICENSEE

Subpart F—Safety Review and Approval for Launch of an Expendable Launch Vehicle from a Non-Federal Launch Site

1. In § 415.109(g) as proposed to be revised at 65 FR 63966, revise ''§ 417.205'' to read ''§ 417.207''.

2. In § 415.115(b) as proposed to be revised at 65 FR 63967, revise ''§ 417.233'' to read ''§ 417.231''.

3. In § 415.115(d)(5) as proposed to be revised at 65 FR 63967, revise ''§ 417.225'' to read ''§ 417.223''.

4. In § 415.115(f) as proposed to be revised at 65 FR 63967, revise ''§ 417.235'' to read ''§ 417.233''.

5. In § 415.115(f)(2) as proposed to be revised at 65 FR 63967, revise ''§ 417.235'' to read ''§ 417.233''.

6. In § 415.117(c)(2)(ii) as proposed to be revised at 65 FR 63969, revise ''§ 417.229'' to read ''§ 417.227''.

7. In § 415.119(h) as proposed to be revised at 65 FR 63970, revise ''§ 417.225'' to read ''§ 417.223''.

PART 417—LAUNCH SAFETY

8. Revise § 417.1 as proposed to be revised at 65 FR 63977 to read as follows:

Subpart A—General

§ 417.1 Scope and Applicability.

(a) *General.* This part prescribes the responsibilities of a launch operator conducting a licensed launch of an expendable launch vehicle and the requirements with which a licensed launch operator must comply to maintain a license and conduct a launch.

(1) The safety requirements of this part apply to all licensed launches of expendable launch vehicles, except for a launch from a federal launch site that meets one of the conditions of paragraph (b) of this section.

(2) All the administrative requirements of this part for submitting material to the FAA apply to all licensed launches from a non-federal launch site. For a licensed launch from a federal launch range, an administrative requirement of this part does not apply if the FAA, through its baseline assessment of the range, finds that the range satisfies the requirement. For a licensed launch from a federal range where the range does not satisfy one or more of the requirements of part 417, the FAA will identify, during the licensing process, the administrative requirements that the launch operator must meet.

(3) Requirements for preparing a license application to conduct a launch, including all related policy, safety and environmental reviews and payload determinations, are contained in parts 413 and 415.

(b) *Federal launch range meets intent certifications, waivers, and noncompliances due to grandfathering.*

(1) If a launch operator has a license from the FAA to launch from a federal launch range as of the effective date of this part and, for a specific requirement of this part and launch:

(i) If the launch operator employs an alternative to the requirement for which the federal range has granted a written meets intent certification on or before the [EFFECTIVE DATE OF] this part, the launch operator need not demonstrate to the FAA that its alternative provides an equivalent level of safety; or

(ii) If the launch operator has, on or before the [EFFECTIVE DATE OF] this part, a written waiver from the federal launch range or a noncompliance that satisfies the federal launch range's grandfathering criteria, the requirement of this part does not apply to the launch.

(2) Even if a launch operator satisfies paragraph (b)(1) of this section for a specific requirement of this part, the launch operator must bring its launch and launch vehicle, including components, systems, and subsystems, into compliance with the requirement, whenever one or more of the following conditions occurs:

(i) The launch operator makes modifications that affect the launch vehicle's operation or safety characteristics;

(ii) The launch operator uses the launch vehicle, component, system, or subsystem in a new application;

(iii) The FAA or the launch operator determines that a previously unforeseen or newly discovered safety hazard exists that is a source of significant risk to public safety; or

(iv) The federal range previously accepted a component, system, or subsystem, but, at that time, did not identify a noncompliance to a federal range requirement.

9. Amend proposed § 417.3 as proposed to be revised at 65 FR 63977 by removing the definition of *serious injury;* and adding the following definitions in alphabetical order:

§ 417.3 Definitions.

* * * * *

Equivalent level of safety means an ''approximately equal'' level of safety. An equivalent level of safety may involve a change to the level of expected risk that is not statistically or mathematically significant as determined by qualitative or quantitative risk analysis.

* * * * *

Explosive debris means solid propellant fragments or other pieces of a launch vehicle or payload that result from breakup of the launch vehicle during flight and that explode upon impact with the Earth's surface and cause overpressure.

* * * * *

Meets intent certification means a decision by a federal launch range to accept a substitute means of satisfying a safety requirement where the substitute provides an equivalent level of safety to that of the original requirement.

* * * * *

Normal flight means the flight of a properly performing launch vehicle whose real-time instantaneous impact point does not deviate from the nominal instantaneous impact point by more than the sum of the wind effects and the three-sigma guidance and performance deviations in the uprange, downrange, left-crossrange, or right-crossrange directions.

Normal trajectory means a trajectory that describes normal flight.

* * * * *

Risk means a measure that accounts for both the probability of occurrence of a hazardous event and the consequence of that event to persons or property.

* * * * *

Waiver means a decision that allows a launch operator to continue with a launch despite not satisfying a specific safety requirement and where the launch operator is not able to demonstrate an equivalent level of safety. A waiver may apply where a failure to satisfy a safety requirement involves a statistically or mathematically significant increase in expected risk as determined through qualitative or quantitative risk analysis, and where the activity may or may not exceed the public risk criteria.

10. Amend § 417.107 as proposed to be revised at 65 FR 63981 by revising paragraph (b); redesignating paragraphs (c) through (f) as paragraphs (e) through (h), respectively; adding new paragraphs (c) and (d); and revising newly redesignated paragraphs (e) and (f) to read as follows:

Subpart B—Launch Safety Requirements

§ 417.107 Flight safety.

* * * * *

(b) *Public risk criteria.* A launch operator may initiate the flight of a launch vehicle only if flight safety analysis performed under paragraph (f) of this section demonstrates that any risk to the public satisfies the following public risk criteria:

(1) A launch operator may initiate the flight of a launch vehicle only if the risk associated with the total flight to all members of the public, excluding persons in waterborne vessels and aircraft, does not exceed an expected average number of 0.00003 casualties ($E_C \leq 30 \times 10^{-6}$) from impacting inert and impacting explosive debris, $E_C \leq 30 \times 10^{-6}$ for toxic release, and $E_C \leq 30 \times 10^{-6}$ for far field blast overpressure. The FAA will determine whether to approve public risk due to any other hazard associated with the proposed flight of a launch vehicle on a case-by-case basis. The E_C criterion for each hazard applies to each launch from lift-off through orbital insertion, including each planned impact, for an orbital launch, and through final impact for a suborbital launch. $^{-6}$

(2) A launch operator may initiate flight only if the risk to any individual member of the public does not exceed a casualty expectation (E_C) of 0.000001 per launch ($E_C \leq 1 \times 10^{-6}$) for each hazard, excluding persons in waterborne vessels and aircraft.

(3) A launch operator may initiate flight only if the probability of debris impact to all water-borne vessels (P_{iv})

that are not operated in direct support of the launch does not exceed 0.00001 ($P_{iv} \leq \times 10^{-5}$) in each debris impact hazard area of § 417.223.

(4) A launch operator may initiate flight only if the probability of debris impact to any individual aircraft (P_{ia}) not operated in direct support of the launch does not exceed 0.00000001 ($P_{ia} \leq 1 \times 10^{-8}$) in each debris impact hazard area of § 417.223.

(c) *Debris thresholds.* A launch operator's flight safety analysis, performed as required by paragraph (f) of this section, must account for any inert debris impact with a mean expected kinetic energy at impact greater than or equal to 11 ft-lbs and, except for the far field blast overpressure effects analysis of § 417.229, a peak incident overpressure greater than or equal to 1.0 psi due to any explosive debris impact.

(1) When using the 11ft-lb threshold to determine potential casualties due to blunt trauma from inert debris impacts, the analysis must:

(i) Incorporate a probabilistic model that accounts for the probability of casualty due to any debris expected to impact with kinetic energy of 11 ft-lbs or greater and satisfies paragraph (d) of this section; or

(ii) Count each expected impact with kinetic energy of 11 ft-lbs or greater to a person as a casualty.

(2) When applying the 1.0-psi threshold to determine potential casualties due to overpressure effects, the analysis must:

(i) Incorporate a probabilistic model that accounts for the probability of casualty due to any blast overpressures of 1.0-psi or greater and satisfies paragraph (d) of this section; or

(ii) Count each person within the 1.0-psi overpressure radius of the source explosion as a casualty. When using this approach, the analysis must compute the peak incident overpressure using the Kingery-Bulmash relationship and may not take into account sheltering, reflections, or atmospheric effects. For persons located in buildings, the analysis must compute the peak incident overpressure for the shortest distance between the building and the blast source. The analysis must count each person located anywhere in a building subjected to peak incident overpressure equal to or greater than 1.0 psi as a casualty.

(3) The analysis must account for any inert debris impact with a mean expected kinetic energy at impact greater than or equal to 11 ft-lbs and a peak incident overpressure greater than or equal to 1.0 psi due to any explosive debris impact when demonstrating that a launch satisfies the probability of impact criterion for waterborne vessels of § 417.107(b)(3).

(4) The analysis must account for any inert or explosive debris impact with a mean expected kinetic energy at impact greater than or equal to 11 ft-lbs when demonstrating whether a launch satisfies the probability of impact criterion for aircraft of § 417.107(b)(4). The analysis must account for the aircraft velocity.

(d) *Casualty modeling.* A probabilistic casualty model must be based on accurate data and scientific principles and must be statistically valid. A launch operator must obtain FAA approval of any probabilistic casualty model that is used in the flight safety analysis. If the launch takes place from a federal launch range, the analysis may employ any probabilistic casualty model that is accepted as part of the FAA's baseline assessment of the federal launch range's safety process.

(e) *Collision avoidance.* (1) A launch operator must ensure that a launch vehicle, any jettisoned components, and its payload do not pass closer than 200 kilometers to a habitable orbital object:

(i) Throughout a sub-orbital launch; and

(ii) During ascent to initial orbital insertion through at least one complete orbit for an orbital launch.

(2) A launch operator must obtain a collision avoidance analysis for each launch from United States Space Command. United States Space Command also calls this analysis a conjunction on launch assessment. Sections 417.231 and A417.31 of appendix A of this part contain the requirements for obtaining a collision avoidance analysis. A launch operator must use the results of the collision avoidance analysis to develop flight commit criteria for collision avoidance as required by § 417.113(b).

(f) *Flight safety analysis.* A launch operator must perform and document a flight a safety analysis as required by subpart C of this part. A launch operator must not initiate flight unless the flight safety analysis demonstrates that any risk to the public satisfies the public risk criteria of paragraph (b) of this section. For a licensed launch that involves a federal launch range, the FAA may treat an analysis performed and documented by the federal range as that of the launch operator as provided in § 417.203(d) of subpart C. A launch operator must use the flight safety analysis products to develop flight safety rules that govern a launch. Section 417.113 contains the requirements for flight safety rules.

11. In § 417.113(b)(1) as proposed to be revised at 65 FR 63982, revise ''§ 417.233'' to read ''§ 417.231''.

12. In § 417.113(b)(2) as proposed to be revised at 65 FR 63982, revise ''§ 417.225'' to read ''§ 417.223''.

13. In § 417.113(c)(4) as proposed to be revised at 65 FR 63983, revise ''§ 417.221'' to read ''§ 417.219''.

14. In § 417.113(c)(5) as proposed to be revised at 65 FR 63983, revise ''§ 417.219'' to read ''§ 417.217''.

15. In § 417.117(h) as proposed to be revised at 65 FR 63984, revise the fourth sentence to read as follows: * * * * A post launch report must contain the results of any monitoring of flight environments and any measured wind profiles used for the launch. Section 417.307(b) contains requirements for monitoring flight environments.

* * * * *

16. Revise § 417.121(c) as proposed to be revised at 65 FR 63985 to read as follows:

§ 417.121 Safety critical preflight operations.

* * * * *

(c) *Collision avoidance.* A launch operator must coordinate with United States Space Command to obtain a collision avoidance analysis, also referred to as a conjunction on launch assessment. Sections 417.107(e), 417.231, and A417.31 of appendix A of this part contain requirements for collision avoidance analysis. A launch operator must develop and incorporate flight commit criteria for collision avoidance as required by § 417.113(b).

* * * * *

17. In § 417.121(e)(3) as proposed to be revised at 65 FR 63985, revise ''§ 417.225'' and ''§ 417.235'' to read ''§ 417.223'' and ''§ 417.233'' respectively.

18. In § 417.121(e)(4) as proposed to be revised at 65 FR 63985, revise ''§ 417.225'' and ''§ 417.235'' to read ''§ 417.223'' and ''§ 417.233'' respectively.

19. In § 417.121(f) as proposed to be revised at 65 FR 63985, revise ''§ 417.225'' and ''§ 417.235'' to read ''§ 417.223'' and ''§ 417.233'' respectively.

20. In § 417.121(i) as proposed to be revised at 65 FR 63985, revise ''§ 417.235'' to read ''§ 417.233''.

21. In § 417.125(c)(2) as proposed to be revised at 65 FR 63986, revise ''§ 417.235'' to read ''§ 417.233''.

22. In § 417.125(f) as proposed to be revised at 65 FR 63986, revise ''§ 417.235'' to read ''§ 417.233''.

23. In § 417.125(g)(2) as proposed to be revised at 65 FR 63986, revise ''§ 417.235'' to read ''§ 417.233''.

24. In § 417.323(c) as proposed to be revised at 65 FR 64030, revise ''§ 417.221(c) with § 417.219(c).

25. In § 417.327(g)(10) as proposed to be revised at 65 FR 64033, revise ''§ 417.221'' to read ''§ 417.219''.

26. Revise subpart C of part 417 as proposed to be revised at 65 FR 63987 to read as follows:

Subpart C—Flight Safety Analysis

417.201 Scope and applicability.
417.203 Compliance.
417.205 General.
417.207 Trajectory analysis.
417.209 Malfunction turn analysis.
417.211 Debris analysis.
417.213 Flight safety limits analysis.
417.215 Straight-up time analysis.
417.217 No-longer-terminate gate analysis.
417.219 Data loss flight time and no longer terminate time analyses.
417.221 Time delay analysis.
417.223 Flight hazard area analysis.
417.225 Debris risk analysis.
417.227 Toxic release hazard analysis.
417.229 Far-Field overpressure blast effects analysis.
417.231 Collision avoidance analysis.
417.233 Analysis for launch of an unguided suborbital rocket flown with a wind weighting safety system.
417.234–417.300 [Reserved]

Subpart C—Flight Safety Analysis

§ 417.201 Scope and applicability.

(a) This subpart contains performance requirements for performing the flight safety analysis required by § 417.107(f).

(b) Except as permitted by paragraphs (c) and (d) of this section, the flight safety analysis requirements of this subpart apply to the flight of any launch vehicle that must use a flight safety system as required by § 417.107(a).

(c) The flight safety analysis requirements of § 417.233 apply to the flight of any unguided suborbital launch vehicle that uses a wind weighting safety system.

(d) For any alternative flight safety system approved by the FAA under § 417.107(a)(3), the FAA will determine during the licensing process which of the analyses required by this subpart apply.

§ 417.203 Compliance.

(a) *General.* A launch operator's flight safety analysis must satisfy the performance requirements of this subpart. The flight safety analysis must also meet the requirements for methods of analysis contained in appendices A and B for an orbital launch and appendices B and C for a suborbital launch except as otherwise permitted by this section. A flight safety analysis for a launch may rely on an earlier analysis from an identical or similar launch if the analysis still applies to the later launch.

(b) *Method of analysis.* For each launch, a launch operator's flight safety analysis must use methods approved during the licensing process by the FAA, as a license modification, or, if the launch takes place from a federal launch range, approved as part of the FAA's baseline assessment of the federal range's processes. Appendix A to this part contains requirements that apply to flight safety methods of analysis. A licensee must submit any change to the methods to the FAA as a request for license modification before the launch to which the proposed change would apply. Section 415.73 contains requirements governing a license modification.

(c) *Alternate analysis.* The FAA will approve an alternate flight safety analysis if a launch operator provides a clear and convincing demonstration that its proposed analysis provides an equivalent level of safety to that required by this subpart. A launch operator must demonstrate that an alternate flight safety analysis is based on accurate data and scientific principles and is statistically valid. The FAA will not find the launch operator's application for a license or license modification sufficiently complete to begin review under § 413.11 of this chapter until the FAA approves the alternate flight safety analysis.

(d) *Analyses performed by a federal range.* The FAA will accept a flight safety analysis used by a federal launch range for a licensed launch, if the launch operator has contracted with a federal launch range for the provision of flight safety analysis for a licensed launch, and the FAA has assessed the range and found that the range's analysis methods satisfy the requirements of this subpart. In this case, the FAA will treat the federal launch range's analysis as that of the launch operator and the launch operator need not provide any further demonstration of compliance.

(e) *Analysis products.* For a licensed launch that does not satisfy paragraph (d) of this section, the launch operator must demonstrate to the FAA compliance with the requirements of this subpart, and must include in its demonstration the analysis products required by appendices A, B, and C, depending on whether the launch vehicle uses a flight safety system or a wind weighting safety system. A launch operator must submit analysis products to the FAA as follows:

(1) *License application flight safety analysis.* At the time of license application, a launch operator must submit the required analysis products as part of the launch operator's safety review document in accordance with § 415.115. The FAA will evaluate the analysis to determine whether the methods of analysis for each launch comply with the requirements of this subpart.

(2) *Six-month analysis.* A launch operator must submit launch specific analysis products to the FAA no later than six months before each planned flight. The launch operator:

(i) Must account for vehicle and mission specific input data.

(ii) May reference previously submitted analysis products and data that are applicable to the launch or data that is applicable to a series of launches.

(iii) May state that an analysis product has not changed since the launch operator's license application submittal. In this case, the six-month submittal need not repeat the data.

(iv) Must identify any analysis product that may change as a flight date approaches and describe what needs to be done to finalize the product and when it will be finalized.

(v) Must submit the analysis products using the same format and organization used during the license application process.

(vi) Must, if requested by the FAA, present the six-month flight safety analysis products in a technical meeting at the FAA.

(3) *Thirty-day flight safety analysis update.* A launch operator must submit updated analysis products no later than 30 days before flight. If an analysis product has not changed since the six-month analysis submittal, the launch operator's thirty-day submittal need not repeat the data. The launch operator:

(i) Must account for potential variations in input data that may affect the analysis products within the final 30 days prior to flight.

(ii) May submit the analysis products using the same format and organization used in its license application.

(iii) May not change an analysis product within the final 30 days before flight unless the launch operator identified a process for making a change in that period as part of the launch operator's flight safety analysis process and the FAA approved the process through the licensing process.

(4) *Programmatic flight safety analysis.* A launch operator need not submit the 6-month or 30-day analysis if the launch operator:

(i) Submits complete analysis products during the licensing process;

(ii) Demonstrates that the analysis satisfies all the requirements of this subpart; and

(iii) Demonstrates the analysis does not need to be updated to account for launch specific factors.

§ 417.205 General.

(a) *Public risk management.* A flight safety analysis must demonstrate that the launch operator will, for each launch, control the risk to the public from hazards associated with normal and malfunctioning launch vehicle flight. The analysis must employ risk assessment or hazard isolation, or a combination of risk assessment and partial isolation of the hazards to demonstrate control of the risk to the public.

(1) *Risk assessment.* When demonstrating control of risk through risk assessment, the analysis must demonstrate that any risk to the public satisfies the public risk criteria of § 417.107(b) of this part. The analysis must account for, but need not be limited to, the variability associated with:

(i) Each source of a hazard during flight,

(ii) Normal flight and each failure response mode of the launch vehicle,

(iii) Each external and launch vehicle flight environment,

(iv) Populations potentially exposed to the flight, and

(v) The performance of any flight safety system, including time delays associated with the system.

(2) *Hazard isolation.* When demonstrating control of risk through hazard isolation, the analysis must establish the geographical areas from which the public must be excluded during flight and any operational controls needed to isolate all hazards from the public.

(3) *Combination of risk assessment and partial isolation of hazards.* When demonstrating control of risk through a combination of risk assessment and partial isolation of the hazards from the public, the analysis must demonstrate that the residual public risk due to any hazard not isolated from the public under paragraph (a)(2) of this section satisfies the public risk criteria.

(b) *Dependent analyses.* Because some analyses required by this subpart are inherently dependent on one another, the data output of any one analysis must be compatible in form and content with the data input requirements of any other analysis that depends on that output. Figure 417.203–1 illustrates the flight safety analyses that might be performed for a launch that uses a flight safety system and the typical dependencies that exist among the analyses.

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Data Source Analyses (These analyses provide data to the dependent analyses indicated with an X.)	Dependent Analyses (These analyses use data from the data source analyses indicated as input.)									
	Malfunction Turn	Flight Safety Limits	Straight Up Time	No-Longer Terminate Gate	Data Loss Flight Time	Flight Hazard Areas	Debris Risk Analysis	Toxic Release Hazard Analysis	Far Field Overpressure Blast Effects Analysis	Collision Avoidance Analysis
Trajectory Analysis	X	X	X	X	X	X	X	X	X	X
Malfunction Turn Analysis		X	X		X	X	X	X	X	
Debris Analysis		X	X	X	X	X	X	X	X	X
Flight Safety Limits			X	X	X	X	X	X	X	
Straight-Up Time								X	X	
No-Longer Terminate Gate					X		X	X	X	
Data Loss Flight Time	X									
Time-Delay Analysis	X	X	X	X	X	X	X	X	X	X

Figure 417.203-1, Illustration of dependent flight safety analyses that might performed for a launch that uses a flight safety system

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§ 417.207 Trajectory analysis.

(a) *General.* A flight safety analysis must include a trajectory analysis that establishes:

(1) For any time after lift-off, the limits of a launch vehicle's normal flight, as defined by the nominal trajectory and potential three-sigma trajectory dispersions about the nominal trajectory.

(2) A fuel exhaustion trajectory that produces instantaneous impact points with the greatest range for any given time-after-liftoff.

(3) A straight-up trajectory that would result if the launch vehicle malfunctioned and flew in a vertical or near vertical direction above the launch point.

(b) *Trajectory model.* A final trajectory analysis must use a six-degree of freedom trajectory model to satisfy the requirements of paragraph (a) of this section.

(c) *Wind effects.* A trajectory analysis must account for wind effects, including profiles of winds that are no less severe than the worst wind conditions under which flight might be attempted, and must account for uncertainty in the wind conditions.

§ 417.209 Malfunction turn analysis.

(a) *General.* A flight safety analysis must include a malfunction turn analysis that establishes the launch vehicle's turning capability in the event of a malfunction during flight. A malfunction turn analysis must account for each cause of a malfunction turn, such as thrust vector offsets or nozzle burn-through. For each cause, the analysis must establish the launch vehicle's turning capability using a set of turn curves. The analysis must account for:

(1) All trajectory times during the thrusting phases of flight.

(2) When a malfunction begins to cause each turn throughout the thrusting phases of flight. The analysis must use trajectory time intervals between malfunction turn start times that are short enough to establish

smooth and continuous flight safety limits and hazard areas.

(3) The relative probability of occurrence of each malfunction turn of which the launch vehicle is capable.

(4) When each malfunction turn will terminate expressed as a single value or a probability time distribution.

(5) What terminates each malfunction turn, such as, aerodynamic or inertial breakup.

(6) The launch vehicle's turning behavior from the time when a malfunction begins to cause a turn until aerodynamic breakup, inertial breakup, or ground impact. The analysis must use trajectory time intervals during the malfunction turn that are short enough to establish turn curves that are smooth and continuous.

(7) For each malfunction turn, the launch vehicle velocity vector turn angle as a function of time from the start of the turn and measured relative to the nominal launch vehicle velocity vector at the start of the turn.

(8) For each malfunction turn, the launch vehicle velocity turn magnitude as a function of time from the start of the turn and measured relative to the nominal velocity magnitude that corresponds to the velocity vector turn angle.

(9) For each malfunction turn, the orientation of the launch vehicle longitudinal axis as a function of time from the start of the turn and measured relative to the nominal launch vehicle velocity vector at the start of the turn.

(b) *Set of turn curves for each malfunction turn cause.* For each cause of a malfunction turn, the analysis must establish a set of turn curves that satisfies paragraph (a) of this section and must establish the associated envelope of the set of turn curves. Each set of turn curves must describe the variation in the malfunction turn characteristics for each cause of the turn. The envelope of each set of curves must define the limits of the launch vehicle's malfunction turn behavior for each cause of a malfunction turn. For each malfunction turn envelope, the analysis must establish the launch vehicle velocity vector turn angle deviation from the nominal launch vehicle velocity vector. For each malfunction turn envelope, the analysis must establish the vehicle velocity turn magnitude deviation from the nominal velocity magnitude that corresponds to the velocity vector turn angle envelope.

§ 417.211 Debris analysis.

(a) *General.* A flight safety analysis must include a debris analysis. For an orbital or suborbital launch, a debris analysis must identify the inert, explosive and other hazardous launch vehicle debris that results from normal and malfunctioning launch vehicle flight.

(b) *Launch vehicle breakup.* A debris analysis must account for each cause of launch vehicle breakup, such as:

(1) Any flight termination system activation,

(2) Launch vehicle explosion,

(3) Aerodynamic loads,

(4) Inertial loads,

(5) Atmospheric reentry heating, and

(6) Impact of intact vehicle.

(c) *Debris fragment lists.* A debris analysis must produce lists of debris fragments for each cause of breakup and any planned jettison of debris, launch vehicle components, or payload. The lists must account for all launch vehicle debris fragments, individually or in groupings of fragments whose characteristics are similar enough to be described by a single set of characteristics. The debris lists must describe the physical, aerodynamic, and harmful characteristics of each debris fragment, such as:

(1) Origin on the vehicle;

(2) Whether it is inert or explosive;

(3) Weight, dimensions, and shape;

(4) Lift and drag characteristics;

(5) Properties of the incremental velocity distribution imparted by breakup; and

(6) Axial, transverse, and tumbling area.

§ 417.213 Flight safety limits analysis.

(a) *General.* A flight safety analysis must identify the location of populated or other protected areas. The analysis must also establish flight safety limits that define when a flight safety official must terminate a launch vehicle's flight to prevent the hazardous effects of the resulting debris impacts from reaching any populated or other protected area and ensure that the launch satisfies the public risk criteria of § 417.107(b).

(b) *Flight safety limits.* The analysis must establish flight safety limits for use in establishing flight termination rules. Section 417.113(c) contains requirements for flight termination rules. The flight safety limits must account for the temporal and geometric extents on the Earth's surface of a launch vehicle's hazardous debris impact dispersion resulting from any planned or unplanned event for all times during flight. Flight safety limits must account for potential contributions to the debris impact dispersions, such as:

(1) Time delays, as established by the time delay analysis of § 417.221,

(2) Residual thrust remaining after flight termination implementation,

(3) Wind effects,

(4) Velocity imparted to vehicle fragments by breakup,

(5) Lift and drag forces on the malfunctioning vehicle and falling debris,

(6) Vehicle guidance and performance errors,

(7) Launch vehicle malfunction turn capabilities, and

(8) Any uncertainty due to map errors and launch vehicle tracking errors.

(c) *Gates.* If a launch involves flight over any populated or other protected area, the flight safety analysis must establish a gate through a flight safety limit. Section 417.217 contains requirements for establishing a gate.

§ 417.215 Straight-up time analysis.

A flight safety analysis must establish the straight-up time for a launch for use as a flight termination rule. Section 417.113(c) contains requirements for flight termination rules. The analysis must establish the straight-up time as the latest time after liftoff, assuming a launch vehicle malfunctioned and flew in a vertical or near vertical direction above the launch point, at which activation of the launch vehicle's flight termination system or breakup of the launch vehicle would not cause hazardous debris or critical overpressure to affect any populated or other protected area.

§ 417.217 No longer terminate gate analysis.

For a launch that involves flight over a populated or other protected area, the flight safety analysis must include a no longer terminate gate analysis. The analysis must establish the portion, referred to as a gate, of a flight safety limit through which a launch vehicle's tracking representation will be allowed to proceed without requiring the flight to be terminated. A tracking representation is a launch vehicle's present position, instantaneous impact point position, debris impact footprint, or other vehicle performance icon or symbol displayed on a flight safety official console during real-time tracking of the launch vehicle's flight. When establishing a gate in a flight safety limit, the analysis must demonstrate that the launch vehicle flight satisfies the public risk criteria of § 417.107(b).

§ 417.219 Data loss flight time and no longer terminate time analyses.

(a) *General.* For each launch, a flight safety analysis must establish data loss flight times, as identified in paragraph (b) of this section, and a no longer terminate time to establish flight

termination rules that apply when launch vehicle tracking data is not available to the flight safety official. Section 417.113(c) contains requirements for flight termination rules.

(b) *Data loss flight times.* A flight safety analysis must establish the shortest elapsed thrusting time during which a launch vehicle can move from normal flight to a condition where the launch vehicle's hazardous debris impact dispersion extends to any protected area as a data loss flight time. The analysis must establish a data loss flight time for all times along the nominal trajectory from liftoff through the no longer-terminate time established under paragraph (c) of this section.

(c) *No longer terminate time.* The analysis must establish a no-longer-terminate time as follows:

(1) For a suborbital launch, the analysis must establish the no longer terminate time as the time after liftoff that a launch vehicle's hazardous debris impact dispersion can no longer reach any protected area.

(2) For an orbital launch where the launch vehicle's instantaneous impact point does not overfly a protected area before reaching orbit, the analysis must establish the no-longer terminate time as the time after liftoff that the launch vehicle's hazardous debris impact dispersion can no longer reach any protected area or orbital insertion, whichever occurs first.

(3) For an orbital launch where a gate permits overflight of a protected area and where orbital insertion occurs after reaching the gate, the analysis must establish the no longer terminate time as the time after liftoff when the time for the launch vehicle's instantaneous impact point to reach the gate is less than the time for the instantaneous impact point to reach any flight safety limit.

§ 417.221 Time delay analysis.

(a) *General.* A flight safety analysis must include a time delay analysis that establishes the mean elapsed time between the violation of a flight termination rule and the time when a flight safety system is capable of terminating flight for use in establishing the flight safety limits of § 417.213.

(b) *Analysis constraints.* A time delay analysis must determine a time delay distribution that accounts for the following:

(1) The variance of time delays for each potential failure scenario, including but not limited to the range of malfunction turn characteristics and the time of flight when the malfunction occurs;

(2) A flight safety official's decision and reaction time, including variation in human response time, and

(3) Flight termination hardware and software delays including those delays inherent in:

(i) Tracking systems;

(ii) Data processing systems, including filter delays;

(iii) Display systems;

(iv) Command control systems; and

(v) Flight termination systems.

§ 417.223 Flight hazard area analysis.

(a) *General.* A flight safety analysis must include a flight hazard area analysis that identifies any regions of land, sea, or air that must be monitored, publicized, controlled, or evacuated in order to control the risk to the public from debris impact hazards. The risk management requirements of § 417.205(a) apply. The analysis must account for, but need not be limited to:

(1) Trajectory times from liftoff to the no longer terminate time of § 417.219(c).

(2) Regions of land potentially exposed to debris resulting from normal flight events and events resulting from any potential malfunction.

(3) Regions of sea and air potentially exposed to debris from normal flight events, including planned impacts.

(4) In the vicinity of the launch site, any waterborne vessels or aircraft exposed to debris from events resulting from any potential abnormal flight events, including launch vehicle malfunction.

(5) Any operational controls implemented to control risk to the public from debris hazards.

(6) Debris identified by the debris analysis of § 417.211.

(7) All launch vehicle trajectory dispersion effects in the surface impact domain.

(b) *Public notices.* A flight hazard areas analysis must establish the ship and aircraft hazard areas for notices to mariners and notices to airmen. Section 417.121(e) requires notices to mariners and airmen.

§ 417.225 Debris risk analysis.

A flight safety analysis must demonstrate that the risk to the public potentially exposed to inert and explosive debris hazards from any one flight of a launch vehicle satisfies the public risk criterion for debris of § 417.107(b)(1). A debris risk analysis must account for risk to populations on land, including regions of launch vehicle flight following passage through any gate in a flight safety limit established under § 417.217. A debris risk analysis must account for any potential casualties to the public using the debris thresholds and as required by § 417.107(c).

§ 417.227 Toxic release hazard analysis.

A flight safety analysis must establish flight commit criteria that ensure compliance with the public risk criterion for toxic release of § 417.107(b)(1). The analysis must account for any toxic release that will occur during the proposed flight of a launch vehicle or that would occur in the event of a flight mishap. The analysis must account for any operational constraints and emergency procedures that provide protection from toxic release. The analysis must account for all members of the public who may be exposed to the toxic release, including all members of the public on land and on any waterborne vessels and aircraft except those operated in direct support of the launch.

§ 417.229 Far-field blast overpressure effects analysis.

(a) *General.* A flight safety analysis must establish flight commit criteria that ensure compliance with the public risk criterion for far field blast overpressure of § 417.107(b)(1). The analysis must demonstrate that any far field blast overpressure due to potential explosions during launch vehicle flight will not cause windows to break or that any risk to the public due to potential far field overpressure complies with the public risk criteria.

(b) *Analysis constraints.* The analysis must account for:

(1) The potential for distant focus overpressure or overpressure enhancement given current meteorological conditions and terrain characteristics;

(2) The potential for broken windows due to peak incident overpressures below 1.0 psi and related casualties;

(3) The explosive capability of the launch vehicle at impact and at altitude and potential explosions resulting from debris impacts, including the potential for mixing of liquid propellants;

(4) Characteristics of the launch vehicle flight and the surroundings that would affect the population's susceptibility to injury, such as, shelter types and time of day of the proposed launch;

(5) Characteristics of the potentially affected windows, including their size, location, orientation, glazing material, and condition; and

(6) The hazard characteristics of the potential glass shards, such as falling from upper building stories or being propelled into or out of a shelter toward potentially occupied spaces.

§ 417.231 Collision avoidance analysis.

(a) *General.* A flight safety analysis must include a collision avoidance analysis that establishes any launch waits in a planned launch window during which a launch operator must not initiate flight, in order to maintain a 200-kilometer separation from any habitable orbiting object. The launch operator must apply any launch waits as flight commit criteria.

(b) *Orbital launch.* For an orbital launch, the analysis must establish any launch waits needed to ensure that the launch vehicle, any jettisoned components, and its payload do not pass closer than 200 kilometers to a habitable orbiting object during ascent to initial orbital insertion through at least one complete orbit.

(c) *Suborbital launch.* For a suborbital launch, the analysis must establish any launch waits needed to ensure that the launch vehicle, any jettisoned components, and any payload do not pass closer than 200 kilometers to a habitable orbital object throughout the flight.

§ 417.233 Analysis for an unguided suborbital rocket flown with a wind weighting safety system.

For launch of an unguided suborbital rocket flown with a wind weighting safety system, the flight safety analysis must establish the launch commit criteria and other launch safety rules that the launch operator must implement to control the risk to the public from potential adverse effects resulting from normal and malfunctioning flight. The risk management requirements of § 417.205(a) apply. The analysis must include a trajectory analysis, flight hazard area analysis, debris risk analysis, and collision avoidance analysis that satisfy § 417.207, § 417.223, § 417.225, and § 417.231, respectively. In addition, for each launch, the analysis must establish any wind constraints under which launch may occur and include a wind weighting analysis that establishes the launcher azimuth and elevation settings that correct for the windcocking and wind-drift effects on the unguided suborbital rocket.

27. Revise appendix A to part 417 as proposed to be revised at 65 FR 64041 to read as follows:

Appendix A to Part 417—Flight Safety Analysis Methodologies and Products

A417.1 Scope

This appendix contains requirements that apply to the methods for performing the flight safety analysis required by § 417.107(f) and subpart C of part 417. The methodologies contained in this appendix provide an acceptable means of satisfying the requirements of subpart C and provide a standard and a measure of fidelity against which the FAA will measure any proposed alternative analysis approach. This appendix also identifies the analysis products that a launch operator must submit to the FAA as required by § 417.203(e).

A417.3 Applicability.

The requirements contained in this appendix apply to a launch operator and the launch operator's flight safety analysis unless the launch operator clearly and convincingly demonstrates that an alternative approach provides an equivalent level of safety. If a federal launch range performs the launch operator's analysis, § 417.203(d) applies. Section A417.33 applies to the flight of any unguided suborbital launch vehicle that uses a wind weighting safety system. All other sections of this appendix apply to the flight of any launch vehicle required to use a flight safety system in accordance with § 417.107(a). For any alternative flight safety system approved by the FAA in accordance with § 417.107(a)(3), the FAA will determine the applicability of this appendix during the licensing process.

A417.5 General.

A launch operator's flight safety analysis must satisfy the requirements for public risk management and the requirements for the compatibility of the input and output of dependent analyses of § 417.205.

A417.7 Trajectory.

(a) *General.* A flight safety analysis must include a trajectory analysis that satisfies the requirements of § 417.207. The requirements of this section apply to the computation of the trajectories required by § 417.207 and to the trajectory analysis products that a launch operator must submit to the FAA as required by § 417.203(e).

(b) *Wind standards.* A trajectory analysis must incorporate wind data in accordance with the following:

(1) For each launch, a trajectory analysis must produce ''with-wind'' launch vehicle trajectories pursuant to paragraph (f)(6) of this section and do so using composite wind profiles for the month that the launch will take place or composite wind profiles that are as severe or more severe than the winds for the month that the launch will take place.

(2) A composite wind profile used for the trajectory analysis must have a cumulative percentile frequency that represents wind conditions that are at least as severe as the worst wind conditions under which flight would be attempted for purposes of achieving the launch operator's mission. These worst wind conditions must account for the launch vehicle's ability to operate normally in the presence of wind and accommodate any flight safety limit constraints.

(c) *Nominal trajectory.* A trajectory analysis must produce a nominal trajectory that describes a launch vehicle's flight path, position and velocity, where all vehicle aerodynamic parameters are as expected, all vehicle internal and external systems perform exactly as planned, and no external perturbing influences other than atmospheric drag and gravity affect the launch vehicle.

(d) *Dispersed trajectories.* A trajectory analysis must produce the following dispersed trajectories and describe the distribution of a launch vehicle's position and velocity as a function of winds and performance error parameters in the uprange, downrange, left-crossrange and right-crossrange directions.

(1) *Three-sigma maximum and minimum performance trajectories.* A trajectory analysis must produce a three-sigma maximum performance trajectory that provides the maximum downrange distance of the instantaneous impact point for any given time after lift-off. A trajectory analysis must produce a three-sigma minimum performance trajectory that provides the minimum downrange distance of the instantaneous impact point for any given time after lift-off. For any time after lift-off, the instantaneous impact point dispersion of a normally performing launch vehicle must lie between the extremes achieved at that time after lift-off by the three-sigma maximum and three-sigma minimum performance trajectories. The three-sigma maximum and minimum performance trajectories must account for wind and performance error parameter distributions in accordance with the following:

(i) For each three-sigma maximum and minimum performance trajectory, the analysis must use composite head wind and composite tail wind profiles that represent the worst wind conditions under which a launch would be attempted in accordance with paragraph (b) of this section.

(ii) Each three-sigma maximum and minimum performance trajectory must account for all launch vehicle performance error parameters identified in accordance with paragraph (f)(1) of this section that have an effect upon instantaneous impact point range.

(2) *Three-sigma left and right lateral trajectories.* A trajectory analysis must produce a three-sigma left lateral trajectory that provides the maximum left crossrange distance of the instantaneous impact point for any time after lift-off. A trajectory analysis must produce a three-sigma right lateral trajectory that provides the maximum right crossrange distance of the instantaneous impact point for any time after lift-off. For any time after lift-off, the instantaneous impact point dispersion of a normally performing launch vehicle must lie between the extremes achieved at that time after lift-off by the three-sigma left lateral and three-sigma right lateral performance trajectories. The three-sigma lateral performance trajectories must account for wind and performance error parameter distributions in accordance with the following:

(i) In producing each left and right lateral trajectory, the analysis must use composite left and composite right lateral-wind profiles that represent the worst wind conditions under which a launch would be attempted in accordance with paragraph (b) of this section.

(ii) The three-sigma left and right lateral trajectories must account for all launch vehicle performance error parameters identified in accordance with paragraph (f)(1)

of this section that have an effect on the lateral deviation of the instantaneous impact point.

(3) *Fuel-exhaustion trajectory.* A trajectory analysis must produce a fuel-exhaustion trajectory for the launch of any launch vehicle with a final suborbital stage that will terminate thrust nominally without burning to fuel exhaustion. The analysis must produce the trajectory that would occur if the planned thrust termination of the final suborbital stage did not occur. The analysis must produce a fuel-exhaustion trajectory that extends either the nominal trajectory taken through fuel exhaustion of the last suborbital stage or the three-sigma maximum trajectory taken through fuel exhaustion of the last suborbital stage, whichever produces instantaneous impact points with the greatest range for any time after liftoff.

(e) *Straight-up trajectory.* A trajectory analysis must produce a straight-up trajectory that begins at the planned time of ignition, and that simulates a malfunction that causes the launch vehicle to fly in a vertical or near vertical direction above the launch point. A straight-up trajectory must last no less than the sum of the straight-up time determined in accordance with A417.15 plus the duration of a potential malfunction turn determined in accordance with A417.9(b)(2).

(f) *Analysis process and computations.* A trajectory analysis must produce each three-sigma trajectory required by this appendix using a six-degree-of-freedom trajectory model and an analysis method, such as root-sum-square or Monte Carlo, that accounts for all individual launch vehicle performance error parameters that contribute to the dispersion of the launch vehicle's instantaneous impact point.

(1) A trajectory analysis must identify all launch vehicle performance error parameters and each parameter's distribution to account for all launch vehicle performance variations and any external forces that can cause offsets from the nominal trajectory during normal flight. A trajectory analysis must account for, but need not be limited to, the following performance error parameters:

(i) Thrust;

(ii) Thrust misalignment;

(iii) Specific impulse;

(iv) Weight;

(v) Variation in firing times of the stages;

(vi) Fuel flow rates;

(vii) Contributions from the guidance, navigation, and control systems;

(ix) Steering misalignment; and

(x) Winds.

(2) Each three-sigma trajectory must account for the effects of wind from liftoff through the point in flight where the launch vehicle attains an altitude where wind no longer affects the launch vehicle.

(g) *Trajectory analysis products.* The products of a trajectory analysis that a launch operator must submit to the FAA as required by § 417.203(e) must include the following:

(1) *Assumptions and procedures.* A description of all assumptions, procedures and models, including the six-degrees-of-freedom model, used in deriving each trajectory.

(2) *Three-sigma launch vehicle performance error parameters.* A description of each three-sigma performance error parameter accounted for by the trajectory analysis and a description of each parameter's distribution determined in accordance with paragraph (f)(1) of this section.

(3) *Wind profile.* A graph and tabular listing of each wind profile used in performing the trajectory analysis as required by paragraph (b)(1) of this section and the worst case winds required by paragraph (b)(2) of this section. The graph and tabular wind data must provide wind magnitude and direction as a function of altitude for the air space regions from the Earth's surface to 100,000 feet in altitude for the area intersected by the launch vehicle trajectory. Altitude intervals must not exceed 5000 feet.

(4) *Launch azimuth.* The azimuthal direction of the trajectory's ''X-axis'' at liftoff measured clockwise in degrees from true north.

(5) *Launch point.* Identification and location of the proposed launch point, including its name, geodetic latitude (+N), longitude (+E), and geodetic height.

(6) *Reference ellipsoid.* The name of the reference ellipsoid used by the trajectory analysis to approximate the average curvature of the Earth and the following information about the model:

(i) Length of semi-major axis,

(ii) Length of semi-minor axis,

(iii) Flattening parameter,

(iv) Eccentricity,

(v) Gravitational parameter,

(vi) Angular velocity of the Earth at the equator, and

(vii) If the reference ellipsoid is not a WGS–84 ellipsoidal Earth model, the equations that convert the submitted ellipsoid information to the WGS–84 ellipsoid.

(7) *Temporal trajectory items.* A launch operator must provide the following temporal trajectory data for time intervals not in excess of one second and for the discrete time points that correspond to each jettison, ignition, burnout, and thrust termination of each stage. If any stage burn time lasts less than four seconds, the time intervals must not exceed 0.2 seconds. The launch operator must provide the temporal trajectory data from launch up to a point in flight when effective thrust of the final stage terminates, or to thrust termination of the stage or burn that places the vehicle in orbit. For an unguided sub-orbital launch vehicle flown with a flight safety system, the launch operator must provide these data for each nominal quadrant launcher elevation angle and payload weight. The launch operator must provide these data on paper in text format and electronically in ASCII text, space delimited format. The launch operator must provide an electronic ''readme'' file that identifies the data and their units of measure in the individual disk files.

(i) *Trajectory time-after-liftoff.* A launch operator must provide trajectory time-after-liftoff measured from first motion of the first thrusting stage of the launch vehicle. The tabulated data must identify the first motion time as T–0 and as the ''0.0'' time point on the trajectory.

(ii) *Launch vehicle direction cosines.* A launch operator must provide the direction cosines of the roll axis, pitch axis, and yaw axis of the launch vehicle. The roll axis is a line identical to the launch vehicle's longitudinal axis with its origin at the nominal center of gravity positive towards the vehicle nose. The roll plane is normal to the roll axis at the vehicle's nominal center of gravity. The yaw axis and the pitch axis are any two orthogonal axes lying in the roll plane. The launch operator must provide roll, pitch and yaw axes of right-handed systems so that, when looking along the roll axis toward the nose, a clockwise rotation around the roll axis will send the pitch axis toward the yaw axis. The right-handed system must be oriented so that the yaw axis is positive in the downrange direction while in the vertical position (roll axis upward from surface) or positive at an angle of 180 degrees to the downrange direction. The axis may be related to the vehicle's normal orientation with respect to the vehicle's trajectory but, once defined, remain fixed with respect to the vehicle's body. The launch operator must indicate the positive direction of the yaw axis chosen. The analysis products must present the direction cosines using the EFG reference system described in paragraph (g)(7)(iv) of this section.

(iii) *X, Y, Z, XD, YD, ZD trajectory coordinates.* A launch operator must provide the launch vehicle position coordinates (X, Y, Z) and velocity magnitudes (XD, YD, ZD) referenced to an orthogonal, Earth-fixed, right-handed coordinate system. The XY-plane must be tangent to the ellipsoidal Earth at the origin, which must coincide with the launch point. The positive X-axis must coincide with the launch azimuth. The positive Z-axis must be directed away from the ellipsoidal Earth. The Y-axis must be positive to the left looking downrange.

(iv) *E, F, G, ED, FD, GD trajectory coordinates.* A launch operator must provide the launch vehicle position coordinates (E, F, G) and velocity magnitudes (ED, FD, GD) referenced to an orthogonal, Earth fixed, Earth centered, right-handed coordinate system. The origin of the EFG system must be at the center of the reference ellipsoid. The E and F axes must lie in the plane of the equator and the G-axis coincides with the rotational axis of the Earth. The E-axis must be positive through 0° East longitude (Greenwich Meridian), the F-axis positive through 90° East longitude, and the G-axis positive through the North Pole. This system must be non-inertial and rotate with the Earth.

(v) *Resultant Earth-fixed velocity.* A launch operator must provide the square root of the sum of the squares of the XD, YD, and ZD components of the trajectory state vector.

(vi) *Path angle of velocity vector.* A launch operator must provide the angle between the local horizontal plane and the velocity vector measured positive upward from the local horizontal. The local horizontal must be a plane tangent to the ellipsoidal Earth at the sub-vehicle point.

(vii) *Sub-vehicle point.* A launch operator must provide sub-vehicle point coordinates that include present position geodetic latitude (+N) and present position longitude (+E). These coordinates must be at each trajectory time on the surface of the

ellipsoidal Earth model and located at the intersection of the line normal to the ellipsoid and passing through the launch vehicle center of gravity.

(viii) *Altitude.* A launch operator must provide the distance from the sub-vehicle point to the launch vehicle's center of gravity.

(ix) *Present position arc-range.* A launch operator must provide the distance measured along the surface of the reference ellipsoid, from the launch point to the sub-vehicle point.

(x) *Total weight.* A launch operator must provide the sum of the inert and propellant weights for each time point on the trajectory.

(xi) *Total vacuum thrust.* A launch operator must provide the total vacuum thrust for each time point on the trajectory.

(xii) *Instantaneous impact point data.* A launch operator must provide instantaneous impact point geodetic latitude (+N), instantaneous impact point longitude (+E), instantaneous impact point arc-range, and time to instantaneous impact. The instantaneous impact point arc-range must consist of the distance, measured along the surface of the reference ellipsoid, from the launch point to the instantaneous impact point. For each point on the trajectory, the time to instantaneous impact must consist of the vacuum flight time remaining until impact if all thrust were terminated at the time point on the trajectory.

(xiii) *Normal trajectory distribution.* A launch operator must provide a description of the distribution of the dispersed trajectories required under (d), such as the elements of covariance matrices for the launch vehicle position coordinates and velocity magnitudes.

A417.9 Malfunction turn.

(a) *General.* A flight safety analysis must include a malfunction turn analysis that satisfies the requirements of § 417.209. The requirements of this section apply to the computation of the malfunction turns and the production of turn data required by § 417.209 and to the malfunction turn analysis products that a launch operator must submit to the FAA as required by § 417.203(e).

(b) *Malfunction turn analysis constraints.* The following constraints apply to a malfunction turn analysis:

(1) The analysis must produce malfunction turns that start at a given malfunction start time. The turn must last no less than 12 seconds. These duration limits apply regardless of whether or not the vehicle would breakup or tumble before the prescribed duration of the turn.

(2) A malfunction turn analysis must account for the thrusting periods of flight along a nominal trajectory beginning at first motion until thrust termination of the final thrusting stage or until the launch vehicle achieves orbit, whichever occurs first.

(3) A malfunction turn must consist of a 90-degree turn or a turn in both the pitch and yaw planes that would produce the largest deviation from the nominal instantaneous impact point of which the launch vehicle is capable at any time during the malfunction turn in accordance with paragraph (d) of this section.

(4) The first malfunction turn must start at liftoff. The analysis must account for subsequent malfunction turns initiated at regular nominal trajectory time intervals not to exceed four seconds.

(5) A malfunction turn analysis must produce malfunction turn data for time intervals of no less than one second over the duration of each malfunction turn.

(6) The analysis must assume that the launch vehicle performance is nominal up to the point of the malfunction that produces the turn.

(7) A malfunction turn analysis must not account for the effects of gravity.

(8) A malfunction turn analysis must ensure the tumble turn envelope curve maintains a positive slope throughout the malfunction turn duration as illustrated in figure A417.9–1. When calculating tumble turns for an aerodynamically unstable launch vehicle, in the high aerodynamic region it often turns out that no matter how small the initial deflection of the rocket engine, the airframe tumbles through 180 degrees, or one-half cycle, in less time than the required turn duration period. In such a case, the analysis must use a 90-degree turn as the malfunction turn.

(c) *Failure modes.* A malfunction turn analysis must account for the significant failure modes that result in a thrust vector offset from the nominal state. If a malfunction turn at a malfunction start time can occur as a function of more than one failure mode, the analysis must account for the failure mode that causes the most rapid and largest launch vehicle instantaneous impact point deviation.

(d) *Type of malfunction turn.* A malfunction turn analysis must establish the maximum turning capability of a launch vehicle's velocity vector during each malfunction turn by accounting for a 90-degree turn to estimate the vehicle's turning capability or by accounting for trim turns and tumble turns in both the pitch and yaw planes to establish the vehicle's turning capability. When establishing the turning capability of a launch vehicle's velocity vector, the analysis must account for each turn in accordance with the following:

(1) *90-degree turn.* A 90-degree turn must constitute a turn produced at the malfunction start time by instantaneously re-directing and maintaining the vehicle's thrust at 90 degrees to the velocity vector, without regard for how this situation can be brought about.

(2) *Pitch turn.* A pitch turn must constitute the angle turned by the launch vehicle's total velocity vector in the pitch-plane. The velocity vector's pitch-plane must be the two dimensional surface that includes the launch vehicle's yaw-axis and the launch vehicle's roll-axis.

(3) *Yaw turn.* A yaw turn must constitute the angle turned by the launch vehicle's total velocity vector in the lateral plane. The velocity vector's lateral plane must be the two dimensional surface that includes the launch vehicle's pitch axis and the launch vehicle's total velocity.

(4) *Trim turn.* A trim turn must constitute a turn where a launch vehicle's thrust moment balances the aerodynamic moment while a constant rotation rate is imparted to the launch vehicle's longitudinal axis. The analysis must account for a maximum-rate trim turn made at or near the greatest angle of attack that can be maintained while the aerodynamic moment is balanced by the thrust moment, whether the vehicle is stable or unstable.

(5) *Tumble turn.* A tumble turn must constitute a turn that results if the launch vehicle's airframe rotates in an uncontrolled fashion, at an angular rate that is brought about by a thrust vector offset angle, and if the offset angle is held constant throughout the turn. The analysis must account for a series of tumble turns, each turn with a different thrust vector offset angle, that are plotted on the same graph for each malfunction start time.

(6) *Turn envelope.* A turn envelope must constitute a curve on a tumble turn graph that has tangent points to each individual tumble turn curve computed for each malfunction start time. The curve must envelope the actual tumble turn curves to predict tumble turn angles for each area between the calculated turn curves. Figure A417.9–1 depicts a series of tumble turn curves and the tumble turn envelope curve.

(7) *Malfunction turn capabilities.* When not using a 90-degree turn, a malfunction turn analysis must establish the launch vehicle maximum turning capability in accordance with the following malfunction turn constraints:

(i) *Launch vehicle stable at all angles of attack.* If a launch vehicle is so stable that the maximum thrust moment that the vehicle could experience cannot produce tumbling, but produces a maximum-rate trim turn at some angle of attack less than 90 degrees, the analysis must produce a series of trim turns, including the maximum-rate trim turn, by varying the initial thrust vector offset at the beginning of the turn. If the maximum thrust moment results in a maximum-rate trim turn at some angle of attack greater than 90 degrees, the analysis must produce a series of trim turns for angles of attack up to and including 90 degrees.

(ii) *Launch vehicle aerodynamically unstable at all angles of attack.* If flying a trim turn is not possible even for a period of only a few seconds, the malfunction turn analysis need only establish tumble turns. Otherwise, the malfunction turn analysis must establish a series of trim turns, including the maximum-rate trim turn, and the family of tumble turns.

(iii) *Launch vehicle unstable at low angles of attack but stable at some higher angles of attack.* If large engine deflections result in tumbling, and small engine deflections do not, the analysis must produce a series of trim and tumble turns as required by paragraph (d)(7)(ii) of this section for launch vehicles aerodynamically unstable at all angles of attack. If both large and small constant engine deflections result in tumbling, regardless of how small the deflection might be, the analysis must account for the malfunction turn capabilities achieved at the stability angle of attack, assuming no upsetting thrust moment, and must account for the turns achieved by a tumbling vehicle.

(e) *Malfunction turn analysis products.* The products of a malfunction turn analysis that

a launch operator must submit to the FAA as required by § 417.203(e) must include:

(1) A description of the assumptions, techniques, and equations used in deriving the malfunction turns.

(2) A set of sample calculations for at least one flight hazard area malfunction start time and one downrange malfunction start time. The sample computation for the downrange malfunction must start at a time at least 50 seconds after the flight hazard area malfunction start time or at the time of nominal thrust termination of the final stage minus the malfunction turn duration.

(3) A launch operator must submit malfunction turn data in electronic tabular and graphic formats. The graphs must use scale factors such that the plotting and reading accuracy do not degrade the accuracy of the data. For each malfunction turn start time, a graph must use the same time scales for the malfunction velocity vector turn angle and malfunction velocity magnitude plot pairs. A launch operator must provide tabular listings of the data used to generate the graphs in digital ASCII file format. A launch operator must submit the data items required in this paragraph for each malfunction start time and for time intervals that do not exceed one second for the duration of each malfunction turn.

(i) *Velocity turn angle graphs.* A launch operator must submit a velocity turn angle graph for each malfunction start time. For each velocity turn angle graph, the ordinate axis must represent the total angle turned by the velocity vector, and the abscissa axis must represent the time duration of the turn and must show increments not to exceed one second. The series of tumble turns must include the envelope of all tumble turn curves. The tumble turn envelope must represent the tumble turn capability for all possible constant thrust vector offset angles. Each tumble turn curve selected to define the envelope must appear on the same graph as the envelope. A launch operator must submit a series of trim turn curves for representative values of thrust vector offset. The series of trim turn curves must include the maximum-rate trim turn. Figure A417.9–1 depicts an example family of tumble turn curves and the tumble turn velocity vector envelope.

(ii) *Velocity magnitude graphs.* A launch operator must submit a velocity magnitude graph for each malfunction start time. For each malfunction velocity magnitude graph, the ordinate axis must represent the magnitude of the velocity vector and the abscissa axis must represent the time duration of the turn. Each graph must show the abscissa divided into increments not to exceed one second. Each graph must show the total velocity magnitude plotted as a function of time starting with the malfunction start time for each thrust vector offset used to define the corresponding velocity turn-angle curve. A launch operator must provide a corresponding velocity magnitude curve for each velocity tumble-turn angle curve and each velocity trim-turn angle curve. For each individual tumble turn curve selected to define the tumble turn envelope, the corresponding velocity magnitude graph must show the individual tumble turn curve's point of tangency to the envelope. The point of tangency must consist of the point where the tumble turn envelope is tangent to an individual tumble turn curve produced with a discrete thrust vector offset angle. A launch operator must transpose the points of tangency to the velocity magnitude curves by plotting a point on the velocity magnitude curve at the same time point where tangency occurs on the corresponding velocity tumble-turn angle curve. Figure A417.9–2 depicts an example tumble turn velocity magnitude curve.

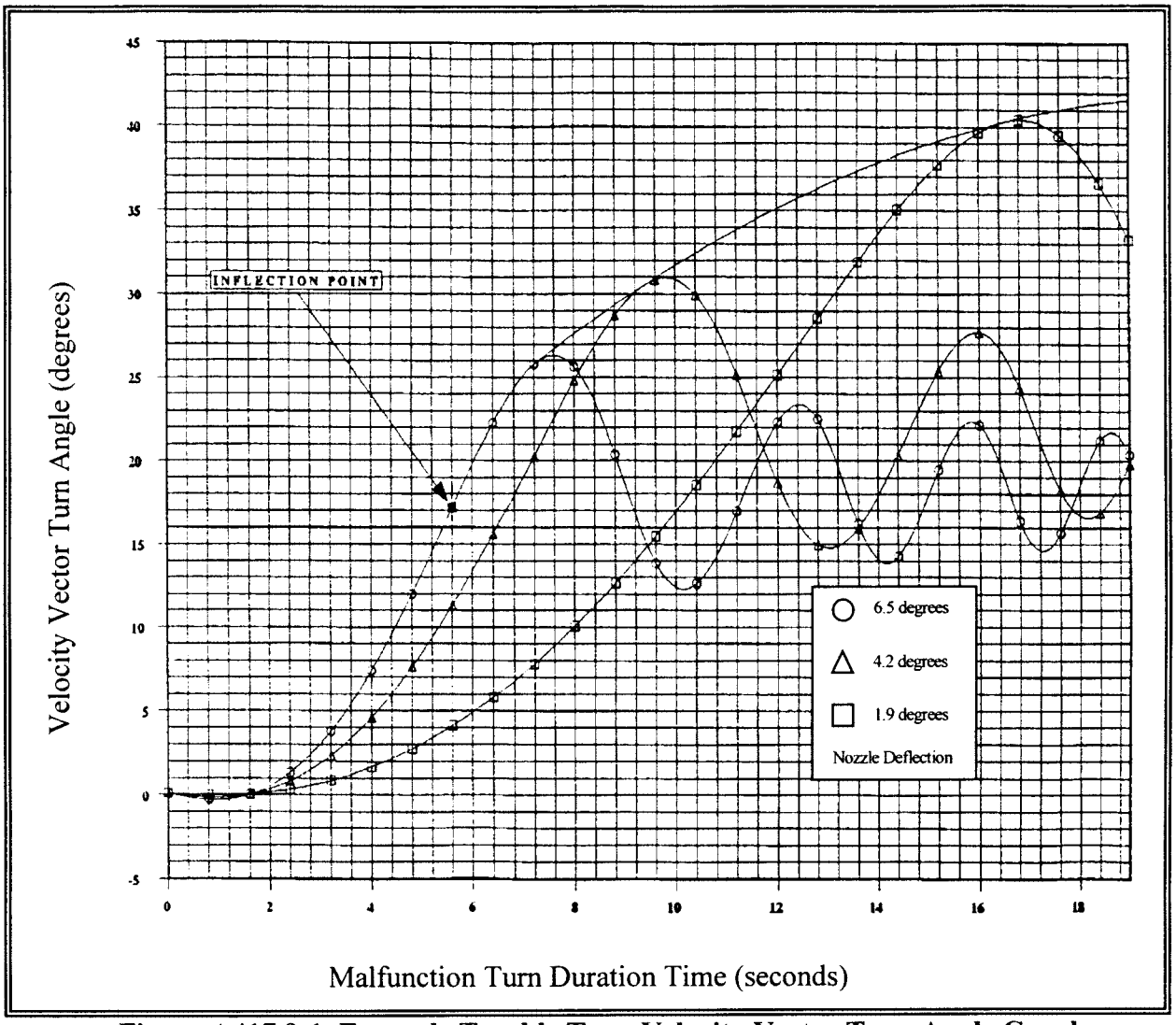

Figure A417.9-1, Example Tumble Turn Velocity Vector Turn Angle Graph.

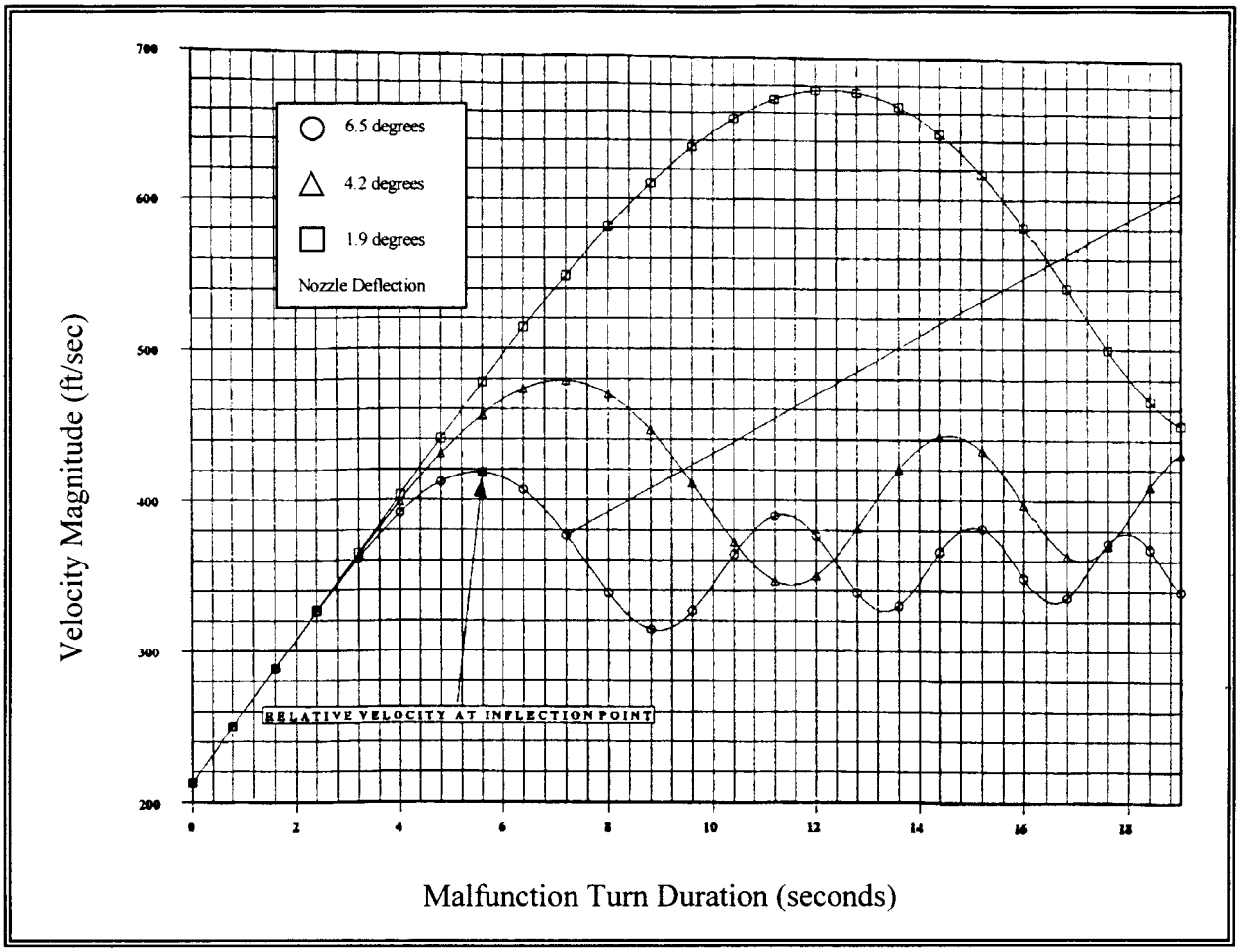

Figure A417.9-2, Illustrative Tumble Turn Velocity Magnitude Graph.

(iii) *Vehicle orientation.* The launch operator must submit tabular or graphical data for the vehicle orientation in the form of roll, pitch, and yaw angular orientation of the vehicle longitudinal axis as a function of time into the turn for each turn initiation time. Angular orientation of a launch vehicle's longitudinal axis is illustrated in figures A417.9–3 and A417.9–4.

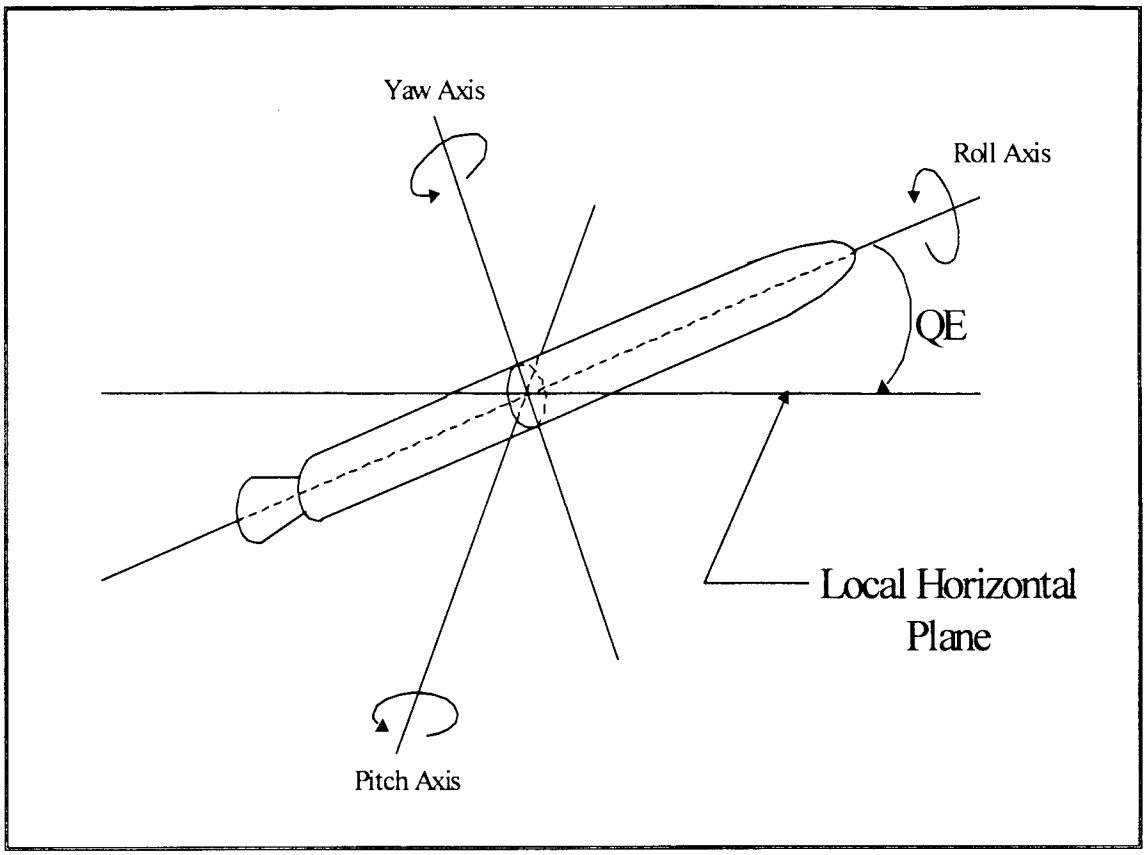

Figure A417.9-3, Illustrative Longitudinal Axis Quadrant Elevation (QE)

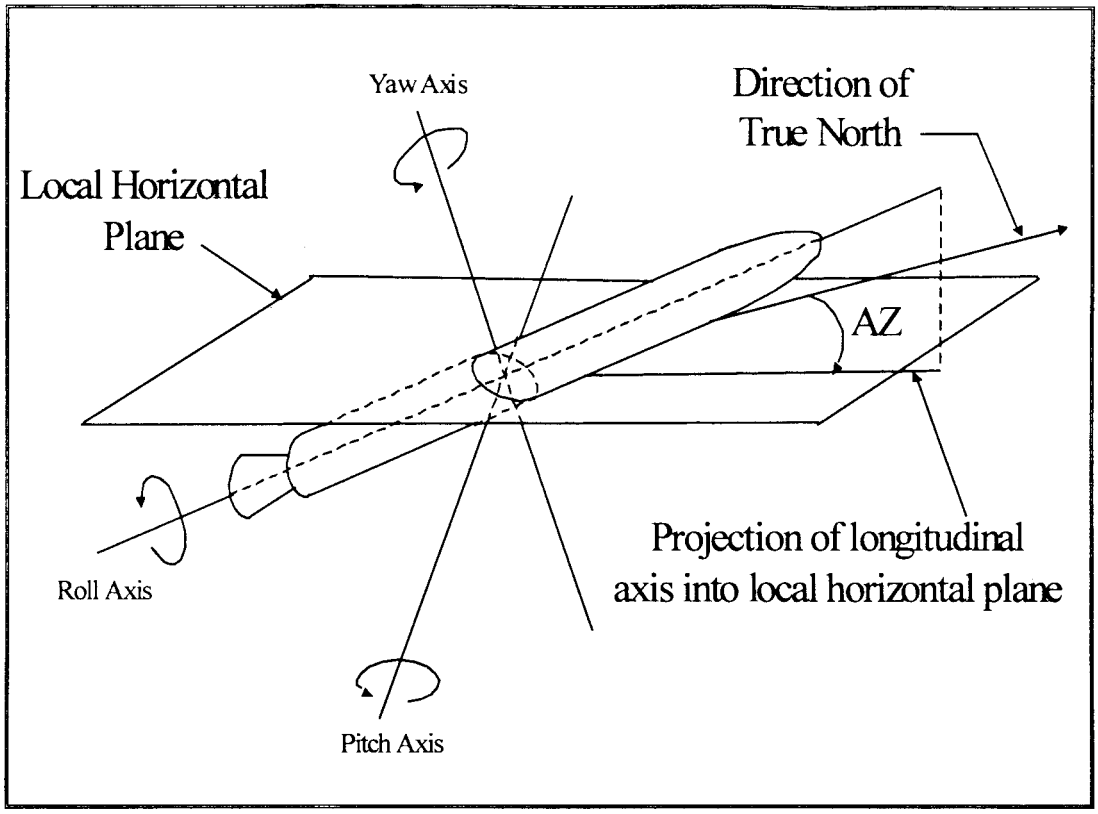

Figure A417.9-4, Illustrative Longitudinal Axis Azimuth (AZ)

(iv) *Onset conditions.* A launch operator must provide launch vehicle state information for each malfunction start time. This state data must include the launch vehicle thrust, weight, velocity magnitude and pad-centered topocentric X, Y, Z, XD, YD, ZD state vector.

(v) *Breakup information.* A launch operator must specify whether its launch vehicle will remain intact throughout each malfunction turn. If the launch vehicle will breakup during a turn, the launch operator must identify the time for launch vehicle breakup on each velocity magnitude graph. The launch operator must show the time into the turn at which vehicle breakup would occur as either a specific value or a probability distribution for time until breakup.

(vi) *Inflection point.* A launch operator must identify the inflection point on each tumble turn envelope curve and maximum rate trim turn curve for each malfunction start time as illustrated in figure A417.9–1. The inflection point marks the point in time during the turn where the slope of the curve stops increasing and begins to decrease or, in other words, the point were the concavity of the curve changes from concave up to concave down. The inflection point on a malfunction turn curve must identify the time in the malfunction turn that the launch vehicle body achieves a 90-degree rotation from the nominal position. On a tumble turn curve the inflection point must represent the start of the launch vehicle tumble.

A417.11 Debris.

(a) *General.* A flight safety analysis must include a debris analysis that satisfies the requirements of § 417.211. The requirements of this section apply to the debris data required by § 417.211 and the debris analysis products that a launch operator must submit to the FAA as required by § 417.203(e).

(b) *Debris analysis constraints.* A debris analysis must produce the debris model described in paragraph (c) of this section. The analysis must account for all launch vehicle debris fragments, individually or in groupings of fragments called classes. The characteristics of each debris fragment represented by a class must be similar enough to the characteristics of all the other debris fragments represented by that class that all the debris fragments of the class can be described by a single set of characteristics. Paragraph (c)(10) of this section applies when establishing a debris class. A debris model must describe the physical, aerodynamic, and harmful characteristics of each debris fragment either individually or as a member of a class. A debris model must consist of lists of individual debris or debris classes for each cause of breakup and any planned jettison of debris, launch vehicle components, or payload. A debris analysis must account for:

(1) Launch vehicle breakup caused by the activation of any flight termination system. The analysis must account for:

(i) The effects of debris produced when flight termination system activation destroys an intact malfunctioning vehicle.

(ii) Spontaneous breakup of the launch vehicle, if the breakup is assisted by the action of any inadvertent separation destruct system.

(iii) The effects of debris produced by the activation of any flight termination system after inadvertent breakup of the launch vehicle.

(2) Debris due to any malfunction where forces on the launch vehicle may exceed the launch vehicle's structural integrity limits.

(3) The immediate post-breakup or jettison environment of the launch vehicle debris, and any change in debris characteristics over time from launch vehicle breakup or jettison until debris impact.

(4) The impact overpressure, fragmentation, and secondary debris effects of any confined or unconfined solid propellant chunks and fueled components containing either liquid or solid propellants that could survive to impact, as a function of vehicle malfunction time.

(5) The effects of impact of the intact vehicle as a function of failure time. The intact impact debris analysis must identify the trinitrotoluene (TNT) yield of impact explosions, and the numbers of fragments projected from all such explosions, including non-launch vehicle ejecta and the blast overpressure radius. The analysis must use a model for TNT yield of impact explosion that accounts for the propellant weight at impact, the impact speed, the orientation of the propellant, and the impacted surface material.

(c) *Debris model.* A debris analysis must produce a model of the debris resulting from planned jettison and from unplanned breakup of a launch vehicle for use as input to other analyses, such as establishing flight safety limits and hazard areas and performing debris risk, toxic, and blast analyses. A launch operator's debris model must satisfy the following:

(1) *Debris fragments.* A debris model must provide the debris fragment data required by this section for the launch vehicle flight from the planned ignition time until the launch vehicle achieves orbital velocity for an orbital launch. For a sub-orbital launch, the debris model must provide the debris fragment data required by this section for the launch vehicle flight from the planned ignition time until thrust termination of the last thrusting stage. A debris model must provide debris fragment data for the number of time periods sufficient to meet the requirements for smooth and continuous contours used to define hazard areas as required by A417.23.

(2) *Inert fragments.* A debris model must identify all inert fragments that are not volatile and that do not burn or explode under normal and malfunction conditions. A debris model must identify inert fragments for each breakup time during flight corresponding to a critical event when the fragment catalog is significantly changed by the event. Critical events include staging, payload fairing jettison, and other normal hardware jettison activities.

(3) *Explosive and non-explosive propellant fragments.* A debris model must identify all propellant fragments that are explosive or non-explosive upon impact. The debris model must describe each propellant fragment as a function of time, from the time of breakup through ballistic free-fall to impact. The debris model must describe the characteristics of each fragment, including its origin on the launch vehicle, representative dimensions and weight at the time of breakup and at the time of impact. For those fragments identified as un-contained or contained propellant fragments, whether explosive or non-explosive, the debris model must identify whether or not burning occurs during free fall, and provide the consumption rate during free fall. The debris model must identify:

(i) Solid propellant that is exposed directly to the atmosphere and that burns but does not explode upon impact as ''un-contained non-explosive solid propellant.''

(ii) Solid or liquid propellant that is enclosed in a container, such as a motor case or pressure vessel, and that burns but does not explode upon impact as ''contained non-explosive propellant.''

(iii) Solid or liquid propellant that is enclosed in a container, such as a motor case or pressure vessel, and that explodes upon impact as ''contained explosive propellant fragment.''

(iv) Solid propellant that is exposed directly to the atmosphere and that explodes upon impact as ''un-contained explosive solid propellant fragment.''

(4) *Other non-inert debris fragments.* In addition to the explosive and flammable fragments required by paragraph (c)(3) of this section, a debris model must identify any other non-inert debris fragments, such as toxic or radioactive fragments, that present any other hazards to the public.

(5) *Fragment weight.* At each modeled breakup time, the individual fragment weights must approximately add up to the sum total weight of inert material in the vehicle and the weight of contained liquid propellants and solid propellants that are not consumed in the initial breakup or conflagration.

(6) *Fragment imparted velocity.* A debris model must identify the maximum velocity imparted to each fragment due to potential explosion or pressure rupture. When accounting for imparted velocity, a debris model must:

(i) Use a Maxwellian distribution with the specified maximum value equal to the 97th percentile; or

(ii) If a debris model does not use a Maxwellian velocity distribution, the analysis products must identify the distribution, and must state whether or not the specified maximum value is a fixed value with no uncertainty.

(7) *Fragment projected area.* A debris model must include the axial, transverse, and mean tumbling areas of each fragment. If the fragment may stabilize under normal or malfunction conditions, the debris model must also provide the projected area normal to the drag force.

(8) *Fragment ballistic coefficient.* A debris model must include the axial, transverse, and tumble orientation ballistic coefficient for each fragment's projected area as required by paragraph (c)(7) of this section.

(9) *Debris fragment count.* A debris model must include the total number of each type of fragment required by paragraphs (c)(2), (c)(3), and (c)(4) of this section and created by a malfunction.

(10) *Fragment classes.* A debris model must categorize malfunction debris fragments into classes where the characteristics of the mean fragment in each class conservatively represent every fragment in the class. The model must define fragment classes for fragments whose characteristics are similar enough to be described and treated by a single average set of characteristics. A debris class must categorize debris by each of the following characteristics, and may include any other useful characteristics:

(i) The type of fragment, defined by paragraphs (c)(2), (c)(3), and (c)(4) of this section. All fragments within a class must be the same type, such as inert or explosive.

(ii) Debris subsonic ballistic coefficient (β_{sub}). The difference between the smallest $\log_{10}(\beta_{sub})$ value and the largest $\log_{10}(\beta_{sub})$ value in a class must not exceed 0.5, except for fragments with β_{sub} less than or equal to three. Fragments with β_{sub} less than or equal to three may be grouped within a class.

(iii) Breakup-imparted velocity (ΔV). A debris model must categorize fragments as a function of the range of ΔV for the fragments within a class and the class's median subsonic ballistic coefficient. For each class, the debris model must keep the ratio of the maximum breakup-imparted velocity (ΔV_{max}) to minimum breakup-imparted velocity (ΔV_{min}) within the following bound:

$$\frac{\Delta V_{max}}{\Delta V_{min}} < \frac{5}{2 + \log_{10}(\beta'_{sub})}$$

Where: β'_{sub} is the median subsonic ballistic coefficient for the fragments in a class.

(d) *Debris analysis products.* The products of a debris analysis that a launch operator must submit to the FAA as required by § 417.203(e) must include:

(1) *Debris model.* The launch operator's debris model that satisfies the requirements of this section.

(2) *Fragment description.* A description of the fragments contained in the launch operator's debris model. The description must identify the fragment as a launch vehicle part or component, describe its shape, representative dimensions, and may include drawings of the fragment.

(3) *Intact impact TNT yield.* For an intact impact of a launch vehicle, for each failure time, a launch operator must identify the TNT yield of each impact explosion and blast overpressure hazard radius.

(4) *Fragment class data.* The class name, the range of values for each parameter used to categorize fragments within a fragment class, and the number of fragments in any fragment class established in accordance with paragraph (c)(10) of this section.

(5) *Ballistic coefficient.* The mean ballistic coefficient (β) and plus and minus three-sigma values of the β for each fragment class. A launch operator must provide graphs of the coefficient of drag (C_d) as a function of Mach number for the nominal and three-sigma β variations for each fragment shape. The launch operator must label each graph with the shape represented by the curve and reference area used to develop the curve. A launch operator must provide a C_d vs. Mach curve for any axial, transverse, and tumble orientations for any fragment that will not stabilize during free-fall conditions. For any fragment that may stabilize during free-fall, a launch operator must provide C_d vs. Mach curves for the stability angle of attack. If the angle of attack where the fragment stabilizes is other than zero degrees, a launch operator must provide both the coefficient of lift (C_L) vs. Mach number and the C_d vs. Mach number curves. The launch operator must provide the equations for each C_d vs. Mach curve.

(6) *Pre-flight propellant weight.* The initial preflight weight of solid and liquid propellant for each launch vehicle component that contains solid or liquid propellant.

(7) *Normal propellant consumption.* The nominal and plus and minus three-sigma solid and liquid propellant consumption rate, and pre-malfunction consumption rate for each component that contains solid or liquid propellant.

(8) *Fragment weight.* The mean and plus and minus three-sigma weight of each fragment or fragment class.

(9) *Projected area.* The mean and plus and minus three-sigma axial, transverse, and tumbling areas for each fragment or fragment class. This information is not required for those fragment classes classified as burning propellant classes under (e)(17) of this section.

(10) *Imparted velocities.* The maximum incremental velocity imparted to each fragment class created by flight termination system activation, or explosive or overpressure loads at breakup. The launch operator must identify the velocity distribution as Maxwellian or must define the distribution, including whether or not the specified maximum value is a fixed value with no uncertainty.

(11) *Fragment type.* The fragment type for each fragment established in accordance with paragraphs (c)(2), (c)(3), and (c)(4) of this section.

(12) *Origin.* The part of the launch vehicle from which each fragment originated.

(13) *Burning propellant classes.* The propellant consumption rate for those fragments that burn during free-fall.

(14) *Contained propellant fragments, explosive or non-explosive.* For contained propellant fragments, whether explosive or non-explosive, a launch operator must provide the initial weight of contained propellant and the consumption rate during free-fall. The initial weight of the propellant in a contained propellant fragment is the weight of the propellant before any of the propellant is consumed by normal vehicle operation or failure of the launch vehicle.

(15) *Solid propellant fragment snuff-out pressure.* The ambient pressure and the pressure at the surface of a solid propellant fragment, in pounds per square inch, required to sustain a solid propellant fragment's combustion during free-fall.

(16) *Other non-inert debris fragments.* For each non-inert debris fragment identified in accordance with paragraph (c)(4) of this section, a launch operator must describe the diffusion, dispersion, deposition, radiation, or other hazard exposure characteristics used to determine the effective casualty area required by paragraph (c)(9) of this section.

(17) *Residual thrust dispersion.* For each thrusting or non-thrusting stage having residual thrust capability following a launch vehicle malfunction, a launch operator must provide either the total residual impulse imparted or the full-residual thrust in foot-pounds as a function of breakup time. For any stage not capable of thrust after a launch vehicle malfunction, a launch operator must provide the conditions under which the stage is no longer capable of thrust. For each stage that can be ignited as a result of a launch vehicle malfunction on a lower stage, a launch operator must identify the effects and duration of the potential thrust, and the maximum deviation of the instantaneous impact point which can be brought about by the thrust. A launch operator must provide the explosion effects of all remaining fuels, pressurized tanks, and remaining stages, particularly with respect to ignition or detonation of upper stages if the flight termination system is activated during the burning period of a lower stage.

A417.13 Flight Safety Limits

(a) *General.* A flight safety analysis must include a flight safety limits analysis that satisfies the requirements of § 417.213. The requirements of this section apply to the computation of the flight safety limits and identifying the location of populated or other protected areas as required by § 417.213 and to the analysis products that the launch operator must submit to the FAA as required by § 417.203(e).

(b) *Flight safety limits constraints.* The analysis must establish flight safety limits in accordance with the following:

(1) Flight safety limits must account for potential malfunction of a launch vehicle during the time from launch vehicle first motion through flight until the no longer terminate time determined as required by A417.19.

(2) For a flight termination at any time during launch vehicle flight, the flight safety limits must:

(i) Represent no less than the extent of the debris impact dispersion for all debris fragments with a ballistic coefficient greater than or equal to three; and

(ii) Ensure that the debris impact area on the Earth's surface that is bounded by the debris impact dispersion in the uprange, downrange and crossrange directions does not extend to any populated or other protected area.

(3) Each debris impact area determined by a flight safety limits analysis must be offset in a direction away from populated or other protected areas. The size of the offset must account for all parameters that may contribute to the impact dispersion. The parameters must include:

(i) Launch vehicle malfunction turn capabilities.

(ii) Effective casualty area produced in accordance with A417.25(b)(8).

(iii) All delays in the identification of a launch vehicle malfunction.

(iv) Malfunction imparted velocities, including any velocity imparted to vehicle fragments by breakup.

(v) Wind effects on the malfunctioning vehicle and falling debris.

(vi) Residual thrust remaining after flight termination.

(vii) Launch vehicle guidance and performance errors.

(viii) Lift and drag forces on the malfunctioning vehicle and falling debris including variations in drag predictions of fragments and debris.

(ix) All hardware and software delays during implementation of flight termination.

(x) All debris impact location uncertainties caused by conditions prior to, and after, activation of the flight termination system.

(xi) Any other impact dispersion parameters peculiar to the launch vehicle.

(xii) All uncertainty due to map errors and launch vehicle tracking errors.

(c) *Risk management.* The requirements for public risk management of § 417.205(a) apply to a flight safety limits analysis. When employing risk assessment, the analysis must establish flight safety limits that satisfy paragraph (b) of this section, account for the products of the debris risk analysis performed in accordance with A417.25, and ensure that any risk to the public satisfies the public risk criteria of § 417.107(b) of this part. When employing hazard isolation, the analysis must establish flight safety limits in accordance with the following:

(1) The flight safety limits must account for the maximum deviation impact locations for the most wind sensitive debris fragment with a minimum of 11 ft-lbs of kinetic energy at impact.

(2) The maximum deviation impact location of the debris identified in (c)(1) of this section for each trajectory time must account for the three-sigma impact location for the maximum deviation flight, and the launch day wind conditions that produce the maximum ballistic wind for that debris.

(3) The maximum deviation flight must account for the instantaneous impact point, of the debris identified in (c)(1) at breakup, that is closest to a protected area and the maximum ballistic wind directed from the breakup point toward that protected area.

(d) *Flight safety limits analysis products.* The products of a flight safety limits analysis that a launch operator must submit to the FAA as required by § 417.203(e) must include:

(1) A description of each method used to develop and implement the flight safety limits. The description must include equations and example computations used in the flight safety limits analysis.

(2) A description of how each analysis method meets the analysis requirements and constraints of this section, including how the method produces a worst case scenario for each impact dispersion area.

(3) A description of how the results of the analysis are used to protect populated and other protected areas.

(4) A graphic depiction or series of depictions of the flight safety limits, the launch point, all launch site boundaries, surrounding geographic area, all protected area boundaries, and the nominal and three-sigma launch vehicle instantaneous impact point ground traces from liftoff to orbital insertion or the end of flight. Each depiction must have labeled geodetic latitude and longitude lines. Each depiction must show the flight safety limits at trajectory time intervals sufficient to depict the mission success margin between the flight safety limits and the protected areas. The launch vehicle trajectory instantaneous impact points must be plotted with sufficient frequency to provide a conformal representation of the launch vehicle's instantaneous impact point ground trace curvature.

(5) A tabular description of the flight safety limits, including the geodetic latitude and longitude for any flight safety limit. The table must contain quantitative values that define flight safety limits. The quantitative values must be rounded to the number of significant digits that can be determined from the uncertainty of the measurement device used to determine the flight safety limits and must be limited to a maximum of six decimal places.

(6) A map error table of direction and scale distortions as a function of distance from the point of tangency from a parallel of true scale and true direction or from a meridian of true scale and true direction. A launch operator must provide a table of tracking error as a function of downrange distance from the launch point for each tracking station used to make flight safety control decisions. A launch operator must submit a description of the method, showing equations and sample

calculations, used to determine the tracking error. The table must contain the map and tracking error data points within 100 nautical miles of the reference point at an interval of one data point every 10 nautical miles, including the reference point. The table must contain map and tracking error data points beyond 100 nautical miles from the reference point at an interval of one data point every 100 nautical miles out to a distance that includes all populated or other areas protected by the flight safety limits.

(7) A launch operator must provide the equations used for geodetic datum conversions and one sample calculation for converting the geodetic latitude and longitude coordinates between the datum ellipsoids used. A launch operator must provide any equations used for range and bearing computations between geodetic coordinates and one sample calculation.

A417.15 Straight-Up Time

(a) *General.* A flight safety analysis must include a straight-up time analysis that satisfies the requirements of § 417.215. The requirements of this section apply to the computation of straight-up time as required by § 417.215 and to the analysis products that the launch operator must submit to the FAA as required by § 417.203(e). The analysis must establish a straight-up time as the latest time-after-liftoff, assuming a launch vehicle malfunctioned and flew in a vertical or near vertical direction above the launch point, at which activation of the launch vehicle's flight termination system or breakup of the launch vehicle would not cause hazardous debris or critical overpressure to affect any populated or other protected area.

(b) *Straight-up time constraints.* A straight-up-time analysis must account for the following:

(1) Launch vehicle trajectory. The analysis must use the straight-up trajectory determined in accordance with A417.7(e).

(2) Sources of debris impact dispersion of A417.13(b)(3)(iii) through (xii)

(b) *Straight-up time analysis products.* The products of a straight-up-time analysis that a launch operator must submit to the FAA as required by § 417.203(e) must include:

(1) The straight-up-time.

(2) A description of the methodology used to determine straight-up time.

A417.17 No-Longer Terminate Gate

(a) *General.* The flight safety analysis for a launch that involves flight over a populated or other protected area must include a no-longer terminate gate analysis that satisfies the requirements of § 417.217. The requirements of this section apply to determining a gate as required by § 417.217 and the analysis products that the launch operator must submit to the FAA as required by § 417.203(e). The analysis must determine the portion, referred to as a gate, of a flight safety limit, through which a launch vehicle's tracking representation will be allowed to proceed without flight termination.

(b) *No-longer-terminate gate analysis constraints.* The following analysis constraints apply to a gate analysis.

(1) For each gate in a flight safety limit, the criteria used for determining whether to allow passage through the gate or to terminate flight at the gate must use all the same launch vehicle flight status parameters as the criteria used for determining whether to terminate flight at a flight safety limit. For example, if the flight safety limits are a function of instantaneous impact point location, the criteria for determining whether to allow passage through a gate in the flight safety limit must also be a function of instantaneous impact point location. Likewise, if the flight safety limits are a function of drag impact point, the gate criteria must also be a function of drag impact point.

(2) When establishing a gate in a flight safety limit, the analysis must ensure that the launch vehicle flight satisfies the public risk criteria of § 417.107(b).

(3) For each established gate, the analysis must account for:

(i) All launch vehicle tracking and map errors.

(ii) All launch vehicle plus and minus three-sigma trajectory limits.

(iii) All debris impact dispersions.

(4) The width of a gate must restrict a launch vehicle's normal trajectory ground trace.

(c) *No-longer-terminate gate analysis products.* The products of a gate analysis that a launch operator must submit to the FAA as required by § 417.203(e) must include:

(1) A description of the methodology used to establish each gate.

(2) A description of the tracking representation.

(3) A tabular description of the input data.

(4) Example analysis computations performed to determine a gate. If a launch involves more than one gate and the same methodology is used to determine each gate, the launch operator need only submit the computations for one of the gates.

(5) A graphic depiction of each gate. A launch operator must provide a depiction or depictions showing flight safety limits, protected area outlines, nominal and 3-sigma left and right trajectory ground traces, protected area overflight regions, and predicted impact dispersion about the three-sigma trajectories within the gate. Each depiction must show latitude and longitude grid lines, gate latitude and longitude labels, and the map scale.

A417.19 Data Loss Flight Time and No Longer Terminate Time

(a) *General.* A flight safety analysis must include a data loss flight time analysis that satisfies the requirements of § 417.219. The requirements of this section apply to the computation of data loss flight times and the no longer terminate time required by § 417.219, and to the analysis products that the launch operator must submit to the FAA as required by § 417.203(e).

(b) *No longer terminate time.* The analysis must establish a no longer terminate time for a launch in accordance with the following:

(1) For a suborbital launch, the analysis must determine a no longer terminate time as the time after liftoff that a launch vehicle's hazardous debris impact dispersion can no longer reach any protected area.

(2) For an orbital launch where the launch vehicle's instantaneous impact point does not overfly a protected area prior to reaching orbit, the analysis must establish the no-longer terminate time as the time after liftoff that the launch vehicle's hazardous debris impact dispersion can no longer reach any protected area or orbital insertion, whichever occurs first.

(3) For an orbital launch where a gate permits overflight of a protected area and where orbital insertion occurs after reaching the gate, the analysis must determine the no longer terminate time as the time after liftoff when the time for the launch vehicle's instantaneous impact point to reach the gate is less than the time for the instantaneous impact point to reach any flight safety limit.

(4) The analysis must account for a malfunction that causes the launch vehicle to proceed from its position at the trajectory time being evaluated toward the closest flight safety limit and protected area.

(5) The analysis must account for the launch vehicle thrust vector that produces the highest instantaneous impact point range-rate that the vehicle is capable of producing at the trajectory time being evaluated.

(c) *Data loss flight times.* For each launch vehicle trajectory time, from the predicted earliest launch vehicle tracking acquisition time until the no longer terminate time, the analysis must determine the data loss flight time in accordance with the following:

(1) The analysis must determine each data loss flight time as the minimum thrusting time for a launch vehicle to move from a normal trajectory position to a position where a flight termination would cause the malfunction debris impact dispersion to reach any protected area.

(2) A data loss flight time analysis must account for a malfunction that causes the launch vehicle to proceed from its position at the trajectory time being evaluated toward the closest flight safety limit and protected area.

(3) The analysis must account for the launch vehicle thrust vector that produces the highest instantaneous impact point range-rate that the vehicle is capable of producing at the trajectory time being evaluated.

(4) Each data loss flight time must account for the system delays at the time of flight.

(5) The analysis must determine a data loss flight time for time increments that do not exceed one second along the launch vehicle nominal trajectory.

(d) *Products.* The products of a data loss flight time and no longer terminate time analysis that a launch operator must submit as required by § 417.203(e) must include:

(1) A launch operator must describe the methodology used in its analysis, and identify all assumptions, techniques, input data, and equations used. A launch operator must submit calculations performed for one data loss flight time in the launch area and one data loss flight time that is no less than 50 seconds later in the downrange area.

(2) A launch operator must submit a graphical description or depictions of the flight safety limits, the launch point, the launch site boundaries, the surrounding geographic area, any protected areas, the no longer terminate time within any applicable scale requirements, latitude and longitude grid lines, and launch vehicle nominal and

three-sigma instantaneous impact point ground traces from liftoff through orbital insertion for an orbital launch, and through final impact for a suborbital launch. Each graph must show any launch vehicle trajectory instantaneous impact points plotted with sufficient frequency to provide a conformal estimate of the launch vehicle's instantaneous impact point ground trace curvature. A launch operator must provide labeled latitude and longitude lines and the map scale on the depiction.

(3) A launch operator must provide a tabular description of each data loss flight time. The tabular description must include the malfunction start time and the geodetic latitude (positive north of the equator) and longitude (positive east of the Greenwich Meridian) coordinates of the intersection of the launch vehicle instantaneous impact point trajectory with the flight safety limit. The table must identify the first data lost flight time and no longer terminate time. The tabular description must include data loss flight times for trajectory time increments not to exceed one second.

A417.21 Time Delay

(a) *General.* A flight safety analysis must include a time delay analysis that satisfies the requirements of § 417.221. The requirements of this section apply to the computation of time delays associated with a flight safety system and other launch vehicle systems and operations as required by § 417.221 and to the analysis products that the launch operator must submit to the FAA as required by § 417.203(e).

(b) *Time delay analysis constraints.* The analysis must account for all significant causes of time delay between the violation of a flight termination rule and the time when a flight safety system is capable of terminating flight in accordance with the following:

(1) The analysis must account for decision and reaction times, including variation in human response time, for flight safety official and other personnel that are part of a launch operator's flight safety system as defined by subpart D of this part.

(2) The analyses must determine the time delay inherent in any data, from any source, used by a flight safety official for making flight termination decisions.

(3) A time delay analysis must account for all significant causes of time delay, including data flow rates and reaction times, for hardware and software, including, but not limited to the following:

(i) *Tracking system.* A time delay analysis must account for time delays between the launch vehicle's current location and last known location and that are associated with the hardware and software that make up the launch vehicle tracking system, whether or not it is located on the launch vehicle, such as transmitters, receivers, decoders, encoders, modulators, circuitry and any encryption and decryption of data.

(ii) *Display systems.* A time delay analysis must account for delays associated with hardware and software that make up any display system used by a flight safety official to aid in making flight control decisions. A time delay analysis must also account for any manual operations requirements, tracking source selection, tracking data processing, flight safety limit computations, inherent display delays, meteorological data processing, automated or manual system configuration control, automated or manual process control, automated or manual mission discrete control, and automated or manual failover decision control.

(iii) *Flight termination system and command control system.* A time delay analysis must account for delays and response times associated with flight termination system and command control system hardware and software, such as transmitters, decoders, encoders, modulators, relays and shutdown, arming and destruct devices, circuitry and any encryption and decryption of data.

(iv) *Software specific time delays.* A delay analysis must account for delays associated with any correlation of data performed by software, such as timing and sequencing; data filtering delays such as error correction, smoothing, editing, or tracking source selection; data transformation delays; and computation cycle time.

(4) A time delay analysis must determine the time delay plus and minus three-sigma values relative to the mean time delay.

(5) For use in any risk analysis, a time delay analysis must determine time delay distributions that account for the variance of time delays for potential launch vehicle failures, including but not limited to, the range of malfunction turn characteristics and the time of flight when the malfunction occurs.

(c) *Time delay analysis products.* The products of a time delay analysis that a launch operator must submit as required by § 417.203(e) must include:

(1) A description of the methodology used to produce the time delay analysis.

(2) A schematic drawing that maps the flight safety official's data flow time delays from the start of a launch vehicle malfunction through the final commanded flight termination on the launch vehicle, including the flight safety official's decision and reaction time. The drawings must indicate major systems, subsystems, major software functions, and data routing.

(3) A tabular listing of each time delay source and its individual mean and plus and minus three-sigma contribution to the overall time delay. The table must provide all time delay values in milliseconds.

(4) The mean delay time and the plus and minus three-sigma values of the delay time relative to the mean value.

A417.23 Flight Hazard Areas

(a) *General.* A flight safety analysis must include a flight hazard area analysis that satisfies the requirements of § 417.223. The requirements of this section apply to the determination of flight hazard areas for orbital and ballistic launch vehicles that use a flight termination system to protect the public as required by § 417.223 and to the analysis products that the launch operator must submit to the FAA as required by § 417.203(e). Requirements that apply to determining flight hazard areas for unguided suborbital rockets that use a wind weighting safety system are contained in appendix C of this part.

(b) *Launch site flight hazard area.* A flight hazard area analysis must establish a launch site flight hazard area that encompasses the launch point and:

(i) If the flight safety analysis employs hazard isolation to establish flight safety limits in accordance with A417.13(c), the launch site flight hazard area must encompass the flight safety limits.

(ii) If the flight safety analysis does not employ hazard isolation to establish the flight safety limits, the launch site flight hazard area must encompass all hazard areas established in accordance with paragraphs (d) through (j) of this section. Figure A417.23–1 illustrates a launch site flight hazard area for a coastal launch site. Figure A417.23–2 illustrates a launch site flight hazard area for an inland launch site.

(c) *Flight corridor.* For regions outside the flight hazard area, the analysis must define a flight corridor that extends downrange from a flight hazard area as illustrated by figure A417.23–3. The flight safety limits established in accordance with A417.13 must bound the flight corridor. The flight corridor must include any land overflight permitted by a gate established in accordance with A417.17. A five-sigma cross range trajectory dispersion about the nominal launch vehicle trajectory must bound any land overflight area. A flight corridor must extend for all downrange positions from the flight hazard area to the no longer terminate time determined in accordance with A417.19.

(d) *Debris impact hazard area.* The analysis must establish a debris impact hazard area that accounts for the effects of impacting debris resulting from normal and malfunctioning launch vehicle flight, except for toxic effects, and accounts for potential impact locations of all debris fragments. The analysis must establish a debris hazard area in accordance with the following:

(1) An individual casualty contour that defines where the risk to an individual would exceed an expected casualty (E_C) criteria of 1×10^{-6} if one person were assumed to be in the open and inside the contour during launch vehicle flight must bound a debris hazard area. The analysis must produce an individual casualty contour in accordance with the following:

(i) The analysis must account for the location of a hypothetical person, and must vary the location of the person to determine when the risk would exceed the E_c criteria of 1×10^{-6}. The analysis must count a person as a casualty when the person's location is subjected to any inert debris impact with a mean expected kinetic energy greater than or equal to 11 ft-lbs or a peak incident overpressure equal to or greater than one psi due to explosive debris impact. The analysis must determine the peak incident overpressure using the Kingery-Bulmash relationship, without regard to sheltering, reflections, or atmospheric effects.

(ii) The analysis must account for person locations that are no more than 1000 feet apart in the downrange direction and no more than 1000 feet apart in the crossrange direction to produce an individual casualty contour. For each person location, the

analysis must sum the probabilities of casualty over all flight times for all debris groups.

(iii) An individual casualty contour must consist of curves that are smooth and continuous. To accomplish this, the analysis must vary the time interval between the trajectory times assessed so that each location of a debris impact point is less than one-half sigma of the downrange dispersion distance.

(2) The input for determining a debris impact hazard area must account for the results of the trajectory analysis required by A417.7, the malfunction turn analysis required by A417.9, and the debris analysis required by A417.11 to define the impact locations of each class of debris established by the debris analysis, and the time delay analysis required by A417.21.

(3) The analysis must account for the extent of the impact debris dispersions for each debris class produced by normal and malfunctioning launch vehicle flight at each trajectory time. The analysis must also account for how the vehicle breaks up, either by the flight termination system or by aerodynamic forces, if the different breakup may result in a different probability of existence for each debris class. A debris impact hazard area must account for each impacting debris fragment classified in accordance with A417.11(c).

(4) The analysis must account for launch vehicle flight that exceeds a flight safety limit. The analysis must also account for trajectory conditions that maximize the mean debris impact distance during the flight safety system delay time determined in accordance with A417.21 and account for a debris model that is representative of a flight termination or aerodynamic breakup. For each launch vehicle breakup event, the analysis must account for trajectory and breakup dispersions, variations in debris class characteristics, and debris dispersion due to any wind condition under which a launch would be attempted.

(5) The analysis must account for the probability of failure of each launch vehicle stage and the probability of existence of each debris class. The analysis must account for the probability of occurrence of each type of launch vehicle failure. The analysis must account for vehicle failure probabilities that vary depending on the time of flight.

(6) In addition to failure debris, the analysis must account for nominal jettisoned body debris impacts and the corresponding debris impact dispersions. The analysis must use a probability of occurrence of 1.0 for the planned debris fragments produced by normal separation events during flight.

(e) *Near-launch-point blast hazard area.* A flight hazard area analysis must define a blast overpressure hazard area as a circle extending from the launch point with a radius equal to the 1.0-psi overpressure distance produced by the equivalent TNT weight of the explosive capability of the vehicle. In addition, the analysis must establish a minimum near-pad blast hazard area to provide protection from hazardous fragments potentially propelled by an explosion. The analysis must account for the maximum possible total solid and liquid propellant explosive potential of the launch vehicle and any payload. The analysis must define a blast overpressure hazard area using the following equations:

$R_{op} = 45 \cdot (NEW)^{1/3}$

Where:

R_{op} is the over pressure distance in feet.

$NEW = W_E \cdot C$ (pounds).

W_E is the weight of the explosive in pounds.

C is the TNT equivalency coefficient of the propellant being evaluated. A launch operator must identify the TNT equivalency of each propellant on its launch vehicle including any payload. TNT equivalency data for common liquid propellants is provided in tables A417–1. Table A417–2 provides factors for converting gallons of specified liquid propellants to pounds.

(f) *Other hazards.* A flight hazard area analysis must identify any additional hazards, such as radioactive material, that may exist on the launch vehicle or payload. For each such hazard, the analysis must determine a hazard area that encompasses any debris impact point and its dispersion and includes an additional hazard radius that accounts for potential casualty due to the additional hazard. Analysis requirements for toxic release and far field blast overpressure are provided in § 417.27 and A417.29, respectively.

(g) *Ship-hit contours.* A flight hazard area analysis must establish ship hazard areas, referred to as ship-hit contours, to ensure that the probability of hitting a ship satisfies the collective probability threshold of 1×10^{-5} required by § 417.107(b) and to determine the area that may need to be surveyed on the day of launch. The analysis must determine the need to survey the ship hazard areas in accordance with paragraph (h) of this section. When paragraph (h) requires surveillance, a launch operator must not initiate flight while the number of ships within any ship-hit contour is greater than or equal to the number of ships for which the contour was established. The flight hazard area must encompass all ship-hit contours. The analysis must establish the ship-hit contours in accordance with the following:

(1) A ship-hit contour must account for the size of the largest ship that could be located in the flight hazard area. The analysis must demonstrate that the ship size used represents the largest ship that could be present in the flight hazard area or, if the ship size is unknown, the analysis must use a ship size of 120,000 square feet. Additional contours may be established for smaller vessels if necessary to facilitate surveillance of the flight hazard area while ensuring that the 1×10^{-5} hit criteria is satisfied.

(2) The analysis must determine ship-hit contours for one to 10 ships in increments of one ship. For each given number of ships, the associated ship-hit contour must bound an area around the nominal instantaneous impact point trace where, if the given number of ships were located on the contour, the collective probability of impacting any ship would be less than or equal to the 1×10^{-5} ship-hit criteria.

(3) Each ship-hit contour must account for all debris as determined in accordance with A417.11. Each contour must account for each mean debris impact point and the extent of the impact dispersion for each simulated launch vehicle failure for increasing trajectory times, starting at liftoff. Each debris impact dispersion must account for the variance in winds, the aerodynamic properties of the debris and the variance in velocity of the debris resulting from vehicle breakup, the malfunction turn capabilities of the launch vehicle, and guidance and performance errors. The analysis must also account for the type of vehicle breakup, either by the flight termination system or by aerodynamic forces that may result in different debris characteristics.

(4) Each ship-hit contour must account for any inert debris impact with mean expected kinetic energy at impact greater than or equal to 11 ft-lbs and peak incident overpressure of greater than or equal to 1.0 psi due to any explosive debris impact. A ship-hit contour must consists of curves that are smooth and continuous. To accomplish this, the analysis must vary the time interval, between the trajectory times assessed such that the distance between each debris impact point location for each time assessed is less than one-half sigma of the downrange dispersion distance.

(5) Each ship-hit contour must account for each nominal staging event and potential launch vehicle failure that may result in vehicle breakup in the flight hazard area. Each contour must account for the probability of failure of each launch vehicle stage and the probability of existence of each debris class. The analysis must account for each launch vehicle failure as a function of probability of occurrence. The analysis must account for each launch vehicle failure probability as a function of flight time. The analysis must account for all potential debris created by flight termination and aerodynamic breakup and the probability of occurrence of each. Each contour must account for breakup through aerodynamic breakup or a flight termination action and the different debris that would result from each type of breakup. The analysis must account for any planned debris impact, such as a stage or payload fairing impact and a probability of existence equal to the probability of success for the planned debris impact.

(h) *Ship surveillance in the launch site flight hazard area.* The launch site flight hazard area need not be surveyed for ships during the launch countdown if the analysis demonstrates, using statistical ship density data, that the total probability of a ship impact occurring is less than or equal to 1×10^{-5}. The analysis must establish whether a launch operator must conduct ship surveillance in the launch site flight hazard area for a launch in accordance with the following:

(1) The analysis must determine ship density for the launch site flight hazard area based on accurate statistical data. The ship density for the launch site flight hazard area must account for factors that affect the ship density, such as time of day. The analysis must use statistical ship density for the launch site flight hazard area multiplied by a safety factor of 10 unless the analysis includes a clear and convincing demonstration of the accuracy of the ship

density data, and accounts for the associated ship density error in the collective ship-hit probability analysis.

(2) The analysis must establish the expected number of ships inside the 10-ship contour determined in accordance with paragraph (g) of this section, by determining the total water surface area within the 10-ship contour and multiplying this area by the ship density determined in accordance with paragraph (h)(1) of this section. If the resulting number of ships is less than 10, the launch operator need not perform ship surveillance in the flight hazard area. If the resulting number of ships is equal to or greater than 10, the launch operator must perform ship surveillance in the flight hazard area as required by § 417.121(f).

(i) *Ship hazard area for notice to mariners.* Regardless of whether ship surveillance is required in accordance with paragraph (h) of this section, the launch operator must provide the ship-hit contour for 10 ships determined in accordance with paragraph (e) of this section as a notice to mariners as required by § 417.121(e).

(j) *Launch site flight hazard area aircraft-hit contour.* A flight hazards area analysis must determine an aircraft-hit contour to be surveyed on the day of launch to ensure that the probability of hitting an aircraft satisfies the individual probability threshold of 1×10^{-8} as required by § 417.107(b) for the flight hazard area around the launch point. The launch site flight hazard area must contain an aircraft-hit contour that extends for altitudes from zero to 60,000 feet. The analysis must determine an aircraft-hit contour in accordance with the following:

(1) An aircraft-hit contour must bound an area around the nominal instantaneous impact point trace where, if an aircraft were located on the contour, the individual probability of impacting the aircraft would be less than or equal to 1×10^{-8}.

(2) The analysis must account for the dimension of the largest aircraft operated in the vicinity of the launch or, if unknown, the dimensions of a Boeing 747 aircraft.

(3) The analysis must account for all debris as determined under A417.11. An aircraft-hit contour must account for aircraft velocity and debris with kinetic energy relative to the aircraft greater than or equal to 11 ft-lbs.

(4) The analysis must account for each nominal staging event and potential vehicle failure that may result in vehicle breakup. The analysis must account for each vehicle failure as a function of probability of occurrence and as a function of time.

(5) The analysis must account for all debris for both flight termination and for aerodynamic breakup and the probability of occurrence of the debris. The analysis must account for each mean debris impact point and the extent of the debris impact dispersion.

(k) *Flight corridor ship hazard areas.* Within a flight corridor but outside of a launch site flight hazard area, the analysis must determine a ship hazard area for each planned debris impact for the issuance of notices to mariners. Each ship hazard area must consist of an area centered on a planned impact point and must be defined by the larger of the three-sigma impact dispersion ellipse or an ellipse with the same semi-major and semi-minor axis ratio as the impact dispersion, where, if a ship were located on the boundary of the ellipse, the probability of hitting the ship would be less than or equal to 1×10^{-5}. The analysis must establish each flight corridor ship hazard area in accordance with C417.5(h) and C417.5(i) of appendix C, which apply to both orbital and suborbital launch. The analysis must demonstrate whether surveillance of a ship hazard area must take place as required by C417.5(g) of appendix C of this part.

(l) *Flight corridor aircraft hazard areas.* Within a flight corridor but outside of a launch site flight hazard area, the analysis must establish an aircraft hazard area for each planned debris impact for the issuance of notices to airmen in accordance with § 417.121(e). Each aircraft hazard area must encompass an air space region, from an altitude of 60,000 feet to impact on the Earth's surface, that contains the larger of the three-sigma drag impact dispersion or an ellipse with the same semi-major and semi-minor axis ratio as the impact dispersion, where, if an aircraft were located on the boundary of the ellipse, the probability of hitting the aircraft would be less than or equal to 1×10^{-8}. The flight safety analysis must determine flight corridor aircraft hazard areas for both orbital and suborbital launch using the methodology contained in paragraph C417.5(f) of appendix C of this part.

(m) *Flight hazard area analysis products.* The products of a flight hazard area analysis that a launch operator must submit to the FAA in accordance with § 417.203(e) must include, but need not be limited to:

(1) A chart that depicts the launch site flight hazard area, including its size and location.

(2) A chart that depicts each hazard area required by this section.

(3) A description of each hazard for which analysis was performed; the methodology used to compute each hazard area; and the debris classes for aerodynamic breakup of the launch vehicle and for flight termination. For each debris class, the launch operator must identify the number of debris fragments, the variation in ballistic coefficient, and the standard deviation of the debris dispersion.

(4) A chart that depicts each of the ship-hit contours, the individual casualty contour, and the aircraft-hit contour.

(5) A chart that depicts the flight corridor, including any regions of land overflight.

(6) A description of the aircraft hazard area for each planned debris impact inside the flight corridor, the information to be published in a Notice to Airmen, and all information required as part of any agreement with the FAA ATC office having jurisdiction over the airspace through which flight will take place.

(7) A description of any ship hazard area for each planned debris impact inside the flight corridor and all information required in a Notice to Mariners.

(8) A description of the methodology used for determining each hazard area.

(9) A description of the hazard area operational controls and procedures to be implemented for flight.

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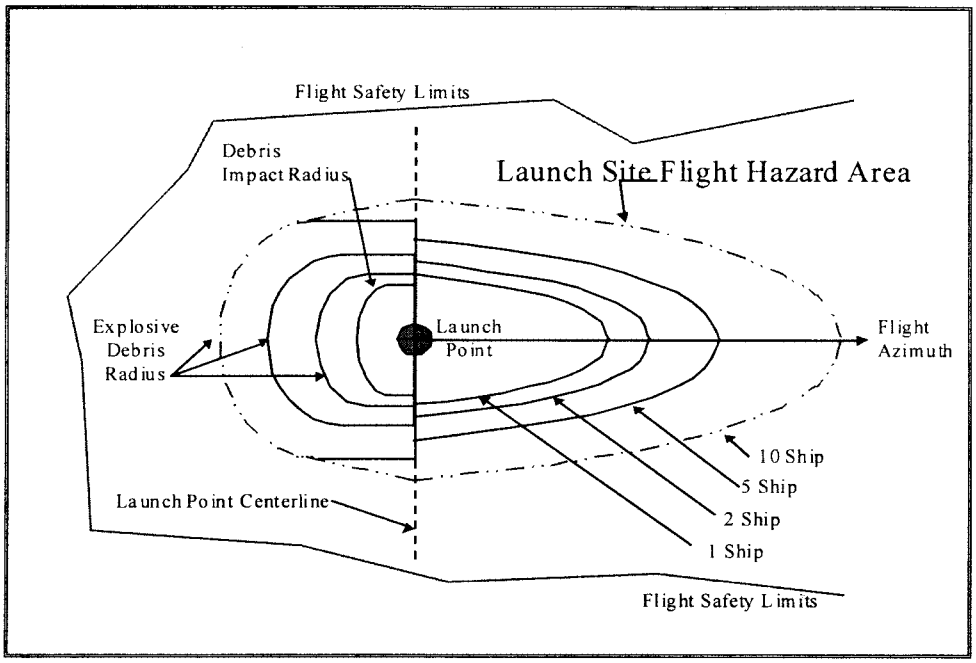

Figure A417.23- 1, Illustration of a Flight Hazard Area for a Coastal Launch Site

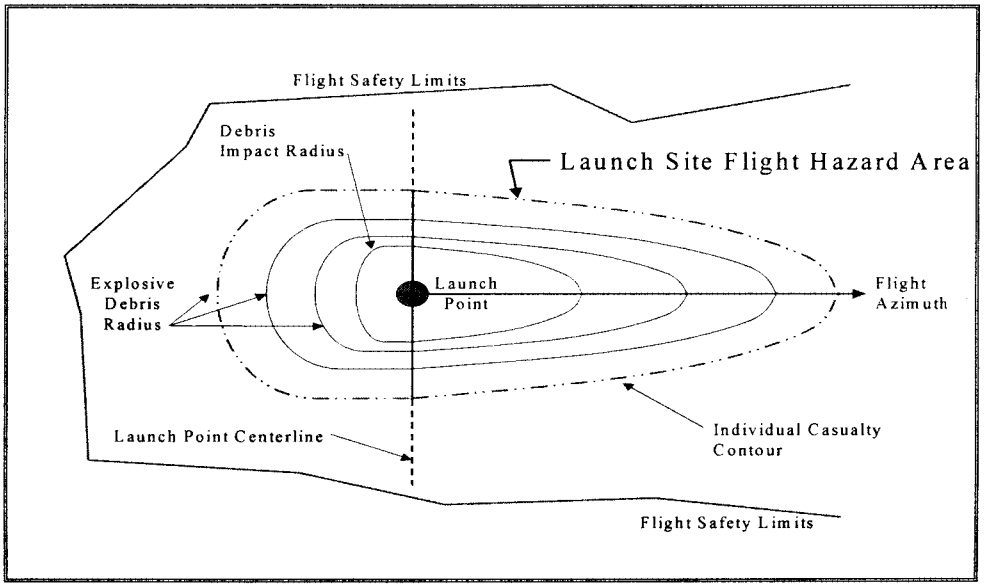

Figure A417.23- 2, Illustration of a Flight Hazard Area for an Inland Launch Site

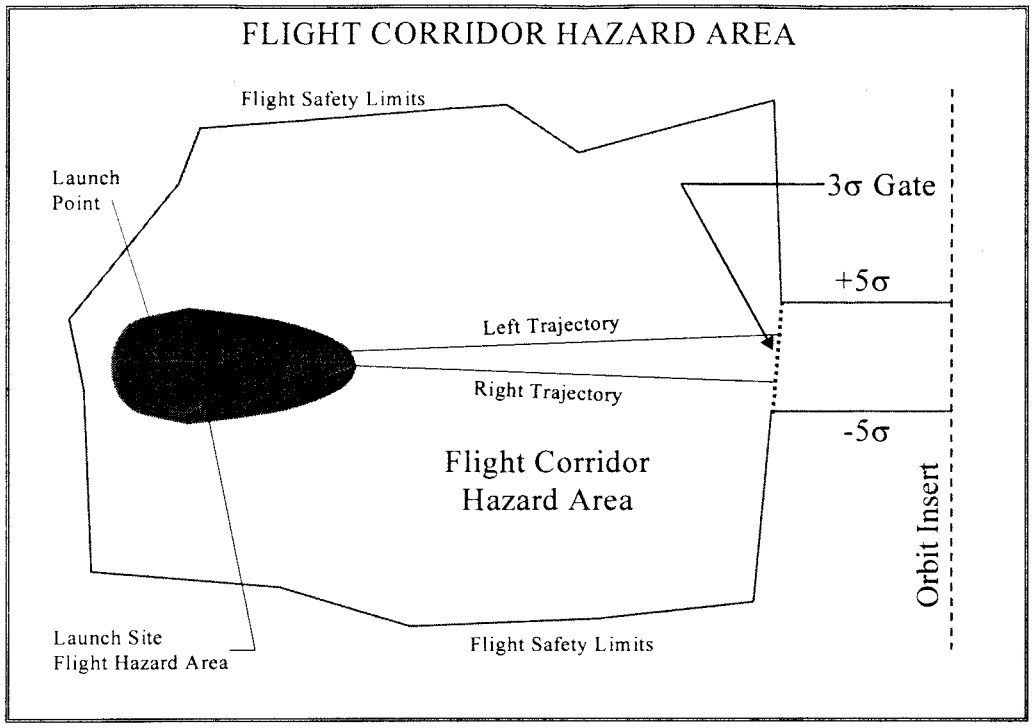

Figure A417.23- 3, Illustration of a Flight Corridor Hazard Area

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TABLE A417–1, LIQUID PROPELLANT EXPLOSIVE EQUIVALENTS

Propellant combinations	TNT equivalents
LO_2/LH_2	The larger of $8W^{2/3}$ or 14% of W. Where W is the weight of LO_2/LH_2.

TABLE A417–1, LIQUID PROPELLANT EXPLOSIVE EQUIVALENTS

Propellant combinations	TNT equivalents
LO_2/LH_2 + LO_2/RP–1.	Sum of (20% for LO_2/RP–1) the larger of $8W^{2/3}$ or 14% of W. Where W is the weight of LO_2/LH_2.
LO_2/RP–1	20% of W up to 500,000 pounds + 10% of W over 500,000 pounds.

TABLE A417–1, LIQUID PROPELLANT EXPLOSIVE EQUIVALENTS

Propellant combinations	TNT equivalents
N_2O_4/N_2H_4 (or UDMH or UDMH/N_2H_4 Mixture).	Where W is the weight of LO_2/RP–1. 10% of W. Where W is the weight of the propellant.

TABLE A417–2, PROPELLANT HAZARD AND COMPATIBILITY GROUPINGS AND FACTORS TO BE USED WHEN CONVERTING GALLONS OF PROPELLANT INTO POUNDS

Propellant	Hazard group	Compatibility group	Pounds/gallon	°F
Hydrogen Peroxide	II	A	11.6	68
Hydrazine	III	C	8.4	68
Liquid Hydrogen	III	C	0.59	–423
Liquid Oxygen	II	A	9.5	–297
Nitrogen Tetroxide	I	A	12.1	68
RP–1	I	C	6.8	68
UDMH	III	C	6.6	68
UDHM/Hydrazine	III	C	7.5	68

A417.25 Debris Risk

(a) *General.* A flight safety analysis must include a debris risk analysis that satisfies the requirements of § 417.225. The requirements of this section apply to the computation of the average number of casualties (EC) to the collective members of the public exposed to inert and explosive debris hazards from the proposed flight of a launch vehicle as required by § 417.225 and to the analysis products that the launch operator must submit to the FAA as required by § 417.203(e).

(b) *Debris risk analysis constraints.* The following constraints apply to a debris risk analysis:

(1) A debris risk analysis must use the methodologies and equations of appendix B of this part.

(2) A debris risk analysis must account for the following populations:

(i) The overflight of populations located inside any flight safety limits.

(ii) All populations located within five-sigma left and right crossrange of a nominal trajectory instantaneous impact point ground trace and within five-sigma of each planned nominal debris impact.

(iii) Any planned overflight of the public within any gate overflight areas.

(iv) Any populations outside the flight safety limits identified in accordance with paragraph (b)(10) of this section.

(3) A debris risk analysis must account for both inert and explosive debris hazards produced from any impacting debris caused by normal and malfunctioning launch vehicle flight. The analysis must account for the debris classes determined by the debris analysis required by A417.11. A debris risk analysis must account for any inert debris impact with mean expected kinetic energy at impact greater than or equal to 11 ft-lb and peak incident overpressure of greater than or equal to 1.0 psi due to any explosive debris impact. The analysis must account for all debris hazards as a function of flight time.

(4) A debris risk analysis must account for debris impact points and dispersion for each class of debris in accordance with the following:

(i) A debris risk analysis must account for drag corrected impact points and dispersions for each class of impacting debris resulting from normal and malfunctioning launch vehicle flight as a function of trajectory time from lift-off through orbital insertion, including each planned impact, for an orbital launch, and through final impact for a suborbital launch.

(ii) The dispersion for each debris class must account for the position and velocity state vector dispersions at breakup, the variance produced by breakup imparted velocities, the variance produced by winds, the variance produced by aerodynamic properties for each debris class, and any other dispersion variances.

(iii) A debris risk analysis must account for the survivability of debris fragments that are subject to reentry aerodynamic forces or heating. A debris class may be eliminated from the debris risk analysis if the launch operator demonstrates that the debris will not survive to impact.

(5) A debris risk analysis must account for launch vehicle failure probability. The following constraints apply:

(i) For a launch vehicle with fewer than 15 flights, a launch operator must use a launch vehicle failure probability of 0.31.

(ii) For a launch vehicle with at least 15 flights, but fewer than 30 flights, a launch operator must use a launch vehicle failure probability of 0.10 or the empirical failure probability, whichever is greater.

(iii) For a launch vehicle with 30 or more flights, a launch operator must use the empirical failure probability determined from the actual flight history.

(iv) For a launch vehicle with a previously established failure probability that undergoes a modification to a stage, and the modification could affect the reliability of that stage, the launch operator must apply the previously established failure probability to all unmodified stages and the failure probability requirements of paragraphs (b)(5)(i) through (b)(5)(iii) of this section to the modified stage.

(6) A debris risk analysis must account for the dwell time of the instantaneous impact point ground trace over each populated or protected area being evaluated.

(7) A debris risk analysis must account for the three-sigma instantaneous impact point trajectory variations in left-crossrange, right-crossrange, uprange, and downrange as a function of trajectory time, due to launch vehicle performance variations as determined by the trajectory analysis performed in accordance with A417.7.

(8) A debris risk analysis must account for the effective casualty area as a function of launch vehicle flight time for all impacting debris generated from a catastrophic launch vehicle malfunction event or a planned impact event. The effective casualty area must account for both payload and vehicle systems and subsystems debris. The effective casualty area must account for all debris fragments determined as part of a launch operator's debris analysis in accordance with A417.11. The effective casualty area for each explosive debris fragment must account for a 1.0-psi blast overpressure radius and the projected debris effects for all potentially explosive debris. The effective casualty area for each inert debris fragment must:

(i) Account for bounce, skip, slide, and splatter effects; or

(ii) Equal seven times the maximum projected area of the fragment.

(9) A debris risk analysis must account for current population density data obtained from a current population database for the region being evaluated or by estimating the current population using exponential population growth rate equations applied to the most current historical data available. The population model must define population centers that are similar enough to be described and treated as a single average set of characteristics without degrading the accuracy of the debris risk estimate.

(10) For a launch vehicle that uses a flight safety system, a debris risk analysis must account for the collective risk to any populations outside the flight safety limits in the area surrounding the launch site during flight, including people who will be at any public launch viewing area during flight. For such populations, in addition to the constraints listed in paragraphs (b)(1) through (b)(9) of this section, a launch operator's debris risk analysis must account for the following:

(i) The probability of a launch vehicle failure that would result in debris impact in protected areas outside the flight safety limits.

(ii) The failure rate of the launch operator's flight safety system. A flight safety system failure rate of 0.002 may be used if the flight safety system complies with the flight safety system requirements of subpart D of this part. For an alternate flight safety system approved in accordance with § 417.107(a)(3), the launch operator must demonstrate the validity of the probability of failure through the licensing process.

(iii) Current population density data and population projections for the day and time of flight for the areas outside the flight safety limits.

(c) *Debris risk analysis products.* The products of a debris risk analysis that a launch operator must submit to the FAA as required by § 417.203(e) must include:

(1) A debris risk analysis report that provides the analysis input data, probabilistic risk determination methods, sample computations, and text or graphical charts that characterize the public risk to geographical areas for each launch.

(2) Geographic data showing:

(i) The launch vehicle nominal, five-sigma left-crossrange and five-sigma right-crossrange instantaneous impact point ground traces;

(ii) All exclusion zones relative to the instantaneous impact point ground traces; and

(iii) All populated areas included in the debris risk analysis.

(3) A discussion of each launch vehicle failure scenario accounted for in the analysis and the probability of occurrence, which may vary with flight time, for each failure scenario. This information must include failure scenarios where a launch vehicle:

(i) Flies within normal limits until some malfunction causes spontaneous breakup or results in a commanded flight termination;

(ii) Experiences malfunction turns; and

(iii) Flight safety system fails to function.

(4) A population model applicable to the launch overflight regions that contains the following: region identification, location of the center of each population center by geodetic latitude and longitude, total area, number of persons in each population center, and a description of the shelter characteristics within the population center.

(5) A description of the launch vehicle, including general information concerning the nature and purpose of the launch and an overview of the launch vehicle, including a scaled diagram of the general arrangement and dimensions of the vehicle. A launch operator's debris risk analysis products may reference other documentation submitted to the FAA containing this information. The launch operator must identify any changes in the launch vehicle description from that submitted during the licensing process in accordance with § 415.109(e). The description must include:

(i) Weights and dimensions of each stage.

(ii) Weights and dimensions of any booster motors attached.

(iii) The types of fuel used in each stage and booster.

(iv) Weights and dimensions of all interstage adapters and skirts.

(v) Payload dimensions, materials, construction, any payload fuel; payload fairing construction, materials, and dimensions; and any non-inert components or materials that add to the effective casualty area of the debris, such as radioactive or toxic materials or high-pressure vessels.

(6) A typical sequence of events showing times of ignition, cutoff, burnout, and jettison of each stage, firing of any ullage rockets, and starting and ending times of coast periods and control modes.

(7) The following information for each launch vehicle motor:

(i) Propellant type and composition;

(ii) Vacuum thrust profile;

(iii) Propellant weight and total motor weight as a function of time;

(iv) A description of each nozzle and steering mechanism;

(v) For solid rocket motors, internal pressure and average propellant thickness, or borehole radius, as a function of time;

(vi) Maximum impact point deviations as a function of failure time during destruct system delays. Burn rate as a function of ambient pressure;

(vii) A discussion of whether a commanded destruct could ignite a non-thrusting motor, and if so, under what conditions; and

(viii) Nozzle exit and entrance areas.

(8) The launch vehicle's launch and failure history, including a summary of past vehicle performance. For a new vehicle with little or no flight history, a launch operator must provide data on similar vehicles that include:

(i) Identification of the launches that have occurred;

(ii) Launch date, location, and direction of each launch;

(iii) The number of launches that performed normally;

(iv) Behavior and impact location of each abnormal experience;

(v) The time, altitude, and nature of each malfunction; and

(vi) Descriptions of corrective actions taken, including changes in vehicle design, flight termination, and guidance and control hardware and software.

(9) The values of probability of impact (P_I) and expected casualty (E_C) for each populated area.

A417.27 Toxic Release Hazard Analysis

A flight safety analysis must include a toxic release hazard analysis that satisfies the requirements of § 417.227. A launch operator's toxic release hazard analysis must satisfy the methodology requirements contained in appendix I of part 417. A launch operator must submit the analysis products identified in appendix I as required by § 417.203(e).

A417.29 Far Field Blast Overpressure Effects

(a) *General.* A flight safety analysis must include a far field blast overpressure effects hazard analysis that satisfies the requirements of § 417.229. The requirements of this section apply to the computation of far field blast overpressure effects from the proposed flight of a launch vehicle as required by § 417.229 and to the analysis products that the launch operator must submit to the FAA as required by § 417.203(e). The analysis must account for distant focus overpressure and any overpressure enhancement to establish the potential for broken windows due to peak incident overpressures below 1.0 psi and related casualties due to falling or projected glass shards. The analysis must employ either paragraph (b) of this section or the risk analysis of paragraph (c) of this section.

(b) *Far field blast overpressure hazard analysis.* Unless an analysis satisfies the requirements of paragraph (c) of this section a far field blast overpressure hazard analysis must satisfy the following:

(1) *Explosive yield factors.* The analysis must use explosive yield factor curves for each type or class of solid or liquid propellant used by the launch vehicle. Each explosive yield factor curve must be based on the most accurate explosive yield data for the corresponding type or class of solid or liquid propellant based on empirical data or computational modeling.

(2) *Establish the maximum credible explosive yield.* The analysis must establish the maximum credible explosive yield resulting from normal and malfunctioning launch vehicle flight. The explosive yield must account for impact mass and velocity of impact on the Earth's surface. The analysis must account for explosive yield expressed as a TNT equivalent for peak overpressure.

(3) *Characterize the population exposed to the hazard.* The analysis must demonstrate whether any population centers are vulnerable to a distant focus overpressure hazard using the methodology provided by section 6.3.2.4 of the American National Standard Institute's ANSI S2.20–1983, ''Estimating Air Blast Characteristics for Single Point Explosions in Air with a Guide to Evaluation of Atmospheric Propagation and Effects'' and in accordance with the following:

(i) For the purposes of this analysis, a population center must include any area outside the launch site and not under the launch operator's control that contains an exposed site. An exposed site includes any structure that may be occupied by human beings, and that has at least one window, but does not include automobiles, airplanes, and waterborne vessels. The analysis must account for the most recent census information on each population center. The analysis must treat any exposed site for which no census information is available, or the census information indicates a population equal to or less than four persons, as a 'single residence.'

(ii) The analysis must identify the distance between the location of the maximum credible impact explosion and the location of each population center potentially exposed. Unless the location of the potential explosion site is limited to a defined region, the analysis must account for the distance between the potential explosion site and a population center as the minimum distance between any point within the region contained by the flight safety limits and the nearest exposed site within the population center.

(iii) The analysis must account for weather conditions optimized for a distant focus overpressure hazard and use an atmospheric blast ''focus factor'' (F) of 5.

(iv) The analysis must determine, using the methodology of section 6.3.2.4 of ANSI S2.20–1983, for each a population center, whether the maximum credible explosive yield of a launch meets, exceeds or is less than the ''no damage yield limit,'' of the population center. If the maximum credible explosive yield is less than the ''no damage yield limit'' for all exposed sites, the remaining requirements of this section do not apply. If the maximum credible explosive yield meets or exceeds the ''no damage yield limit'' for a population center then that population center is vulnerable to far field blast overpressure from the launch and the requirements of paragraphs (b)(4) and (b)(5) of this section apply.

(4) *Estimate the quantity of broken windows.* The analysis must use a focus factor of 5 and the methods provided by ANSI S2.20–1983 to estimate the number of potential broken windows within each population center determined to be vulnerable to the distant focus overpressure hazard in accordance with paragraph (b)(3) of this section.

(5) *Determine and implement measures necessary to prevent distant focus overpressure from breaking windows.* For each population center that is vulnerable to far field blast overpressure from a launch, the analysis must identify mitigation measures to protect the public from serious injury from broken windows and the flight commit criteria of § 417.113(b) needed to enforce the mitigation measures. A launch operator's mitigation measures must include one or more of the following:

(i) Apply a minimum 4-millimeter thick anti-shatter film to all exposed sites where the maximum credible yield exceeds the ''no damage yield limit.''

(ii) Evacuate the exposed public to a location that is not vulnerable to the distant focus overpressure hazard at least two hours prior to the planned flight time.

(iii) If, in accordance with paragraph (b)(4) of this section, the analysis predicts that less than 20 windows will break, advise the public of the potential for glass breakage.

(c) *Far field blast overpressure risk analysis.* If a launch operator does not employ paragraph (b) of this section to perform a far field overpressure hazard analysis, the launch operator must conduct a risk analysis that demonstrates that the launch will be conducted in accordance with the public risk criteria of § 417.107(b).

(d) *Far field blast overpressure effect products.* The products of a far field blast overpressure analysis that a launch operator must submit to the FAA as required by § 417.203(e) must include:

(1) A description of the methodology used to produce the far field blast overpressure analysis results, a tabular description of the analysis input data, and a description of any far field blast overpressure mitigation measures implemented.

(2) For any far field blast overpressure risk analysis, an example set of the analysis computations.

(3) The values for the maximum credible explosive yield as a function of time of flight.

(4) The distance between the potential explosion location and any population center vulnerable to the far field blast overpressure hazard. For each population center, the launch operator must identify the exposed populations by location and number of people.

(5) Any mitigation measures established to protect the public from far field blast overpressure hazards and any flight commit criteria established to ensure the mitigation measures are enforced.

A417.31 Collision Avoidance

(a) *General.* A flight safety analysis must include a collision avoidance analysis that satisfies the requirements of § 417.231. The

requirements of this section apply to the process of obtaining a collision avoidance assessment from United States Space Command as required by § 417.231 and to the analysis products that the launch operator must submit to the FAA as required by § 417.203(e). United States Space Command refers to a collision avoidance analysis for a space launch as a conjunction on launch assessment.

(b) *Analysis constraints.* A launch operator must satisfy the following when obtaining and implementing the results of a collision avoidance analysis:

(1) A launch operator must provide United States Space Command with the launch window and trajectory data needed to perform a conjunction on launch assessment for a launch as required by paragraph (c) of this section, at least 15 days before the first attempt at flight. The FAA will identify a launch operator to United States Space Command as part of issuing a license and provide a launch operator with current United States Space Command contact information.

(2) A launch operator must obtain a conjunction on launch assessment performed by United States Space Command 6 hours before the beginning of a launch window.

(3) A launch operator may use a conjunction on launch assessment for 12 hours from the time that United States Space Command determines the state vectors of the habitable orbiting objects. If a launch operator needs an updated conjunction on launch assessment due to a launch delay, the launch operator must submit the request to United States Space Command at least 12 hours prior to the beginning of the new launch window.

(4) For every 90 minutes, or portion of 90 minutes, that pass between the time United States Space Command last determined the state vectors of the orbiting objects, a launch operator must expand each wait in a launch window by subtracting 15 seconds from the start of the wait in the launch window and adding 15 seconds to the end of the wait in the launch window. A launch operator must incorporate all the resulting waits in the launch window into its flight commit criteria established as required by § 417.113.

(c) *Information required.* A launch operator must prepare a conjunction on launch assessment worksheet for each launch using a standardized format that contains the input data required by this paragraph. A launch operator must submit the input data to United States Space Command for the purposes of completing a conjunction on launch assessment. A launch operator must submit the input data to the FAA as part of the license application process in accordance with § 415.115.

(1) *Launch information.* A launch operator must submit the following launch information:

(i) *Mission name.* A mnemonic given to the launch vehicle/payload combination identifying the launch mission from all others.

(ii) *Segment number.* A segment is defined as a launch vehicle stage or payload after the thrusting portion of its flight has ended. This includes the jettison or deployment of any stage or payload. A launch operator must provide a separate worksheet for each segment. For each segment, a launch operator must determine the ''vector at injection'' as defined by paragraph (c)(5) of this section. The data must present each segment number as a sequence number relative to the total number of segments for a launch, such as ''1 of 5.''

(iii) *Launch window.* The launch window opening and closing times in Greenwich Mean Time (referred to as ZULU time) and the Julian dates for each scheduled launch attempt.

(2) *Point of contact.* The person or office within a launch operator's organization that collects, analyzes, and distributes conjunction on launch assessment results.

(3) *Conjunction on launch assessment analysis results transmission medium.* A launch operator must identify the transmission medium, such as voice, FAX, or e-mail, for receiving results from United States Space Command.

(4) *Requestor launch operator needs.* A launch operator must indicate the types of analysis output formats required for establishing flight commit criteria for a launch:

(i) *Waits.* All the times within the launch window during which flight must not be initiated.

(ii) *Windows.* All the times within an overall launch window during which flight may be initiated.

(5) *Vector at injection.* A launch operator must identify the vector at injection for each segment. ''Vector at injection'' identifies the position and velocity of all orbital or suborbital segments after the thrust for a segment has ended.

(i) *Epoch.* The epoch time, in Greenwich Mean Time (GMT), of the expected launch vehicle liftoff time.

(ii) *Position and velocity.* The position coordinates in the EFG coordinate system measured in kilometers and the EFG components measured in kilometers per second, of each launch vehicle stage or payload after any burnout, jettison, or deployment.

(6) *Time of powered flight.* The elapsed time in seconds, from liftoff to arrival at the launch vehicle vector at injection. The input data must include the time of powered flight for each stage or jettisoned component measured from liftoff.

(7) *Time span for launch window file (LWF).* A launch operator must provide the following information regarding its launch window:

(i) *Launch window.* The launch window measured in minutes from the initial proposed liftoff time.

(ii) *Time of powered flight.* The time provided in accordance with paragraph (c)(6) of this section measured in minutes rounded up to the nearest integer minute.

(iii) *Screen duration.* The time duration, after all thrusting periods of flight have ended, that a conjunction on launch assessment must screen for potential conjunctions with habitable orbital objects. Screen duration is measured in minutes and must be greater than or equal to 100 minutes for an orbital launch.

(iv) *Extra pad.* An additional period of time for conjunction on launch assessment screening to ensure the entire first orbit is screened for potential conjunctions with habitable orbital objects. This time must be 10 minutes unless otherwise specified by United States Space Command.

(v) *Total.* The summation total of the time spans provided in accordance with paragraphs (c)(7)(i) through (c)(7)(iv) expressed in minutes.

(8) *Screening.* A launch operator must select spherical or ellipsoidal screening as defined in this paragraph for determining any conjunction. The default must be the spherical screening method using an avoidance radius of 200 kilometers for habitable orbiting objects. If the launch operator requests screening for any uninhabitable objects, the default must be the spherical screening method using a miss-distance of 25 kilometers.

(i) *Spherical screening.* Spherical screening utilizes an impact exclusion sphere centered on each orbiting object's center-of-mass to determine any conjunction. A launch operator must specify the avoidance radius for habitable objects and for any uninhabitable objects if the launch operator elects to perform the analysis for uninhabitable objects.

(ii) *Ellipsoidal screening.* Ellipsoidal screening utilizes an impact exclusion ellipsoid of revolution centered on the orbiting object's center-of-mass to determine any conjunction. A launch operator must provide input in the UVW coordinate system in kilometers. The launch operator must provide delta-U measured in the radial-track direction, delta –V measured in the in-track direction, and delta –W measured in the cross-track direction.

(9) *Orbiting objects to evaluate.* A launch operator must identify the orbiting objects to be included in the analysis.

(10) *Deliverable schedule/need dates.* A launch operator must identify the times before flight, referred to as ''L-times,'' for which the launch operator requests a conjunction on launch assessment.

(d) *Collision avoidance assessment products.* A launch operator must submit its conjunction on launch assessment products as required by § 417.203(e) and must include the input data required by paragraph (c) of this section. A launch operator must incorporate the result of the conjunction on launch assessment into its flight commit criteria established in accordance with § 417.113.

A417.33 Unguided Suborbital Rocket Flown With a Wind Weighting Safety System

For launch of an unguided suborbital rocket flown with a wind weighting safety system, the flight safety analysis must satisfy the requirements of § 417.233. The analysis for an unguided suborbital rocket flown with a wind weighting safety system must incorporate the methodologies for trajectory analysis, flight hazard area analysis, and wind weighting analysis contained in appendix C of this part. The analysis must also include a debris risk analysis performed in accordance with A417.25 and appendix B of this part and a collision avoidance analysis performed in accordance with A417.31.

28. In B417.1 as proposed to be revised at 65 FR 64050, revise ''§ 417.227'' to read ''§ 417.225'' each place it appears.

29. In B417.3 as proposed to be revised at 65 FR 64050, revise ''§ 417.227(b)(5)'' to read ''§ 417.225''.

30. In B417.5(b)(1) as proposed to be revised at 65 FR 64051, revise ''§ 417.205'' to read ''§ 417.207 and A417.7''.

31. In B417.5(b)(2) as proposed to be revised at 65 FR 64051, revise ''§ 417.227(b)(6)'' to read ''A417.25''.

32. In B417.5(b)(3) as proposed to be revised at 65 FR 64051, revise ''§ 417.209'' to read ''§ 417.211 and A417.11''.

33. In B417.5(c) as proposed to be revised at 65 FR 64051, revise ''§ 417.205(c)'' to read ''§ 417.207 and A417.7''.

34. In B417.7(a) as proposed to be revised at 65 FR 64052, revise ''§ 417.227(b)(11)'' to read ''§ 417.225 and A417.25''.

35. In B417.9(a) as proposed to be revised at 65 FR 64056, revise ''§ 417.227'' to read ''A417.25''.

36. In C417.1 as proposed to be revised at 65 FR 64057, revise ''§ 417.235'' to read ''§ 7.233''.

37. In C417.3(g) introductory text as proposed to be revised at 65 FR 64059, revise ''§ 417.235(g)'' to read ''A417.203(e)''.

38. In C417.5(a) as proposed to be revised at 65 FR 64059, revise ''§ 417.235(c)'' to read ''§ 417.233''.

39. In C417.5(j) as proposed to be revised at 65 FR 64062, revise ''§ 417.235(c)'' to read ''§ 417.203(e)''.

40. In C417.7(d) as proposed to be revised at 65 FR 64063, revise ''§ 417.235(g)'' to read ''§ 417.203(e)''.

41. In D417.13(b) as proposed to be revised at 65 FR 64067, revise ''§ 417.223(b)(3)'' to read ''§ 417.221 and A417.21''.

42. In D417.19(a) as proposed to be revised at 65 FR 64068, revise ''§ 417.221(c)'' to read ''§ 417.219 and A417.19''.

43. In I417.1 as proposed to be revised at 65 FR 64116, revise ''§ 417.229''to read ''§ 417.227''.

44. In I417.5(e) introductory text as proposed to be revised at 65 FR 64119, revise ''§ 417.203(c)'' to read ''§ 417.203(e)''.

Issued in Washington, DC on July 15, 2002.

Patricia G. Smith,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 02–18340 Filed 7–29–02; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Tuesday,
July 30, 2002

Part IV

Federal Retirement Thrift Investment Board

5 CFR Parts 1605, 1620, 1651, and 1655
Correction of Administrative Errors; Expanded and Continuing Eligibility; Death Benefits; Loan Program; Final Rule

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Parts 1605, 1620, 1651 and 1655

Correction of Administrative Errors; Expanded and Continuing Eligibility; Death Benefits; Loan Program

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is revising the Board's Uniformed Services Employment and Reemployment Rights Act (USERRA) regulations regarding Thrift Savings Plan (TSP) contributions and loan payments, and updating the definitions used in those regulations. The Executive Director is also amending the Board's death benefit regulations to allow the spouse of a deceased participant to transfer a TSP death benefit payment to an eligible retirement plan or to the spouse's existing TSP account. Finally, the Executive Director is amending the Board's loan regulations to explain that the Soldiers' and Sailors' Civil Relief Act of 1940 allows a participant returning to civilian service from active duty military service to reduce to 6 percent the interest rate owed on a TSP loan for the period of missed TSP loan payments due to military leave.

EFFECTIVE DATE: July 30, 2002.

FOR FURTHER INFORMATION CONTACT: Merritt A. Willing or Patrick J. Forrest on (202) 942–1661. FAX (202) 942–1676.

SUPPLEMENTARY INFORMATION: The Board administers the TSP, which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514. The TSP provisions of FERSA have been codified, as amended, largely at 5 U.S.C. 8351 and 8401–79. The TSP is a tax-deferred retirement savings plan for Federal civilian employees and members of the uniformed services which is similar to cash or deferred arrangements established under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)).

The Board published these regulations in proposed form in the **Federal Register** on May 17, 2002 (67 FR 35051). The Board received several comments on those regulations, which are discussed by section below.

Proposed § 1605.31(c) explains how a Federal Employees' Retirement System (FERS) employee who separates or enters nonpay status to perform military service will receive agency makeup TSP contributions to his or her civilian account when he or she is reemployed or returned to pay status in the civilian service. One commenter asked the Board to state expressly that the employee otherwise must be eligible to receive civilian agency contributions before being eligible to receive those agency makeup contributions. Final § 1605.31(c) contains that statement.

Proposed § 1620.42 pertains to contribution elections filed by TSP participants who are reemployed or restored to pay status in the civilian service under USERRA. One commenter asked the Board to state expressly that agencies must reinstate contribution elections that were on file when the participant separated or entered nonpay status to perform miliary service, unless a new election is filed. Agencies retain the records of employees who enter nonpay status; therefore, they must reinstate a contribution election if the participant returns to pay status from a nonpay status unless a new election is filed. However, agencies do not necessarily maintain the records of employees who separate; therefore, an agency is not required to reinstate a contribution election if the participant is reemployed. Final § 1620.42(b) informs participants and agencies of this distinction.

Proposed §§ 1651.2, 1651.5, and 1651.14 pertain to the payment of a TSP death benefit to the spouse of a participant. One commenter urged the Board to ''work with Congress'' to extend certain tax benefits now available for surviving spouses to surviving same sex partners. The commenter acknowledged that this would require a change in statute. The Board has a longstanding practice of taking no position on benefit levels and views them as matters for the Congress and the Administration to debate and conclude. The Board is neither chartered nor staffed to analyze, advocate, or oppose them.

The final comment concerns proposed § 1651.14, which explains that the spouse of a deceased participant may request the TSP to transfer all or a portion of a TSP death benefit to the spouse's TSP account if he or she already has one. The commenter asked if the TSP would apply this rule retroactively. The TSP applied this rule as early as permitted by statute. Before January 1, 2002, under the Internal Revenue Code (I.R.C.) a TSP death benefit could be transferred only to an individual retirement account. However, the I.R.C. was amended effective January 1, 2002, to allow a death benefit to be transferred to any eligible retirement plan, including the TSP. *See* 26 U.S.C. 402(c)(8), (c)(9). The Board decided to offer the death benefit transfer option to all qualified spouses at the earliest possible point permitted by statute, *i.e.,* in January 2002. Therefore, the TSP notified each qualified spouse who was to be paid a TSP death benefit in January 2002 that he or she could transfer that payment to his or her TSP account. The current rule merely codifies that practice.

After publication of the proposed rule, Board staff reconsidered the wording in two of its provisions and made minor changes. First, proposed § 1605.31(d) pertains to the payment of lost earnings and states that agencies will submit ''lost earnings records.'' Those records will not exist when the new record keeping system is introduced; therefore, final § 1605.31(d) does not mention records. The rule continues to be, however, that agencies are required to make these payments. Second, the proposed definition of ''retroactive period'' at § 1620.41 discusses ''retroactive agency contributions,'' which are more accurately described as ''missed agency contributions'' in the final definition.

Accordingly, the Board is publishing the proposed rule as a final rule, with the above-mentioned minor modifications.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only employees of the Federal Government.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, 1501–1571, the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by state, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under section 1532 is not required.

Submission to Congress and the General Accounting Office

Pursuant to 5 U.S.C. 801(a)(1)(A), the Board submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller

General of the United States before publication of this rule in today's **Federal Register**. This rule is not a major rule as defined at 5 U.S.C. 804(2).

List of Subjects

5 CFR Part 1605

Claims, Employee benefit plans, Government employees, Military personnel, Pensions, Retirement.

5 CFR Part 1620

District of Columbia, Employee benefit plans, Government employees, Military personnel, Pensions, Retirement.

5 CFR Part 1651

Employee benefit plans, Government employees, Pensions, Retirement.

5 CFR Part 1655

Employee benefit plans, Government employees, Military personnel, Pensions, Retirement.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons set forth in the preamble, 5 CFR chapter VI is amended as follows:

PART 1605—CORRECTION OF ADMINISTRATIVE ERRORS

1. The authority citation for part 1605 is revised to read as follows:

Authority: 5 U.S.C. 8351, 8432a, and 8474(b)(5) and (c)(1).

Section 1605.14 also issued under Title II, Pub. L. 106–265, 114 Stat. 770.

Subpart D also issued under 5 U.S.C. 8432b(b)(4) and (i), 8440e.

Subpart D—Miscellaneous Provisions

2. Section 1605.31 is revised to read as follows:

§ 1605.31 Contributions missed as a result of military service.

(a) *Applicability.* This section applies to employees who meet the conditions specified at 5 CFR 1620.40 and who are eligible to make up employee contributions or to receive employing agency contributions missed as a result of military service.

(b) *Missed employee contributions.* An employee who separates or enters nonpay status to perform military service may be eligible to make up TSP contributions when he or she is reemployed or restored to pay status in the civilian service. Eligibility for making up missed employee contributions will be determined in accordance with the rules specified at 5 CFR part 1620, subpart E. Missed employee contributions must be made up in accordance with the rules set out in § 1605.11(c) and the following procedures:

(1) The employing agency will use the contribution election on file for the employee at the time he or she separated or was placed in nonpay status. If an employee terminated TSP contributions within two months before entry into military service, he or she may make a retroactive election to resume contributions for the first open season following the termination. The employee may also make retroactive contribution elections for any open season that occurred during the period of military service, as described at 5 CFR 1620.42.

(2) The pay used to determine the amount of contributions eligible for makeup is the pay the employee would have earned had he or she remained continuously employed in the position held immediately before the separation or placement in nonpay status.

(3) If the employee contributed to a uniformed services TSP account during the period of military service, the amount of employee contributions available for makeup will be reduced by the total amount of employee contributions made to the uniformed services TSP account. (This includes contributions from basic pay, incentive pay, and special pay, including bonus pay.)

(c) *Missed agency contributions.* This paragraph (c) applies only to an employee who would have been eligible to receive agency contributions had he or she remained in civilian service or pay status. A FERS employee who separates or enters nonpay status to perform military service is eligible to receive agency makeup contributions when he or she is reemployed or restored to pay status in the civilian service, as follows:

(1) The employee is entitled to receive the agency automatic (1%) contributions that he or she would have received had the employee remained in civilian service or pay status. Within 60 days of the employee's reemployment or restoration to pay status, the employing agency must calculate the agency automatic (1%) makeup contributions and report those contributions to the record keeper. After the contribution has been reported, the agency must submit lost earnings records for the contribution.

(2) An employee who contributed to a uniformed services TSP account during the period of military service is also immediately entitled to receive agency matching makeup contributions to his or her civilian account for the employee contributions to the uniformed services account that were deducted from his or her basic pay, subject to any reduction in matching contributions required by paragraph (c)(4) of this section. However, an employee is not entitled to receive agency matching makeup contributions on contributions that were deducted from his or her incentive pay or special pay, including bonus pay, while performing military service.

(3) An employee who makes up missed contributions is entitled to receive attributable agency matching makeup contributions (unless the employee has already received the maximum amount of matching contributions, as described in paragraphs (c)(2) and (c)(4) of this section).

(4) If the employee received uniformed services matching contributions, the agency matching makeup contributions will be reduced by the amount of the uniformed services matching contributions.

(d) *Lost earnings.* The employee is entitled to lost earnings on missed agency contributions made under paragraph (c) of this section. The employee will elect to have the lost earnings calculated using either the rates of return based on the contributions allocation(s) on file for the participant during the period of military service or using the rates of return for the G Fund; the participant must make this election at the same time his or her makeup schedule is established pursuant to § 1605.11(c).

PART 1620—EXPANDED AND CONTINUING ELIGIBILITY

3. The authority citation for part 1620 is revised to read as follows:

Authority: 5 U.S.C. 8474(b)(5) and (c)(1).

Subpart C also issued under 5 U.S.C. 8440a(b)(7), 8440b(b)(8), and 8440c(b)(8).

Subpart D also issued under sec. 1043(b), Pub. L. 104–106, 110 Stat. 186, 434–435; and sec. 7202(m)(2), Pub. L. 101–508, 104 Stat. 1388.

Subpart E also issued under 5 U.S.C. 8432b(i) and 8440e.

Subpart E—Uniformed Services Employment and Reemployment Rights Act (USERRA)—Covered Military Service

4. Section 1620.41 is revised to read as follows:

§ 1620.41 Definitions.

As used in this subpart:

Current contributions means contributions that must be made for the

current pay date which is reported on the journal voucher that accompanies the payroll submission.

Nonpay status means an employer-approved temporary absence from duty.

Reemployed or returned to pay status means reemployed in or returned to a pay status, pursuant to 38 U.S.C. chapter 43, to a position that is subject to 5 U.S.C. 8351 or chapter 84.

Retroactive period means the period for which an employee can make up missed employee contributions and receive missed agency contributions. It begins the day after the employee separates or enters nonpay status to perform military service and ends when the employee is reemployed or returned to pay status.

Separate from civilian service means to cease employment with the Federal Government, the U.S. Postal Service, or with any other employer from a position that is deemed to be civilian Government employment for purposes of participating in the TSP, for 31 or more full calendar days.

5. Section 1620.42 is revised to read as follows:

§ 1620.42 Processing TSP contribution elections.

(a) *Time for filing election.* Upon reemployment or return to pay status, an employee has 60 days to submit contribution elections to make current contributions and to make up missed contributions. An employee's right to make a retroactive TSP contribution election will expire if the election is not made within 60 days of the participant's reemployment or return to pay status. After the 60-day contribution election period expires, the employee must wait for an open season to submit a contribution election to make current contributions.

(b) *Current contributions.* If the employee entered nonpay status with a valid contribution election on file, the agency must immediately reinstate that election for current contributions when the employee returns to pay status, unless the employee files a new contribution election as described in paragraph (a) of this section. If the employee separated to perform military service, the agency is not required to reinstate a prior contribution election. An election to make current contributions will be effective as soon as administratively feasible, but no later than the first day of the first full pay period after it is received by the employing agency.

(c) *Makeup contributions.* An election to make up contributions will be processed as follows:

(1) If the employee had a valid contribution election on file when he or she separated or entered nonpay status to perform military service, that election form will be reinstated for purposes of makeup contributions, unless the employee submits new contribution elections effective for any missed open season.

(2) An employee who terminated contributions within two months of entering military service will be eligible to make a retroactive contribution election for the first open season that occurs after the effective date that the contributions were terminated. This election may be made even if the termination was made outside an open season.

6. Section 1620.44 is amended by revising the last sentence to read as follows:

§ 1620.44 Restoring forfeited agency automatic (1%) contributions.

* * * The employing agency will follow the procedure described in § 1620.46(e) to have those funds restored.

7. Section 1620.45 is revised to read as follows:

§ 1620.45 Suspending TSP loans, restoring post-employment withdrawals, and reversing taxable distributions.

(a) *Suspending TSP loans during nonpay status.* If the TSP is notified that an employee entered into a nonpay status to perform military service, any outstanding TSP loan from a civilian TSP account will be suspended, that is, it will not be declared a taxable distribution while the employee is performing military service.

(1) Interest will accrue on the loan balance during the period of suspension. When the employee returns to civilian pay status, the employing agency will resume the deduction of loan payments from the participant's basic pay and the TSP will reamortize the loan (which will include interest accrued during the period of military service). The loan repayment term will be extended by the employee's period of military service. Consequently, when the employee returns to pay status, the TSP record keeper must receive documentation to show the beginning and ending dates of military service.

(2) If the TSP does not receive documentation that the employee entered into nonpay status to perform military service and the period of missed loan repayments extends beyond one year, the loan will be closed and the outstanding loan balance (including accrued interest) will be declared a taxable distribution. However, the taxable distribution can be reversed in accordance with paragraph (c) of this section.

(b) *Restoring post-employment withdrawals.* An employee who separates from civilian service to perform military service and who receives an automatic cashout of his or her account may return to the TSP an amount equal to the amount of the payment. The employee must notify the TSP record keeper of his or her intent to return the withdrawn funds within 90 days of the date the employee returns to civilian service or pay status; if the employee is eligible to return a withdrawal, the TSP record keeper will then inform the employee of the actions that must be taken to return the funds.

(c) *Reversing taxable distributions.* An employee may request that a taxable loan distribution be reversed if the taxable distribution resulted from the employee's separation or placement in nonpay status to perform military service. The TSP will reverse the taxable distribution under the process described as follows:

(1) An employee who received a post-employment withdrawal when he or she separated to perform military service can have a taxable distribution reversed only if the withdrawn amount is returned as described in paragraph (b) of this section;

(2) A taxable loan distribution can be reversed either by reinstating the loan or by repaying it in full. The TSP loan can be reinstated only if the employee agrees to repay the loan within the original loan repayment term plus the length of military service, and if, after reinstatement of the loan, the employee will have no more than two outstanding loans, only one of which is a residential loan; and

(3) The employee must notify the TSP record keeper of his or her intent to reverse a taxable loan distribution within 90 days of the date the employee returns to civilian service or pay status; if the employee is eligible to reverse a taxable loan distribution, the TSP record keeper will then inform the employee of the actions that must be taken to reverse the distribution.

(d) *Earnings.* Employees will not receive retroactive earnings on amounts returned to their accounts under this section.

PART 1651—DEATH BENEFITS

8. The authority citation for part 1651 is revised to read as follows:

Authority: 5 U.S.C. 8424(d), 8432(j), 8433(e), 8435(c)(2), 8474(b)(5) and 8474(c)(1).

9. Section 1651.1 is amended by adding a new definition, in alphabetical order, to read as follows:

§ 1651.1 Definitions.

* * * * *

Eligible retirement plan means an individual retirement account described in I.R.C. section 408(a) (26 U.S.C. 408(a)); an individual retirement annuity described in I.R.C. section 408(b) (26 U.S.C. 408(b)) (other than an endowment contract); a qualified trust; an annuity plan described in I.R.C. section 403(a) (26 U.S.C. 403(a)); an annuity contract described in I.R.C. section 403(b) (26 U.S.C. 403(b)); and an eligible deferred compensation plan described in I.R.C. section 457(b) (26 U.S.C. 457(b)) which is maintained by an eligible employer described in I.R.C. section 457(e)(1)(A) (26 U.S.C. 457(e)(1)(A)).

* * * * *

10. Section 1651.2 is amended by revising paragraph (a)(2) to read as follows:

§ 1651.2 Entitlement to benefits.

(a) * * *

(2) If there is no designated beneficiary, to the spouse of the participant in accordance with § 1651.5;

* * * * *

11. Section 1651.5 is amended by revising the section heading and the first sentence to read as follows:

§ 1651.5 Spouse of the participant.

For purposes of payment under § 1651.2(a)(2), the spouse of the participant is the person to whom the participant was married on the date of death. * * *

12. Section 1651.14 is amended by revising paragraph (c) to read as follows:

§ 1651.14 How payment is made.

* * * * *

(c) *Payment to the participant's spouse.* The spouse of the participant may request that the TSP transfer all or a portion of the payment to an eligible retirement plan (including the spouse's TSP account, if he or she already has one). A transfer to a spouse's TSP account is permitted only if the spouse is not receiving monthly payments from the account. In order to request such a transfer, a spouse must file Form TSP–13–S, Spouse's Election to Transfer to IRA or Other Eligible Retirement Plan, with the TSP record keeper.

* * * * *

PART 1655—LOAN PROGRAM

13. The authority citation for part 1655 is revised to read as follows:

Authority: 5 U.S.C. 8433(g) and 8474; 50 U.S.C. App. 526.

14. Section 1655.7 is amended by revising paragraph (c) to read as follows:

§ 1655.7 Interest rate.

* * * * *

(c) The interest rate calculated under this section remains fixed until the loan is repaid, unless the participant informs the TSP record keeper that he or she entered into active duty military service and requests that the interest rate on a loan issued before entry into active duty military service be reduced to an annual rate of 6 percent for the period of such service. The participant must provide the record keeper with the beginning and ending dates of active duty military service.

[FR Doc. 02–19159 Filed 7–29–02; 8:45 am]

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Federal Register

Tuesday,
July 30, 2002

Part V

Environmental Protection Agency

Fiftieth Report of the TSCA Interagency Testing Committee to the Administrator of the Environmental Protection Agency; Receipt of Report and Request for Comments; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0026; FRL–7183–7]

Fiftieth Report of the TSCA Interagency Testing Committee to the Administrator of the Environmental Protection Agency; Receipt of Report and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Toxic Substances Control Act (TSCA) Interagency Testing Committee (ITC) transmitted its 50th ITC Report to the Administrator of EPA on May 28, 2002. In the 50th ITC Report, which is included with this notice, the ITC is rescinding its request in the 48th ITC Report to EPA for the addition to the TSCA section 8(a) Preliminary Assessment Information Reporting (PAIR) rule of 12 of the 15 Degradation Effects Bioconcentration Information Testing Strategies (DEBITS) chemicals. However, the ITC is asking EPA to add 3 chemicals to the PAIR rule and 3 chemicals to the TSCA section 8(d) Health and Safety Data Reporting (HaSDR) rule.

The ITC is adding 2 chemicals and removing 36 chemicals from the *Priority Testing List*.

The ITC is soliciting comments on its Voluntary Information Submissions Innovative Online Network (VISION) and Voluntary Information Submissions Policy (VISP).

DATES: Comments, identified by docket ID number OPPT–2002–0026, must be received on or before August 29, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPT–2002–0026 in the subject line on the first page of your response.

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

For technical information contact: John D. Walker, ITC Executive Director (7401M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–7526; fax: (202) 564–7528; e-mail address: walker.johnd@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This notice is directed to the public in general. It may, however, be of particular interest to you if you manufacture (defined by statute to include import) and/or process TSCA-covered chemicals and you may be identified by the North American Industrial Classification System (NAICS) codes 325 and 32411. Because this notice is directed to the general public and other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

You may also access additional information about the ITC and the TSCA testing program through the web site for the Office of Prevention, Pesticides and Toxic Substances (OPPTS) at http://www.epa.gov/opptsfrs/home/opptsim.htm/, or go directly to the ITC home page at http://www.epa.gov/opptintr/itc/.

2. *In person*. The Agency has established an official record for this action under docket control number OPPT–2002–0026. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPT–2002–0026 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

3. *Electronically*. You may submit your comments electronically by e-mail to: oppt.ncic@epa.gov, or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPT–2002–0026. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views and comments on the 50th ITC Report. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. Provide specific examples to illustrate your concerns.
5. Offer alternatives for improvement.
6. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

The Toxic Substances Control Act (TSCA) (15 U.S.C. 2601 *et seq.*) authorizes the Administrator of the EPA to promulgate regulations under TSCA section 4(a) requiring testing of chemicals and chemical groups in order to develop data relevant to determining the risks that such chemicals and chemical groups may present to health or the environment. Section 4(e) of TSCA established the ITC to recommend chemicals and chemical groups to the Administrator of the EPA for priority testing consideration. Section 4(e) of TSCA directs the ITC to revise the TSCA section 4(e) *Priority Testing List* at least every 6 months.

A. The 50th ITC Report

The 50th ITC Report was transmitted to EPA's Administrator on May 28, 2002, and is included in this notice.

In the 50th ITC Report, the ITC:

1. Rescinds its request in the 48th ITC Report to EPA for the addition to the PAIR rule of 12 of the 15 DEBITS chemicals. The 12 DEBITS chemicals are 3 ''chloroalkenes,'' 5 ''chlorinated trihalomethyl pyridines,'' 1 ''trihaloethylidene bisbenzene'' (benzene, 1,1'-(2,2,2-trichloroethylidene)bis-, CAS No. 2971–22–4); and 3 ''trichlorophenyldihydropyrazols'' (benzamide, 3-amino-N-[4,5-dihydro-5-oxo-1-(2,4,6-trichlorophenyl)-1H-pyrazol-3-yl]-, CAS No. 40567–18–8); 3H-pyrazol-3-one, 5-((5-amino-2-chlorophenyl)amino)-2,4-dihydro-2-(2,4,6-trichlorophenyl)-, CAS No. 53411–33–9; and benzamide, N-(4,5-dihydro-5-oxo-1-(2,4,6-trichlorophenyl)-1H-pyrazol-3-yl)-3-nitro-, CAS No. 63134–25–8. The ITC is not rescinding its request in the 48th ITC Report to add benzenamine, 3-chloro-2,6-dinitro-N,N-dipropyl-4-(trifluoromethyl)-, CAS No. 29091–20–1; 3H-pyrazol-3-one, 5-((2-chloro-5-nitrophenyl)amino)-2,4-dihydro-2-(2,4,6-trichlorophenyl)-, CAS No. 30707–68–7; and phenol, 4,4'-[2,2,2-trifluoro-1-(trifluoromethyl)ethylidene]bis-, CAS No. 1478–61–1 to the PAIR rule.

2. Adds 3 chemicals to the PAIR rule: 1 DEBITS chemical (stannane, dimethylbis[(1-oxoneodecyl)oxy]-, CAS No. 68928–76–7) from the 49th Report; 1 DEBITS chemical (benzene, 1,3,5-tribromo-2-(2-propenyloxy)-, CAS No. 3278–89–5) and 1-triazene, 1,3-diphenyl-, CAS No. 136–35–6 from the 50th ITC Report.

3. Adds stannane, dimethylbis[(1-oxoneodecyl)oxy]-, CAS No. 68928–76–7; benzene, 1,3,5-tribromo-2-(2-propenyloxy)-, CAS No. 3278–89–5; and 1-triazene, 1,3-diphenyl-, CAS No. 136–35–6 to the TSCA section 8(d) HaSDR rule.

4. Solicits comments on its VISION and VISP.

B. Status of the Priority Testing List

The ITC is adding benzene, 1,3,5-tribromo-2-(2-propenyloxy)- (CAS No. 3278–89–5) and 1-triazene, 1,3-diphenyl- (CAS No. 136–35–6) to the *Priority Testing List*. The ITC is removing acetone, 9 ''alkylphenols'' and ''alkylphenol ethoxylates'' added in the 37th ITC Report, 7 ''nonylphenol ethoxylates'' added in the 39th ITC Report, 4 ''alkylphenols'' and ''alkylphenol ethoxylates'' added in the 41st ITC Report, 3 DEBITS chemicals added in the 46th ITC Report, 3 DEBITS chemicals (3 ''chloroalkenes'') added in the 47th ITC Report, and 9 DEBITS chemicals added in the 48th ITC Report from the *Priority Testing List*. The current TSCA 4(e) *Priority Testing List* as of May 2002 can be found in Table 1 of the 50th ITC Report which is included in this notice.

List of Subjects

Environmental protection, Chemicals, Hazardous substances.

Dated: July 22, 2002.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Fiftieth Report of the TSCA Interagency Testing Committee to the Administrator, U.S. Environmental Protection Agency

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IV. Revisions to the TSCA Section 4(e) *Priority Testing List*
A. Chemicals Added to the *Priority Testing List*
1. Benzene, 1,3,5-tribromo-2-(2-propenyloxy)-.
2. 1-Triazene, 1,3-diphenyl.
B. Chemicals Removed From the *Priority Testing List*
1. Acetone.
2. Twenty alkylphenols and alkylphenol ethoxylates.
3. Three DEBITS chemicals from the 46th ITC Report.
4. Three DEBITS chemicals from the 47th ITC Report.
5. Nine DEBITS chemicals from the 48th ITC Report.
V. References
VI. The TSCA Interagency Testing Committee

SUMMARY

In this 50th ITC Report, the ITC is rescinding its request to the EPA to add 12 Degradation Effects Bioconcentration Information Testing Strategies (DEBITS) chemicals to the TSCA section 8(a) Preliminary Assessment Information Reporting (PAIR) rule (3 DEBITS chemicals from the 47th ITC Report and 9 DEBITS chemicals from the 48th ITC Report). However, the ITC is asking the EPA to add 6 chemicals to the PAIR rule, 3 DEBITS chemicals (3-chloro-2,6-dinitro-N,N-dipropyl-4-(trifluoromethyl)-benzeneamine, 3H-pyrazol-3-one; 5-((2-chloro-5-nitrophenyl)amino)-2,4-dihydro-2-(2,4,6-trichlorophenyl)-; and phenol, 4,4'-[2,2,2-trifluoro-1-(trifluoromethyl)ethylidene]bis-), from the 48th ITC Report, 1 DEBITS chemical (stannane, dimethylbis[(1-oxoneodecyl)oxy]-), from the 49th ITC Report, 1 DEBITS

chemical (benzene, 1,3,5-tribromo-2-(2-propenyloxy)-), and from the 50th ITC Report, 1-triazene, 1,3-diphenyl. The ITC is also asking the EPA to add stannane, dimethylbis[(1-oxoneodecyl)oxy]-; benzene, 1,3,5-tribromo-2-(2-propenyloxy)-; and 1-triazene, 1,3-diphenyl to the TSCA section 8(d) Health and Safety Data Reporting (HaSDR) rule.

The ITC is adding benzene, 1,3,5-tribromo-2-(2-propenyloxy)- and 1-triazene, 1,3-diphenyl to the *Priority Testing List*. The ITC is removing acetone, 9 alkylphenols and alkylphenol ethoxylates from the 37th ITC Report, 7 nonylphenol ethoxylates from the 39th ITC Report, 4 alkylphenols and alkylphenol ethoxylates from the 41st ITC Report, 3 DEBITS chemicals from the 46th ITC Report, 3 DEBITS chemicals from the 47th ITC Report, and 9 DEBITS chemicals from the 48th ITC Report and from the *Priority Testing List*.

The ITC is soliciting comments on its Voluntary Information Submissions Innovative Online Network (VISION) and Voluntary Information Submissions Policy (VISP).

The revised TSCA section 4(e) *Priority Testing List* follows as Table 1 of this appendix.

TABLE 1.—THE TSCA SECTION 4(E) PRIORITY TESTING LIST (MAY 2002)

Report	Date	Chemical name/Group	Action
28	May 1991	Chemicals with Low Confidence Reference Dose (RfD) Thiophenol	Designated
31	January 1993	13 Chemicals with insufficient dermal absorption rate data	Designated
32	May 1993	16 Chemicals with insufficient dermal absorption rate data	Designated
35	November 1994	4 Chemicals with insufficient dermal absorption rate data	Designated
37	November 1995	6 Alkylphenols and alkylphenol ethoxylates	Recommended
39	November 1996	1 Nonylphenol ethoxylate	Recommended
41	November 1997	3 Alkylphenols and alkylphenol ethoxylates	Recommended
42	May 1998	3-Amino-5-mercapto-1,2,4-triazole	Recommended
42	May 1998	Glycoluril	Recommended
46	May 2000	8 Nonylphenol polyethoxylate degradation products	Recommended
47	November 2000	37 Indium compounds	Recommended
47	November 2000	Pentachlorothiophenol	Recommended
48	May 2001	Phenol, 4,4'-[2,2,2-trifluoro-1-(trifluoromethyl)ethylidene]bis-	Recommended
48	May 2001	3-Chloro-2,6-dinitro-N,N-dipropyl-4-(trifluoromethyl)-benzeneamine	Recommended
48	May 2001	3H-Pyrazol-3-one, 5-[(2-chloro-5-nitrophenyl)amino]-2,4-dihydro-2-(2,4,6-trichlorophenyl)	Recommended
49	November 2001	Stannane, dimethylbis[(1-oxoneodecyl)oxy]-	Recommended
50	May 2002	Benzene, 1,3,5-tribromo-2-(2-propenyloxy)-	Recommended
50	May 2002	1-Triazene, 1,3-diphenyl	Recommended

I. Background

The ITC was established by section 4(e) of TSCA ''to make recommendations to the Administrator respecting the chemical substances and mixtures to which the Administrator should give priority consideration for the promulgation of a rule for testing under section 4(a).... At least every six months ..., the Committee shall make such revisions to the *Priority Testing List* as it determines to be necessary and transmit them to the Administrator together with the Committee's reasons for the revisions'' (Public Law 94–469, 90 Stat. 2003 *et seq.*, 15 U.S.C. 2601 *et seq.*). Since its creation in 1976, the ITC has submitted 49 semi-annual (May and November) reports to the EPA Administrator transmitting the *Priority Testing List* and its revisions. ITC Reports are available from the ITC's web site (http://www.epa.gov/opptintr/itc) within a few days of submission to the Administrator and from http://www.epa.gov/fedrgstr after publication in the **Federal Register**. The ITC meets monthly and produces its revisions to the *Priority Testing List* with administrative and technical support from the ITC staff, ITC members and their U.S. Government organizations, and contract support provided by EPA. ITC members and staff are listed at the end of this Report.

The 50th ITC Report marks a significant milestone for the ITC. Since its first meeting on February 5, 1977, the ITC has convened 425 meetings, screened thousands of chemicals, and reviewed more than 2,500 organic, organo-metallic, and inorganic chemicals to identify those with suspicions of toxicity, environmental release, and consumer or occupational exposures, but few, if any data (Ref. 14). In its 50 Reports, the ITC has added to the *Priority Testing List* and recommended testing or information reporting for 81 individual chemicals and 80 chemical groups (about 1,400 chemicals) for priority consideration by the EPA Administrator. In response, the EPA has published 200 **Federal Register** notices and reviewed hundreds of test protocols and data submissions and the U.S. chemical industry has developed over 1,000 tests and submitted more than 75,000 unpublished health and safety studies to the EPA.

As of 1992, testing was ongoing, proposed, under consideration, required or voluntarily conducted for 85% of the chemicals and chemical groups recommended by the ITC (Ref. 14). Many of the data developed as a result of ITC's recommendations have been incorporated into Material Safety Data Sheets, used by U.S. Government and industry organizations to develop hazard assessments and included in the Organization for Economic Cooperation and Development (OECD) Screening Information Data Set (SIDS) dossiers (e.g., 100% of the

chemicals in phase I of the OECD SIDS program were reviewed by the ITC prior to preparation of SIDS dossiers), (Ref. 14). Well-known examples of chemicals for which data have been developed as a result of ITC recommendations include alkyl phthalates, chlorinated paraffins and hexachlorobutadiene (Ref. 1), acrylamide, aryl phosphates, methylene chloride and trichloroethane (Ref. 2), chlorinated benzenes (Refs. 1 and 3), benzidine-, o-dianisidine- and o-toluidine-based dyes (Ref. 4), phenylenediamines (Ref. 5), alkyl tins and fluoroalkenes (Ref. 6), octylphenol (Ref. 7), bisphenol A (Ref. 8), tetrabromobisphenol A (Ref. 9), methyl tertiary butyl ether or MTBE (Ref. 10), and brominated flame retardants, including brominated diphenyl ethers (Ref. 11).

II. TSCA Section 8 Reporting

A. TSCA Section 8 Reporting Rules

Following receipt of the ITC's Report (and the revised *Priority Testing List*) by the EPA Administrator, the EPA's Office of Pollution Prevention and Toxics (OPPT) promulgates TSCA section 8(a) PAIR and TSCA section 8(d) HaSDR rules for chemicals added to the *Priority Testing List*. The PAIR rule requires producers and importers of Chemical Abstract Service (CAS)-numbered chemicals added to the *Priority Testing List* to submit production and exposure reports under TSCA section 8(a). The HaSDR rule requires producers, importers, and processors of all chemicals (including those with no CAS numbers) added to the *Priority Testing List* to submit unpublished health and safety studies under TSCA section 8(d) that must be in compliance with the revised HaSDR rule (63 FR 15765, April 1, 1998) (FRL–5750–4) codified at 40 CFR part 716. All submissions must be received by the EPA within 90 days of the reporting rules **Federal Register** publication date. The reporting rules are automatically promulgated by OPPT unless otherwise requested by the ITC. Under the ITC's VISION and VISP, promulgation of HaSDR rules for most chemicals that are added to the *Priority Testing List* has been delayed to allow voluntary submission of studies of specific interest (see section II.C. for further details on VISION and VISP).

B. ITC's Use of TSCA Section 8 and Other Information

The ITC reviews the TSCA section 8(a) PAIR rule reports, TSCA section 8(d) HaSDR rule studies and other information that becomes available after the ITC adds chemicals to the *Priority Testing List*. Other information includes TSCA section 4(a) and 4(d) studies; TSCA section 8(c) submissions; TSCA section 8(e) ''substantial risk'' notices; ''For Your Information'' (FYI) submissions; ITC voluntary submissions, unpublished data submitted to and from 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 ITC reviews this information and 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.

C. Promoting More Efficient Use of Information Submission Resources

To promote more efficient use of information submission resources, the ITC developed the VISP and VISION. The VISP provides examples of data needed by ITC member U.S. Government organizations, examples of studies that should not be submitted, the milestones for submitting information, guidelines for using the TSCA Electronic HaSDR Form and instructions for electronically submitting full studies. The VISP is described in the ITC's 41st Report (63 FR 17658, April 9, 1998) (FRL–5773–5) and is accessible through the world wide web (http://www.epa.gov/opptintr/itc/visp.htm). To facilitate the implementation of the VISP, the ITC developed the VISION. The VISION is described in the ITC's 42nd ITC Report (63 FR 42554, August 7, 1998) (FRL–5797–8) and is also accessible through the world wide web (http://www.epa.gov/opptintr/itc/vision.htm). The VISION includes links to the TSCA Electronic HaSDR Form (http://www.epa.gov/opptintr/.er/hasd.htm) including revised section 3.2 of the TSCA Electronic HaSDR Form to provide more use and exposure information (for details see the 46th ITC Report; 65 FR 75552, December 1, 2000) (FRL–6594–7).

The ITC requests that chemical producers, importers, processors, and users provide information electronically via VISION on chemicals for which the ITC is soliciting voluntary information. If the ITC does not receive voluntary information submissions to meet its data needs according to the procedures in VISP, the ITC may then ask the EPA to add those chemicals to a TSCA section 8(d) HaSDR rule to determine if there are unpublished data to meet those needs (see section III.A. that requests comments on the need to continue VISION and VISP).

D. Coordinating Information Rrequests

To avoid duplicate reporting, the ITC carefully coordinates its information solicitations and reporting requirements with other national and international testing programs, (e.g., the National Toxicology Program, the OECD SIDS program and the EPA's High Production Volume (HPV) Challenge program). The ITC is currently focusing its efforts on persistent non-HPV chemicals that have bioconcentration and exposure potential, but few, if any, publicly available ecological or health effects data. The ITC is working with the EPA Persistent Bioaccumulative Toxics (PBT), Endocrine Disruption, and perfluoroctylsulfonate chemicals workgroups to identify potentially toxic chemicals with few data to complement the objectives of those programs.

E. Requests to Promulgate TSCA Section 8(a) PAIR and Section 8(d) HaSDR Rules

The ITC asked the EPA to add 3 chloroalkenes to the TSCA section 8(a) PAIR rule in its 48th ITC Report (66 FR 51276, October 5, 2001) (FRL–6786–7). In addition, the ITC asked the EPA to add 5 chlorinated trihalomethyl pyridines, 2 trihaloethylidene bisbenzenes, 4 trichlorophenyldihydropyrazols, and 3-chloro-2,6-dinitro-N,N-dipropyl-4-(trifluoromethyl)-benzeneamine to the TSCA section 8(a) PAIR rule in its 48th ITC Report (66 FR 51276, October 5, 2001).

At this time, the ITC is rescinding its request to add the 3 chloroalkenes; 5 chlorinated trihalomethyl pyridines; 1 of the trihaloethylidene bisbenzenes (benzene, 1,1'-(2,2,2-trichloroethylidene)bis-, CAS No. 2971–22–4); and 3 of the trichlorophenyldihydropyrazols (benzamide, 3-amino-N-[4,5-dihydro-5-oxo-1- (2,4,6-trichlorophenyl)-1H-pyrazol-3-yl, CAS No. 40567–18–8, 3H-pyrazol-3-one, 5-((5-amino-2-chlorophenyl)amino)-2,4-dihydro-2-(2,4,6-trichlorophenyl)-, CAS No. 53411–33–9, and benzamide, N-(4,5-dihydro-5-oxo-1-(2,4,6-trichlorophenyl)-1H-pyrazol-3-yl)-3-nitro-, CAS No. 63134–25–8) to the TSCA section 8(a) PAIR rule, either because no production or importation data were submitted to the EPA in response to the 1998 Inventory Update Rule (IUR) or because the predicted bioconcentration factors (BCFs) were judged to be too low to warrant priority consideration at this time.

The ITC is not rescinding its request to add 3-chloro-2,6-dinitro-N,N-dipropyl-4-(trifluoromethyl)-benzeneamine (CAS No. 29091–20–1), 3H-pyrazol-3-one, 5-((2-chloro-5- nitrophenyl)amino)-2,4-dihydro-2-(2,4,6-trichlorophenyl)- (CAS No. 30707–68–7), and phenol, 4,4'-[2,2,2-trifluoro-1-(trifluoromethyl)ethylidene]bis- (CAS No. 1478–61–1) to the TSCA section 8(a) PAIR rule.

At this time, the ITC is also asking the EPA to add stannane, dimethylbis[(1-oxoneodecyl)oxy]- (CAS No. 68928–76–7), benzene, 1,3,5-tribromo-2-(2-propenyloxy)- (CAS No. 3278–89–5) and 1-triazene, 1,3-diphenyl (CAS No.136–35–6) to the TSCA section 8(a) PAIR rule. Stannane, dimethylbis[(1-oxoneodecyl)oxy]- and benzene, 1,3,5-tribromo-2-(2-propenyloxy)- are being added to the TSCA section 8(a) PAIR rule, because they are estimated to persist and have predicted BCFs of 8,650 and 4,019, respectively, few toxicity data and a need for additional use and exposure data, beyond that provided by the manufacturers. 1-Triazene, 1,3-diphenyl is being added to the TSCA section 8(a) PAIR rule, because it is a predicted carcinogen based on its metabolism and because the ITC needs occupational exposure data.

At this time, the ITC is also asking the EPA to add stannane, dimethylbis[(1-oxoneodecyl)oxy]-, benzene, 1,3,5-tribromo-2-(2-propenyloxy)- and 1-triazene, 1,3-diphenyl to the TSCA section 8(d) HaSDR rule. Stannane, dimethylbis[(1-oxoneodecyl)oxy]- is being added to the TSCA section 8(d) HaSDR rule, because the ITC needs to know if there are other toxicity data in addition to that described in section IV.A.2. and 3. of the 49th Report (67 FR 10298, March 6, 2002) (FRL–6820–8). The ITC needs ecological effects and more health effects data; only studies where stannane, dimethylbis[(1-oxoneodecyl)oxy]- is ≥90% of the test substance by weight should be submitted.

Benzene, 1,3,5-tribromo-2-(2-propenyloxy)- is being added to the TSCA section 8(d) HaSDR rule, because the ITC needs to know

if there are other toxicity data in addition to that described in section IV.A.1.iii. of this Report. The ITC needs ecological effects and more health effects data; only studies where benzene, 1,3,5- tribromo-2-(2-propenyloxy)- is ≥90% of the test substance by weight should be submitted.

1-Triazene, 1,3-diphenyl is being added to the TSCA section 8(d) HaSDR rule, because the ITC needs pharmacokinetics, genotoxicity, subchronic and chronic toxicity, reproductive, and developmental toxicity data. Only studies where diazoaminobenzene is ≥90% of the test substance by weight should be submitted.

III. ITC's Activities During this Reporting Period (November 2001 to April 2002)

A. VISION

The ITC is the only organization for which the EPA can promulgate direct TSCA section 8(d) HaSDR final rules. As such, when the EPA convened public meetings to discuss revisions to the TSCA section 8(d) HaSDR rule (63 FR 15765, April 1, 1998) (FRL–5750–4), the ITC was invited to provide and respond to comments on this rule. One of the most consistent comments by the chemical industry was that the ITC should offer more opportunities to provide voluntary information submissions (to avoid the mandatory requirements of submitting information in response to a TSCA section 8(d) HaSDR rule). In response to these chemical industry requests, the ITC developed VISP, VISION, and the TSCA Electronic HaSDR Form, and is currently evaluating their effectiveness.

The ITC developed VISP, VISION, and the TSCA Electronic HaSDR Form as tools to provide a more cost-effective method for chemical producers, importers, processors, and users of ITC-recommended chemicals to provide voluntary information. With the exception of 3 trade organizations, the Alkylphenols & Ethoxylates Research Council (APERC), the Color Pigment Manufacturers Association (CPMA), and the Ecological and Toxicological Association of Organic Dye Manufacturers (ETAD), and 4 manufacturers, 3M Specialty Materials, Ciba Speciality Chemicals, E. I. du Pont de Nemours and Company, and Rohm and Haas Company, these tools have not been used by chemical producers, importers, processors, and users of ITC-recommended chemicals. The ITC has received voluntary information submissions on <15% of the approximately 500 chemicals for which the ITC has solicited voluntary information since implementing the VISP and VISION, in effect delaying the ITC's ability to obtain the information it needs to make decisions and meet U.S. Government data needs.

The ITC recognizes that there are increasing demands on the chemical industry to provide information in response to voluntary initiatives, e.g., the OECD SIDS program, EPA HPV Challenge program and Voluntary Children's Chemical Evaluation Program (VCCEP). The ITC supports and coordinates its voluntary information requests with these programs. However, as a statutory-mandated organization charged with screening and identifying potentially hazardous chemicals, the ITC also recognizes that the chemical industry has the responsibility under TSCA and under the principles of Responsible Care® and Chemical Right-to-Know, to promptly and voluntarily provide information on the ITC's recommended chemicals to be used in subsequent hazard, exposure, and risk assessments by the U.S. Government organizations represented on the ITC.

The ITC is considering whether to continue the use of the VISP, VISION, and the TSCA Electronic HaSDR Form for chemicals added to the *Priority Testing List*, as the lack of use of these tools has resulted in substantial delays in obtaining information that could be used to meet the ITC's data needs. The ITC requests comments on procedures that could be implemented to make these existing tools or other procedures for submitting voluntary information more effective. Comments in a word processing file attached to an e-mail to walker.johnd@epa.gov are preferred, but the ITC will also accept comments submitted to Dr. John D. Walker at the address listed at the end of this Report by September 30, 2002.

B. DEBITS

In its 45th through 49th ITC Reports, the ITC described its strategies to screen and evaluate chemicals with persistence and bioconcentration potential. These activities are referred to as DEBITS. DEBITS provides a means to prioritize chemicals for information reporting and testing based on degradation and bioconcentration potential and availability of effects data.

Prior to this reporting period the ITC made information reporting or testing deferral decisions on 206 DEBITS chemicals. During this reporting period, the ITC completed its review of the remaining 252 DEBITS chemicals, including the 9 chemicals discussed in this section:

1. Benzene, 1,3,5-tribromo-2-(2-propenyloxy)- (CAS No. 3278–89–5),

2. 2,9-Dimethylquinacridone (CAS No. 980–26–7),

3. 1,2-Ethanediyl tetrakis (2-chloro-1-methylethyl) phosphate (CAS No. 34621–99–3),

4. Oxirane, 2,2',2''-(methylidynetris(phenyleneoxymethylene)) (tris- (CAS No. 66072–38–6),

5. *P*-cresol, 2,6-di-tert-butyl-alpha-(dimethylamino) (CAS No. 88–27–7),

6. Spiro isobenzofuran-1(3H),9'-9H xanthen-3-one, 3',6'-bis(ethylamino)-2',7'-dimethyl- (CAS No. 41382–37–0),

7. 1H-indole-2-carboxaldehyde, 2,3-dihydro-2-hydroxy-1,3,3-trimethyl-(4-methoxyphenyl) methylhydrazone (CAS No. 81241–99–8),

8. Phenoxazin-5-ium, 3,7-bis(diethylamino)-, (T-4)-tetrachlorozincate(2-) (2:1) (CAS No. 63589–47–9), and

9. Oxirane, 2-[2-(4-chlorophenyl)ethyl]-2-(1,1-dimethylethyl)- (CAS No. 80443–63–6).

The ITC is adding benzene, 1,3,5-tribromo-2-(2-propenyloxy)- to the *Priority Testing List* as discussed in section IV.A.1. The ITC deferred making a testing recommendation for 2,9-dimethylquinacridone because its absorption potential into mammalian tissues is expected to be low based on absorption data for the structurally related EPA HPV Challenge chemical, 5,12-dihydroquino(2,3-b)acridine-7,14-dione (CAS No. 1047–16–1). 1,2-Ethanediyl tetrakis (2-chloro-1-methylethyl) phosphate was previously removed from the *Priority Testing List* in the ITC's 36th ITC Report (60 FR 42982, August 17, 1995) (FRL–4965–6).

Oxirane, 2,2',2''-(methylidynetris (phenyleneoxymethylene))tris- was deferred for testing because its predicted hydrolysis half life was 3 days. The ITC deferred making testing recommendations for *p*-cresol, 2,6-di-tert-butyl-alpha-(dimethylamino); spiro isobenzofuran-1(3H),9'-9H xanthen-3-one, 3',6'-bis(ethylamino)-2',7'-dimethyl-; 1H-indole-2-carboxaldehyde, 2,3-dihydro-2-hydroxy-1,3,3-trimethyl-(4-methoxyphenyl) methylhydrazone; and phenoxazin-5-ium, 3,7-bis(diethylamino)-, (T-4)-tetrachlorozincate(2-) (2:1) because of their low-exposure potential. Oxirane, 2-[2-(4-chlorophenyl)ethyl]-2-(1,1-dimethylethyl)- was deferred for testing because it is likely to be tested under one of the voluntary HPV chemical testing programs.

The remaining 243 DEBITS chemicals deferred for testing include 7 DEBITS chemicals with predicted BCFs <1,000 (see Table 2 of this appendix), 28 EPA HPV Challenge program DEBITS chemicals (see Table 3 of this appendix), and 208 non-HPV DEBITS chemicals with predicted BCFs of 3–13 (see Table 4 of this appendix).

TABLE 2.—SEVEN DEBITS CHEMICALS WITH PREDICTED BCFS <1,000

CAS No.	Chemical name	Structural class	BCF
827–94–1	2,6-Dibromo-4-nitrobenzenamine	2,6-Dibromoanilines	64
90–93–7	Bis[4-(Dimethylamino)phenyl] methanone	4,4'-Substituted benzophenones	467
6408–72–6	9,10-Anthracenedione, 1,4-diamino-2,3-diphenoxy-	Diaminoanthraquinones	585

TABLE 2.—SEVEN DEBITS CHEMICALS WITH PREDICTED BCFS <1,000—Continued

CAS No.	Chemical name	Structural class	BCF
19014–53–0	9,10-Anthracenedione,1-amino-2-(4-((hexahydro-2-oxo-1H-azepin-1-yl)methyl)phenoxy)-4-hydroxy-	Hydroxyamino anthraquinones	336
596–03–2	Spiro isobenzofuran-1(3H),9'-9Hxanthen-3-one,4',5'-dibromo-3;,6'- dihydroxy-, disodium salt	Spiro[isobenzofuran-1(3H),9'-[9H]xanthen]-3-ones	709
2280–49–1	N-Phenyl-N-(trichloromethylsulfenyl)benzene sulfonamide		598
20941–65–5	Tetrakis(diethylcarbamodithioato-S,S')tellurium		478

TABLE 3.—TWENTY-EIGHT EPA HPV CHALLENGE PROGRAM DEBITS CHEMICALS

CAS No.	Chemical name
Structural Class—[(2-Hydroxy-1-naphthalenyl)azo]benzenesulfonate salts	
7023–61–2	2-Naphthalenecarboxylic acid, 4-((5-chloro-4-methyl-2-sulfophenyl)azo)-3-hydroxy-, calcium salt (1:1)
7585–41–3	2-Naphthalenecarboxylic acid, 4-((5-chloro-4-methyl-2-sulfophenyl)azo)-3-hydroxy-, barium salt (1:1)
Structural Class—[[4-[(Phenyl)azo]phenyl]azo] benzenesulfonic acid salts	
68555–86–2	Benzenesulfonic acid, 4-((5-methoxy-4-((4-methoxyphenyl)azo)-2-methylphenyl)azo)-, sodium salt
Structural Class— 4,4'-bis(Triazinylamino)stilbene-2,2'-disulfonic acid salts	
5182–81–9	2,2'-Stilbenedisulfonic acid, 4,4'-bis((4-anilino-6-morpholino-s-triazin-2-yl)amino)-, disodium salt
67786–25–8	Benzenesulfonic acid, 2,2'-(1,2-ethenediyl)bis(5-((4-(bis(2-hydroxypropyl)amino)-6-((4-sulfophenyl) amino)-1,3,5-triazin-2-yl)amino)-, tetrasodium salt
Structural Class - 4-Amino-4'-nitroazobenzenes	
3618–72–2	Acetamide, -(5-(bis(2-(acetyloxy)ethyl)amino)-2-((2-bromo-4,6-dinitrophenyl)azo)-4-methoxyphenyl)-
Structural Class—Halogenated cycloalkenes	
77–47–4	1,3-Cyclopentadiene, 1,2,3,4,5,5-Hexachloro-
3734–48–3	4,7-Methanoindene, 4,5,6,7,8,8-hexachloro-delta(sup 1,5)-tetrahydro- (chlordene)
62111–47–1	Heptachlorocyclopentene
Structural Class—Halogenated propanes	
1070–78–6	1,1,1,3-Tetrachloropropane
16714–68–4	1,1,2,2,3-Pentachloropropane
Structural Class —Hexachlorobicyclo[2.2.1]hept-5-ene-2,3-dicarboxy compounds	
115–27–5	4,7-Methanoiosobenzofuran-1,3-dione, 4,5,6,7,8,8-hexachloro-3a,4,7,7a-tetrahydro
115–28–6	Chlorendic acid
Structural Class—Phosphoric acid, 2-chloroethyl esters	
13674–87–8	2-Propanol, 1,3-dichloro-, phosphate (3:1)
13204–14–8	2,2-Bis(chloromethyl)trimethylene bis(bis(2-chloroethyl)phosphate)
Structural Class —Sulfonaphthyl-substituted 4,1-diazophenyl compounds	
8003–69–8	2-Naphthalenesulfonic acid,6-((7-amino-1-hydroxy-3-sulfo-2-naphthalenyl)azo)-3-((4-((4-amino-6(or 7)-sulfo-1-naphthalenyl)azo)phenyl)azo)-4-hydroxy-, trisodium salt
1670–62–6	Trisodium 6-((2,4-diaminophenyl)azo)-3-((4-((4-((7-((2,4- diaminophenyl)azo)-1-hydroxy-3-sulphonato-2-naphthyl)azo)phenyl)amino)-3-sulphonatophenyl)azo)-4-hydroxynaphthalene-2-sulphonate

TABLE 3.—TWENTY-EIGHT EPA HPV CHALLENGE PROGRAM DEBITS CHEMICALS—Continued

CAS No.	Chemical name
Structural Class— Tetrachlorobenzenes	
95–94–3	1,2,4,5-Tetrachlorobenzene
634–66–2	1,2,3,4-tetrachlorobenzene
Structural Class —Tris(aminoaryl)methanamimnium compounds	
2152–64–9	Benzenamine, -phenyl-4-((4-(phenylamino)phenyl)(4-(phenylimino)-2,5-cyclohexadien-1-ylidene)methyl)-, monohydrochloride
101–20–2	Urea, N-(4-Chlorophenyl)-N'-(3,4-dichlorophenyl)-
719–32–4	Terephthaloyl chloride, tetrachloro-
433–06–3	1,1,2,2-Tetrachloroethylsulfenyl chloride
1203–86–7	2,2-Dichloro-1-(2,4,5-trichlorophenyl)-ethanone
55954–19–3	1H-Azepine-1-carboxamide, N-(3-(((hexahydro-2-oxo-1H-azepin-1-yl)carbonyl)amino)methyl)- 3,5,5-trimethylcyclohexyl)hexahydro-2-oxo-
60825–27–6	Acetic acid, ((3,5,6-trichloro-2-pyridinyl)oxy)-, ethyl ester
64667–33–0	Hexanoic acid, 4,6,6,6-tetrachloro-3,3-dimethyl-, methyl ester
69806–40–2	Propanoic acid, 2-(4-((3-chloro-5-(trifluoromethyl)-2-pyridinyl)oxy)phenoxy)-, methyl ester

TABLE 4.—TWO HUNDRED EIGHT NON-HPV DEBITS CHEMICALS WITH PREDICTED BCFS OF 3–13

CAS No.	Chemical name
Structual Class—(2-Thiazolylazo)benzenamines	
19745–44–9	Propionitrile, 3-[p-[(5-nitro-2-thiazolyl)azo]-N-phenethylanilino]-
68516–81–4	Ethanol, 2-[ethyl[3-methyl-4-[(5-nitro-2-thiazolyl)azo]phenyl]amino]-
70693–63–9	Benzenamine, N,N-diethyl-3-methyl-4-(2-thiazolylazo)-
Structual Class—[(2-Hydroxy-1-naphthalenyl)azo]benzenesulfonate salts	
12688–94–7	Manganese, (4-((5-chloro-4-methyl-2-sulfophenyl)azo)-3-hydroxy-2-naphthalenecarboxylato(2-))-
5070–41–8	2-Naphthalenecarboxylic acid, 4-((5-chloro-4-methyl-2-sulfophenyl)azo)-3-hydroxy-, strontium salt (1:1)
17852–99–2	Calcium 4-((4-chloro-5-methyl-2-sulphonatophenyl)azo)-3-hydroxy-2-naphthoate
20514–68–1	2-Naphthalenecarboxylic acid, 4-((4-chloro-5-ethyl-2-sulfophenyl)azo)-3-hydroxy-, calcium salt (1:1)
67801–01–8	Barium bis(5-chloro-4-ethyl-2-((2-hydroxy-1-naphthyl)azo)benzenesulphonate)
67828–72–2	2-Naphthalenecarboxylic acid, 4-((4-chloro-5-methyl-2-sulfophenyl)azo)-3-hydroxy-, strontium salt (1:1)
Structual Class—[(3,5-Dinitro-2-thienyl)azo]anilines	
14932–34–9	2,2'-(4-((3,5-Dinitro-2-thienyl)azo)-4,1-phenyleneimino)bisethanol, diacetate (ester)
58979–46–7	Acetamide, N-[5-(diethylamino)-2-[(3,5-dinitro-2-thienyl)azo]phenyl]-
Structual Class—[[3-[(Phenyl)azo]phenyl]azo]benzenes	
4482–25–1	1,3-Benzenediamine, 4,4'-(4-methyl-1,3-phenylene)bis(azo)bis 6-methyl-
5421–66–9	1,3-Benzenediamine, 4,4'-((4-methyl-1,3-phenylene)bis(azo))bis(6-methyl-, dihydrochloride
67874–26–4	Benzoic acid, 5-((4-((3-((3-((2,4-diaminophenyl)azo)-2-hydroxy-5-sulfophenyl)azo)-2,6-dihydroxyphenyl)azo)phenyl) azo)-2-hydroxy-, disodium salt
71799–74–1	2,7-Naphthalenedisulfonic acid, 4-((2,4-dihydroxy-5-((2-hydroxy-3,5-dinitrophenyl)azo)-3((4-nitrophenyl)azo)phenyl)azo)-5-hydroxy-

TABLE 4.—TWO HUNDRED EIGHT NON-HPV DEBITS CHEMICALS WITH PREDICTED BCFS OF 3–13—Continued

CAS No.	Chemical name
Structual Class—[[4-[(Phenyl)azo]phenyl]azo]benzenesulfonic acid salts	
51418–90–7	Benzenesulfonic acid, 3-((4-((4-(2-hydroxybutoxy)-3-methylphenyl)azo)-3-methoxyphenyl)azo)-, monosodium salt
61290–31–1	Benzenesulfonic acid, 3-((4-((4-(2-hydroxybutoxy)phenyl)azo)-5-methoxy-2-methylphenyl)azo)-, monolithium salt
63405–85–6	Benzenesulfonic acid, 3-[[3-methoxy-4-[(4-methoxyphenyl)azo]phenyl]azo]-, sodium
68400–34–0	Benzenesulfonic acid, 4-[[4-[(4-hydroxyphenyl)azo]-5-methoxy-2-methylphenyl]azo-, monosodium salt]
68959–01–3	Benzenesulfonic acid, 4-chloro-3-((4-((4-ethoxyphenyl)azo)phenyl)azo)-, sodium salt
Structual Class—[[4-[(Phenyl)azo]phenyl]azo] benzenesulfonic acids	
30282–44–1	Benzenesulfonic acid, p-[[2,4-dihyroxy-3-(xylylazo)phneyl]azo]-
Structual Class—[2-Methoxy-4-[(3-sulfophenyl)azo]phenyl]urea salts	
7248–45–5	Benzoic acid, 2-hydroxy-5-((4-((((2-methoxy-4-((3-sulfophenyl)azo)phenyl)amino) carbonyl)amino)phenyl)azo)-, disodium salt
10114–86–0	3,3'-(Carbonylbis(imino(3-methoxy-4,1-phenylene)azo))bis(benzenesulfonic acid), disodium salt
Structual Class—[2-Methoxy-4-[(3-sulfophenyl)azo]phenyl]ureas	
8697–36–6	Benzenesulfonic acid, 3,3'-(carbonylbis(imino(3-methoxy-4,1-phenylene)azo))bis-
Structual Class—1-[(Dinitrophenyl)azo]-2-naphthalenols	
4998–82–7	1-[(2-Hydroxy-3,5-dinitrophenyl)azo]-2-hydroxynaphthalene
Structual Class— 1H-Indole-5-sulfonic acid, 2-phenyl-3-[[2-(phenylsulfonyl)phenyl]azo]-1H-Indole-5- sulfonic acid salts	
90677–63–7	1H-Indole-5-sulfonic acid, 2-phenyl-3-[[2-(phenylsulfonyl)phenyl]azo]-, monosodium salt
Structual Class—1H-Indole-5-sulfonic acid, 2-phenyl-3-[[2-(phenylsulfonyl)phenyl]azo]-1H-Indole-5- sulfonic acids	
93972–88–4	1H-Indole-5-sulfonic acid, 2-phenyl-3-[[2-(phenylsulfonyl)phenyl]azo]-
Structual Class—2-(Phenylazo)-3-oxo-N-phenylbutanamides	
2512–29–0	Butanamide, 2-[(4-methyl-2-nitrophenyl)azo]-3-oxo-N-phenyl-
6486-21-1	Acetoacetanilide, 2-[(4-methoxy-2-nitrophenyl)azo]-
6486–23–3	Butanamide, 2[(4-chloro-2-nitrophenyl)azo]-N-(2-chlorophenyl)-3-oxo-
12225–18–2	Butanamide, N-(4-chloro-2,5-dimethoxyphenyl)-2-((2,5-dimethoxy-4-((phenylamino)sulfonyl)phenyl)azo)-3-oxo-
13515–40–7	o-Acetoacetanisidide, 2-[(4-chloro-2-nitrophenyl)azo]-
32432–45–4	o-Acetoacetotoluidide, 4'-chloro-2-[(4-chloro-2-nitrophenyl)azo]-
52320–66–8	2-((4-Chloro-2-nitrophenyl)azo)-N-(4-ethoxyphenyl)-3-oxobutyramide
Structual Class—2,4-bis[(Arylazo)arylamino]-6-amino-1,3,5-triazines	
104–03–8	2-Naphthalenesulfonic acid, 7,7'-((6-(4-morpholinyl)-1,3,5-triazine-2,4-diyl)diimino)bis(4-hydroxy-3-((4-methoxy-2-sulfophenyl)azo)-, tetrasodium salt
50925–42–3	1,5-Naphthalenedisulfonic acid, 3,3'-((6-((2-hydroxyethyl)amino)-1,3,5-triazine-2,4-diyl)bis(imino(2-methyl-4,1-phenylene)azo))bis-, tetrasodium salt
52953–36–3	Cuprate(4-),(4-hydroxy-7-((4-((2-hydroxyethyl)amino)-6-((5-hydroxy-6-((2-hydroxy-5-sulfophenyl)azo)-7-sulfo-2-naphthalenyl)amino)-1,3,5-triazin-2-yl)amino)-3-((4-methoxy-2-sulfophenyl)azo)-2-naphthalenesulfonato(6-))-, tetrasodium
Structual Class—2-[[6-[(1,3,5-Triazin-2-yl)amino]-1-hydroxy-3-sulfo-2-naphthalenyl]azo]-1,5-naphthalenedisulfonic acid salts	
70616–90–9	1,5-Naphthalenedisulfonic acid, 2-((6-((4,6-dichloro-1,3,5-triazin-2-yl)methylamino)-1-hydroxy-3-sulfo-2-naphthalenyl)azo)-, trisodium salt

TABLE 4.—TWO HUNDRED EIGHT NON-HPV DEBITS CHEMICALS WITH PREDICTED BCFS OF 3–13—Continued

CAS No.	Chemical name
89923–44–4	Trisodium 2-((6-((4-(ethylphenylamino-6-fluoro-1,3,5-triazin-2-yl)amino)-1-hydroxy-3-sulphonato-2-naphthyl)azo)naphthalene-1,5-disulphonate
Structual Class—2-Azo-N-(2,3-dihydro-2-oxo-1H-benzimidazol-5-yl)- 3-oxobutanamides	
12236–62–3	Butanamide, 2-((4-chloro-2-nitrophenyl)azo)-N-(2,3-dihydro-2-oxo-1H-benzimidazol-5-yl)-3-oxo-
68134–22–5	Butanamide, -(2,3-dihydro-2-oxo-1H-benzimidazol-5-yl)-3-oxo-2-((2-(trifluoromethyl)phenyl)azo)-
Structual Class—2-Halo-4-(phenylazo)-6- [((((sulfonaphthyl)azo)sulfophenyl)amino]-1,3,5-triazines	
68110–31–6	2,7-Naphthalenedisulfonic acid, 4-amino-3,6-bis((4-((4-chloro-6-((3-sulfophenyl)amino)-1,3,5-triazin-2-yl)amino)-2-sulfophenyl)azo)-5-hydroxy-, hexasodium salt
68133–24–4	2,7-Naphthalenedisulfonic acid, 4-amino-3,6-bis[[5-[[4-chloro-6-[(3-sulfophenyl)amino]-1,3,5-triazin-2-yl] amino]-2-sulfophenyl]azo]-5-hydroxy-, hexasodium salt
70528–89–1	2,7-Naphthalenedisulfonic acid, 4-amino-6-((5-((4-((3-chlorophenyl)amino)-6-fluoro-1,3,5-triazin-2-yl)amino)-2-sulfophenyl)azo)-5-hydroxy-3-((4-sulfophenyl)azo)-, tetrasodium salt
Structual Class—3-[[4-[(6-Nitro-2-benzothiazolyl)azo]phenyl]amino] propanenitriles	
13486–43–6	Ethanol, 2-ethyl-4-(6-methoxy-2-benzothiazolyl)azo phenyl amino-
16586–42–8	Propanenitrile, 3-ethyl-3-methyl-4-(6-nitro-2-benzothiazolyl)azo phenyl amino-
16588–67–3	Propionitrile, 3-N-ethyl-4-6-(methylsulfonyl)-2-benzothiazolyl azo-,m-toluidino-
25510–81–0	Propanenitrile,3-(ethyl(4-((6-nitro-2-benzothiazolyl)azo)phenyl)amino)-
41362–82–7	Propanenitrile, 3-4-(5,6-dichloro-2-benzothiazolyl)azo phenyl methylamino-
Structual Class—3-[[4-[(Phenyl)azo]-1-naphthalenyl]azo]benzenesulfonic acids, sodium salts	
67875–21–2	Benzenesulfonic acid, 3-[[4-[(2-hydroxy-5-methylphenyl)azo]-1-naphthalenyl]azo]-, monosodium salt
68959–00–2	Benzenesulfonic acid, 3-((4-((2-ethoxy-5-methylphenyl)azo)-1-naphthalenyl)azo)-, sodium salt
Structual Class—3-[[Phenyl]azo]-N-(phenyl)benzenecarboxamides	
12236–64–5	2-Naphthalenecarboxamide, -(4-(acetylamino)phenyl)-4-((5-(aminocarbonyl)- 2-chlorophenyl)azo)-3-hydroxy-
36968–27–1	2-Naphthalenecarboxamide, 4-[[4-(aminocarbonyl) pohenyl]azo]-3-hydroxy-N-(2-methoxyphenyl)-
19904–51–4	2-Naphthalenecarboxamide, 3-hydroxy-4-((2-methoxy-5-((phenylamino)carbonyl)phenyl)azo)-
Structual Class—4,4'-bis(Arylazo)stilbene-2,2'-disulfonic acid salts	
2870–32–8	2,2'-(1,2-Ethenediyl)bis(5-((4-ethoxyphenyl)azo) benzenesulfonic acid), disodium salt
53523–90–3	Benzoic acid, 3,3'-[1,2-ethenediylbis[(3-sulfo-4,1-phenylene)azo]]bis [6-hydroxy-5-methyl-, tetralithium salt
75701–34–7	2-Naphthalenesulfonic acid, 3,3'-[1,2-ethenediylbis[(3-sulfo-4,1-phenylene)azo]]bis[6-amino- 4-hydroxy-, cmpd with 2,2',2''-nitrilotris (ethanol) (1:4)
Structual Class—4,4'-bis(Arylazo)stilbene-2,2'-disulfonic acids	
91–34–9	Benzenesulfonic acid, 2,2'-(1,2-ethenediyl)bis 5-(4-hydroxyphenyl)azo-
Structual Class—4,4'-bis(Triazinylamino)stilbene-2,2'-disulfonic acid salts	
37138–26–4	Benzenesulfonic acid,2,2'-(1,2-ethenediyl)bis[5-[[4-chloro-6-[(4-sulfophenyl)amino]- 1,3,5-triazin-2-yl]amino]-, tetrasodium salt
41098–56–0	1,4-Benzenedisulfonic acid,2,2'-(1,2-ethenediylbis((3-sulfo-4,1-phenylene)imino(6-(diethylamino)-1,3,5-triazine-4,2-diyl)imino))bis-, hexasodium salt
17506–54–5	Benzenesulfonic acid, 2,2'-(1,2-ethenediyl)bis(5-((4-(bis(2-hydroxypropyl)amino)-6-((4-sulfophenyl)amino)-1,3,5-triazin-2-yl)amino)-, dipotassium disodium salt
68003–30–5	Benzenesulfonic acid,2,2'-(1,2-ethenediyl)bis(5-((4-(2-hydroxypropoxy)-6-(phenylamino)-1,3,5-triazin-2-yl)amino)-, disodium salt

TABLE 4.—TWO HUNDRED EIGHT NON-HPV DEBITS CHEMICALS WITH PREDICTED BCFS OF 3–13—Continued

CAS No.	Chemical name
68003–31–6	Benzenesulfonic acid, 2,2'-(1,2-ethenediyl)bis[5-[[4-[2-(2-hydroxyethoxy)ethoxy]-6-[phenylamino]-1,3,5-triazin-2-yl]amino]-, disodium salt
68025–20–7	Benzenesulfonic acid,5-((4-(2-(2-hydroxyethoxy)ethoxy)- 6-(phenylamino)-1,3,5-triazin-2-yl)amino)-2-(2-(4-((4-(2-hydroxypropoxy)-6-(phenylamino)-1,3,5-triazin-2-yl)amino)-2-sulfophenyl)ethenyl)-, disodium salt
68155–68–0	Benzenesulfonic acid,2,2'-(1,2-ethenediyl)bis(5-((4-chloro-6-((4-sulfophenyl)amino)-1,3,5-triazin-2-yl)amino)-, dipotassium disodium salt
85187–74–2	Benzenesulfonic acid, 2,2'-(1,2-ethenediyl)bis(5-((4-(methylamino)-6- (phenylamino)-1,3,5-triazin-2-yl)amino)-, sodium salt
Structual Class—4-Amino-4'-nitroazobenzenes	
101–52–0	2-Methoxy-4-[(4-nitrophenyl)azo]benzenamine
1533–76–2	Propanamide, -(5-(bis(2-(acetyloxy)ethyl)amino)-2-((4-nitrophenyl)azo)phenyl)-
1533–77–3	Acetanilide, 5'-(bis(2-hydroxyethyl)amino)-2'-((2-methoxy-4-nitrophenyl)azo)-, diacetate (ester)
1533–78–4	Acetamide, -(5-(bis(2-(acetyloxy)ethyl)amino)-2-((2-chloro-4-nitrophenyl)azo)phenyl)-
2872–52–8	2-(Ethyl(4-((4-nitrophenyl)azo)phenyl)amino)ethanol
3025–41–0	Ethanol, 2,2'-4-(2-chloro-4-nitrophenyl)azo phenyl imino bis-
3179–89–3	Ethanol, 2,2'-3-methyl-4-(4-nitrophenyl)azo phenyl imino bis-
3180–81–2	Ethanol, 2-,4-(2-chloro-4-nitrophenyl)azo phenyl ethylamino-
3618–73–3	Acetamide, -(5-(bis(2-(acetyloxy)ethyl)amino)-2-((2-chloro-4,6-dinitrophenyl)azo)-4-methoxyphenyl)-
4058–30–4	Propanenitrile,3,3'-((4-((2-chloro-4-nitrophenyl)azo)phenyl)imino)bis-
5261–31–4	Propanenitrile, 3-((2-(acetyloxy)ethyl)(4-((2,6-dichloro-4-nitrophenyl)azo)phenyl)amino)-
6021–61–0	Propionitrile, 3-[p-[(2-chloro-4-nitrophenyl)azo]-N-(2-hydroxyethyl)anilino]-,
6657–32–5	Propionitrile, 3-[N-(2-hydroxyethyl)-p-[(p-nitrophenyl)azo]anilino]-
13301–61–6	Propionitrile, 3-[p-[(2,6-dichloro-4-nitrophenyl)azo]-N-ethylanilino]-
16586–43–9	Propanenitrile, 3-[[4-[(2-chloro-4-nitrophenyl)azo]-3-methylphenyl]ethylamino]-
5474–89–3	Benzonitrile, 2-[[p-[(2-cyanoethyl)ethylamino]phenyl]azo]-5-nitro-
17464–91–4	Ethanol,2,2'-((4-((2-bromo-6-chloro-4-nitrophenyl)azo)-3-chlorophenyl)imino)bis-
17741–62–7	Thiomorpholine, 4-p-(2,6-dichloro-4-nitrophenyl)azo phenyl-,1,1-dioxide
22578–86–5	Acetamide, N-(2-((2-bromo-4,6-dinitrophenyl)azo)-5-((2-cyanoethyl)ethylamino)-4-methoxyphenyl)-
23355–64–8	Ethanol, 2,2'-[[3-chloro-4-[(2,6-dichloro-4-nitrophenyl)azo]phenyl]imino]di-
24170–60–3	Acetamide, N-2-(2-cyano-4,6-dinitrophenyl)azo-5-(diethylamino)phenyl-
29426–52–6	Ethanol, 2,2'-3-methyl-4-2-(methylsulfonyl)-4-nitrophenyl azo phenyl imino bis-, diacetate ester
29649–47–6	Acetamide,-(2-((2-chloro-4-nitrophenyl)azo)-5-((2-(2,5-dioxo-1-pyrrolidinyl)ethyl)ethylamino)phenyl)-
10177–47–6	Benzamide, N-5-bis 2-(acetyloxy)ethyl amino-2-(4-nitrophenyl)azo phenyl-
30124–94–8	Benzonitrile, 2-4-bis 2-(acetyloxy)ethyl amino phenyl azo-5-nitro-
31464–38–7	Propanenitrile, 3-methyl-4-(4-nitrophenyl)azo phenyl amino-
31482–56–1	Propanenitrile, 3-ethyl-4-(4-nitrophenyl)azo phenyl amino-
40690–89–9	Propanenitrile, 3-[[2-(benzoyloxy)ethyl][4-[(4-nitrophenyl)azo]phenyl]amino]-
40880–51–1	Propanenitrile, 3-4-(2-chloro-4-nitrophenyl)azo phenyl ethylamino-
41642–51–7	Acetamide, -2-(2,6-dicyano-4-nitrophenyl)azo-5-(diethylamino)phenyl-

TABLE 4.—TWO HUNDRED EIGHT NON-HPV DEBITS CHEMICALS WITH PREDICTED BCFS OF 3–13—Continued

CAS No.	Chemical name
43047–20–7	Ethanol, 2,2-chloro-4-(4-nitrophenyl)azo phenyl amino-
52697–38–8	Acetamide, -[2-[(2-bromo-4,6-dinitrophenyl)azo]-5-(diethylamino)phenyl]-
53950–33–7	Acetamide, -(2-((2-bromo-4,6-dinitrophenyl)azo)-5-((2-cyanoethyl)amino)-4-methoxyphenyl)-
56548–64–2	Acetamide, -[2-[(2-bromo-4,6-dinitrophenyl)azo]-5-(diethylamino)-4-methoxyphenyl)-
61355–92–8	.beta.-Alanine, - 3-(acetylamino)-4- (4-nitrophenyl)azo phenyl -N-(3-methoxy-3-oxopropyl)-, methyl ester
22487049	Ethanol, 2,2'-4-(2,6-dichloro-4-nitrophenyl) azo phenyl imino bis-
65916–12–3	Acetamide, -(2-((2,6-dicyano-4-nitrophenyl)azo)-5-((2-(2-ethoxyethoxy)ethyl)ethylamino)phenyl)-
66214–54–8	Ethanol, 2,2'-4-(4-nitrophenyl)azo phenyl imino bis-, diacetate (ester)
66882–16–4	Benzonitrile, 2-[[4-[bis[2-(acetyloxy)ethyl]amino]-2-methylphenyl]azo]-5-nitro-
67674–22–0	Acetamide, -2-(2-bromo-4,6-dinitrophenyl)azo-5-(ethylamino)-4-methoxyphenyl-
67846–62–2	Propanamide, -(2-((2-chloro-4,6-dinitrophenyl)azo)-5-(ethylamino)-4-(2-methoxyethoxy)phenyl)-
67874–57–1	Propanenitrile, 3-2-chloro-4-(2,6-dichloro-4-nitrophenyl)azo phenyl amino-
67923–43–7	Propanenitrile, 3,3'- 4- (2,6-dichloro-4-nitrophenyl) azo phenyl imino bis-
68391–42–4	Propanenitrile, 3-[[2-(acetyloxy)ethyl][4-[(4-nitrophenyl)azo]phenyl]amino]-
68391–47–9	Acetamide, N-5-bis-2-(acetyloxy)ethyl amino-2-(2,4-dinitrophenyl)azo phenyl-
68957–67–5	Acetamide, N-(2-((2-chloro-4,6-dinitrophenyl)azo)-5-(ethylamino)-4-(2-methoxyethoxy)phenyl)-
70210–10–5	Propanenitrile, 3-((2-(2-cyanoethoxy)ethyl)(4-((4-nitrophenyl)azo)phenyl)amino)-
71617–28–2	Acetamide,N-(4-chloro-2-((2-chloro-4-nitrophenyl)azo)-5-((2-hydroxypropyl)amino)phenyl)-
72968–78–6	2,4,10-Trioxa-7-azaundecan-11-oic acid, 7-(4-((2-cyano-4-nitrophenyl)azo)-3-methylphenyl)-3-oxo-, methyl ester
75150–11–7	Acetamide, -(2-((2-chloro-4-nitrophenyl)azo)-5-((2-cyanoethyl)-2-propenylamino) phenyl)-
Structual Class—5-(Phenylazo)-8-(phenylamino)-1- naphthalenesulfonic acid salts	
67875–18–7	1-Naphthalenesulfonic acid, 5-((2-chloro-4-nitrophenyl)azo)-8-phenylamino-, sodium salt
67875–11–0	1-Naphthalenesulfonic acid, 5-[(3-chlorophenyl)azo]-8-(phenylamino)-, monosodium
Structual Class—5,8-bis(phenylazo)-2-sulfonaphthalenes	
67875–14–3	2-Naphthalenesulfonic acid, 5-((4-(bis(2-hydroxyethyl)amino)phenyl)azo)-8-((2-methylphenyl)azo)-, monosodium salt
68039–07–6	2-Naphthalenesulfonic acid, 5(or 8)-((4-hydroxy-2-methylphenyl)azo)-8(or 5)-(phenylazo)-, monosodium salt
68039–08–7	2-Naphthalenesulfonic acid, 5(or 8)-((4-ethoxy-2-methylphenyl)azo)-8(or 5)-(phenylazo)-, sodium salt
Structual Class—5,8-bis[(naphthyl or phenyl)azo]-2-sulfonaphthalenes	
4399–55–7	1,5-Naphthalenedisulfonic acid, 3-((4-((4-((6-amino-1-hydroxy-3-sulfo-2-naphthalenyl)azo)-6-sulfo-1-naphthalenyl)azo)-1-naphthalenyl)azo)-, tetrasodium salt
68227–72–5	1-Naphthalenesulfonic acid, 8-(phenylamino)-5-((4-(phenylazo)-6-sulfo-1-naphthalenyl)azo)-, disodium salt
70210–31–0	2-Naphthalenesulfonic acid,8-((4-((4-amino-3-sulfophenyl) azo)-6-sulfo-1-naphthalenyl)azo)-5-((6-(benzoylamino)-1-hydroxy-3-sulfo-2-naphthalenyl)azo)-, tetrasodium salt
Structual Class—5-[[4-[(3-Sulfophenyl)azo]-1-naphthalenyl]azo] naphthalene sulfonic acid salts	
530–08–7	1-Naphthalenesulfonic acid, 8-(phenylamino)-5-((4-((3-sulfophenyl)azo)-1-naphthalenyl)azo)-, disodium salt
1593–37–1	2-Naphthalenesulfonic acid, 6-hydroxy-5-((4-((4-(phenylamino)-3-sulfophenyl)azo)-1- naphthalenyl)azo)-,disodium salt

TABLE 4.—TWO HUNDRED EIGHT NON-HPV DEBITS CHEMICALS WITH PREDICTED BCFS OF 3–13—Continued

CAS No.	Chemical name
Structual Class—5-Azo-2,6-dialkylamino-4-methyl-3-pyridinecarbonitriles	
63833–78–3	3-Pyridinecarbonitrile, 5- (2-cyano-4-nitrophenyl)azo -6- (2-hydroxyethyl)amino
72968–71–9	2-Thiophenecarboxylic acid, 4-cyano-5-((5-cyano-2,6-bis((3-methoxypropyl)amino)-4-methyl-3-pyridinyl)azo)-3-methyl-, methyl ester
Structual Class—Azobis(4,1-phenyleneazo)bis(naphthalenesulfonates)	
52469–75–7	Trisodium 5-amino-3-((4-((4-((7-amino-1-hydroxy-3-sulphonato-2-naphthyl)azo)phenyl)azo)phenyl)azo)-4-hydroxynaphthalene-2,7-disulphonate
72017–89–1	2,7-Naphthalenedisulfonic acid, 3,3'-(azobis(4,1-phenyleneazo))bis(5-amino-4-hydroxy-, tetrasodium salt
72017–91–5	2,7-Naphthalenedisulfonic acid, 5-amino-3-((4-((4-((8-amino-1-hydroxy-3,6-disulfo-2-naphthalenyl)azo)-3-methoxyphenyl)azo)phenyl)azo)-4-hydroxy-, tetrasodium salt
75173–68–1	Copper, (mu-((3,3'-(azoxybis((2-hydroxy-4,1-phenylene)azo))bis(4-hydroxy-2,7- naphthalenesulfonato))(8-)))di-, tetrasodium
93941–06–1	2,7-Naphthalenedisulfonic acid, 3,3'-(azoxybis((2-methoxy-4,1-phenylene)azo))bis(4,5-dihydroxy-
99869–36–0	2,7-Naphthalenedisulfonic acid, 3,3'-(azoxybis((2-methoxy-4,1-phenylene)azo))bis(4,5-dihydroxy-, lithium salt
99869–37–1	2,7-Naphthalenedisulfonic acid, 3,3'-(azoxybis((2-methoxy-4,1-phenylene)azo))bis(4,5-dihydroxy-, sodium salt
124605–82–9	2,7-Naphthalenedisulfonic acid, 5-amino-3-[[4-[[4-[(8-amino-1-hydroxy-3,6-disulfo-2-naphthalenyl)azo]-2-methylphenyl]azo]-4-hydroxy-, lithium sodium salt
Structual Class—Biphenylbis(azonaphthalenesulfonates)	
4198–19–0	2,7-Naphthalenedisulfonic acid, 3,3'-((3,3'-dimethoxy(1,1'-biphenyl)-4,4'-diyl)bis(azo))bis(4,5-dihydroxy-, tetrasodium salt
3770–03–3	Cuprate(4-), (mu-((4,4'-((3,3'-di(hydroxy-kappaO)(1,1'-biphenyl)-4,4'-diyl)bis(azo-kappaN1))bis(3-(hydroxy-kappaO)-2,7-naphthalenedisulfonato))(8-)))di-, tetrasodium
28407–37–6	2,7-Naphthalenedisulfonic acid, 3,3'((3,3'-dihydroxy(1,1'-biphenyl)-4,4'-diyl)bis(azo)bis(5-amino-4-hydroxy-, sodium salt, copper complex
66418–17–5	Cuprate(3-), [.mu.-[4-[[4'-[(6-amino-1-hydroxy-3-sulfo-2-naphthalenyl)azo]-3,3'- dihydroxy(1,1'-biphenyl)-4-yl)azo]-3-hydroxy-2,7-naphthalene disulfonato(7-)]]di-, trisodium
67952–80–1	Cuprate(4-), (mu-(5-(acetylamino)-3-((4'-((8-amino-1-hydroxy-3,6-disulfo-2-naphthalenyl)azo)-3,3'-dihydroxy(1,1'-biphenyl)-4-yl)azo)-4-hydroxy-2,7-naphthalenedisulfonato(8-)))di-, tetrasodium
68133–82–4	Chromate(2-), bis(2-((6-amino-1-hydroxy-3-sulfo-2-naphthalenyl)azo)benzoato(3-))-, dihydrogen
68259–04–1	Acetic acid, 2,2'-((4,4'-bis((6-((1-hydroxy-4-(((2-methoxyethoxy)carbaryl)amino)phenyl)amino)-3-sulfo-2-naphthalenyl)azo(1,1'-biphenyl)-3,3'-diyl)bis(oxy))bis-, disodium salt
71550–22–6	2,7-Naphthalenedisulfonic acid, 3,3'-((3,3'-dimethoxy(1,1'-biphenyl)-4,4'-diyl)bis(azo))bis(5-amino-4-hydroxy-, tetralithium salt
71873–63–7	Cuprate(4-), [.mu.-[7-[[3,3'-dihydroxy-4'-[(4-hydroxy-2-sulfobenzo[a]phenazin-3-yl)azo-kappaN1)(1,1'-biphenyl)-4-yl)azo-kappaN1)-8-(hydrozy-kappa0)-1,3,6-naphthalenetrisulfonato(8-)))di-, tetrasodium salt
Structual Class—Bis[1',2'-dihydro-6'-hydroxy-4'-methyl-2'-oxo-1,3'- bipyridiniums]	
71032–99–0	1,3'-Bipyridinium, 5',5'''-(1,2-ethanediylbis(4,1-phenyleneazo))bis(1',2'-dihydro-6'-hydroxy-4'-methyl-2'-oxo-, salt with 2-hydroxypropanoic acid (1:2)
75214–63–0	1,3'-Bipyridinium, 5'-[[4-[[4-[(1',2'-dihydro-6'-hydroxy-3,4'-dimethyl-2'-oxo[1,3'-bipyridinium)-5'-yl)azo)benzoyl)amino)phenyl)azo)-1',3'-dihydro-6'-hydroxy-3,4'-dimethyl-2'-oxo-, salt with 2-hydroxypropanoic acid (1:2)
Structual Class—Bis[2-(phenylazo)-3-oxo-N-phenylbutanamides]	
6505–28–8	Butanamide, 2,2'-((3,3'-dimethoxy(1,1'-biphenyl)-4,4'-diyl)bis(azo))bis(3-oxo-N-phenyl-
7147–42–4	Butanamide, 2,2'-((3,3'-dimethoxy(1,1'-biphenyl)-4,4'-diyl)bis(azo))bis(N-(2-methylphenyl)-3-oxo-

TABLE 4.—TWO HUNDRED EIGHT NON-HPV DEBITS CHEMICALS WITH PREDICTED BCFS OF 3–13—Continued

CAS No.	Chemical name
68155–71–5	Benzamide, 4-((1-(((2-methoxyphenyl)amino)carbonyl)-2-oxopropyl)azo)-N-(4-((1-(((2-methoxyphenyl)amino)carbonyl)-2-oxopropyl)azo)phenyl)-
68516–73–4	1,4-Benzenedicarboxylic acid, 2,2'-[1,4-phenylenebis[imino(1-acetyl-2-oxo-2,1-ethanediyl)azo))bis-, tetramethyl ester
77804–81–0	Butanamide, 2,2'-(1,2-ethanediylbis(oxy-2,1-phenyleneazo)) bis(N- (2,3-dihydro-2-oxo-1H-benzimidazol-5-yl)-3-oxo-
Structual Class—Diaminoanthraquinones	
4403–90–1	m-Toluenesulfonic acid, 6,6'-(1,4-anthraquinonylenediimino) di-, disodium salt
67827–60–5	2-Anthracenesulfonic acid, 1-amino-4-((3-((benzoylamino)methyl)-2,4,6-trimethylphenyl)amino)-9,10-dihydro-9,10-dioxo-, monosodium salt
67969–88–4	2-Anthracenesulfonic acid, 1-amino-4-((4-(((4-methylphenyl)sulfonyl]oxy]phenyl)amino)-9,10-dihydro-9,10-dioxo-, monosodium salt
67970–27–8	Benzenesulfonic acid, 2,2'-((9,10-dihydro-9,10-dioxo-1,4-anthracenediyl)diimino) bis(5-methyl-, diammonium salt
72391–24–3	Benzenesulfonic acid, [[(chloroacetyl)amino]methyl][4-[[4-(cyclohexylamino)-9,10-dioxo-1-anthracenyl)amino)phenoxy)methyl-, monosodium salt
Structual Class—N-(2,3-dihydro-2-oxo-1H-benzimidazol-5-yl)-4- [[4-[(methylamino)sulfonyl]phenyl]azo]-3-hydroxy-2- naphthalenecarboxamides	
3771–33–9	2-Naphthalenecarboxamide, -(2,3-dihydro-2-oxo-1H-benzimidazol-5-yl)-4-((2,5-dimethoxy-4-((methylamino)sulfonyl)phenyl)azo)-3-hydroxy-
Structual Class— -(2,3-dihydro-2-oxo-1H-benzimidazol-5-yl)-4- [[4-[(methylamino)sulfonyl]phenyl]azo]-3-hydroxy-2- naphthalenecarboxamides	
18269–75–6	2-Naphthalenecarboxamide,-(2,3-dihydro-2-oxo-1H-benzimidazol-5-yl)-3-hydroxy-4-((2-methoxy-5-methyl-4-((methylamino)sulfonyl)phenyl)azo)-
61951–98–2	N-(2,3-Dihydro-2-oxo-1H-benzimidazol-5-yl)-3-hydroxy-4-((5-methoxy-2-methyl-4-((methylamino)sulphonyl)phenyl)azo)naphthalene-2-carboxamide
Structual Class—N-(arylazo)phenyl (disulfonaphthyl)azobenzamides	
70900–28–6	2,7-Naphthalenedisulfonic acid, 4-amino-3-((4-(((4-((4-amino-2-hydroxyphenyl)azo) phenyl)amino)carbonyl)phenyl)azo)-5-hydroxy-6-((4-sulfophenyl)azo)-, trisodium salt
72245–55–7	2,7-Naphthalenedisulfonic acid, 4-amino-3-((4-(((4-((7-amino-1-hydroxy-3-sulfo-2-naphthalenyl)azo)phenyl)amino)carbonyl)phenyl)azo)-5-hydroxy-6-(phenylazo)-, sodium salt
72245–57–9	2,7-Naphthalenedisulfonic acid, 4-amino-3-((4-(((4-((2-amino-4-hydroxyphenyl)azo)phenyl)amino)carbonyl)phenyl)azo)-5-hydroxy-6-(phenylazo)-, sodium salt
Structual Class—N,N'-bis[(arylazo)sulfonaphthyl]urea salts	
3441–14–3	2-Naphthalenesulfonic acid, 3-((4-(acetylamino)phenyl)azo)-4-hydroxy-7-((((5-hydroxy-6-(phenylazo)-7-sulfo-2-naphthalenyl)amino)carbonyl)amino)-, disodium salt
3626–36–6	2-Naphthalenesulfonic acid, 7,7'-(carbonyldiimino)bis(4-hydroxy-3-(phenylazo)-, disodium salt
79255–95–1	2-Naphthalenesulfonic acid, 7,7'-(carbonyldiimino)bis(4-hydroxy-3-((2-methyl-4-sulfophenyl)azo)-, sodium salt, compd. with 2,2',2''-nitrilotris(ethanol)
Structual Class—N-[2-[(2,6-dicyano-4-methylphenyl)azo]-5-(dialkylamino) phenyl]methanesulfonamides	
68385–96–6	Methanesulfonamide, -[2-[(2,6-dicyano-4-methylphenyl)azo]-5-(diethylamino)phenyl]-
72968–82–2	Methanesulfonamide, N-2-(2,6-dicyano-4-methylphenyl)azo-5-(dipropylamino)phenyl
Structual Class—N-[5-(amino)-2-[[5-(ethylthio)-1,3,4-thiadiazol-2-yl]azo]phenyl]acetamides	
63134–15–6	Acetamide, -5-(dipropylamino)-2-5-(ethylthio)-1,3,4-thiadiazol-2-ylazo phenyl-
67338–62–9	Acetamide, -(5-(ethyl(phenylmethyl)amino)-2-((5-(ethylthio)-1,3,4-thiadiazol-2-yl)azo)phenyl)-

TABLE 4.—TWO HUNDRED EIGHT NON-HPV DEBITS CHEMICALS WITH PREDICTED BCFS OF 3–13—Continued

CAS No.	Chemical name
Structual Class—Sulfonaphthyl-substituted 4,1-diazophenyl compounds	
20025–74–5	1,3,5-Naphthalenetrisulfonic acid, 7-((4-((4-((2,5,6-trichloro-4-pyrimidinyl)amino)phenyl)azo)phenyl)azo)-, trisodium salt
68460–07–1	2,7-Naphthalenedisulfonic acid, 4-amino-3-[[4-[(2-amino-4-hydroxyphenyl)azo]phenyl]azo]-5-hydroxy- 6-(phenylazo)-, disodium salt
124649–82–7	2-Naphthalenesulfonic acid, 4-hydroxy-3-[[2-methoxy-5-methyl-4-[(4-sulfophenyl)azo]phenyl]azo]-7-(phenylamino)-, cmpd. with [nitrilotris(2,1-ethanediyloxy)]tris[propanol] (1:2)
Structual Class—Sulfonaphthyl-substituted diphenylamine-4,4'-diazo-2-sulfonic acid salts	
67969–92–0	2-Naphthalenesulfonic acid, 6-amino-3-[[4-[[4-[(7-amino-1-hydroxy-3-sulfo-2-naphthalenenyl]azo]phenyl]amino]-3-sulfophenyl]azo]-4-hydroxy-, trisodium salt
Structual Class—Sulfonaphthyl-substituted diphenylamine-4,4'-diazo-2-sulfonic acids	
72066–88–7	2,7-Naphthalenedisulfonic acid,4-amino-3-((4-((4-((2-amino-4-hydroxyphenyl)azo) phenyl)amino)-3-sulfophenyl)azo)-5-hydroxy-6-(phenylazo)-
Structual Class—Sulfonaphthyl-substituted N,N'-bis(azophenyl) urea salts	
3214–47–9	1,5-Naphthalenedisulfonic acid,3,3'-(carbonylbis(imino(2-methyl-4,1-phenylene)azo))bis-, tetrasodium salt
28706–21–0	1,3-Naphthalenedisulfonic acid, 7,7'-(iminobis(carbonyl(2-methyl-4,1-phenylene)azo))bis-, tetrasodium salt
28706–22–1	1,5-Naphthalenedisulfonic acid, 3,3'-(carbonylbis(imino(3-methoxy-4,1-phenylene)azo))bis-, tetrasodium salt
67969–87–3	1,3-Naphthalenedisulfonic acid, 7-((4-((((2-methoxy-4-((3-sulfophenyl)azo)phenyl)amino)carbonyl)amino)-2-methylphenyl)azo)-, trisodium salt
71873–47–7	Benzoic acid,3-((1-hydroxy-6-((((4-((8-hydroxy- 3,6- disulfo-1-naphthalenyl)azo)-2-methoxy-5-methylphenyl)amino) carbonyl) amino)-3-sulfo-2-naphthalenyl)azo)-4-methoxy-, tetrasodium salt
Structual Class—Tris(aminoaryl)methanamimnium compounds	
2390–59–2	Ethanaminium, -(4-(bis(4-(diethylamino)phenyl)methylene)-2,5-cyclohexadien-1-ylidene)-N-ethyl-, chloride
2390–60–5	Ethanaminium, -(4-((4-(diethylamino)phenyl)(4-(ethylamino)-1-naphthalenyl)methylene)-2,5-cyclohexadien-1-ylidene)-N-ethyl-, chloride
2580–56–5	2-Methanaminium,N-(4-((4-(dimethylamino)phenyl)(4- (phenylamino)-1-naphthalenyl)methylene)-2,5-cyclohexadien-1-ylidene)-N-methyl-, chloride
1064–48–8	2,7-Naphthalenedisulfonic acid, 4-amino-5-hydroxy-3-((4-nitrophenyl)azo)-6-(phenylazo)-, disodium salt
1580–44–1	2-Naphthalenesulfonic acid, 7-amino-4-hydroxy-3-((5-hydroxy-6-(phenylazo)-7-sulfo-2-naphthalenyl)azo)-, disodium salt
6527–70–4	2,9-Triphenodioxazinedisulfonic acid, 6,13-dichloro-3,10-bis(phenylamino)-, disodium salt
1789–01–9	Cuprate(2-), (mu-((7,7'-iminobis(3-((5-(aminosulfonyl)-2-(hydroxy- kappaO)phenyl)azo-kappaN1)-4-(hydroxy-kappaO)-2- naphthalenesulfonato))(6-)))di-, disodium
12239–34–8	Acetamide, -(5-(bis(2-(acetyloxy)ethyl)amino)-2-((2-bromo-4,6-dinitrophenyl)azo)-4-ethoxyphenyl)-
4232–06–2	Benzenemethanamine, N-ethyl-N- 4-(1H-1,2,4-triazol-3-ylazo)phenyl -
41680–76–6	1,4-Benzenedicarboxylic acid, 2,5-bis(4-chlorophenyl)amino-
18386–01–7	.beta.-Alanine, N-ethyl-N-[4-[(5-nitro-2,1-benzisothiazol-3-yl)azo]phenyl]-, methyl ester
58104–55–5	2-Naphthalenesulfonamide, 6-hydroxy-N-(2-hydroxyethyl)-N-methyl-5-((4-(phenylazo)phenyl)azo)-
64181–81–3	7-((4-Chloro-6-((3-sulfophenyl)amino)-1,3,5-triazin-2-yl)amino)-4-hydroxy-3-((4-methoxy-2-sulfophenyl)azo)-2-naphthalenesulfonic acid, trisodium salt
67800–97–9	Chromate(1-), bis(3-(4-((5-chloro-2-hydroxyphenyl)azo)-4,5-dihydro-3-methyl-5-oxo- 1H-pyrazol-1-yl)benzene sulfonamidato(2-)-, sodium
67905–39–9	Aluminum, tris(triacontyl)-

TABLE 4.—TWO HUNDRED EIGHT NON-HPV DEBITS CHEMICALS WITH PREDICTED BCFS OF 3–13—Continued

CAS No.	Chemical name
67907–13–5	Benzenesulfonic acid, 2-((4-((4-(((4-methylphenyl)sulfonyl)oxy)phenyl) azo)phenyl)amino)-5-nitro-, monosodium salt
68958–98–5	Benzenesulfonic acid, 3-((4-((4-hydroxyphenyl)azo)-1-naphthalenyl)azo)-, monosodium salt
70209–93–7	Benzoic acid, 2-((8-((4-chloro-6-((4-(6-methyl-7-sulfo-2-benzothiazolyl)phenyl)amino)-1,3,5-triazin-2-yl)amino)-1-hydroxy-3,6-disulfo-2-naphthalenyl)azo)-, tetrasodium salt
70209–98–2	Benzenesulfonic acid,2-((1-(2-chloro-6-methylphenyl)-4,5- dihydro-3-methyl-5-oxo-1H-pyrazol-4-yl)azo)-4-((4-chloro-6-(phenylamino)-1,3,5-triazin-2-yl)amino)-, monosodium salt
70528–90–4	3-Pyridinecarbonitrile, 5-((4-chloro-2-nitrophenyl)azo)-1-ethyl-1,2-dihydro-6-hydroxy-4-methyl-2-oxo-
71735–65–4	Tetrasodium(8-hydroxy-7-((2-hydroxy-7-sulpho-6-((4-((2,5,6-trichloro-4-pyrimidinyl)amino)phenyl)azo)-1-naphthyl)azo)naphthalene-1,3,6-trisulphonato(6-))cuprate(4-)
72252–58–5	Chromate(4-), (mu-(3-((2-(amino-kappaN)-5- (hydroxy-kappaO)- 6-((2-(hydroxy-kappaO)-5-nitro-3-sulfophenyl)azo-kappaN1)-7-sulfo-1-naphthalenyl)azo-kappaN1)-2-hydroxy-5-sulfobenzoato(8-)))di-, tetrasodium
72828–69–4	Benzenesulfonic acid, 2-((5-amino-3-methyl-1-(3-sulfophenyl)-1H-pyrazol-5-yl)azo)-, 1,1'-((1-methylethylidene)di-4,1-phenylene) ester, disodium salt
73309–47–4	1-Naphthalenesulfonic acid, 4,4'-((4,6-dihydroxy-1,3-phenylene)bis(azo))bis-, disodium salt
78181–99–4	1-Propanaminium, 3-((2-cyano-3-(4-(diethylamino) phenyl)-1-oxo-2-propenyl)oxy)-N-(2-((2-cyano-3-(4-(diethylamino) phenyl)-1-oxo-2-propenyl)oxy)ethyl)-N,N-dimethyl-, chloride
85392–59–2	Iron, [.mu.-[3-[[5-[[2,4-dihydroxy-5-[(2-hydroxy-3-nitro-5-sulfophenyl) azo]phenyl)phenyl)methyl-2,4-dihydroxyphenyl) azo)-2-hydroxy- 5-nitrobenzenesulfonato(6-)))di-
112484–44–3	2,7-Naphthalenedisulfonic acid,4-amino-6-((4-(((4-((2,4-diaminophenyl)azo)phenyl) amino)sulfonyl) phenyl)azo)-5-hydroxy-3-((4-nitrophenyl)azo)-, potassium sodium salt
130201–55–7	Benzenesulfonic acid, 3,3'-[[6-(4-morpholinyl)-1,3,5-triazine-2,4-diyl]bis[imino[2-(acetylamino)-4,1-phenylene]azo]]bis-, disodium salt

IV. Revisions to the TSCA Section 4(e) Priority Testing List

A. Chemicals Added to the Priority Testing List

1. *Benzene, 1,3,5-tribromo-2-(2-propenyloxy)-* —i. *Recommendation.* Benzene, 1,3,5-tribromo-2-(2-propenyloxy)- (CAS No. 3278–89–5) is recommended to obtain unpublished exposure, environmental fate, health effects, and ecological effects data.

ii. *Rationale for recommendation.* Benzene, 1,3,5-tribromo-2-(2-propenyloxy)- is predicted to persist and bioconcentrate. There are very few toxicity data. Depending on the exposure, environmental fate, health effects, and ecological effects data that are provided, the EPA may consider benzene, 1,3,5-tribromo-2-(2-propenyloxy)- for their PBT Initiative.

iii. *Supporting information.* Benzene, 1,3,5-tribromo-2-(2-propenyloxy)- is produced in excess of 500,000 pounds per annum and used as a flame retardant for expanded polystyrene insulation board. The predicted BCF of benzene, 1,3,5-tribromo-2-(2-propenyloxy)- is 4,019. The rat oral LD_{50} was 5 grams/kilograms (g/kg) and it was not mutagenic in an Ames assay. A TOXLINE search identified one report that benzene, 1,3,5-tribromo-2-(2-propenyloxy)- was detected in sewer slime (Ref. 13).

iv. *Information needs.* The ITC needs exposure, environmental fate, health effects, and ecological effects data. Only studies where benzene, 1,3,5-tribromo-2-(2-propenyloxy)- is ≤ 90% of the test substance by weight should be submitted.

2. *1-Triazene, 1,3-diphenyl*—i. *Recommendation.* 1-Triazene, 1,3-diphenyl (diazoaminobenzene) (CAS No. 136–35–6) is being recommended to obtain annual production/importation volumes and trends, use, exposure, and health effects data.

ii. *Rationale for recommendation.* No occupational exposure limits have been established by the American Conference of Government Industrial Hygienists (ACGIH), the National Institute for Occupational Safety and Health (NIOSH), or the Occupational Safety and Health Administration (OSHA). Occupational exposures have not been characterized and there are no estimates of the number of workers exposed. The ITC needs occupational exposure data from the uses of diazoaminobenzene, e.g., to manufacture dyes and insecticides.

iii. *Supporting information.* A recent National Toxicology Program Report indicated that diazoaminobenzene is metabolized in rats and mice to the known carcinogens benzene and aniline (Ref. 12). Although not tested for carcinogenicity, diazoaminobenzene is a predicted carcinogen based on its metabolism and similarity in toxic effects to benzene and aniline. Diazoaminobenzene is used as an intermediate, complexing agent, and polymer additive. It is an impurity in certain color additives used in cosmetics, food products, and pharmaceuticals. It may also be used as a propellant for molding of rubbers and plastics and as a coupler to promote adhesion of natural rubber to steel tire cords. Since diazoaminobenzene has semiconducting properties it may have applications in the semi conductor industry.

Diazoaminobenzene may put workers at a heretofore unrecognized increased risk of cancer if they are exposed in the workplace. Importation, production, use, and exposure information will assist in determining if diazoaminobenzene may need further testing to adequately assess potential hazards associated with occupational exposures.

iv. *Information needs.*—a. Recent non-CBI estimates of annual production or importation volume data and trends.

b. Use information, including percentages of production or importation that are associated with different uses.

c. Estimates of the number of humans and concentrations of diazoaminobenzene compounds to which humans may be exposed from use, manufacturing, or processing.

d. Health effects data including pharmacokinetics, genotoxicity, subchronic

and chronic toxicity, reproductive, and developmental toxicity, and any human data from occupationally exposed workers. This information is needed in order to adequately access the extent and degree of exposure and potential hazard associated with diazoaminobenzene.

e. Only studies where diazoaminobenzene is ≥90% of the test substance by weight should be submitted.

B. Chemicals Removed From the Priority Testing List

1. *Acetone.* Acetone was designated in the ITC's 28th ITC Report for reproductive effects testing as a chemical with a low confidence reference dose or RfD (56 FR 41212, August 19, 1991) (FRL–3937–4). Acetone is being removed from the *Priority Testing List* because it was in the OECD SIDS program (see http://irptc.unep.ch/irptc/sids/sidspub.html volume 6) and because it is included in the EPA's VCCEP for reproductive effects and developmental toxicity testing (http://www.epa.gov/chemrtk/childhlt.htm). The EPA anticipates that under the VCCEP, tier 2 testing for prenatal developmental toxicity, reproductive and fertility effects testing will be conducted for acetone.

2. *Twenty alkylphenols and alkylphenol ethoxylates.* The ITC is continuing to review data on the alkylphenols and alkylphenol ethoxylates that were recommended in ITC's 37th ITC Report (61 FR 4188, February 2, 1996) (FRL–4991–6), 39th ITC Report (62 FR 8578, February 25, 1997) (FRL–5580–9), and 41st ITC Report (63 FR 17658 , April 9, 1998) (FRL–5773–5). At this time, the ITC is removing from the *Priority Testing List*, 9 alkylphenols and alkylphenol ethoxylates from the 37th ITC Report, 7 nonylphenol ethoxylates from the 39th ITC Report, and 4 alkylphenols and alkylphenol ethoxylates from the 41st ITC Report (see Table 5 of this appendix). The rationales for removing these alkylphenols and alkylphenol ethoxylates are provided as footnotes to Table 5 of this appendix.

TABLE 5.—ALKYLPHENOLS AND ALKYLPHENOL ETHOXYLATES BEING REMOVED FROM THE PRIORITY TESTING LIST

Report	CAS No.	Chemical name	Rationale
37	99–71–8	4-sec-Butylphenol	1
37	104–40–5	4-Nonylphenol	2
37	1638–22–8	4-n-Butylphenol	2
37	9002–93–1	Polyethylene glycol 4-(tert-octyl)phenyl ether	2
37	9036–19–5	Polyethylene glycol mono(octyl)phenyl ether	3
37	14938–35–3	4-Pentylphenol	2
37	27193–28–8	(1,1,3,3-Tetramethylbutyl)phenol (mixed isomers)	3
37	27193–86–8	Dodecylphenol (mixed isomers)	4
37	68987–90–6	Poly(oxy-1,2-ethanediyl), .alpha.-(octylphenyl)-.omega.-hydroxy-, branched	3
39	20427–84–3	2-[2-(4-Nonylphenoxy)ethoxy]ethanol	2
39	37205–87–1	Poly(oxy-1,2-ethanediyl), .alpha.-(isononylphenyl)-.omega.-hydroxy-	2
39	68412–54–4	Poly(oxy-1,2-ethanediyl), .alpha.-(nonylphenyl)-.omega.-hydroxy-, branched	2
39	98113–10–1	NP 9	2
39	127087–87–0	Poly(oxy-1,2-ethanediyl), .alpha.-(4-nonylphenyl)-.omega.-hydroxy-, branched	2
39	9016–45–9	Poly(oxy-1,2-ethanediyl), .alpha.-(nonylphenyl)-.omega.-hydroxy-	5
39	26027–38–3	Poly(oxy-1,2-ethanediyl), .alpha.-(4-nonylphenyl)-.omega.-hydroxy-	5
41	74499–35–7	Phenol, (tetrapropenyl) derivs.	4
41	68908–55–4	Phenol, polybutene derivs.	2
41	112375–88–9	Phenol, polyisobutylene derivs.	2
41	9014–92–0	Poly(oxy-1,2-ethanediyl), α-(dodecylphenyl)-ω-hydroxy-	2

Removal rationales:

1. Data developed from testing 4-tert-butylphenol (CAS No. 98–54–4) in response to the HPV Challenge program may be used to predict toxicity.

2. No domestic production or importation volumes were reported to the EPA in response to 1986, 1990, 1994, and 1998 IURs or no domestic production or importation volumes were reported to the EPA in response to the July 5, 2000 PAIR rule (65 FR 41371) (FRL–6589–1).

3. Data developed from testing phenol, 4-(1,1,3,3-tetramethylbutyl)- (CAS No. 140–66–9) in response to the HPV Challenge program may be used to predict toxicity.

4. Data developed from testing p-dodecylphenol (CAS No. 210555–94–5) in response to the HPV Challenge program may be used to predict toxicity.

5. Data developed from testing branched nonylphenol (CAS No.84852–15–3) in response to the HPV Challenge program may be used to predict toxicity.

There are 10 alkylphenols and alkylphenol ethoxylates remaining on the *Priority Testing List* (see Table 6 of this appendix).

TABLE 6.—ALKYLPHENOLS AND ALKYLPHENOL ETHOXYLATES REMAINING ON THE PRIORITY TESTING LIST

Report	CAS No.	Chemical name
37	80–46–6	4-tert-Pentylphenol
37	88–18–6	2-tert-Butylphenol
37	98–54–4	4-tert-Butylphenol
37	1806–26–4	4-Octylphenol
37	25154–52–3	Nonylphenol (mixed isomers)
37	84852–15–3	Branched nonylphenol (mixed isomers)
39	27986–36–3	2-(Nonylphenoxyl)ethanol
41	1987–50–4	Phenol, 4-heptyl-
41	72624–02–3	Phenol, heptyl derivs.
41	140–66–9	Phenol, 4-(1,1,3,3-tetramethylbutyl)-

3. *Three DEBITS chemicals from the 46th ITC Report*. In its 46th ITC Report, the ITC discussed 2 groups of DEBITS chemicals, polychlorophenols and polychlorobenzenethiols and chlorotrifluoromethylphenoxy benzenes (65 FR 75552, December 1, 2000) (FRL–6594–7). Two of the polychlorophenols and polychlorobenzenethiols (pentachlorothiophenol, CAS No. 133–49–3 and tetrachloropyrocatechol, CAS No. 1198–55–6) and two of the chlorotrifluoromethylphenoxy benzenes (p-toluidine, 5-chloro-.alpha.,.alpha.,.alpha.-trifluoro-2-nitro-N-phenyl, CAS No. 1806–24–2 and benzoic acid, 3-[2-chloro-4-(trifluoromethyl)phenoxy]-, 2-ethoxy-1-methyl-2-oxo, CAS No. 88185–22–2) were subsequently added to the *Priority Testing List* in the ITC's 47th ITC Report. All 4 of these chemicals were added to the July 26, 2001 PAIR rule (66 FR 38955) (FRL–6783–6). All of these chemicals, except pentachlorothiophenol, are being removed from the *Priority Testing List* because no production or importation data were submitted to the EPA in response to the 1998 IUR (10,000 pound reporting threshold) or the July 26, 2001 PAIR rule (1,000 pound reporting threshold).

4. *Three DEBITS chemicals from the 47th ITC Report*. In its 47th ITC Report, the ITC added 3 chloroalkenes to the *Priority Testing List*: 1,3-butadiene, 1,1,2,3,4-pentachloro-4-(1-methylethoxy)- (CAS No. 68334–67–8); 3-butenoic acid, 2,2,3,4,4-pentachloro-butyl ester (CAS No. 75147–20–9); and 3-butenoic acid, 2,2,3,4,4-pentachloro- (CAS No. 85743–61–9). The ITC is removing these 3 chloroalkenes from the *Priority Testing List* because no production or importation data were submitted to the EPA in response to the 1998 IUR.

5. *Nine DEBITS chemicals from the 48th ITC Report*. In its 48th ITC Report, the ITC added 5 chlorinated trihalomethyl pyridines, 2 trihaloethylidene bisbenzenes, 4 trichlorophenyldihydropyrazols and 3-chloro-2,6-dinitro-N,N-dipropyl-4-(trifluoromethyl) -benzeneamine to the *Priority Testing List*. The ITC is removing the 5 chlorinated trihalomethyl pyridines, 1 of the trihaloethylidene bisbenzenes (benzene, 1,1'-(2,2,2-trichloroethylidene)bis-), and 3 of the trichlorophenyldihydropyrazols (benzamide, 3-amino-N-[4,5-dihydro-5-oxo-1-(2,4,6-trichlorophenyl)-1H-pyrazol-3-yl; 3H-pyrazol-3-one, 5-((5-amino-2-chlorophenyl)amino) -2,4-dihydro-2-(2,4,6-trichlorophenyl)-; and benzamide, N-(4,5-dihydro-5-oxo-1- (2,4,6-trichlorophenyl)-1H-pyrazol-3-yl)-3-nitro-) from the *Priority Testing List* because no production or importation data were submitted to the EPA in response to the 1998 IUR or because the predicted BCFs were judged to be too low to warrant priority consideration at this time.

V. References

1. ITC. 1977. Initial Report of the TSCA Interagency Testing Committee (October 1, 1977) to the Administrator; Receipt of Report and Request for Comments Regarding the *Priority Testing List* of Chemicals. **Federal Register** (42 FR 55026–55080, October 12, 1977).

2. ITC. 1978a. Second Report of the TSCA Interagency Testing Committee (April 10, 1978) to the Administrator; Receipt of Report and Request for Comments Regarding the *Priority Testing List* of Chemicals. **Federal Register** (43 FR 16684–16688, April 19, 1978).

3. ITC. 1978b. Third Report of the TSCA Interagency Testing Committee (October 2, 1978) to the Administrator; Receipt of Report and Request for Comments Regarding the *Priority Testing List* of Chemicals. **Federal Register** (43 FR 50630–50635, October 10, 1978).

4. ITC. 1979. Fifth Report of the TSCA Interagency Testing Committee (November 8, 1979) to the Administrator; Receipt of Report and Request for Comments Regarding the *Priority Testing List* of Chemicals. **Federal Register** (44 FR 70664–70674, December 7, 1979).

5. ITC. 1980a. Sixth Report of the TSCA Interagency Testing Committee (April 9, 1980) to the Administrator; Receipt of Report and Request for Comments Regarding the *Priority Testing List* of Chemicals. **Federal Register** (45 FR 35897–35910, May 28, 1980).

6. ITC. 1980b. Seventh Report of the TSCA Interagency Testing Committee (October 24, 1980) to the Administrator; Receipt of Report and Request for Comments Regarding the *Priority Testing List* of Chemicals. **Federal Register** (45 FR 78432–78446, November 25, 1980).

7. ITC. 1982. Eleventh Report of the TSCA Interagency Testing Committee (November 3, 1982) to the Administrator; Receipt of Report and Request for Comments Regarding *Priority Testing List* of Chemicals. **Federal Register** (47 FR 54625–54644, December 3, 1982).

8. ITC. 1984. Fourteenth Report of the TSCA Interagency Testing Committee (May 8, 1984) to the Administrator; Receipt of Report and Request for Comments Regarding *Priority Testing List* of Chemicals. **Federal Register** (49 FR 22389–22407, May 29, 1984).

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10. ITC. 1986. Nineteenth Report of the TSCA Interagency Testing Committee (October 31, 1986) to the Administrator; Receipt of Report and Request for Comments Regarding *Priority Testing List* of Chemicals. **Federal Register** (51 FR 41417–41432, November 14, 1986).

11. ITC. 1989. Twenty-fifth Report of the TSCA Interagency Testing Committee (November 1, 1989) to the Administrator; Receipt of Report and Request for Comments Regarding *Priority Testing List* of Chemicals. **Federal Register** (54 FR 51114–51130, December 12, 1989).

12. National Toxicology Program (NTP). 2002. Toxicity Report Series Number 73. NTP report on the metabolism, toxicity, and predicted carcinogenicity of diazoaminobenzene (CAS No. 136–35–6), U.S. Department of Health and Human Services, Public Health Service, National Institutes of Health. NIH Publication No. 01–4412. Draft abstract available online at:http:/

/ntp-server.niehs.nih.gov/htdocs/ST-studies/tox073.html

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14. Walker JD. 1993. The TSCA Interagency Testing Committee, 1977 to 1992: Creation, structure, functions and contributions. pp. 451–509. In J.W. Gorsuch, F.J. Dwyer, C.G. Ingersoll and T.W. La Pointe (eds.), *Environmental Toxicology and Risk Assessment*: Second Volume, ASTM STP 1216. ASTM, Philadelphia, PA.

VI. TSCA Interagency Testing Committee

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Council on Environmental Quality
Vacant

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Barbara C. Levin, Alternate

National Oceanographic and Atmospheric Administration
Thomas P. O'Connor, Member
Teri Rowles, Alternate

Environmental Protection Agency
Paul Campanella, Member
David R. Williams, Alternate

National Cancer Institute
Alan Poland, Member
David Longfellow, Alternate

National Institute of Environmental Health Sciences
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National Science Foundation
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Occupational Safety and Health Administration
Val H. Schaeffer, Member
Lyn Penniman, Alternate

Liaison Organizations and Their Representatives

Agency for Toxic Substances and Disease Registry
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Daphne Moffett, Alternate

Consumer Product Safety Commission
Jacqueline Ferrante, Member
Treye Thomas, Alternate

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Clifford P. Rice, Member
Laurau L. McConnell, Alternate

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Department of the Interior
Barnett A. Rattner, Member

Food and Drug Administration
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National Library of Medicine
Vera W. Hudson, Member

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Technical Support Contractor
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John D. Walker, Executive Director
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Federal Register

Tuesday,
July 30, 2002

Part VI

The President

Proclamation 7578—National Korean War Veterans Armistice Day, 2002

Federal Register
Vol. 67, No. 146
Tuesday, July 30, 2002

Presidential Documents

Title 3—

The President

Proclamation 7578 of July 26, 2002

National Korean War Veterans Armistice Day, 2002

By the President of the United States of America

A Proclamation

Fifty-two years ago, armed forces from North Korea shattered the peace as they crossed the 38th Parallel and invaded South Korea. A 22-country force assembled to face this Cold War challenge, and the majority of them were Americans. The brave men and women of this coalition fought courageously to defend a population facing tyranny and aggression, and they succeeded in defeating the invading forces.

During the Korean War, approximately 1.8 million members of the United States Armed Forces fought in places such as Pork Chop Hill, Pusan Perimeter, and the Chosin Reservoir. During the intense fighting, approximately 34,000 American lives were lost in combat; 92,000 were wounded; and more than 8,000 listed as missing in action or taken prisoner. Their distinguished service reminds us of the words engraved on the Korean War Veterans Memorial in Washington—''Freedom Is Not Free.''

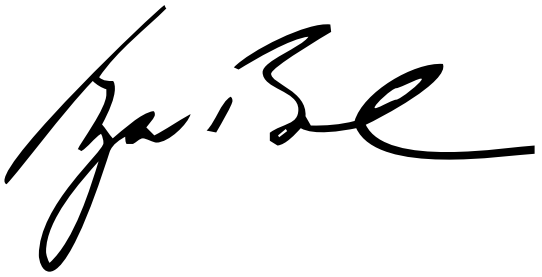
As we face the challenges of a new era and a new war, we look to America's Korean War veterans for their example of dedication and sacrifice in defending freedom. These men and women faced a formidable adversary and endured harsh and bitter conditions in upholding our Nation's heritage of valor, tenacity, and honor during this important stand against Communist aggression. For their gallantry in action, 131 servicemen earned our Nation's highest military award, the Medal of Honor. More than 90 of them received the award posthumously.

Forty-nine years ago, the Military Armistice Agreement ended the fighting and stopped the spread of Communism in Korea. In order to thank and honor veterans of the Korean War and their families, America will commemorate the 50th Anniversary of the Korean War through November 11, 2003. Today, as the Republic of Korea stands as a strong, democratic, and progressive nation, we thank our Korean War veterans for serving our Nation and the world with courage and distinction. These patriots advanced the principles and ideals upon which our Nation was founded, and they helped promote liberty, opportunity, and hope.

The Congress, by Public Law 104–19, as amended (36 U.S.C. 127), has designated July 27, 2002, as ''National Korean War Veterans Armistice Day,'' and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim July 27, 2002, as National Korean War Veterans Armistice Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities that honor and give thanks to our distinguished Korean War veterans. I also ask Federal departments and agencies and interested groups, organizations, and individuals to fly the flag of the United States at half-staff on July 27, 2002, in memory of the Americans who died as a result of their service in Korea.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of July, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.



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Federal Register

Tuesday,
July 30, 2002

Part VII

The President

Proclamation 7579—Anniversary of the Americans with Disabilities Act, 2002

Federal Register
Vol. 67, No. 146
Tuesday, July 30, 2002

Presidential Documents

Title 3—

The President

Proclamation 7579 of July 26, 2002

Anniversary of the Americans with Disabilities Act, 2002

By the President of the United States of America

A Proclamation

The Americans with Disabilities Act of 1990 (ADA) is one of the most compassionate and successful civil rights laws in American history. In the 12 years since President George H. W. Bush signed the ADA into law, more people with disabilities are participating fully in our society than ever before. As we mark this important anniversary, we celebrate the positive effect this landmark legislation has had upon our Nation, and we recognize the important influence it has had in improving employment opportunities, government services, public accommodations, transportation, and telecommunications for those with disabilities.

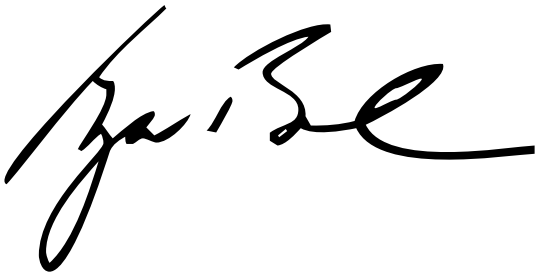
Today, Americans with disabilities enjoy greatly improved access to countless facets of life; but more work needs to be done. We must continue to build on the important foundations established by the ADA. Too many Americans with disabilities remain isolated, dependent, and deprived of the tools they need to enjoy all that our Nation has to offer.

My Administration is committed to removing the barriers that prevent people with disabilities from realizing their full potential and achieving their dreams. The New Freedom Initiative, which I announced last year, builds on the hopeful path of the ADA. It provides Americans with disabilities increased access to assistive technologies, expands educational options, and increases opportunities for them to integrate into our workforce. We are committed to ensuring the delivery of vital services to disabled persons in an integrated, community-based setting.

My Administration will continue to enforce the Americans with Disabilities Act, and we will work with businesses and State and local governments to increase partnerships that promote the purposes of the ADA. Together, we are working for a day when all people with disabilities are able to live and work with dignity, freedom, and independence and realize their potential as fully integrated members of our society.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim July 26, 2002, as a day in celebration of the 12th Anniversary of the Americans with Disabilities Act. I call upon public officials, business leaders, people with disabilities, and all Americans to pursue the ADA's full promise of equal opportunity and to celebrate the expanded freedom that the ADA has brought to American life.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of July, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.



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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.

RULES GOING INTO EFFECT JULY 30, 2002

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- Construction contracts; trade agreements thresholds; published 7-30-02
- Institutions of higher education; Federal contracts and grants; ROTC programs; published 7-30-02
- Small Business Administration and DOD; partnership agreement; published 7-30-02
- Technical amendments; published 7-30-02
- Weighted guidelines form; published 7-30-02

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Air quality implementation plans; approval and promulgation; various States:
- Indiana; published 5-31-02

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- Wireless telecommunications services—
  - 746-764 and 996-794 MHz bands; service rules; published 7-30-02

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  - Uniformed Services Employment and Reemployment Rights regulations, etc.; published 7-30-02

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- Health Insurance Portability and Accountability Act of 1996—
  - Standard unique employer identifier; published 5-31-02

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Fish and wildlife restoration; Federal aid to States:
- National Coastal Wetlands Conservation Grant Program; published 7-30-02

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- Tuberculosis in cattle and bison—
  - State and area classfications; comments due by 8-5-02; published 6-6-02 [FR 02-14197]

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  - Loggerhead turtle; comments due by 8-5-02; published 6-4-02 [FR 02-13959]

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  - Bering Sea and Aleutian Islands and Gulf of Alaska groundfish; Steller sea lion protection measures; correction; comments due by 8-9-02; published 7-10-02 [FR 02-17045]

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- Northeastern United States fisheries—
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- Chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks; comments due by 8-5-02; published 6-5-02 [FR 02-13805]

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- California; comments due by 8-7-02; published 7-8-02 [FR 02-16858]

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- California; comments due by 8-7-02; published 7-8-02 [FR 02-16864]

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- South Dakota; comments due by 8-9-02; published 7-10-02 [FR 02-17358]

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- Michigan; comments due by 8-9-02; published 7-10-02 [FR 02-17240]

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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

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H.R. 2362/P.L. 107–202

Benjamin Franklin Tercentenary Commission Act (July 24, 2002; 116 Stat. 739)

H.R. 3971/P.L. 107–203

To provide for an independent investigation of Forest Service firefighter deaths that are caused by wildfire entrapment or burnover. (July 24, 2002; 116 Stat. 744)

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