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Rules and Regulations

Federal Register
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Monday, April 14, 2003

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

5 CFR Chapter LXVII

RIN 3137–AA15

Supplemental Standards of Ethical Conduct for Employees of the Institute of Museum and Library Services

AGENCY: Institute of Museum and Library Services (IMLS).

ACTION: Interim final rule, with request for comments.

SUMMARY: The Institute of Museum and Library Services, with the concurrence of the Office of Government Ethics (OGE), is issuing regulations for officers and employees of IMLS that supplement the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE. The supplemental regulations require IMLS employees to obtain prior written approval to engage in certain outside employment or related activities.

EFFECTIVE DATE: These regulations take effect on April 14, 2003. Comments are invited and must be received on or before May 14, 2003.

ADDRESSES: Send comments by mail to Nancy E. Weiss, General Counsel, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Suite 802, Washington, DC 20506, or by e-mail to *regulations@imls.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy E. Weiss, General Counsel, Institute of Museum and Library Services, Suite 802, 1100 Pennsylvania Avenue, NW., Washington, DC 20506. Telephone (202) 606–5414; e-mail *nweiss@imls.gov.* Individuals who use a telecommunications device for the deaf (TDD) may contact IMLS' TDD terminal at (202) 606–8636.

SUPPLEMENTARY INFORMATION:

1. Background

On August 7, 1992, OGE published in the **Federal Register** new Standards of Ethical Conduct for Employees of the Executive branch (the ''Standards'') (57 FR 35006–35067). The Standards, as corrected and amended, are codified at 5 CFR part 2635 and generally became effective February 3, 1993. Those regulations established uniform standards of ethical conduct that apply to all executive branch personnel.

With the concurrence of OGE, 5 CFR 2635.150 authorizes executive branch agencies to publish agency-specific supplemental regulations necessary to implement their respective ethics programs. With OGE's concurrence, IMLS has determined that the following supplemental regulations contained in a new chapter LXVII, consisting of part 7701, of 5 CFR as set forth in this interim rule are necessary to implement IMLS's ethics program successfully, in light to of IMLS' programs and operations.

II. Analysis of the Regulations

Section 7701.101 General

Section 7701.101 explains that the regulations contained in this interim rule will apply to all IMLS employees and are supplemental to the executive branchwide standards. Employees of IMLS are also subject to the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635, the executive branch financial disclosure and financial interests regulations at 5 CFR parts 2634 and 2640, and the executive branch employees responsibilities and conduct regulations at 5 CFR part 735.

Section 7701.102 Prior-Approval for Outside Employment

Under 5 CFR 2635.803, an agency that determines if is necessary or desirable for the purpose of administering its ethics program may, by supplemental regulation with OGE's concurrence and co-signature, require its employees to obtain written approval before engaging in outside employment. IMLS has determined that it is necessary to the administration of its ethics program to institute the requirement that employment that may pose the most potential for employees to violate applicable conflict laws and regulations.

Therefore, subsection 7701.102(a) requires prior approval of outside employment when the outside employment involves a prohibited source. In identifying a ''prohibited source'' for purposes of this prior approval requirement, IMLS will apply the definition of that term found in the Standards at 5 CFR 2635.203(d). Thus, an employee would have to obtain approval before engaging in outside employment with any person (including an organization more than half of whose members are persons) seeking official action by IMLS; doing business or seeking to do business with IMLS; conducting activities regulated by IMLS; or having interests that may be substantially affected by the performance or nonperformance of the employee's official duties. Section 7701.102(a) also requires written requests for approval to be submitted to the employee's immediate supervisor and his or her Designated Agency Ethics Officials and specifies the information to be included in the employee's request. Section 7701.102(b) states the standard to be used in approving or denying requests for approval of outside employment. The basis of denial, if any, must be found in applicable statutes or Federal regulations, including the executive branchwide Standards and this part.

Section 7701.102(c) defines outside employment as including any form of compensated or uncompensated non-Federal employment or business relationship involving the provision of personal services by the employee. It includes writing done under arrangement with another person for production or publication of the written product.

III. Matters of Regulatory Procedure

Waiver of Proposed Rulemaking

As Director of IMLS, I have found good cause pursuant to 5 U.S.C. 553(b) and (d)(3) for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking and the 30-day delay in effectiveness as to this interim rule. The reason for this determination is that this rulemaking is related to IMLS' organization, procedure and practice. Nonetheless, this is an interim rulemaking with provision for a 30-day public comment period. IMLS will review all comments received during the comment period and will consider any modifications that appear appropriate in adopting these rules as

final with the concurrence and co-signature of the Office of Government Ethics.

Regulatory Flexibility Act

As Director of IMLS, I have determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have a significant economic impact on a substantial number of small entities because it only affects IMLS employees.

Paperwork Reduction Act

As Director of IMLS, I have determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because these regulations do not contain any information collection requirements that require the approval of the Office of Management and Budget.

Executive Order 12866

In promulgating this interim rule, IMLS has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This rule has not been reviewed by the Office of Management and Budget under that Executive Order, since it deals with agency organization, management, and personnel matters and is not in any event deemed ''significant'' thereunder.

Executive Order 12988

As Director of IMLS, I have reviewed this interim rule in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this rule will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

Congressional Review Act

IMLS has determined that this rulemaking is a nonrule under the Congressional Review Act (5 U.S.C. chapter 8), since it deals with agency management, organization and personnel matters.

List of Subjects in 5 CFR Part 7701

Conflict of interests, Standards of conduct, Government employees.

Dated: March 7, 2003.

Robert S. Martin,

Director, Institute of Museum and Library Services.

Approved: March 26, 2003.

Amy L. Comstock,

Director, Office of Government Ethics.

■ For the reasons set forth in the preamble, the Institute of Museum and Library Services, with the concurrence of the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations, by adding a new chapter LXVII, consisting of part 7701, to read as follows:

CHAPTER LXVII—INSTITUTE OF MUSEUM AND LIBRARY SERVICES

PART 7701—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE INSTITUTE OF MUSEUM AND LIBRARY SERVICES

Sec.

Authority: 5 U.S.C. 7301, 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.803.

§ 7701.101 Purpose.

In accordance with 5 CFR 2635.105, the regulations of this part apply to employees of the Institute of Museum and Library Services (IMLS) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. In addition to the regulations in 5 CFR part 2635 and this part, employees of IMLS are subject to the executive branch employee responsibilities and conduct regulations at 5 CFR part 735, the executive branch financial disclosure regulations at 5 CFR part 2634, and the executive branch financial interests regulations at 5 CFR part 2640.

§ 7701.102 Prior approval for outside employment.

(a) Before engaging in any outside employment with a prohibited source within the meaning of 5 CFR 2635.203(d), whether or not for compensation, an employee other than a special Government employee must obtain written approval from his or her immediate supervisor and the Designated Agency Ethics Official. The request for approval shall include the following:

(1) The name of the person, group, or organization for which the work is to be performed, the type of work to be performed, and the proposed hours of work and approximate dates of employment;

(2) A brief description of the employee's official IMLS duties and a brief description of the employee's discipline or inherent area of expertise based on experience of educational background;

(3) The employee's certification that the outside employment will not depend on information obtained as a result of the employee's official Government position and that no official duty time or Government property, resources, or facilities not available to the general public will be used in connection with the outside employment; and

(4) Responses to the following:

(i) Whether the proposed outside employment will pertain to a matter to which the employee is presently assigned or has been assigned within the last year;

(ii) Whether the proposed outside employment pertains to an ongoing or announced agency policy or program;

(iii) Whether the sponsor of the proposed outside employment has any interests before IMLS that may be substantially affected by the performance or nonperformance of the employee's duties;

(iv) Whether the employee intends to refer to his or her official IMLS position during the proposed outside employment and if so, the text of any disclaimers that he or she will use;

(v) Whether the employee will receive any payment or compensation for the proposed outside employment; and

(vi) Whether the proposed outside employment will involve teaching a course which is part of the established curriculum of an accredited institution of higher education, secondary school, elementary school, or an education or training program sponsored by a Federal, State or local government entity.

(b) Approval shall be granted only upon determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635 and this part.

(c) Outside employment means any form of compensated or uncompensated non-Federal employment or business relationship involving the provision of personal services by the employee. It includes, but is not limited to, personal services such as acting as an officer, director, employee, trustee, agent, attorney, consultant, contractor, general partner, teacher or speaker. It includes writing when done under an arrangement with another person for

production or publication of the written product.

[FR Doc. 03–8989 Filed 4–11–03; 8:45 am]

BILLING CODE 7036–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–05–AD; Amendment 39–13116; AD 2003–08–05]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS350B3 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Eurocopter France (Eurocopter) model helicopters that requires inspecting the ASU No. 2 printed circuit board (PCB) to determine if the resistor R8 is installed, and if it is not installed, replacing the PCB with an airworthy PCB with that resistor installed. This amendment is prompted by the discovery of a PCB without a critical resistor that polarizes the voltage regulator that regulates electrical power to a critical warning light, a critical caution light, and the main rotor revolutions per minute (RPM) signal to the vehicle engine management display (VEMD). The actions specified by this AD are intended to prevent the malfunction of the two critical lights and the rotor RPM signal to the VEMD, failure of these components to timely alert the pilot to the associated malfunctions, further helicopter damage because of these malfunctions, and subsequent loss of control of the helicopter.

DATES: Effective May 19, 2003.

FOR FURTHER INFORMATION CONTACT: Carroll Wright, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5120, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for Eurocopter Model AS350B3 helicopters was published in the **Federal Register** on January 21, 2003 (68 FR 2714). That action proposed to require, within 15 hours time-in-service (TIS), inspecting the ASU No. 2 PCB on helicopters with serial numbers 3062 and earlier to determine if the resistor R8 is installed, and if it is not installed, replacing the PCB with an airworthy PCB with resistor R8 installed within 50 hours TIS.

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter Model AS350B3 helicopters. The DGAC advises that the absence of a resistor R8 on the ASU No. 2 boards can lead to a malfunction of the electric circuits supplying the ''BATT. TEMP.'' red warning light, the ''ENGINE CHIP'' amber caution light, and the rotor RPM signal output to the VEMD.

Eurocopter has issued Service Bulletin No. 77.00.07, dated March 27, 2000, which specifies checking to determine if the resistor R8 is installed on the PCB within 25 hours time-in-service (TIS) and, if a resistor R8 is not installed, replacing the PCB with one that has a resistor R8 installed within 50 hours TIS. The DGAC classified this service bulletin as mandatory and issued AD No. 2001–319–083(A), dated July 25, 2001, to ensure the continued airworthiness of these helicopters in France.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

The FAA estimates that 30 helicopters of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost $1,200. The manufacturer states in its service bulletin that PCB's will be replaced free of charge. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $37,800, if a PCB is replaced in the entire fleet and there is no free replacement by the manufacturer.

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–08–05 Eurocopter France: Amendment 39–13116. Docket No. 2002–SW–05–AD.

Applicability: Model AS350B3 helicopters, serial numbers (S/N) 3062 and earlier, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent malfunction of the electrical circuits controlling the ''BATT. TEMP.'' red warning light, the ''ENGINE CHIP'' amber caution and the rotor revolutions-per-minute (RPM) signal output to the vehicle engine management display (VEMD), accomplish the following:

(a) Within 15 hours time-in-service (TIS), inspect the ASU No. 2 printed circuit board (PCB), part number SE 03022, to determine if resistor R8 is installed.

(b) If the resistor R8 is not installed, within 50 hours TIS, replace the PCB with an airworthy PCB that has a resistor R8 installed.

Note 2: Eurocopter Service Bulletin No. 77.00.07, dated March 27, 2000, pertains to the subject of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(d) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on May 19, 2003.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 2001–319–083(A), dated July 25, 2001.

Issued in Fort Worth, Texas, on April 8, 2003.

Michele M. Owsley,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–9012 Filed 4–11–03; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 210

[Release Nos. 33–8128A; 34–46464A; FR–63A; File No. S7–08–02]

RIN 3235–AI33

Acceleration of Periodic Report Filing Dates and Disclosure Concerning Web Site Access to Reports; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; technical amendments.

SUMMARY: This document contains corrections to final rules which were published in the **Federal Register** on Monday, September 16, 2002 (67 FR 58480). The rules relate to the acceleration of the filing of quarterly and annual reports under the Securities Exchange Act of 1934 by certain accelerated filers.

EFFECTIVE DATE: April 14, 2003.

FOR FURTHER INFORMATION CONTACT: Jeffrey J. Minton, Special Counsel, Office of Rulemaking, Division of Corporation Finance, at (202) 942–2910, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0312.

SUPPLEMENTARY INFORMATION:

I. Background

On September 5, 2002, the Commission adopted,[1] among other things, changes to rules 3–01[2] and 3–12[3] of Regulation S–X[4] under the Securities Act of 1933 (the ''Securities Act'').[5] These rules relate to the timeliness of financial information in Commission filings, such as Securities Act registration statements and proxy statements and information statements under section 14[6] of the Securities Exchange Act of 1934 (the ''Exchange Act'').[7] The changes were made to conform the timeliness requirements for these filings made by accelerated filers to changes adopted to the deadlines for Forms 10–K[8] and 10–Q[9] for accelerated filers, as defined in Exchange Act rule 12b–2.[10] The new deadlines will be phased-in over three years.

After we adopted the amendments to rules 3–01 and 3–12 of Regulation S–X, questions arose regarding the appropriate phase-in period for an accelerated filer required to update interim financial information in registration statements filed or that become effective 134 days after the end of the filer's fiscal year. This is the period after audited financial statements for the most recently completed fiscal year are already required to be filed on Form 10–K and on or after the date most registrants are required to have filed interim financial statements for the first quarter on Form 10–Q. Concerns arose that the phase-in periods in the conforming amendments to rules 3–01 and 3–12 of Regulation S–X do not match the phase-in periods described in the adopting release.

Accordingly, the amendments set forth in this document clarify that the phase-in periods applicable to accelerated filers who need to update interim information in accordance with amended rules 3–01 and 3–12 of Regulation S–X match the phase-in periods for filing quarterly information on Form 10–Q. The corrections clarify that updated interim information is required within 130 days after the end of the registrant's fiscal year for fiscal years ending on or after December 15, 2003 and before December 15, 2004, and within 125 days after the end of the registrant's fiscal year for fiscal years ending on or after December 15, 2004. The changes are technical corrections to clarify the rules as described in the original adopting release, and do not alter the phase-in periods for these requirements as described in the original adopting release.

II. Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

Text of Amendments

List of Subjects in 17 CFR Part 210

Reporting and recordkeeping requirements, Securities.

■ In accordance with the foregoing, the Commission amends Title 17, chapter II of the Code of Federal Regulations as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77aa(25), 77aa(26), 78j–1, 78l, 78m, 78n, 78o(d), 78u–5, 78w(a), 78ll(d), 79e(b), 79j(a), 79n, 79t(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–31, 80a–37(a), unless otherwise noted.

■ 2. Section 210.3–01 is amended by revising paragraphs (e)(1) and (i)(2) to read as follows:

§ 210.3–01 Consolidatedbalance sheets.

* * * * *

(e) * * *

(1) For accelerated filers (as defined in § 240.12b–2 of this chapter):

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[1] *See* Release No. 33–8128 (Sept. 5, 2002) [67 FR 58480].

[2] 17 CFR 210.3–01.

[3] 17 CFR 210.3–12.

[4] 17 CFR 210.1–01 *et seq.*

[5] 15 U.S.C. 77a *et seq.*

[6] 15 U.S.C. 78n

[7] 15 U.S.C. 78a *et seq.*

[8] 17 CFR 249.310.

[9] 17 CFR 308a.

[10] 17 CFR 240.12b–2.

(i) 135 days for fiscal years ending on or after December 15, 2002 and before December 15, 2003;

(ii) 130 days for fiscal years ending on or after December 15, 2003 and before December 15, 2004; and

(iii) 125 days for fiscal years ending on or after December 15, 2004; and

* * * * *

(i) * * *

(2) For purposes of paragraph (e) of this section, the number of days shall be:

(i) For accelerated filers (as defined in § 240.12b–2 of this chapter):

(A) 134 days subsequent to the end of the registrant's most recent fiscal year for fiscal years ending on or after December 15, 2002 and before December 15, 2003;

(B) 129 days subsequent to the end of the registrant's most recent fiscal year for fiscal years ending on or after December 15, 2003 and before December 15, 2004; and

(C) 124 days subsequent to the end of the registrant's most recent fiscal year for fiscal years ending on or after December 15, 2004; and

(ii) 134 days subsequent to the end of the registrant's most recent fiscal year for all other registrants.

■ 3. Section 210.3–12 is amended by revising paragraph (g)(1) to read as follows:

§ 210.3–12 Age of financial statements at effective date of registration statement or at mailing date of proxy statement.

* * * * *

(g)(1) For purposes of paragraph (a) of this section, the number of days shall be:

(i) For accelerated filers (as defined in § 240.12b–2 of this chapter):

(A) 135 days for fiscal years ending on or after December 15, 2002 and before December 15, 2003;

(B) 130 days for fiscal years ending on or after December 15, 2003 and before December 15, 2004; and

(C) 125 days for fiscal years ending on or after December 15, 2004; and

(ii) 135 days for all other registrants.

* * * * *

Dated: April 8, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8998 Filed 4–11–03; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 341

[Docket No. 76N–052G]

RIN 0910–AA01

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Final Monograph for Combination Drug Products; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of December 23, 2002 (67 FR 78158). The document issued a final monograph that established conditions under which over-the-counter (OTC) cold, cough, allergy, bronchodilator, and antiasthmatic (cough-cold) combination drug products are generally recognized as safe and effective and not misbranded as part of its ongoing review of OTC drug products.

DATES: The regulation is effective December 23, 2004.

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

SUPPLEMENTARY INFORMATION: In FR Doc. 02–32158 appearing on page 78158 in the **Federal Register** of Monday, December 23, 2002, the following corrections are made:

§ 341.40 [Corrected]

1. On page 78168, in the second column, in Part 341 *Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use*, under the authority citation, in amendment 2, ''Section 341.40 is added to subpart C to read as follows:'' is corrected to read ''Section 341.40 is added to subpart B to read as follows:''

§ 341.70 [Corrected]

2. On page 78170, in the second column, in § 341.70 *Labeling of OTC drug products containing ingredients that are used for treating concurrent symptoms (in either a single-ingredient or combination drug product)*, in paragraph (b), ''Repeat every hour as needed or as directed by a doctor.'' is corrected to read ''Repeat every 2 hours as needed or as directed by a doctor.''

Dated: April 8, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–9067 Filed 4–11–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 558

New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for seven approved new animal drug applications (NADAs) for clopidol Type A medicated articles and combination drug medicated chicken and turkey feeds from Aventis Animal Nutrition, Inc., to Merial Ltd.

DATES: This rule is effective April 14, 2003.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209.

SUPPLEMENTARY INFORMATION: Aventis Animal Nutrition, Inc., 3480 Preston Ridge Rd., suite 650, Alpharetta, GA 30005–8891, has informed FDA that it has transferred ownership of, and all rights and interest in, NADA 34–393, 40–264, 41–541, 44–016, 46–209, 49–934, and 99–150 for clopidol Type A medicated articles and certain combination clearances for use in medicated feeds for chickens and turkeys to Merial Ltd., 3239 Satellite Blvd., Bldg. 500, Duluth, GA 30096–4640. Accordingly, the agency is amending the regulations in § 558.175 (21 CFR 558.175) to reflect the transfer of ownership. Section 558.175 is also being changed to a table format.

Following the change of sponsor of these NADAs, Aventis Animal Nutrition, Inc., is no longer the sponsor of any approved applications. Therefore, 21 CFR 510.600(c) is being amended to remove the entries for this sponsor.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended]

■ 2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry for ''Aventis Animal Nutrition, Inc.'' and in the table in paragraph (c)(2) by removing the entry for ''011526''.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 3. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 4. Section 558.175 is revised to read as follows:

§ 558.175 Clopidol.

(a) *Specifications.* Type A medicated article containing 25 percent clopidol.

(b) *Approvals.* See No. 050604 in § 510.600(c) of this chapter.

(c) [Reserved]

■ (d) *Conditions of use.* It is used as follows:

Clopidol in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(1) 113.5		Broiler chickens and replacement chickens intended for use as caged layers: As an aid in the prevention of coccidiosis caused by *E. tenella*, *E. necatrix*, *E. acervulina*, *E. maxima*, *E. brunetti*, and *E. mivati*.	Do not feed to chickens over 16 weeks of age.	050604
(2) 113.5	Bacitracin methylene disalicylate 4 to 50	Broiler chickens: As in paragraph (d)(1) of this section; for increased rate of weight gain.	Feed continuously as the sole ration from the time chicks are placed in floor pens until slaughter. Do not feed to chickens over 16 weeks of age; bacitracin methylene disalicylate as provided by No. 046573 in § 510.600(c) of this chapter.	050604
(3) 113.5	Bacitracin 4 to 25 plus roxarsone 45.4	Broiler chickens: As in paragraph (d)(1) of this section; for growth promotion, feed efficiency; improved pigmentation, and increased rate of weight gain.	Do not feed to chickens over 16 weeks of age; withdraw 5 days before slaughter; as sole source of organic arsenic; as bacitracin methylene disalicylate or bacitracin zinc provided by No. 046573 in § 510.600(c) of this chapter.	046573 050604
(4) 113.5	Bacitracin zinc 5 to 25	Broiler chickens: As in paragraph (d)(1) of this section; for increased rate of weight gain and improved feed efficiency.	Feed continuously as sole ration; bacitracin zinc as provided by No. 046573 in § 510.600(c) of this chapter.	046573 050604
(5) 113.5	Chlortetracycline 100 to 200	Broiler and replacement chickens: As in paragraph (d)(1) of this section; for control of infectious synovitis caused by *Mycoplasma synoviae* susceptible to chlortetracycline.	Feed continuously as sole ration from the time chicks are placed in floor pens for 7 to 14 days.	050604
(6) 113.5	Lincomycin 2 to 4	Broiler chickens: As in paragraph (d)(1) of this section; for increased rate of weight gain and improved feed efficiency.	Do not feed to chickens over 16 weeks of age; as lincomycin hydrochloride monohydrate.	000009
(7) 113.5	Roxarsone 45.4	Broiler and replacement chickens intended for use as caged layers: As in paragraph (d)(1) of this section; for growth promotion, feed efficiency; and improved pigmentation.	Do not feed to chickens over 16 weeks of age; withdraw 5 days before slaughter; as sole source of organic arsenic.	050604

Clopidol in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(8) 227		Broiler and replacement chickens intended for use as caged layers: As in paragraph (d)(1) of this section.	Feed continuously as the sole ration; feed up to 16 weeks of age if intended for use as caged layers; withdraw 5 days before slaughter if given at the level of 0.025 percent in feed or reduce level to 0.0125 percent 5 days before slaughter.	050604
(9) 113.5 or 227		Turkeys: As an aid in the prevention of leucocytozoonosis caused by *Leucocytozoon smithi*.	For turkeys grown for meat purposes only; feed continuously as the sole ration at 0.0125 or 0.025 percent clopidol depending on management practices, degree of exposure, and amount of feed eaten; withdraw 5 days before slaughter.	050604

Dated: March 25, 2003.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 03–9028 Filed 4–11–03; 8:45 am]

BILLING CO DE 4160–01–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[FL–094–200316a; FRL–7481–8]

Approval and Promulgation of State Plan for Designated Facilities and Pollutants: Florida

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the sections 111(d)/129 plan submitted by the Florida Department of Environmental Protection (FDEP) for the State of Florida on November 29, 2001, for implementing and enforcing the Emissions Guidelines (EG) applicable to existing Commercial and Industrial Solid Waste Incineration (CISWI) units that commenced construction on or before November 30, 1999.

DATES: This direct final rule is effective June 13, 2003 without further notice, unless EPA receives adverse comments by May 14, 2003. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Joydeb Majumder, EPA Region 4, Air Toxics and Management Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–3104. Copies of materials submitted to EPA may be examined during normal business hours at the above listed Region 4 location. Anyone interested in examining this document should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Joydeb Majumder at (404) 562–9121 or Heidi LeSane at (404) 562–9035.

SUPPLEMENTARY INFORMATION:

I. Background

On December 1, 2000, pursuant to sections 111 and 129 of the Clean Air Act (Act), EPA promulgated new source performance standards (NSPS) applicable to new CISWIs and EG applicable to existing CISWIs. The NSPS and EG are codified at 40 CFR part 60, subparts CCCC and DDDD, respectively. Subparts CCCC and DDDD regulate the following: Particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans.

Section 129(b)(2) of the Act requires States to submit to EPA for approval State Plans that implement and enforce the EG. State Plans must be at least as protective as the EG, and become Federally enforceable upon approval by EPA. The procedures for adoption and submittal of State Plans are codified in 40 CFR part 60, subpart B. EPA originally promulgated the subpart B provisions on November 17, 1975. EPA amended subpart B on December 19, 1995, to allow the subparts developed under section 129 to include specifications that supersede the general provisions in subpart B regarding the schedule for submittal of State Plans, the stringency of the emission limitations, and the compliance schedules.

This action approves the State Plan submitted by FDEP for the State of Florida to implement and enforce subpart DDDD, as it applies to existing CISWI units only.

II. Discussion

FDEP submitted to EPA on November 29, 2001, the following in their 111(d)/129 State Plan for implementing and enforcing the EG for existing CISWIs under their direct jurisdiction in the State of Florida: Public Participation-Demonstration that the Public Had Adequate Notice and Opportunity to Submit Written Comments and Attend the Public Hearing; Legal Authority; Emission Limits and Standards; Compliance Schedule; Inventory of CISWI Plants/Units; CISWI Emissions Inventory; Source Surveillance, Compliance Assurance and Enforcement Procedures; Submittal of Progress Reports to EPA; and applicable State of Florida statutes and rules of the FDEP.

The approval of the Florida State Plan is based on finding that: (1) FDEP provided adequate public notice of public hearings for the EG for CISWIs, and (2) FDEP also demonstrated legal authority to adopt emission standards and compliance schedules; enforceable applicable laws, regulations, standards, and compliance schedules; the ability to seek injunctive relief; obtain information necessary to determine compliance; require record keeping; conduct inspections and tests; require the use of monitors; require emission reports of owners and operators; and make emission data publicly available.

FDEP cites the following references for the legal authority: The Florida Statues (F.S.), sections 403.031 definitions, 403.061 powers and duties, 403.0872 Title V air operating permits, and 403.8055 authority to adopt federal

standards by reference. Subsections 403.061(6), (7), (8), and (13), F.S., gives the authority for obtaining information, requiring record keeping, and using monitors. Most importantly, subsection 403.061(35), F.S., gives FDEP the authority to exercise the duties, powers, and responsibilities required of the state under the Act. The sections of Florida Statues that give authority for compliance and enforcement are 403.121 judicial and administrative remedies, 403.131 injunctive relief, 403.141 civil remedies, and 403.161 civil and criminal penalties. Finally, section 119.07, F.S., is the authority for making the information available to the public.

An enforcement mechanism is a legal instrument by which the FDEP can enforce a set of standards and conditions. The FDEP has adopted 40 CFR 60, subpart DDDD, into Chapter 62–204 of the Florida Administrative Code, thereby making it an enforceable rule. Therefore, FDEP's mechanism for enforcing the standards and conditions of 40 CFR 60, subpart DDDD, is Rule 62.204.800(8)(f), F.A.C. On the basis of these statutes and rules of the State of Florida, the State Plan is approved as being at least as protective as the Federal requirements for existing CISWI units.

FDEP adopted by reference, all emission standards and limitations applicable to existing CISWI units. These standards and limitation have been approved as being at least as protective as the Federal requirements contained in subpart DDDD for existing CISWI units.

FDEP submitted the compliance schedule for CISWIs under their jurisdiction in the State of Florida. This portion of the Plan has been reviewed and approved as being at least as protective as Federal requirements for existing CISWI units.

FDEP submitted an emissions inventory of all designated pollutants for CISWI units under their jurisdiction in the State of Florida. This portion of the Plan has been reviewed and approved as meeting the Federal requirements for existing CISWI units.

FDEP includes its legal authority to require owners and operators of designated facilities to maintain records and report to their Agency the nature and amount of emissions and any other information that may be necessary to enable their Agency to judge the compliance status of the facilities in Appendix B of the State Plan. In Appendix B, FDEP also submits its legal authority to provide for periodic inspection and testing and provisions for making reports of CISWI emissions data, correlated with emission standards that apply, available to the general public.

The State Plan outlines the authority to meet the requirements of monitoring, record keeping, reporting, and compliance assurance. This portion of the Plan has been reviewed and approved as being at least as protective as Federal requirements for existing CISWI units.

As stated in the Plan, FDEP will provide progress reports of plan implementation updates to the EPA on an annual basis. These progress reports will include the required items pursuant to 40 CFR part 60, subpart B. This portion of the plan has reviewed and approved as meeting the Federal requirement for State Plan reporting.

This action approves the State Plan submitted by FDEP for the State of Florida to implement and enforce subpart DDDD, as it applies to existing CISWI units only.

III. Final Action

This action approves the State Plan submitted by FDEP for the State of Florida to implement and enforce subpart DDDD, as it applies to existing CISWI units only. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the State Implementation Plan (SIP) revision should adverse comments be filed. This rule will be effective June 13, 2003 without further notice unless the Agency receives adverse comments by May 14, 2003.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 13, 2003, and no further action will be taken on the proposed rule.

IV. Statutory and Executive Order Reviews

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

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the

requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 13, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Nitrogen dioxide, Particulate matter, Sulfur oxides.

Dated: March 24, 2003.

A. Stanely Meiburg,

Acting, Regional Administrator, Region 4.

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

PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

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

Subpart K—Florida

■ 2. Subpart K is amended by adding an undesignated center heading and § 62.2380 to read as follows:

Air Emissions From Commercial and Industrial Solid Waste Incineration (CISWI) Units—Section 111(d)/129 Plan

§ 62.2380 Identification of sources.

The Plan applies to existing Commercial and Industrial Solid Waste Incineration Units that Commenced Construction On or Before November 30, 1999.

[FR Doc. 03–8953 Filed 4–11–03; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 68, No. 71
Monday, April 14, 2003

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 02–109–2]

Importation of Beef From Uruguay

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed Rule; Notice of reopening and extension of comment period.

SUMMARY: We are extending the comment period for our proposed rule to amend the regulations governing the importation of certain animals, meat, and other animal products into the United States to allow, under certain conditions, the importation of fresh (chilled or frozen) beef from Uruguay. This action will allow interested persons additional time to prepare and submit comments.

DATES: We will consider all comments that we receive on or before April 25, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–109–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–109–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 02–109–1'' on the subject line.

You may read any comments that we receive on Docket No. 02–109–1 in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street andIndependence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

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

FOR FURTHER INFORMATION CONTACT: Dr. Hatim Gubara, Senior Staff Veterinarian, Regionalization Evaluation Services Staff, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

On February 10, 2003, we published in the **Federal Register** (68 FR 6673–6677, Docket No. 02–109–1) a proposal to amend the regulations governing the importation of certain animals, meat, and other animal products into the United States to allow, under certain conditions, the importation of fresh (chilled or frozen) beef from Uruguay. Based on the evidence in a recent risk evaluation, we believe that fresh (chilled or frozen) beef from Uruguay can be safely imported from Uruguay provided certain conditions are met.

Comments on the proposed rule were required to be received on or before April 11, 2003. We are reopening and extending the comment period for Docket No. 02–109–1 for an additional 14 days ending April 25, 2003. This action will allow interested persons additional time to prepare and submit comments.

Authority: 7 U.S.C. 450, 7701–7772, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 9th day of April 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–9022 Filed 4–11–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

10 CFR Part 709

[Docket No. CN–03–RM–01]

RIN 1992–AA33

Office of Counterintelligence; Polygraph Examination Regulations

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking and opportunity for public comment.

SUMMARY: The Department of Energy (DOE or Department) publishes a notice of proposed rulemaking to begin a proceeding to consider whether to retain or modify its current Polygraph Examination Regulations. DOE is undertaking this action, among other reasons, to satisfy the directive of section 3152 of the National Defense Authorization Act for Fiscal Year 2002 that following issuance of the National Academy of Sciences' Polygraph Review (NAS Polygraph Review), DOE is to prescribe regulations for a new counterintelligence polygraph program, whose Congressionally-specified purpose is ''* * * to minimize the potential for release or disclosure of classified data, materials, or information.''

DATES: Written comments (10 copies) are due June 13, 2003.

ADDRESSES: You may choose to address written comments to U.S. Department of Energy, Office of Counterintelligence (CN–1), Docket No. CN–03–RM–01, 1000 Independence Avenue. SW., Washington, DC 20585. Alternatively, you may e-mail your comments to: *poly@hq.doe.gov.* You may review or copy the public comments DOE has received in Docket No. CN–03–RM–01 and any other docket material DOE makes available at the DOE Freedom of Information Reading Room, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585. This notice of proposed rulemaking and supporting documentation is available on DOE's internet home page at the following address: *http://www.energy.gov.*

FOR FURTHER INFORMATION CONTACT: Douglas Hinckley, U.S. Department of Energy, Office of Counterintelligence, CN–1, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–5901; or Lise Howe, U.S. Department of Energy, Office of General Counsel, GC–

73, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2906.

SUPPLEMENTARY INFORMATION:

I. Introduction

Under section 3152(a) of the National Defense Authorization Act for Fiscal Year 2002 (NDAA for FY 2002), DOE is obligated to prescribe regulations for a new counterintelligence polygraph program the stated purpose of which is ''* * * to minimize the potential for release or disclosure of classified data, materials, or information'' (42 U.S.C. 7383h–1(a).) Section 3152(b) requires DOE to ''* * * take into account the results of the Polygraph Review,'' which is defined by section 3152(e) to mean ''* * * the review of the Committee to Review the Scientific Evidence on the Polygraph of the National Academy of Sciences'' (42 U.S.C. 7383h–1(b), (e)).

Upon promulgation of final regulations under section 3152, and ''effective 30 days after the Secretary submits to the congressional defense committees the Secretary's certification that the final rule * * * has been fully implemented, * * *'' section 3154 of the National Defense Authorization Act for Fiscal Year 2000 (NDAA for FY 2000) (42 U.S.C. 7383h), would be repealed by operation of law. (42 U.S.C. 7383h–1(c).) The repeal of section 3154 would eliminate the existing authority which underlies DOE's counterintelligence polygraph regulations, which are codified at 10 CFR part 709, but would not preclude the retention of some or all of those regulations through this rulemaking pursuant to the later-enacted section 3152 of the NDAA for FY 2002.

In Part II of this **SUPPLEMENTARY INFORMATION,** DOE reviews background information useful in understanding the existing statutory and regulatory provisions applicable to DOE's current counterintelligence polygraph examination program. In Part III of this Supplementary Information, DOE discusses its preliminary views with regard to the relevant factual and policy issues, including DOE's evaluation of the NAS Polygraph Review which is entitled ''The Polygraph and Lie Detection.'' That discussion explains why the Secretary of Energy has approved today's preliminary proposal to retain the regulations in 10 CFR part 709 as a balanced approach for the carefully circumscribed use of polygraph examinations as a tool that appears in current circumstances well-suited to accomplish the Congressionally-specified purpose ''* * * to minimize the potential for release or disclosure of classified data, materials, or information'' (42 U.S.C. 7383h–1).

DOE invites interested members of the public to provide their views on the issues in this rulemaking by filing written comments. With an open mind, DOE intends carefully to evaluate the public comments received in response to this notice of proposed rulemaking. DOE will then consider whether to issue a supplemental notice of proposed rulemaking with additional policy options for public comment and whether it is necessary and timely to hold a public hearing to provide an opportunity for presentation of oral comments.

II. Background

Consistent with section 3154 of the NDAA for FY 2000, DOE published a notice of final rulemaking establishing 10 CFR part 709 on December 17, 1999 (64 FR 70975). The provisions of 10 CFR part 709 list the types of employees and positions that are subject to polygraph examinations. Under 10 CFR 709.4, the polygraph program applies to all DOE employees and contractor employees, applicants for employment, and other individuals assigned or detailed to positions in eight categories which are discussed in detail in part III of this Supplementary Information. Employees may request exculpatory polygraph examinations to deal with unresolved counterintelligence or personnel security issues. Part 709 also describes the polygraph examination protocols DOE uses, the policies for safeguarding the privacy rights of employees, and the requirements that apply to ensure well qualified and well trained polygraph examiners.

After DOE promulgated 10 CFR part 709, Congress amended section 3154 of the NDAA for FY 2000 by section 3135 in the National Defense Authorization Act for Fiscal Year 2001 (Pub. L. 106–398). Section 3135 amended the earlier definition of ''covered persons'' contained in section 3154 to include assignees, detailees and applicants. The definition of ''high risk program'' was revised to include programs using information known as Sensitive Compartmented Information, SAP, PSAP, PAP, and any other program or position category specified in section 709.4(a) of Title 10, Code of Federal Regulations. Section 3135 amended section 3154(f) to add the terms ''terrorism'' after ''sabotage'' and ''deliberate damage to or malicious misuse of a United States Government information or defense system'' to the statutory definition of the scope of a counterintelligence polygraph examination. Section 3135 also amended section 3154 by adding language that limited the Secretary's authority to waive the examination requirement.

III. DOE's Proposal To Implement Section 3152(a) of the NDAA for FY 2002

The focal point for analysis of the factual information and policy considerations relevant to this rulemaking is the Congressionally stated purpose of the counterintelligence polygraph regulations which is ''* * * to minimize the potential for release or disclosure of classified data, material, or information'' (42 U.S.C. 7383h–1(a)). Given the nature of this directive—as a statement of the purpose of the program, not as a standard that the program must meet—DOE does not construe this directive as a mandate mechanistically to construct a program that takes all steps to protect classified data, materials, or information, no matter what the countervailing considerations. Construing the directive in that fashion could lead to absurd results, potentially requiring DOE to expend so much of its resources on polygraphs and associated provisions that the program would significantly detract from DOE's ability to accomplish its national security mission. At the same time, however, DOE does believe that the directive signals a Congressional hierarchy in the weighing of various considerations, pursuant to which DOE must take potential jeopardy of classified data, materials, or information very seriously in considering the potential consequences that may flow from how it constructs its program. DOE has evaluated the question whether to retain or modify the list of positions currently set forth in its regulations as subject to polygraph examinations over a five-year period against this Congressionally-stated purpose so construed.

As noted above, that list is set forth at 10 CFR 709.4. It includes: ''(1) Positions that DOE has determined include counterintelligence activities or access to counterintelligence sources and methods; (2) positions that DOE has determined include intelligence activities or access to intelligence sources and methods; (3) positions requiring access to information that is protected within a non-intelligence special access program (SAP) designated by the Secretary of Energy; (4) positions that are subject to the Personnel Security Assurance Program (PSAP); (5) positions that are subject to the Personnel Assurance program (PAP); (6) positions that DOE has determined have a need-to-know or access to information specifically designated by the Secretary

regarding the design and operation of nuclear weapons and associated use control features; (7) positions within the Office of Independent Oversight and Performance Assurance, or any successor thereto, involved in inspection and assessment of safeguards and security functions, including cyber security, of the Department; (8) positions within the Office of Security and Emergency Operations, or any successor thereto * * *'' This list reflects, but is not restricted to, the positions listed in section 3154 of the NDAA for FY 2000. Consistent with section 3152 of the NDAA for FY 2002, DOE proposes to retain these eight position categories because in each category there are individuals who possess or have routine access to classified data, material, or information that would likely be targeted for acquisition by foreign powers. DOE has not reached a firm conclusion that all the position categories on the list should be retained, or that all should be retained in their current form, but it believes that a sufficient basis for their retention exists that it is not prepared to propose the modification or removal of any at this time. DOE accordingly particularly invites comment on the question whether the list, or any of the position categories on the list, is overinclusive or underinclusive, and if so, how and on what basis the list, or any of the position categories on the list, should be modified.

The list of position categories in 10 CFR 709.4(a) also includes two categories of individuals who volunteer for polygraph examinations. There is a category of applicants for employment who opt for the Accelerated Access Authorization Program (AAAP) (10 CFR 709.4(a)(9)). These applicants choose to be polygraphed in order to obtain expedited interim ''Q'' clearances pending completion of field investigations. There is also a category composed of incumbent employees who volunteer for so-called exculpatory polygraph examinations to resolve questions that have arisen in the context of counterintelligence investigations or personnel security issues (10 CFR 709.4(a)(10).

The NAS Polygraph Review examined the scientific evidence with regard to the validity of polygraph examinations used for the screening of applicants for employment and incumbent employees, as well as for specific-event investigations (which include what DOE calls ''exculpatory polygraph examinations''). The NAS pointed out that the available scientific evidence is generally of low quality and consisted of 57 studies of which 53 are specific-event investigations and four are flawed studies of employee screening. While noting that the available empirical research has not established the underlying factors that produce the physiological responses observed during polygraph examinations, and that generalizing from such responses in research settings to real world settings is hazardous, the NAS nevertheless concluded that ''* * * specific-incident polygraph tests discriminate lying from truth telling at rates well above chance, though well below perfection * * *'' (NAS Polygraph Review at p. 3). DOE is inclined to accept this conclusion with regard to exculpatory polygraph examinations under 10 CFR 709.4(a)(10), but given the limitations of the tool, DOE does not treat the results of such examinations as conclusive as to truthfulness or mendacity. Accordingly, DOE may follow up an exculpatory polygraph result with additional investigative activities if DOE considers that action appropriate. DOE does not now contemplate any change in this policy.

With regard to polygraph examinations for employee screening under 10 CFR part 709, the NAS takes a significantly different view. Against the background of what it acknowledges is very sparse evidence, the NAS is dubious about both the *validity* and the *advisability* of such examinations.

Validity. According to the NAS, the proportion of the employee population at DOE that poses a major national security threat (presumably including threats to classified information) is extremely low. In the NAS's view, screening in a population with a very low rate of target transgressions will necessarily yield, as a function of how sensitively the polygraph test is set, either a large number of false positives or a large of false negatives (NAS Polygraph Review at 4, 2–4 through 2–7, 2–20 though 2–21, and 7–2 through 7–4). On that basis, the NAS concludes that polygraph examinations are too inaccurate to be used for employee screening. (NAS Polygraph Review, p.4.)

In reaching its negative conclusion, the NAS acknowledged that a screening polygraph, even if set to reduce the number of false positives, will identify true positives who are being deceptive. Accordingly, DOE does not believe that the issues that the NAS has raised about the polygraph's accuracy are sufficient to warrant a decision by DOE to abandon it as a screening tool. Doing so would mean that DOE would be giving up a tool that, while far from perfect, will help identify some individuals who should not be given access to classified data, materials, or information. DOE does not believe wholesale abandonment of a tool that has some admitted value for that purpose can be squared with Congress's overall direction to implement a polygraph program whose purpose is '' * * * to minimize the potential for release or disclosure of classified data, materials, or information.''

Advisability. The NAS's main conclusion is that lack of evidence of validity and accuracy justifies not using polygraph examinations for screening purposes. In arriving at this conclusion, the NAS also took into account the expense associated with invalid polygraph results, the potential loss of competent or highly skilled individuals due to false positives or the fear of such a test result, and claims of adverse impact on civil liberties. The NAS also acknowledged but considered less significant the deterrent effect that the prospect of being polygraphed could have on employment applicants who are national security risks. In short, what NAS conducted was a cost-benefit analysis that (given the nature of the costs and benefits) inevitably rested in no small part on value judgments made by the NAS. There is nothing inappropriate about this approach in light of the NAS's mission and charge.

DOE, however, has a significantly different mission—one that is intimately involved in science, but directed to a particular end—the national security of the United States; therefore, not surprisingly, section 3152 gave the Department a particular charge for its polygraph program. That charge was not to devise a program based on the NAS's or the Department's own weighing of costs and benefits based on its own value judgments. Rather, Congress directed DOE to develop a polygraph program focused on minimizing the risk of release or disclosure of classified information. That amounts to a Congressional specification that the most important cost about which DOE should be concerned is the risk of release or disclosure of classified information. DOE believes that Congress's judgment in that regard was reasonable. Given that DOE's classified information consists in significant measure of information regarding nuclear weapons of mass destruction, the consequences of compromise of that information can be profoundly significant. Those consequences make it sensible for Congress to conclude that DOE's priority should be on deterrence and detection of potential security risks with a secondary priority of mitigating the consequences of false positives and false negatives. Moreover, whatever may be the importance of other

considerations, DOE believes that at this time, when the United States is engaged in hostilities precisely in order to address the potentially disastrous consequences that may flow from weapons of mass destruction falling into the wrong hands, it is under a particular obligation to make sure that no action that it takes be susceptible to misinterpretation as a relaxation of controls over information concerning these kinds of weapons. For all these reasons, while fully respecting the questions the NAS has raised about the use of polygraphs as a screening tool, DOE does not believe it can endorse the NAS's conclusion that the tool should be laid down.

Perhaps in recognition that its main conclusion was less tenable in the context of Federal agencies with national security missions established by law, the NAS went on to conclude in the alternative that if polygraph screening is to be used at all, it should only be used as a trigger for follow-up detailed investigations and not as a sole basis for personnel action (NAS Polygraph Review, p. 5). This alternative conclusion appears to DOE to be much more compatible with the priority DOE is statutorily invited to place on minimizing the potential for release or disclosure of classified information. It is also consistent with the way DOE currently uses screening polygraphs.

Under DOE's current regulations, neither DOE nor its contractors may take an adverse personnel action against an individual solely on the basis of a polygraph result indicating deception (10 CFR 709.25). If, after an initial polygraph examination, there are remaining unresolved issues, DOE must advise the individual and provide an opportunity for the individual to undergo an additional polygraph examination. If the additional polygraph examination is not sufficient to resolve the matter, DOE must undertake a comprehensive investigation using the polygraph examination as an investigative lead (10 CFR 709.15(b)). In DOE's view, this regulatory scheme is consistent both with the NAS's alternative conclusion and with the statutory priority on minimizing release or disclosure of classified information. Therefore, pursuant to section 3152 of the NDAA for FY 2002, DOE today proposes on a preliminary basis to retain the regulatory provisions in part 709. DOE invites public comment on its evaluation of the NAS Polygraph Review with regard to employee screening and on its assessment that the existing provisions of part 709 are consistent with the NAS's alternative conclusion

IV. Regulatory Review

A. National Environmental Policy Act

The proposed rule would retain the existing procedures for counterintelligence evaluations to include polygraph examinations and therefore will have no impact on the environment. DOE has determined that this rule is covered under the Categorical Exclusion in DOE's National Environmental Policy Act regulations in paragraph A.5 of appendix A to subpart D, 10 CFR part 1021, which applies to rulemakings amending an existing regulation that does not change the environmental effect of the regulations being amended. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires preparation of an initial regulatory flexibility analysis for every rule that must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rulemaking will not directly regulate small businesses or small governmental entities. It will apply principally to individuals who are employees of, or applicants for employment by, some of DOE's prime contractors, which are large businesses. There may be some affected small businesses that are subcontractors, but the rule will not impose unallowable costs. Accordingly, DOE certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

DOE has determined that this proposed rule does not contain any new or amended record-keeping, reporting or application requirements, or any other type of information collection requirements that require the approval of the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* The OMB has defined the term ''information'' to exclude certifications, consents, and acknowledgments that entail only minimal burden [5 CFR 1320.3(h)(1)].

D. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531 *et seq.*, requires a Federal agency to perform a detailed assessment of the costs and benefits of any rule imposing a Federal mandate with costs to state, local, or tribal governments, or to the private sector of $100 million or more. The proposed rule does not impose a Federal mandate requiring preparation of an assessment under the Unfunded Mandates Reform Act of 1995.

E. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act of 1999, (Pub. L. No. 105–277), requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well being. This proposed rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

F. Executive Order 12866

Executive Order 12866, 58 FR 51735 (October 4, 1993) provides for a review by the Office of Information and Regulatory Affairs in the Office of Management and Budget of a ''significant regulatory action,'' which is defined as an action that may have an effect on the economy of $100 million or more or adversely affect the economy, competition, jobs, productivity, environment, public health or safety, or state, local or tribal governments. DOE has concluded that this proposed rule (10 CFR Part 709) is not a significant regulatory action. Accordingly, this rulemaking has not been reviewed by the Office of Information and Regulatory Affairs.

G. Executive Order 12988

Section 3(a) of Executive Order 12988, 61 FR 4729 (February 7, 1996) imposes on executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses

other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

H. Executive Order 13084

Under Executive Order 13084, 63 FR 27655 (May 19, 1998), DOE may not issue a discretionary rule that significantly or uniquely affects Indian tribal governments and imposes substantial direct compliance costs. This proposed rulemaking would not have such effects. Accordingly, Executive Order 13084 does not apply to this rulemaking.

I. Executive Order 13132

Executive Order 13132, 64 FR 43255 (August 10, 1999), requires agencies to develop an accountable process to ensure meaningful and timely input by state and local officials in the development of regulatory policies that have ''federalism implications.'' Policies that have federalism implications are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735). DOE has examined this proposed rule and determined that it would not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. No further action is required by the Executive Order.

J. Review Under Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy, Supply, Distribution, or Use), 66 FR 28355 (May 22, 2001) requires preparation and submission to OMB of a Statement of Energy Effects for significant regulatory action under Executive Order 12866 that are likely to have a significant adverse effect on the supply, distribution, or use of energy. This rulemaking, although significant, will not have such an effect. Consequently, DOE has concluded that there is no need for a Statement of Energy Effects.

K. Treasury and General Government Appropriations Act, 1999

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, *note*) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issues by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2001), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed this notice of proposed rulemaking under the OMB and DOE guidelines, and has concluded that it is consistent with applicable policies in those guidelines.

V. Opportunity for Public Comment

Interested members of the public are invited to participate in this proceeding by submitting data, views, or comments on this proposed rule. Ten copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice. Comments should be identified on the outside of the envelope and on the comments themselves with the designation ''Polygraph Examination Regulation, Docket No. CN–03–RM–01.'' If anyone wishing to provide written comments is unable to provide ten copies, alternative arrangements can be made in advance with the DOE. All comments received on or before the date specified at the beginning of this notice, and other relevant information before final action is taken on the proposed rule, will be considered.

All submitted comments will be available for public inspection as part of the administrative record on file for this rulemaking in the DOE Freedom of Information Reading Room at the address indicated in the **ADDRESSES** section of this notice. Pursuant to the provisions of 10 CFR 1004.11, anyone submitting information or data that he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document, as well as two copies, if possible, from which the information has been deleted. The DOE will make its determination as to the confidentiality of the information and treat it accordingly.

List of Subjects in 10 CFR Part 709

Lie detector tests, Privacy.

Issued in Washington, DC on April 8, 2003.

Stephen W. Dillard,

Director, Office of Counterintelligence.

For the reasons stated in the preamble, DOE hereby proposes to amend 10 CFR part 709 to read as follows:

PART 709—POLYGRAPH EXAMINATION REGULATIONS

1. The authority citation for 10 CFR part 709 is revised to read as follows:

Authority: 42 U.S.C. 2011, *et seq.*, 7101, *et seq.*, 7383h–1.

* * * * *

[FR Doc. 03–9009 Filed 4–11–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 5

[Docket No. 03–06]

RIN 1557–AC13

Electronic Filings

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is issuing this interim rule, with a request for comments, to amend our rules, policies and procedures for corporate activities. The interim rule expressly provides that the OCC may permit national banks to make any class of licensing filings electronically. Its purpose is to facilitate the expansion of the OCC's e-Corp program. The e-Corp program, which began as a pilot project to enable participating national banks to make certain types of licensing filings electronically, has been made available to all national banks through the OCC's National BankNet web site. The rule furthers the OCC's objectives of reducing regulatory burden for national banks and improving the agency's efficiency in processing filings through increased use of electronic technology. The interim rule also amends part 5 to clarify the circumstances under which we may adopt filing procedures different from those otherwise required by part 5.

DATES: *Effective Date*: This rule is effective April 14, 2003.

Comment Date: Comments must be received by June 13, 2003.

ADDRESSES: You should direct comments to the Public Information Room, Office of the Comptroller of the Currency, Mailstop 1–5, Attention: Docket No. 03–06, 250 E Street, SW., Washington, DC 20219. Due to delays in paper mail delivery in the Washington, DC, area, commenters are encouraged to submit comments by fax or e-mail. Comments may be sent by fax to (202) 874–4448, or by e-mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

FOR FURTHER INFORMATION CONTACT: Jean Campbell, Attorney, Legislative and Regulatory Activities Division, (202) 874–5090; or Darrell Sheets, Licensing Data Manager, Licensing, Policy and Systems Division, (202) 874–5060, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background and Description of the Rule

1. Electronic Filing

The OCC's ongoing objectives include minimizing regulatory burden for the national banks we supervise, consistent with safety and soundness, and achieving greater efficiency in the agency's regulatory processes. National banks' preparation of required licensing applications and filings and the OCC's processing of those submissions are activities where substantial efficiencies, including cost savings, can be achieved through increased use of electronic technology. Moreover, the Government Paperwork Elimination Act (GPEA)[1] requires that Federal agencies consider providing the public with the option of automated transactional processes that use and accept electronic filings and signatures, when practicable. The requirements of GPEA apply to all interactions with the Federal government that involve the electronic submission, maintenance, or disclosure of information.[2] This includes transactions '' such as the electronic filings that are the subject of this notice—that involve Federal information collections covered by the Paperwork Reduction Act (PRA).[3]

To further the objectives we have described and to facilitate compliance with GPEA, the OCC designed Web-based corporate applications and made them available to a limited number of national banks through a pilot program called e-Corp. National banks that participated in the pilot used e-Corp to submit electronically certain licensing filings to the OCC using electronic signatures. Ten national banks participated in the pilot program. Authorized users from those national banks accessed e-Corp's electronic forms through the OCC's National BankNet Web site (BankNet).[4] Four applications were available: establishment of a branch, relocation of a branch, relocation of a main office within a 30-mile radius (within current city, town or village limits), and relocation of a main office within a 30-mile radius (outside current city, town or village limits). Three more e-Corp electronic filings are currently under development: notices of branch closing, change of corporate title, and change of address.

In March 2003 the OCC made e-Corp available to all national banks through BankNet. The four corporate filings described above are available for electronic submission. In the near future we also expect to add to e-Corp additional classes of corporate filings, such as the three currently under development, as we gain experience with electronic filing. In recognition of the fact that national banks rely on technology to varying extents, electronic filing will be voluntary. Any bank that wishes to continue filing paper-based applications may do so.

The interim rule facilitates the expansion of e-Corp by revising § 5.2, which generally describes our filing rules. As revised, § 5.2 expressly provides that the OCC may permit national banks to make any class of filings available for electronic submission. The rule refers national banks to the Comptroller's Licensing Manual (Manual) to find information about the filings that are available for electronic submission. The Manual also specifies the procedures that apply to national banks making electronic filings. In light of rapid changes in technology and our plan to expand the electronic filing system over time, we believe it is preferable to provide detailed information on electronic filings in the more flexible format of the Manual, rather than in the text of the regulation. The Manual is available on the OCC's Internet website.[5] The Manual is updated on a continuous basis and will be updated as necessary when electronic filing of additional types of applications or notices is available to national banks. We plan to publish notices on BankNet and the OCC's homepage whenever an additional class of applications is added to e-Corp.

2. Exceptions to Licensing Procedures

Section 5.2(b) of our rules provides that, after giving appropriate notice to the applicant and, at the OCC's discretion, to others, the OCC may adopt materially different procedures for a particular filing, or a class of filings, in exceptional circumstances, such as natural disasters or unusual transactions. The wording of this provision could be misleading if the reference to natural disasters were interpreted, contrary to its intended meaning, as establishing the standard for determining what is an exceptional circumstance rather than as merely illustrative of one type of situation where use of filing procedures otherwise prescribed by part 5 is warranted. Accordingly, the interim rule deletes the phrase ''such as natural disasters.'' As revised, the standard in § 5.2(b) simply permits the OCC to adopt materially different procedures in exceptional circumstances or for unusual transactions. The notice requirement in the current rule is unchanged.

3. Comptroller's Licensing Manual

The Comptroller's Corporate Manual formerly contained guidance on how applicants and other filers could comply with our rules. On July 17, 2002, the OCC replaced the Comptroller's Corporate Manual with the Comptroller's Licensing Manual and made the Manual available on our homepage. As we have described, the Manual contains information on corporate applications, such as charter and merger applications, and other policies and procedures on corporate changes sought by national banks. The interim rule substitutes the new name of the Manual, provides the OCC's Internet address, and substitutes a new address to use to submit a request for a printed version of the Manual.

4. Notice and Comment; Effective Date

Under the Administrative Procedure Act (APA), the requirement that an

[1] 44 U.S.C. 3504 note.

[2] *See* OMB Memorandum M–00–10, ''OMB Procedures and Guidance; Implementation of the Government Paperwork Elimination Act,'' 65 FR 25508, May 2, 2000 (OMB Guidance).

[3] 44 U.S.C. 3501 *et seq.*

[4] BankNet is a secure, extranet website that allows the OCC to deliver data-based services via the Internet to the national banks we supervise.

[5] *See www.occ.treas.gov/corpapps/corpapplic.htm*. This is the web address for the OCC's homepage, which contains information available to the general public. Printed copies of the Manual are available for a fee from the OCC's Communications Division.

agency provide public notice and an opportunity for comment does not apply to ''rules of agency organization, procedure, or practice.'' [6] This exemption applies to a rule that does not itself affect the substantive rights of those affected, even though the rule ''may alter the manner in which the parties present themselves or their viewpoints to the agency.'' *JEM Broadcasting Co., Inc.* v. *FCC*, 22 F.3d 320, 326–27 (D.C. Cir. 1994).

The interim rule has no effect on the substantive rights of national banks subject to application or filing requirements. The electronic filing amendments pertain only to the form in which a bank may make a submission to the OCC. Moreover, electronic filing is permissive, not mandatory. Similarly, the amendment to the ''exceptional circumstances'' provision only clarifies the types of circumstances that may warrant the use of special procedures. The requirement that the OCC provide notice to an applicant in such a case is unchanged. For these reasons, we conclude that this interim rule is not subject to the notice and comment requirements of the APA.

The interim rule is effective immediately upon publication in the **Federal Register**. An agency may dispense with the delayed effective date requirement of the APA for ''good cause.'' [7] As we have described, we expect that the interim rule, which imposes no new requirements, will help produce efficiencies for national banks by enabling them to save time and money in the preparation and processing of certain required filings. For these reasons, we conclude that there is good cause to dispense with the 30-day delayed effective date prescribed by the APA.

Finally, subject to certain exceptions, 12 U.S.C. 4802(b)(1) provides that new regulations and amendments to regulations prescribed by a Federal banking agency that impose additional reporting, disclosure, or other new requirements on an insured depository institution must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form. The interim rule imposes no additional reporting, disclosure, or other new requirements on insured depository institutions. For this reason, section 4802(b)(1) does not apply to this rulemaking.

[6] 5 U.S.C. 553(b)(A).

[7] *Id.* at 553(d)(3).

Comment Solicitation

Although notice and comment are not required, we are nonetheless interested in receiving any comments that may improve this rule before it is adopted in final form. We therefore request comment on all aspects of this interim rule.

Community Bank Comment Request

In addition, we invite your comments on the impact of this proposal on community banks. The OCC recognizes that community banks operate with more limited resources than larger institutions and may present a different risk profile. Thus, the OCC specifically requests comments on the impact of this proposal on community banks' current resources and available personnel with the requisite expertise, and whether the goals of the proposed regulation could be achieved, for community banks, through an alternative approach.

Solicitation of Comments on Use of Plain Language

The OCC also requests comment on whether the interim rule is written clearly and is easy to understand. On June 1, 1998, the President issued a memorandum directing each agency in the Executive branch to write its rules in plain language. This directive applies to all new proposed and final rulemaking documents issued on or after January 1, 1999. In addition, Pub. L. 106–102 requires each Federal agency to use plain language in all proposed and final rules published after January 1, 2000. The OCC invites comments on how to make this rule clearer. For example, you may wish to discuss:

(1) Whether we have organized the material to suit your needs;

(2) Whether the requirements of the rule are clear; or

(3) Whether there is something else we could do to make the rule easier to understand.

Regulatory Analysis

Regulatory Flexibility Act

The Regulatory Flexibility Act applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b).[8] Because the OCC has determined for good cause that the APA does not require public notice and comment on this final rule, we are not publishing a general notice of proposed rulemaking. Thus, the Regulatory Flexibility Act does not apply to this interim rule.

[8] *See id.* at 553(d).

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–04 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that the interim rule will not result in expenditures by State, local, or tribal governments or by the private sector of $100 million or more. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

Executive Order 12866

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

List of Subjects in Part 5

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set forth in the preamble, part 5 of chapter I of the Code of Federal Regulations is revised to read as follows:

PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

1. The authority citation for part 5 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 24a, 24(Seventh), 93a, and 3101 *et seq.*

2. In § 5.2, paragraphs (b) and (c) are revised and a new paragraph (d) is added to read as follows:

§ 5.2 Rules of general applicability.

* * * * *

(b) *Exceptions.* The OCC may adopt materially different procedures for a particular filing, or class of filings, in exceptional circumstances or for unusual transactions, after providing notice of the change to the applicant and to any other party that the OCC determines should receive notice.

(c) *Additional information.* The ''Comptroller's Licensing Manual''

(Manual) provides additional guidance, including policies, procedures, and sample forms. The Manual is available on the OCC's Internet Web page at *http://www.occ.treas.gov*. Printed copies are available for a fee from Publications, Communications Division, Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219–0001.

(d) *Electronic filing.* The OCC may permit electronic filing for any class of filings. The Manual identifies filings that may be made electronically and describes the procedures that the OCC requires in those cases.

Dated: April 3, 2003

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 03–8995 Filed 4–11–03; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–39–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–600, B4–600R, and F4–600R (Collectively Called A300–600) Series Airplanes; and Model A310 Series Airplanes; Equipped With Pratt & Whitney JT9D–7R4 or 4000 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Model A300–600 and A310 series airplanes, that currently requires deactivating both thrust reversers and revising the airplane flight manual (AFM) to ensure safe and appropriate performance during certain takeoff conditions. This action would require installing modifications that will add an independent third line of defense on the thrust reversers, which would enhance their redundancy and terminate the requirements of the existing AD. The actions specified by the proposed AD are intended to prevent in-flight deployment of the thrust reversers, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 14, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–39–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–39–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–39–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–39–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 15, 1998, the FAA issued AD 98–25–51, amendment 39–10952 (63 FR 70637, December 22, 1998), applicable to certain Airbus Model A300–600 and A310 series airplanes. That AD requires deactivating both thrust reversers and revising the airplane flight manual (AFM) to ensure safe and appropriate performance during certain takeoff conditions. That action was prompted by a report indicating that the thrust reverser of engine number 1 on an Airbus Model A300–600 series airplane deployed during climb. The requirements of that AD are intended to prevent in-flight deployment of a thrust reverser, which could result in reduced controllability of the airplane.

Actions Since Issuance of Previous Rule

Since AD 98–25–51 was issued, Airbus issued service information that provides instructions for reactivating the thrust reversers through the implementation of a program that involves parts replacement and repetitive inspections of the thrust reversers. The FAA approved this program as an alternative method of compliance (AMOC) with the requirements of AD 98–25–51, allowing for reactivation of the thrust reversers and removal of the AFM limitations.

The actions required by AD 98–25–51 and the reactivation program are considered ''interim action.'' Since issuance of that AD and the AMOC, the manufacturer has developed a modification to address the unsafe

condition, and the FAA has determined that further rulemaking action is necessary; this proposed AD follows from that determination.

Explanation of Relevant Service Information

Airbus has issued the following service bulletins:

Service Bulletins

Airbus service bulletin—	For Airbus model—	Equipped with model—
A300–78–6017, dated August 6, 2001	A300 B4–620 airplanes	PWJT9D–7R4 series engines.
A300–78–6018, dated July 17, 2001	A300 B4–622R airplanes	PW4000 series engines.
A300–78–6020, dated August 10, 2001	A300 B4–622 airplanes	PW4000 series engines.
A310–78–2018, dated June 1, 2001	A310–222 and –322 series airplanes	PWJT9D–7R4 series engines.
A310–78–2019, dated May 2, 2001	A310–324 and –325 series airplanes	PW4000 series engines.
A310–78–2020, dated June 1, 2001	A310–221 and –222 series airplanes	PWJT9D–7R4 series engines.

These service bulletins describe procedures for installing modifications that will add an independent third line of defense on the thrust reverser system and consequently enhance its redundancy. The actions are intended to preclude a single/dual thrust reverser deployment due to failure of the first two lines of defense, or failure of mechanical retention means. The modifications comprise five parts:

- Retrofit of the new electrical circuit between the avionics compartment and the forward cargo compartment at frame (FR) 38.2.
- Retrofit of the new electrical circuit between the forward cargo compartment at FR 38.2 and the wing/pylon interfaces.

sbull Retrofit of the new electrical circuit in the engine pylons.

- Retrofit of the new electrical circuit in the avionics compartment.
- Installation of the synchronous shaft lock system and connection to the new electrical circuit.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, classified these service bulletins as mandatory and issued French airworthiness directive 2001–523(B), dated October 31, 2001, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 98–25–51 to continue to require deactivating both thrust reversers and revising the airplane flight manual (AFM) to ensure that safe and appropriate performance is achieved during certain takeoff conditions. (The AMOC described previously allows for re-activation of the thrust reversers and removal of the AFM limitations.) The proposed AD would also require installing modifications involving retrofit of a new electrical circuit at four locations and installation of the synchronous shaft lock system and connection to the new electrical circuit. The modifications would terminate the requirements of the existing AD, as well as the associated AMOC, which allows re-activation of the thrust reversers. The modifications would be required to be accomplished in accordance with the applicable service bulletins described previously.

Cost Impact

There are approximately 38 airplanes of U.S. registry that would be affected by this proposed AD. The FAA provides the following cost estimates for the actions specified in this proposed AD:

Cost Estimates

Action	Model/series	Work hours	Hourly labor rate	Parts cost	Cost per airplane
Actions currently required by AD 98–25–51					
Thrust reverser deactivation	All	2	$60	$0	$120
AFM revision	All	1	60	0	60
Proposed modification, per Service Bulletin					
A310–78–2018	A310–222 and –322	1,433	60	16,234	102,214
A310–78–2019	A310–324 and –325	1,395	60	15,061	98,761
A310–78–2020	A310–221 and –222	1,267	60	14,848	90,868
A300–78–6017	A300 B4–620	817	60	13,810	62,830
A300–78–6018	A300 B4–622R	1,198	60	15,141	87,021
A300–78–6020	A300 B4–622	817	60	10,760	59,780

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10952 (63 FR 70637, December 22, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Airbus: Docket 2002–NM–39–AD. Supersedes AD 98–25–51, Amendment 39–10952.

Applicability: The following airplanes; certificated in any category:

TABLE 1.—APPLICABILITY

Model—	Equipped with—	Except those modified in accordance with Airbus service bulletin—	Or modified in accordance with Airbus production modification—
A300 B4–620	PWJT9D–7R4 series engines	A300–78–6017, dated August 6, 2001.	12261, 12264, and 12265.
A300 B4–622	PW4000 series engines	A300–78–6020, dated August 10, 2001.	12262, 12263, 12265, and 12377; or 12262, 12263, and 12266.
A300 B4–622R	PW4000 series engines	A300–78–6018, dated July 17, 2001.	12262, 12263, 12265, and 12377; or 12262, 12263, and 12266.
A310–221	PWJT9D–7R4 series engines	A310–78–2020, dated June 1, 2001.	12261, 12264, and 12265.
A310–222	PWJT9D–7R4 series engines	A310–78–2020 or A310–78–2018, both dated June 1, 2001.	12261, 12264, and 12265.
Airbus Model A310–324 and –325	PW4000 series engines	A310–78–2019, dated May 2, 2001.	12262, 12263, 12265, and 12377; or 12262, 12263, and 12266.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent in-flight deployment of a thrust reverser, which could result in reduced controllability of the airplane, accomplish the following:

Restatement of Requirements of AD 98–25–51

(a) Within the next 4 flight cycles after December 28, 1998 (the effective date of AD 98–25–51, amendment 39–10952), deactivate both thrust reversers in accordance with Airbus All Operators Telex (AOT) 78–08, dated November 30, 1998.

(b) Within the next 4 flight cycles after December 28, 1998, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following:

''The takeoff performance on wet and contaminated runways with thrust reversers deactivated shall be determined in accordance with Airbus Flight Operations Telex (FOT) 999.0124/98, dated November 30, 1998, as follows:

For takeoff on wet runways, use performance data in accordance with paragraph 4.1 of the FOT.

For takeoff on contaminated runways, use performance data in accordance with paragraph 4.2 of the FOT.

(**NOTE:** This supersedes any relief provided by the Master Minimum Equipment List (MMEL).)

Note 2: The ''FCOM'' referenced in Airbus Flight Operations Telex (FOT) 999.0124/98, dated November 30, 1998, is Airbus Industrie Flight Crew Operating Manual (FCOM), Revision 27 for Airbus Model A310 series airplanes and Revision 22 for A300–600 series airplanes. (The revision number is indicated on the List of Effective Pages (LEP) of the FCOM.)

New Requirements of This AD

Modification

(c) Within 1 year after the effective date of this AD, install modifications related to an independent third line of defense on the thrust reversers, in accordance with the applicable service bulletin listed in Table 2 of this AD. The modifications involve retrofit of a new electrical circuit at four locations and installation of the synchronous shaft lock system and connection to the new electrical circuit. After the modifications have been

installed, the thrust reversers may be reactivated, and the AFM limitation specified by paragraph (b) of this AD may be removed from the AFM. Table 2 follows:

TABLE 2.—SERVICE INFORMATION FOR MODIFICATION

For Airbus model—	Equipped with model—	Install the modification in accordance with Airbus service bulletin—
A300 B4–620 airplanes	PWJT9D–7R4 series engines	A300–78–6017, dated August 6, 2001.
A300 B4–622 airplanes	PW4000 series engines	A300–78–6020, dated August 10, 2001.
A300 B4–622R airplanes	PW4000 series engines	A300–78–6018, dated July 17, 2001.
A310–221 series airplanes	PWJT9D–7R4 series engines	A310–78–2020, dated June 1, 2001.
A310–222 series airplanes	PWJT9D–7R4 series engines	A310–78–2020 or A310–78–2018, both dated June 1, 2001.
A310–322 series airplanes	PWJT9D–7R4 series engines	A310–78–2018, dated June 1, 2001.
Airbus Model A310–324 and –325 series airplanes.	PW4000 series engines	A310–78–2019, dated May 2, 2001.

Alternative Methods of Compliance

(d)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

(2) Alternative methods of compliance, approved previously in accordance with AD 98–25–51, amendment 39–10952, are approved as alternative methods of compliance with the requirements of paragraphs (a) and (b) of this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in French airworthiness directive 2001–523(B), dated October 31, 2001.

Issued in Renton, Washington, on April 8, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–9015 Filed 4–11–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 111

[Docket No. 96N–0417]

Dietary Supplements; Current Good Manufacturing Practice Regulations; Public Meetings; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of public meetings; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of March 28, 2003 (68 FR 15117). The notice announced two public meetings to discuss the proposed rule entitled ''Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Dietary Ingredients and Dietary Supplements.'' The document was published with an inadvertent error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT:

For the east coast meeting: Kenneth Taylor, Center for Food Safety and Applied Nutrition (HFS–810), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1439, FAX: 301–436–2639, or e-mail: *Kenneth.Taylor@cfsan.fda.gov.*

For the west coast meeting: Janet McDonald, FDA/San Francisco District, 1431 Harbor Bay Pkwy., Alameda, CA 94502–7070, 510–337–6845, FAX: 510–337–6708, or e-mail: *Janet.McDonald@fda.gov.*

SUPPLEMENTARY INFORMATION: In the FR Doc. 03–7377, appearing on page 15117 in the **Federal Register** of Friday, March 28, 2003, the following correction is made:

1. On page 15117, in the first column, under ''DATES,'' the first sentence is corrected to read ''The public meetings will be held on the east coast on Tuesday, April 29, 2003, from 9 a.m. to 12 noon and 1:30 p.m. to 5 p.m. and on the west coast on Tuesday, May 6, 2003, from 9 a.m. to 12 noon and 1:30 p.m. to 5 p.m.''

Dated: April 8, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–9066 Filed 4–11–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–098–FOR]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendments.

SUMMARY: We are announcing receipt of a proposed amendment to the West Virginia regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The program amendment consists of changes to the Code of West Virginia (W. Va. Code) as contained in House Bills 2881 and 2882, changes to the Coal Related Dam Safety Rules at Code of State Regulations (CSR) 38–4, and changes to the Surface Coal Mining and Reclamation Regulations at CSR 38–2 as contained in House Bill 2603. The amendment concerns a variety of topics including bond release, dam safety, permit application requirements,

drainage and sediment control systems, fish and wildlife considerations, revegetation, performance standards, inspection and enforcement, coal refuse, and performance standards applicable to remining operations. The amendment is intended to improve the effectiveness of the West Virginia program and to render the West Virginia program no less effective than the Federal regulations.

DATES: We will accept written comments on this amendment until 4 p.m. (local time), on May 14, 2003. If requested, we will hold a public hearing on the amendment on May 9, 2003. We will accept requests to speak at a hearing until 4 p.m. (local time), on April 29, 2003.

ADDRESSES: You should mail or hand-deliver written comments and requests to speak at the hearing to Mr. Roger W. Calhoun, Director, Charleston Field Office at the address listed below.

You may review copies of the West Virginia program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Charleston Field Office.

Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301, Telephone: (304) 347–7158. E-mail: *chfo@osmre.gov*.

West Virginia Department of Environmental Protection, 10 McJunkin Road, Nitro, West Virginia 25143, Telephone: (304) 759–0510. Copies of Enrolled House Bills 2603, 2881, and 2882 and summaries of changes to the State's Coal Related Dam Safety Rules and the Surface Mining Reclamation Rules will be posted at the Department's Internet page: *http://www.state.wv.us.*

In addition, you may review copies of the proposed amendment during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, PO Box 886, Morgantown, West Virginia 26507, Telephone: (304) 291–4004. (By Appointment Only)

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 323 Harper Park Drive, Suite 3, Beckley, West Virginia 25801, Telephone: (304) 255–5265.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office, Telephone: (304) 347–7158. Internet: *chfo@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, '' * * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * * ; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Description of the Proposed Amendment

By letter dated March 18, 2003, the West Virginia Department of Environmental Protection (WVDEP) sent us a proposed amendment to its program (Administrative Record Number WV–1352) under SMCRA (30 U.S.C. 1201 *et seq.*). West Virginia sent the amendment in response to the required program amendments at 30 CFR 948.16(nnn), (ooo), and (qqqq) and to include the changes made at its own initiative.

The program amendment consists of changes to the W. Va. Code as contained in House Bills 2881 and 2882, and changes to the Coal Related Dam Safety Rule at CSR 38–4 and to the Surface Coal Mining and Reclamation Regulations at CSR 38–2 as contained in House Bill 2603. The amendment concerns a variety of topics including bond release, dam safety, permit application requirements, drainage and sediment control systems, fish and wildlife considerations, revegetation, performance standards, inspection and enforcement, coal refuse, and performance standards applicable to remining operations. The amendment is intended to improve the effectiveness of the West Virginia program and to render the West Virginia program no less effective than the Federal regulations.

A. The provisions of the W. Va. Code that West Virginia proposes to revise as contained in House Bills 2881 and 2882 are:

W. Va. Code 22–3–23, concerning release of bond or deposits, is amended by changing the term ''director'' to ''secretary'' in numerous locations.

W. Va. Code 22–3–23(c)(1)(C), concerning bond release for all operations except those with an approved variance from approximate original contour (AOC), is amended by adding the following language to the end of the last sentence: ''where expressly authorized by legislative rule promulgated pursuant to section three, article one of this chapter.'' As amended, the sentence reads as follows:

> Provided, however, that the release may be made where the quality of the untreated post mining water discharged is better than or equal to the premining water quality discharged from the mining site where expressly authorized by legislative rule promulgated pursuant to section three, article one of this chapter.

W. Va. Code 22–3–23(c)(2)(C), concerning bond release for operations with an approved variance from AOC, is amended by adding the following language to the end of the last sentence: ''where expressly authorized by legislative rule promulgated pursuant to section three, article one of this chapter.'' As amended, the sentence reads as follows:

> Provided, however, that the release may be made where the quality of the untreated post mining water discharged is better than or equal to the premining water quality discharged from the mining site where expressly authorized by legislative rule promulgated pursuant to section three, article one of this chapter.

W. Va. Code 22–3–23(c)(2)(C), concerning bond release, is amended by deleting the reference to subdivision 3 and requiring compliance with the bond release scheduling requirements of subdivisions 1 and 2 of this subsection.

W. Va. Code 22B–1–7, concerning appeals to boards, is amended by changing the term ''director'' to ''secretary'' in several locations.

W. Va. Code 22B–1–7(d), concerning appeals to boards, is amended by adding a proviso that unjust hardship shall not be grounds for granting a stay or suspension of an order, permit or

official action for an order issued pursuant to W. Va. Code 22–3.

W. Va. Code 22B–1–7(h), concerning appeals to boards, is amended by deleting the reference to article 3 in regard to appeals to the environmental quality board.

B. The provisions of the Code of State Regulations that West Virginia proposes to revise as contained in House Bill 2603 are:

Surface Mining Reclamation Regulations at CSR 38–2

CSR 38–2 is amended by updating the name of the U.S. Department of Agriculture, Natural Resources Conservation Service (formerly Soil Conservation Service) in several locations, *i.e.,* subsections 3.2.c, 3.20, 10.2.a.4, 10.3.a.1, 10.4.c.1, 10.6.b.2, 10.6.b.7.A, 10.6.b.7.B, and 10.6.b.8.

CSR 38–2–3.7.d, concerning disposal of excess spoil, is new and adds a requirement for a survey of the watershed identifying all man made structures and residents in proximity to the disposal area to determine potential storm runoff impacts. At least 30 days prior to any beginning of placement of material, the accuracy of the survey shall be field verified. Any changes shall be documented and brought to the attention of the Secretary to determine if there is a need to revise the permit.

CSR 38–2–3.22.f.5.A, A.1 and A.2, concerning the requirement to restore, protect, or replace water supply of present water users, is new and adds that the hydrologic reclamation plan shall contain a description of the measures to be taken to replace water supplies that are contaminated, diminished, or interrupted. The plan shall include an identification of the water replacement, which includes quantity and quality descriptions including discharge rates, or usage and depth to water; and documentation that the development of identified water replacement is feasible and that the financial resources necessary to replace the affected water supply are available.

CSR 38–2–3.31.a, concerning Federal, State, county, municipal, or other local government-financed highway or other construction exemption, is amended by adding a provision that may allow funding at less than 50 percent to qualify if the construction is undertaken as an approved government reclamation contract.

CSR 38–2–5.4.b.4, concerning sediment control, is amended by adding language to provide that all sediment control systems for valley fills, including durable rock fills, shall be designed for the entire disturbed acreage and shall include a schedule indicating timing and sequence of construction over the life of the fill.

CSR 38–2–5.4.b.11, concerning the control of water discharge, is amended by adding language to provide that the location of discharge points and the volume to be released shall not cause a net increase in peak runoff from the proposed permit area when compared to premining conditions and shall be compatible with the post-mining configuration and adequately address watershed transfer.

CSR 38–2–5.6 is a new provision concerning storm water runoff and requires each permit application to contain a storm water runoff analysis consistent with subsections 5.6.a through 5.6.d.1.e. The new language provides as follows:

5.6.a. Each application for a permit shall contain a storm water runoff analysis which includes the following:

5.6.a.1. An analysis showing the changes in storm runoff caused by the proposed operations(s) using standard engineering and hydrologic practices and assumptions.

5.6.a.2. The analysis will evaluate pre-mining, worst case during mining, and post-mining (Phase III standards) conditions. The storm used for the analysis will be the largest required design storm for any sediment control or other water retention structure proposed in the application. The analysis must take into account all allowable operational clearing and grubbing activities. The applicant will establish evaluation points on a case-by-case basis depending on site specific conditions including, but not limited to, type of operation and proximity of man-made structures.

5.6.a.3. The worst case during mining and post-mining evaluations must show no net increase in peak runoff compared to the pre-mining evaluation.

5.6.b. Each application for a permit shall contain a runoff-monitoring plan which shall include, but is not limited to, the installation and maintenance of rain gauges. The plan shall be specific to local conditions. All operations must record daily precipitation and report monitoring results on a monthly basis and any one (1) year, twenty-four (24) storm event or greater must be reported to the Secretary within twenty-four (24) hours and shall include the results of a permit wide drainage system inspection.

5.6.c. Each application for a permit shall contain a sediment retention plan to minimize downstream sediment deposition within the watershed resulting from precipitation events. Sediment retention plans may include, but are not limited to decant ponds, secondary control structures, increased frequency for cleaning out sediment control structures, or other methods approved by the Secretary.

5.6.d. After the first day of January two thousand four, all active mining operations must be consistent with the requirements of this subdivision. The permittee must demonstrate in writing that the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval within the schedule described in 5.6.d.1. Full compliance [compliance] with the permit revision shall be accomplished within 180 days from the date of Secretary approval. Active mining operations for the purpose of this subsection exclude permits that have obtained at least a Phase I release and are vegetated. Provided, however, permits or portions of permits that meet at least Phase I standards and are vegetated will be considered on a case by case basis.

5.6.d.1. Schedule of Submittal

5.6.d.1.a. Within 180 days from the first day of January two thousand four all active mining operations with permitted acreage greater than 400 acres must demonstrate in writing that the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval.

5.6.d.1.b. Within 360 days from the first day of January two thousand four all active mining operations with permitted acreage between 200 and 400 acres must demonstrate in writing that the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval.

5.6.d.1.c. Within 540 days from the first day of January two thousand four all active mining operations with permitted acreage between 100 and less than 200 acres must demonstrate in writing that the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval.

5.6.d.1.d. Within 720 days from the first day of January two thousand four all active mining operations with permitted acreage between 50 and less than 100 acres must demonstrate in writing that the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval.

5.6.d.1.e. Within 900 days from the first day of January two thousand four all active mining operations with permitted acreage less than 50 acres must demonstrate in writing that the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval. Provided, however, an exemption may be

considered on a case-by-case basis. Futhermore, haulroads, loadouts, and ventilation facilities are excluded from this requirement.

CSR 38–2–8.2.e, concerning fish and wildlife considerations, is amended by adding language to provide that in constructing a windrow, timber shall not be placed in a manner or location to block natural drainways.

CSR 38–2–9.1.a, concerning revegetation, is amended by adding language to provide that reforestation opportunities must be maximized for all areas not directly associated with the primary approved postmining land use and requiring revegetation plans for those areas to be reforested to include a map, a planting schedule and stocking rates.

CSR 38–2–9.3.d, concerning standards for evaluating vegetative cover, is amended by deleting the words ''from the Handbook,'' so that sampling techniques will no longer be taken from the State's revegetation handbook.

CSR 38–2–9.3.f, concerning standards for evaluating vegetative cover and productivity, is amended by deleting the words ''in the Handbook,'' and replacing those words with the words ''by the Secretary.'' The effect of the change is that vegetation ground cover and productivity levels will be set by the Secretary of the WVDEP, rather than as provided in the State's revegetation handbook.

CSR 38–2–14.5.h, concerning hydrologic balance, is amended by adding a proviso that the requirement for replacement of an affected water supply that is needed for the land use in existence at the time of contamination, diminution or interruption or where the affected water supply is necessary to achieve the post-mining land use shall not be waived.

CSR 38–2–14.14.g.1, concerning durable rock fills, is amended by adding language to provide that fills proposed after January 1, 2004, may only be approved with the design, construction, and use of a single lift fill if they include an erosion protection zone or a durable rock fill designed to be reclaimed from the tow [toe] upward.

CSR 38–2–14.14.g.2 is new and adds additional design specifications and requirements for single lift fills with an erosion protection zone at subsections 14.14.g.2.A through 14.14.g.2.B.3. The new language provides as follows:

14.14.g.2.A. Erosion Protection Zone. The erosion protection zone is a designed structure constructed to provide energy dissipation to minimize erosion vulnerability and may extend beyond the designed toe of the fill.

14.14.g.2.A.1. The effective length of the erosion protection zone shall be at least one half the height of the fill measured to the target fill elevation or fill design elevation as defined in the approximate original contour procedures and shall be designed to provide a continuous underdrain extension from the fill through and beneath the erosion protection zone.

14.14.g.2.A.2. The height of the erosion protection zone shall be sufficient to accommodate designed flow from the underdrain of the fill and shall comply with 14.14.e.1. of this rule.

14.14.g.2.A.3. The erosion protection zone shall be constructed of durable rock as defined in 14.14.g.1. originating from a permit area and shall be of sufficient gradation to satisfy the underdrain function of the fill.

14.14.g.2.A.4. The outer slope or face of the erosion protection zone shall be no steeper than two (2) horizontal or [to] one (1) vertical (2:1). The top of the erosion protection zone shall slope toward the fill at a three (3) to five (5) percent grade and slope laterally from the center toward the sides at one (1) percent grade to discharge channels capable of passing the peak runoff of a one-hundred (100) year, twenty-four (24) hour precipitation event.

14.14.g.2.A.5. Prior to commencement of single lift construction of the durable rock fill, the erosion protection zone must be seeded and certified by a registered professional engineer as a critical phase of fill construction. The erosion protection zone shall be maintained until completion of reclamation of the fill.

14.14.g.2.A.6. Unless otherwise approved in the reclamation plan, the erosion protection zone shall be removed and the area upon which it was located shall be regraded and revegetated in accordance with the reclamation plan.

14.14.g.2.B. Single Lift Construction Requirements.

14.14.g.2.B.1. Excess spoil disposal shall commence at the head of the hollow and proceed downstream to the final toe. Unless required for construction of the underdrain, there shall be no material placed in the fill from the sides of the valley more than 300 feet ahead of the advancing toe. Exceptions from side placement of material limits may be approved by the Secretary if requested and the applicant can demonstrate through sound engineering that it is necessary to facilitate access to isolated coal seams, the head of the hollow or otherwise facilitates fill stability, erosion, or drainage control.

14.14.g.2.B.2. During construction, the fill shall be designed and maintained in such a manner as to prevent water from discharging over the face of the fill.

14.14.g.2.B.2.(a). The top of the fill shall be configured to prevent water from discharging over the face of the fill and to direct water to the sides of the fill.

14.14.g.2.B.2.(b). Water discharging along the edges of the fill shall be conveyed in such a manner to minimize erosion along the edges of the fill.

14.14.g.2.B.3. Reclamation of the fill shall be initiated from the top of the fill and progress to the toe with concurrent construction of terraces and permanent drainage.

CSR 38–2–14.14.g.3 is new and adds design specifications and requirements at 14.14.g.3.A through 14.14.g.3.B for durable rock fills designed to be reclaimed from the toe upward. The new language provides as follows:

14.14.g.3.A. Transportation of Material to toe of fill. The method of transporting material to the toe of the fill shall be specified in the application and shall include a plan for inclement weather dumping. The means of transporting material to the toe may be by any method authorized by the Act and this rule and is not limited to the use of roads.

14.14.g.3.A.1. Constructed roads shall be graded and sloped in such a manner that water does not discharge over the face. Sumps shall be constructed along the road in switchback areas and shall be located at least 15 feet from the outslope.

14.14.g.3.A.2. The constructed road shall be in compliance with all applicable State and Federal safety requirements. The design criteria to comply with all applicable State and Federal safety requirements shall be included in the permit.

14.14.g.3.B. Once the necessary volume of material has been transported to the toe of the fill, face construction and installation of terraces and permanent drainage shall commence. The face construction and reclamation of the fill shall be from the bottom up with progressive construction of terraces and permanent drainage in dumping increments not to exceed 100 feet.

CSR 38–2–14.15.a.2, concerning contemporaneous reclamation standards, is amended by adding language to provide that the mining and reclamation plan shall contain information on how mining and reclamation operations will be coordinated so as to minimize surface water runoff, and comply with the storm water runoff plan.

CSR 38–2–14.15.c, concerning reclaimed area, is amended by adding the words ''and seeding has occurred'' to the definition of reclaimed acreage that is applicable to this subsection. As amended, the definition of reclaimed area provides that for purposes of this subsection, reclaimed acreage shall be that portion of the permit area which has at a minimum been fully regraded and stabilized in accordance with the reclamation plan, meets Phase I standards, and seeding has occurred.

CSR 38–2–14.15.g, concerning contemporaneous reclamation variance—permit applications, is amended by adding language to require a demonstration that the variance being sought will comply with CSR 38–2–5.6 concerning the new storm water runoff provisions.

CSR 38–2–17.1, concerning Small Operator Assistance Program, is amended by adding that the Secretary of WVDEP shall establish a formula for allocating funds to provide services for eligible small operators if available funds are less than those required to provide the services pursuant to CSR 38–2–17.

CSR 38–2–20.6.a, concerning civil penalty assessments, is amended by deleting all language concerning an ''assessment officer,'' and adding language concerning the Secretary of WVDEP. The new language provides that the Secretary shall not determine the proposed penalty assessment until such time as an inspection of the violation has been conducted and the findings of that inspection are submitted to the Secretary in writing.

CSR 38–2–20.6.c, concerning notice of civil penalty assessment, is amended by deleting two sentences that provide that the ''Secretary shall also give notice including any worksheet, in person or by certified mail, to the operator of any penalty adjustment as a result of an informal conference within thirty (30) days following the date of the conference. The reasons for reassessment shall be documented in the file by the assessment officer.'' Also, the following sentence is added immediately before the existing last sentence: ''The reasons for reassessment shall be documented in the file by the Secretary.''

CSR 38–2–20.6.d, concerning notice of informal assessment conference, is amended by adding language to provide that the Secretary shall arrange for a conference to review the proposed assessment or reassessment, upon written request if received within 15 days from the date the proposed assessment or reassessment is received. Language is also added to provide that the operator shall forward the amount of proposed penalty assessment to the Secretary for placement in an interest bearing escrow account, and that the Secretary shall assign an assessment officer to hold the assessment conference.

CSR 38–2–20.6.e, concerning informal conference, is amended by adding language to provide that the assessment officer shall give notice including any worksheet, in person or by certified mail, to the operator of any penalty adjustment as a result of an informal conference within 30 days following the date of the conference. The reasons for the assessment officer's action shall be documented in the file.

CSR 38–2–20.6.f is new and adds the requirement that an increase or reduction of a proposed civil penalty of more than 25 percent and more than $500.00 shall not be final and binding until approved by the Secretary.

CSR 38–2–20.6.j, concerning escrow, is amended by adding the phrase ''an informal conference or'' immediately before the words ''judicial review of a proposed assessment.'' In addition, the words ''continue to'' are deleted immediately before the words ''be held in escrow.'' The new language provides that if a person requests an informal conference or judicial review of a proposed assessment, the proposed penalty assessment shall be held in escrow until completion of the judicial review.

CSR 38–2–22.4.g.3.A, concerning coal refuse, impoundments designed without discharge structures, is amended by deleting the second sentence and adding three sentences in its place. The new language requires that a system shall be designed to dewater the impoundment of the probable maximum storm in 10 days by pumping or other means. The new language requires the requirements of the Coal Related Dam Safety Rule at CSR 38–4–25.14, concerning removal of storm water from impoundments, shall be met. For existing structures exceeding the minimum 2 PMP volume requirement, the dewatering system shall be installed when the containment volume is reduced to 2 PMPs.

CSR 38–2–22.4.i.6 is new and concerns the use of corrugated metal pipes in spillways. This provision provides that corrugated metal pipes shall not be used in new or unconstructed refuse impoundments or slurry cells. If an existing corrugated metal pipe has developed leaks or otherwise deteriorated so as to cause the pipe to not function properly and such deterioration constitutes a hazard to the proper operation of the impoundment, the Secretary will require the corrugated metal pipe to be either repaired or replaced.

CSR 38–2–24.2.a, concerning remining operations—revegetation, is amended by deleting the words ''in the Handbook'' at the end of the last sentence, and replacing those words with the words ''by the Secretary.'' The new revision provides that the determination of premining [remining] ground cover success and productivity shall be made using sampling techniques described by the Secretary.

CSR 38–2–24.3, concerning remining operations—water quality, is amended by adding the following language at the end of the last sentence: ''or a coal remining operation as defined in 40 CFR Part 434 as amended may qualify for the water quality exemptions set forth in 40 CFR 434 as amended.'' The new revision provides that a coal remining operation which began after February 4, 1987, and on a site which was mined prior to August 3, 1977, may qualify for the water quality exemptions set forth in subsection (p), section 301 of the Federal Clean Water Act, as amended or a coal remining operation as defined in 40 CFR Part 434 as amended may qualify for the water quality exemptions set forth in 40 CFR Part 434 as amended.

CSR 38–2–24.4, concerning remining operations—requirements to release bonds, is amended by adding the following language at the end of the first sentence: ''and the terms and conditions set forth in the NPDES [National Pollutant Discharge Elimination System] Permit in accordance with subsection (p), section 301 of the Federal Clean Water Act, as amended or 40 CFR Part 434 as amended.'' The new revision provides that bond release for remining operations shall be in accordance with all of the requirements set forth in subsection 12.2 of this rule and the terms and conditions set forth in the NPDES Permit in accordance with subsection (p), section 301 of the Federal Clean Water Act, as amended or 40 CFR Part 434 as amended.

Coal Related Dam Safety Rules at CSR 38–4

CSR 38–4–3.4.c, concerning hazard evaluation, is amended by deleting the existing heading and renaming the provision ''Assessment of Hazards and Consequences of Failure.'' In addition, the following language is added as an introductory paragraph:

All new applications and expansions to existing impoundments must submit a complete Assessment of Hazards and Consequences of Failure (AHCF) in narrative form, certified by a Registered Professional Engineer (RPE), that addresses potential risks and impacts resulting from failure that could

occur from the construction and/or operation of the facility and addresses the following:

CSR 38–4–7.1.f.3.A, concerning Class C impoundments designed without discharge structures, is amended by deleting the existing second sentence and replacing that sentence with the following three sentences. ''A system shall be designed to dewater the impoundment of the probable maximum storm in ten (10) days by pumping or by other means. The requirements of 25.14 shall also be met. For existing structures exceeding the minimum 2 PMP volume requirements, the dewatering system shall be installed when the containment volume is reduced to 2 PMPs.''

CSR 38–4–7.1.n is new and concerns use of corrugated metal pipes for spillways. The new language provides as follows:

Corrugated metal pipes, whether coated or uncoated, shall not be used in new or unconstructed refuse impoundments or slurry cells. If an existing corrugated metal pipe has developed leaks or otherwise deteriorated so as to cause the pipe to not function properly and such deterioration constitutes a hazard to the proper operation of the impoundment, the Secretary will require the corrugated metal pipe to be either repaired or replaced. Provided, however, sediment control or other water retention structures used for the treatment of effluent and designated as Class A Dams under 3.4.b of this rule are exempt from this prohibition.

CSR 38–4–8.1, concerning subsidence evaluation of the site and the dam and its storage area, is amended by revising the phrase ''that coal pillars and floor are strong'' to read ''that the coal pillars, roofs and floor are strong.'' The last two existing sentences are deleted, and the new last sentence is amended by adding, at the end, the words ''or are otherwise capable of preventing significant subsidence impacts, in accordance with 8.2 and 8.3 of this rule.'' The effect of this change is to add this requirement as an alternative condition for allowing dams to be constructed over underground workings.

CSR 38–4–8.2.a, concerning basin, is new and provides as follows:

There shall be no underground mining in a safety zone that extends horizontally 200 feet from the high water mark of an impoundment and vertically to a depth that provides for a minimum thickness of 100 feet of solid strata between the bottom of the pool and any mining. The presence of any mine workings within this safety zone is prohibited unless the potential subsidence effects are mitigated by injection grouting or otherwise filling the mine related voids completely. Alternately, such risk can be mitigated by providing constructed barriers, grouting or other means to establish equivalent protection that will comply with the safety zone dimensions. Coal extraction of 80 percent or more is prohibited unless at a depth greater than 60 times the coal extraction thickness or at a depth where the maximum tensile strain at original ground is less than 5.0 mm/m (0.5%), whichever is greater. The Secretary may impose other limitations as specified by BM IC 8741, barrier analysis, other pertinent analysis or due to conditions such as fracturing, which may require a larger safety zone or further limitations in coal extraction.

CSR 38–4–8.2.b, concerning embankment, is new and provides as follows:

There shall be no mining in a safety zone under the structural embankment measured outward 200 feet in all directions, downward 350 feet and then outward at a dip of 65° from the horizontal, unless acceptable pillar stability and/or strain effects are confirmed by a design evaluation to be certified by an RPE. Also, the related AHCF must clearly demonstrate that the facility will have a low risk of impact to the public and the environment. Existing mine workings within this safety zone having the potential to cause significant subsidence impacts are prohibited unless those effects are mitigated by grouting, filling the mine related voids or providing comparable protection. Additional underground mining may be subsequently approved in the embankment safety zone only if a design evaluation, certified by an RPE, demonstrates that no significant impacts from subsidence can result.

CSR 38–4–8.2.c, concerning existing impoundments, is new and provides as follows:

Existing impoundments that currently have mining within the safety zones must be evaluated in accordance with this section and 3.4.c. of this rule. Remedial measures shall be implemented as necessary to eliminate or reduce the potential impact on the public and/or the environment. Remedial measures may include, but are not limited to, constructed barriers, grouting of underground works and back stowing of mines.

CSR 38–4–8.3, concerning safety factors applicable to new, revised, and existing impoundment facilities, is new and provides as follows:

A detailed engineering design evaluation of the embankment and impoundment basin areas shall be conducted to assure protection of the environment and public. The engineering design analysis shall demonstrate that appropriate safety factors exist. Major design considerations of this engineering analysis are embankment stability, pillar design, outcrop barrier design, and any other design aspects as necessary to manage risk. The adequacy of calculated safety factors should be determined by applying appropriate regulatory standards. For design applications where regulatory standards do not exist, the AHCF should be the basis used to derive acceptable safety factors.

CSR 38–4–25.14 concerning removal of storm water in the impoundment is new and provides as follows:

Storm water in the impoundment shall be removed as specified in the design requirements. In addition, the slurry impoundment pool shall be maintained at the lowest practical pool level based upon the design requirements and the AHCF. The mechanical storm dewatering system shall be installed as designed and maintained properly with the system being tested monthly.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the West Virginia program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We may not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (*see* **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Charleston Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII, Word file avoiding the use of special characters and any form of encryption. Please also include Attn: SATS NO. WV–098–FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Charleston Field office at (304) 347–7158.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from

individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. (local time), on April 29, 2003. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will make a written summary of each meeting a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The basis for this determination is our decision on a State regulatory program and does not involve a Federal regulation involving Indian lands.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This

determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 28, 2003.

Brent Wahlquist,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 03–9033 Filed 4–11–03; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[FL–094–200316b; FRL–7481–7]

Approval and Promulgation of State Plan for Designated Facilities and Pollutants: Florida

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the section 111(d)/129 State Plan submitted by the Florida Department of Environmental Protection (FDEP) for the State of Florida on November 29, 2001, for implementing and enforcing the Emissions Guidelines (EG) applicable to existing Commercial and Industrial Solid Waste Incinerators. The Plan was submitted by FDEP to satisfy Federal Clean Air Act requirements. In the Final Rules Section of this **Federal Register**, the EPA is approving the Florida State Plan revision as a direct final rule without prior proposal because the Agency views this revision as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before May 14, 2003.

ADDRESSES: All comments should be addressed to: Joydeb Majumder, EPA Region 4, Air Toxics and Management Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Copies of documents relative to this action are available for inspection during normal business hours at the above listed Region 4 location. Anyone interested in examining this document should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Joydeb Majumder at (404) 562–9121 or Sean Lakeman at (404) 562–9043.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: March 24, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 03–8954 Filed 4–11–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 032803F]

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Scoping Process

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare a supplemental environmental impact statement (SEIS) and notice of re-initiation of scoping process; request for comments.

SUMMARY: The New England Fishery Management Council (Council) announces its intent to prepare an amendment to the Fishery Management Plan (FMP) for Atlantic Herring (*Clupea harengus*) and to prepare an SEIS to analyze the impacts of any proposed management measures. The Council is also formally re-initiating a public process to determine the scope of alternatives to be addressed in the amendment and SEIS. The purpose of this notification is to alert the interested public of the re-commencement of the scoping process and to provide for public participation in compliance with environmental documentation requirements.

DATES: The Council will discuss and take scoping comments at public meetings in April and May 2003. For specific dates and times of the scoping meetings, see **SUPPLEMENTARY INFORMATION**. Written scoping comments must be received on or before 5 pm., local time, June 2, 2003.

ADDRESSES: The Council will take scoping comments at public meetings in Maine, Massachusetts, and New Jersey. For specific locations, see **SUPPLEMENTARY INFORMATION**. Written comments and requests for copies of the scoping document and other information should be directed to Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950, telephone (978) 465–0492. The scoping document is accessible electronically via the Internet at *http://www.nefmc.org*. Comments may also be sent via facsimile (fax) to (978) 465–3116. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Atlantic herring fishery is managed as one stock complex along the east coast from Maine to Cape Hatteras, NC, although evidence suggests that separate spawning components exist within the stock complex. The Council and the Atlantic States Marine Fisheries Commission (ASMFC or Commission) adopted management measures for the herring fishery in state and Federal waters in 1999, and NMFS approved most of the management measures contained in the Federal Herring FMP on October 27, 1999. The Federal Atlantic Herring FMP became effective on January 10, 2001.

The state and Federal management plans contain similar management measures.The state and Federal management plans for herring establish total allowable catches (TACs) levels in each of four management areas. In state waters, there are spawning area restrictions and requirements for vessels to take specified days out of the fishery (under the Commission plan). Both plans include limits on the size of vessels that can take, catch, or harvest herring. Each plan includes administrative elements such as

requirements for vessel, dealer, and processor permits and reporting requirements. A control date of September 16, 1999, was established for the Atlantic herring fishery in Federal waters (64 FR 50266, September 16, 1999).

Additional measures for the Federal Herring FMP are being considered for two reasons: (1) a new stock assessment for herring is available; and (2) the Council made a commitment to consider limited or controlled access in the herring fishery shortly after developing the Herring FMP.

In February 2003, the Transboundary Resource Assessment Committee (TRAC), composed of both U.S. and Canadian scientists, met in St. Andrew's, New Brunswick, to undertake a joint peer review of the status of the transboundary herring resource and to provide collective guidance for fisheries managers to consider. The TRAC assessment will be used in considering possible adjustments to the FMP, which may include changes to the herring overfishing definition and its associated reference points, revisions to the estimates of maximum sustainable yield (MSY) and optimum yield (OY) for the herring fishery, adjustments to management areas, and/or adjustments to area-specific TAC calculations. The Herring Plan Development Team (PDT) will review the TRAC information and provide technical guidance on these and other issues as the development of this amendment proceeds.

While the overall TAC for herring is more than twice recent landing levels, the TAC in the inshore Gulf of Maine (Area 1A) represents more than 60 percent of the total landings and has triggered a closure of the herring fishery in this area every year. Some fishermen believe that harvesting capacity in this area should be restricted to avoid problems that result from excess fishing capacity. One of these problems is a ''race to fish'' as increasing numbers of vessels try to catch the TAC before the others. Besides generating inefficiencies, the available TAC in this area will likely continue to be taken before the fishing year is over. This can disrupt the supply of herring for various markets and affect stability in the fishery.

Management of a number of fisheries in the Northeast Region is complicated by excess fishing capacity which makes it difficult to reduce fishing mortality to levels necessary for stock rebuilding. In order to avoid the problems experienced in these fisheries, there is interest in developing a limited access system for the herring fishery to possibly address existing capacity problems in Area 1A and avoid such problems in other areas as the fishery continues to develop.

In July 1999, the Council made a formal commitment to develop a limited or controlled access program for the herring fishery. Scoping meetings were conducted in early 2000, and comments were sought on limited/controlled access in the herring fishery, particularly in Area 1A. At that time, concern about excess capacity was focused on Area 1A, as Areas 2 and 3 (southern New England and Georges Bank) could support increased fishing effort and additional capacity in the fishery. However, some new markets have emerged, additional harvesting and processing capacity has developed, and catches from Areas 2 and 3 have increased somewhat, suggesting that capacity concerns in these areas may be different than they were in 2000. For this reason, the Council may consider a limited access program for all herring management areas.

This amendment may address one or more of the following issues:

1. According to the best available scientific information, overfishing is not occurring on the herring resource at this time, but may occur in the future if effort and capacity are not monitored and controlled in a proactive manner.

2. Allocation issues have arisen since the establishment of the TACs in the herring fishery, and these issues should be examined and minimized to the extent practicable (examples include the race to fish and gear conflicts resulting from the TACs).

3. Interactions of herring with other species and other fisheries are becoming increasingly important, especially as all stocks in the Northeast Region continue to increase. These interactions and their associated impacts should be examined so that negative impacts can be minimized where possible and appropriate.

Measures Under Consideration

At this time, the Council is seeking comments on a wide range of management measures it is considering to address a range of issues. The measures under consideration include, but are not limited to, the following:

Limited Access

One or more kinds of permits may be issued to vessels fishing in one or more of the management areas. Qualification criteria for limited access permits could take many different forms. For example, qualification criteria could be based on catch levels over a particular period of time, possession of another permit, future performance in the fishery, or any combination of these standards.

If the Council does develop a limited access program in this amendment, it may develop separate qualifying criteria for the directed herring fishery and the incidental catch herring fishery. The Council also may consider a quota-based limited access program for participants in the herring fishery. Under such a program, TACs for herring could be specifically allocated to a limited number of individuals or entities. This allows the individuals or entities to be responsible for controlling their own capacity and harvesting their share of the resource in a way that maximizes their economic benefits and the overall benefits to the fishery. Some examples of quota-based programs that may be considered include Individual Fishing Quotas (IFQs), group quota shares, and community quota shares.

In addition to establishing some kind of limited access program, the Council will consider the ''no action alternative;'' that is, to allow the herring fishery to remain an open-access fishery. Consideration of the no action alternative is a legal requirement and is based on the fact that domestic catches are currently less than one-half the overall TAC. New markets and additional harvesting capacity to fully utilize the herring resource are currently being examined for the herring fishery. In addition, an open access system provides the most flexibility to fishermen to move into the herring fishery as an alternative to other fisheries.

Other Effort Controls

A limited access program by itself may or may not address potential capacity problems in the herring fishery, especially in Area 1A. For this reason, the Council is considering and seeking comments on other types of effort controls for the fishery, if necessary. These include, but are not limited to, the following:

1. *Vessel Upgrade Restrictions*—Restrictions on the overall size and capacity of herring vessels is already included in the FMP. However, additional restrictions on the ability of herring vessels to upgrade (increase their size and/or horsepower) may be an effective tool for controlling existing capacity in the fishery.

2. *Trip Limits*—Trip limits may slow down the race to fish and prevent early closure of the fishery, especially in Area 1A. For the herring fishery, it would be important to consider the high-volume nature of the directed fishery and the need to minimize regulatory discarding.

3. *Days at Sea (DAS) for the Herring Fishery*—Limits on the number of days that vessels can fish for herring is

another way to control effort in the fishery.

4. *Days Out of the Herring Fishery*—Requirements for vessels to take days out of the herring fishery were included in the Herring FMP, but were not approved by NMFS for several reasons. The Commission implemented days out of the fishery in state waters through the Interstate FMP for herring and has found it to be an effective tool to slow the race to fish. For this reason, the Council may re-consider a program for days out of the Federal fishery. Such a program may be based on no-fishing days or no-landing days (as is currently in the Comission plan).

Management Area Boundaries

The recently-completed TRAC Assessment of the herring resource recommends, among other things, consideration of some adjustments to the existing management area boundaries for the herring fishery. The Council will consider these recommendations as well as other comments received during the scoping period regarding adjustments to existing herring management area boundaries.

Other Measures and Adjustments Under Consideration

Because of the new TRAC Assessment and other management issues that have emerged over the past 3 years, the Council may consider additional measures for development in this amendment.

1. *Transboundary Nature of the Resource and Interactions with Canadian Herring Fisheries*—The Council is seeking comments on more effective ways to address the transboundary nature of this resource. Specifically, the Council is seeking comments on interactions between U.S. herring management and the New Brunswick weir fishery, the southwest Nova Scotia herring fishery, and the Canadian fishery for herring on Georges Bank.

2. *Seine-only and/or Trawl-only Areas*—To reduce gear conflicts associated with the TACs and the race to fish, the Council may consider establishing areas for fishing with purse seines and/or midwater trawls only.

3. *Clarification of the Definition of Midwater Trawl*—The Council may consider revising the regulatory definition of a midwater trawl to improve enforcement and clarify perceptions about the gear intended to be fished.

4. *Spawning Area Restrictions*—Spawning area restrictions were included in the Herring FMP, but were not approved by NMFS for several reasons. The Commission implemented spawning area restrictions through the Interstate FMP for herring. The Council is seeking comment on whether or not these restrictions should be re-considered in this amendment.

5. *Improved Coordination with Mackerel Management*— Mackerel is managed through the Mid-Atlantic Fishery Management Council's Squid/Mackerel/Butterfish FMP. The Council recognizes the overlap between the herring and mackerel fisheries and the need to better coordinate the management of these resources. The Council is seeking comments on how to better coordinate herring and mackerel management.

6. *Bycatch and Bycatch Monitoring*—The Council is seeking comments on measures to minimize bycatch and to better monitor the nature of bycatch in the herring fishery. This includes consideration of requirements for observer coverage in the fishery.

Scoping Process

All persons affected by or otherwise interested in herring management are invited to participate in determining the scope and significance of issues to be analyzed by submitting written comments (see **ADDRESSES**) or by attending one of the scoping hearings. Scoping consists of the range of actions, alternatives, and impacts to be considered. Alternatives include the following: not amending the management plan (taking no action), developing an amendment that contains management measures such as those discussed in this notice, or other reasonable courses of action. Impacts may be direct, individual, or cumulative.

This scoping process will also identify and eliminate from detailed analysis issues that are not significant. When, after the scoping process is completed, the Council proceeds with the development of an amendment to the Herring FMP, the Council will prepare an SEIS to analyze the impacts of a range of alternatives under consideration. The Council will hold public hearings to receive comments on the draft amendment and on the analysis of its impacts presented in the SEIS.

Scoping Hearing Schedule

The Council will discuss and take scoping comments at public meetings as follows:

1. Monday, April 28, 2003, 7 p.m., Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048. Telephone (508) 339–2200.

2. Tuesday, April 29, 2003, 7 p.m., Kings Grant Hotel, Trask Road, Route 128, Exit 21N, Danvers, MA 01923. Telephone (978) 774–6800.

3. Tuesday, May 6, 2003, 7 p.m., Samoset Resort and Conference Center, 220 Warrenton Street, Rockport, ME 04856. Telephone (207) 594–2511.

4. Monday, May 12, 2003, 7 p.m., Clarion Hotel and Conference Center, 6821 Black Horse Pike, Egg Harbor Township/Atlantic City West, NJ 08234. Telephone (609) 272–0200/(800) 782–9237.

Special Accommodations

The meetings are accessible to people with physical disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to this meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 9, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–9059 Filed 4–11–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 71
Monday, April 14, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Meeting Notice

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation (ACHP) will meet on Friday, May 9, 2003. The meeting will be held in Room M–09 at the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC, beginning at 9 a.m.

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

The agenda for the meeting includes the following:

I. Chairman's Welcome
II. Presentation of Chairman's Awards for Federal Achievement in Historic Preservation
III. Report of the Executive Committee
  A. FY 2004 ACHP Appropriations
  B. Legislative Issues
  1. ACHP Reauthorization Legislation
  2. Surface Transportation Reauthorization Legislation
  3. Historic Preservation Tax Incentives
  C. Revision of ACHP Strategic Plan
IV. Preserve America Program Development
  A. Presidential Awards
  B. Preserve America Communities
V. Preserve America Executive Order Implementation
  A. Interagency Assistance Efforts
  B. Guidelines for Federal Agency Reports
VI. Report of the Preservation Initiatives Committee
  A. Federal Heritage Tourism Summit II
  B. ACHP Donations Strategy
VII. Report of the Federal Agency Programs Committee
  A. Army Alternate Procedures—Amendment and Implementation Report
  B. Program Comment for Dudded Areas
  C. Section 106 Cases
VIII. Report of the Communications, Education, and Outreach Committee
  A. Publicity for Preserve America and Executive Order
  B. Dissemination of ACHP Publications
IX. Chairman's Report
  A. Meeting with Tribal Representatives
  B. Reissue of Federal Stewardship Report
X. Executive Director's Report
XI. New Business
XII. Adjourn

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

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

Dated: April 9, 2003.

John M. Fowler,

Executive Director.

[FR Doc. 03–9038 Filed 4–11–03; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Basin Creek Fuels Reduction Project, Beaverhead-Deerlodge National Forest, Silver Bow, County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The USDA, Forest Service, Beaverhead-Deerlodge National Forest, will prepare an Environmental Impact Statement (EIS) to document the analysis and disclose the environmental impacts of proposed vegetation treatments in the Basin Creek watershed south of Butte, Montana.

The project area is located in the southern half of the Basin Creek watershed within the Highland Mountains in southwestern Montana (Township 2 North, Range 7 West sections 29, 31, 32; Township 1 North, Range 7 West, sections 5–8, 17–20; Township 1 North, Range 8 West, sections 1–4, 9–12, 13–16, 21–24; and Township 2 North, Range 8 West, section 23).

The Beaverhead-Deerlodge National Forest is proposing to treat forested areas in the Basin Creek Project Area to reduce the likelihood of high intensity rapidly spreading fire to reduce risks to fire fighter and public safety, private property, and water quality in the Basin Creek Municipal Watershed. The proposed action will reduce high levels of wildland fuels in two main areas of concern, a 3,900-acre area southwest of the Roosevelt Drive subdivision and a 9,000-acre area in the Basin Creek Municipal watershed. Treatments would include up to 1,500 acres of slashing, burning, and timber harvest in the area below the Roosevelt Drive subdivision. No permanent road construction is proposed in this area; however, there may be some need for temporary roads. Close coordination with the local homeowners will occur in the specific design of treatments.

A large portion (5,700 acres) of the municipal watershed is in an inventorized roadless area. Fire simulation models are being used to determine where treatments would be the most effective in slowing fire while minimizing the number of acres needing to be treated. Modeling has not been completed at this time, therefore, no

estimate of number of acres is known at this time. No permanent or temporary road construction is proposed within the inventorized roadless area.

Reconstruction of the Herman Gulch Road is being considered to improve the route for firefighter and public access during emergency situations and address soil erosion issues.

No treatments would be proposed within INFISH defined riparian habitat conservation areas. No treatment within old-growth forest is planned.

Alternatives: This EIS will evaluate alternative methods to meet the designated Purpose and Need for the action:

1. Minimize the risks to water quality in the event of wildland fire in the Basin Creek Municipal Watershed.

2. Reduce the potential of damage to public and private property and structures within the project area from wildland fire.

3. Modify vegetative conditions to increase firefighter and public safety.

At least one alternative will exclude any treatments within the inventorized roadless area. As required by NEPA, a ''no action'' alternative will be analyzed as a baseline for gauging the potential impacts of action alternatives. Forest Plan Visual Quality Objectives for the project area are fairly restrictive. Proposed treatments may require a Forest Plan amendment.

Public Involvement: The public will be invited to comment on the Draft EIS during a public open house, field trip, and in writing to the Beaverhead-Deerlodge National Forest. The location and time of the open house and time of the site field visit will be announced in the local news media, as dates are determined. The public may contact the Forest to have their name added to a project mailing list.

DATES: Initial comments concerning the scope of the analysis should be received in writing no later than 30 days from the publication of this notice of intent.

ADDRESSES: The responsible official is Dale Bosworth, Chief of the Forest Service. Please send written comments to Thomas K. Reilly, Forest Supervisor, 420 Barrett Street, Dillon, MT 59725. Comments may also be electronically submitted to *r1_b-d_comments@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Steve Egeline, Acting Butte District Ranger, Beaverhead-Deerlodge National Forest, 1820 Meadowlark Lane, Butte, MT 59701, or phone (406) 494–0219.

SUPPLEMENTARY INFORMATION: Public participation is important to this analysis. Part of the goal of public involvement is to identify additional issues and to refine general issues. Scoping notices were mailed to the public on March 29, 2002 and February 11, 2003.

People may visit with Forest Service officials at any time during the analysis and prior to the decision. Two periods are specifically designated for comments on the analysis: (1) during the scoping process, and (2) during the draft EIS period.

During the scoping process, the Forest Service seeks additional information and comments from individuals or organizations that may be interested in or affected by the proposed action, and federal, state, and local agencies. The Forest Service invites written comments and suggestions on this action, particularly in terms of issues and alternative development.

The draft EIS is anticipated to be available for review in June 2003. The final EIS planned for completion in December 2003.

The Environmental Protection Agency will publish the notice of availability of the draft Environmental Impact Statement in the **Federal Register.** The Forest will also publish a legal notice of its availability in the Montana Standard Newspaper, Butte, Montana. A 45-day comment period on the draft EIS will begin the day after the legal notice is published.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519,553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The responsible official will make the decision on this proposal after considering comments and responses, environmental consequences discussed in the final EIS, applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Record of Decision.

Dated: April 7, 2003.

Thomas K. Reilly,

Forest Supervisor.

[FR Doc. 03–9010 Filed 4–11–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Lower Big Creek, Kootenai National Forest, Lincoln County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA—Forest Service will prepare an Environmental Impact Statement to disclose the environmental effects of timber harvest, prescribed burning, and road management in the Lower Big Creek Decision Area on the Rexford Ranger District of the Kootenai National Forest. The Decision Area is located approximately 15 miles southwest of Eureka, Montana.

DATES: Written comments and suggestions should be postmarked or received within 30 days following publication of this notice.

ADDRESSES: Written comments and suggestions concerning the scope of the analysis should be sent to Glen M. McNitt, District Ranger, Rexford Ranger District, 1299 U.S. Highway 93 N, Eureka, MT 59917.

FOR FURTHER INFORMATION CONTACT: Chris Fox, Interdisciplinary Team Leader, Rexford Ranger District, Phone: (406) 296–2536.

SUPPLEMENTARY INFORMATION: The Decision Area contains approximately 64,000 acres of land within the Kootenai National Forest. Proposed activities within the Decision Area include all or portions of the following areas: T34–35N, R29–30W, PMM, Lincoln County, Montana.

All proposed activities are outside the boundaries of any roadless area or any areas considered for inclusion to the National Wilderness System as recommended by the Kootenai National Forest Plan or by any past or present legislative wilderness proposals, with the exception of approximately 840 acres of underburning-only in the Big Creek Inventoried Roadless Area.

Purpose and Need: The purpose and need for the project is to: (1) Reduce fuel accumulations to decrease the likelihood that fires would become large stand-replacing wildfires; (2) Restore characteristic vegetation patterns (patch sizes and stand structure) on the landscape; (3) Provide a transportation system that increases security for grizzly bears, reduces impacts to aquatic resources, improves riparian wildlife habitat, and insures economical and safe access; and (4) Respond to the social and economic needs of the public.

Proposed Activities: The Forest Service proposes to use regeneration harvest on approximately 2,650 acres, shelterwood-commercial thin harvest on approximately 350 acres, commercial thinning on approximately 560 acres, and roadside salvage and post and pole harvest on approximately 75 acres.

The Proposed Action would result in nineteen openings over 40 acres, ranging from 98 to 530 acres. A 60-day public review period, and approval by the Regional Forester for exceeding the 40 acre limitation for regeneration harvest, would be required prior to the signing of the Record of Decision. This 60-day period is initiated with this Notice of Intent.

The Proposed Action includes approximately 3,625 acres of prescribed burning in association with timber harvest, and approximately 1,100 acres of prescribed burning without timber harvest.

The Proposed Action also includes maintenance activities on portions of approximately 109 miles of road to meet Best Management Practices; decommissioning approximately 25 miles of closed roads; placing 14 miles of roads (which are currently restricted year-long to motor vehicles) in storage; and reconstructing approximately 1.7 miles of existing road.

The Proposed Action includes precommercial thinning of sapling-sized trees on approximately 300 acres within managed plantations and natural stands that have regenerated after wildfire. Precommercial thinning would not occur in lynx habitat.

Forest Plan Amendments: The Proposed Action includes two project-specific Forest Plan amendments necessary to meet the project's objectives:

An amendment to allow harvest in 15 units adjacent to existing openings in Management Area (MA) 12 (Big Game Summer Range). The amendment would be needed to suspend Wildlife and Fish Standard #7 and Timber Standard #2 for this area. These standards state that movement corridors and adjacent hiding cover be retained. The resulting opening sizes more closely correlate to natural disturbance patterns. Snags and down woody material would be left to provide wildlife habitat and maintain soil productivity.

An amendment to allow MA 12 open road density to be managed at 1.18 miles/square mile during project implementation. The amendment would needed to suspend Facilities Standard #3, which states that open road density should be maintained at 0.75 miles/square mile. The open road density would return to 0.74 following project completion.

Range of Alternatives: The Forest Service will consider a range of alternatives. One of these will be the ''no action'' alternative, in which none of the proposed activities will be implemented. Additional alternatives will be considered to achieve the project's purpose and need for action, and to respond to specific resource issues and public concerns.

Public Involvement and Scoping: In November 2002, efforts were made to involve the public in considering management opportunities within the Decision Area. A scoping package was mailed for public review on November 5, 2002. A field trip was held on November 15, 2002; an open house was held on November 21, 2002. Comments received prior to this notice will be included in the documentation for the EIS.

Estimated Dates for Filing: While public participation in this analysis is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the Draft EIS (DEIS). The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by May 2003. At that time EPA will publish a Notice of Availability (NOA) of the DEIS in the **Federal Register**. The comment period on the DEIS will be 45 days from the date the EPA publishes the NOA in the **Federal Register**. It is very important that those interested in the management of this area participate at that time.

The final EIS (FEIS) is scheduled to be completed by August 2003. In the FEIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the DEIS, and applicable laws, regulations, and policies considered in making a decision regarding the proposal.

Reviewer's Obligations: The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of DEIS' must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803, F.2d 1016, 1022 9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this Proposed Action participate by the close DEIS 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the FEIS.

To be most helpful, comments on the DEIS should be as specific as possible, and may address the adequacy of the statement or the merit of the alternatives discussed. Reviewers may wish to refer to the Council on Environmental Quality regulations (40 CFR 1503.3) for implementing the procedural provisions of the National Environmental Policy Act.

Responsible Official: As the Forest Supervisor of the Kootenai National Forest, 1101 U.S. Highway 2 West, Libby, MT 59923, I am the Responsible Official. As the Responsible Official, I will decide if the proposed project will be implemented. I will document the decision and reasons for the decision in the Record of Decision. I have delegated the responsibility for preparing the DEIS and FEIS to Glen M. McNitt, District Ranger, Rexford Ranger District.

Dated: April 3, 2003.

Bob Castaneda,

Forest Supervisor, Kootenai National Forest.

[FR Doc. 03–8988 Filed 4–11–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Trinity County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Trinity County Resource Advisory Committee (RAC) will meet on May 5, 2003 in Weaverville, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

DATES: The meeting will be held on May 5, 2003 from 6:30 to 8:30 p.m.

ADDRESSES: The meeting will be held at the Trinity County Office of Education Conference Room, 201 Memorial Drive, Weaverville, California.

FOR FURTHER INFORMATION CONTACT: Ann Garland, Designated Federal Official, USDA, Six Rivers National Forest, PO Box 68, Willow Creek, CA 95573. Phone: (530) 629–2118. Email: *agarland@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The committee will discuss proposed fuels reduction, watershed restoration, and public project. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: April 7, 2003.

S.E. 'Lou' Woltering,

Forest Servisor.

[FR Doc. 03–9016 Filed 4–11–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Seek Reinstatement of an Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the intention of the National Agricultural Statistics Service (NASS) to seek approval for reinstatement of an information collection, the Farm and Ranch Irrigation Survey.

DATES: Comments on this notice must be received by June 18, 2003, to be assured of consideration.

ADDRESSES: Comments may be mailed to Ginny McBride, NASS Information Collection Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue, SW., Washington, DC 20250–2024 or sent electronically to *gmcbride@nass.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Carol House, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Farm and Ranch Irrigation Survey.

OMB Control Number: 0535—0234.

Type of Request: Intent to Seek Approval to Reinstate an Information Collection.

Abstract: The Farm and Ranch Irrigation Survey is conducted every 5 years as authorized by the Census of Agriculture Act of 1997 (Pub. L. No. 105–113). The 2003 Farm and Ranch Irrigation Survey will use a probability sample from farms that reported irrigation on the 2002 Census of Agriculture. This irrigation survey will provide a comprehensive inventory of farm irrigation practices with detailed data relating to acres irrigated by category of land use, acres and yields of irrigated and non-irrigated crops, quantity of water applied, and method of application to selected crops. Also included will be 2003 expenditures for maintenance and repair of irrigation equipment and facilities; purchase of energy for on-farm pumping of irrigation water; investment in irrigation equipment, facilities, and land improvement; and cost of water received from off-farm water supplies. Irrigation data are used by the farmers, their representatives, government agencies, and many other groups concerned with the irrigation industry. This survey will provide the only source of dependable, comparable irrigation data by State. The National Agricultural Statistics Service will use the information collected only for statistical purposes and will publish the data only as tabulated totals.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 30 minutes per response.

Respondents: Farms.

Estimated Number of Respondents: 25,000.

Estimated Total Annual Burden on Respondents: 12,500 hours.

Copies of this information collection and related instructions can be obtained without charge from Ginny McBride, NASS Information Collection Clearance Officer, at (202) 720–5778.

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

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed in Washington, DC, March 24, 2003.

Carol House,

Associate Administrator.

[FR Doc. 03–9039 Filed 4–11–03; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021203A]

Small Takes of Marine Mammals Incidental to Specified Activities; Oceanographic Surveys in the Hess Deep, Eastern Equatorial Pacific Ocean

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 an application from the Lamont-Doherty Earth Observatory (LDEO) for an Incidental Harassment Authorization (IHA) to take small numbers of marine

mammals, by harassment, incidental to conducting oceanographic surveys in the Hess Deep in international waters of the Eastern Equatorial Pacific Ocean. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue a small take authorization to LDEO to incidentally take, by harassment, small numbers of several species of cetaceans and pinnipeds for a limited period of time within the next year.

DATES: Comments and information must be received no later than May 14, 2003.

ADDRESSES: Comments on the application should be addressed to Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here. A copy of the application, Environmental Assessment (EA) and/or a list of the references used in this document may be obtained by writing to this address or by telephoning the contact listed here. Comments cannot be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055, ext 128,

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) 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 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, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have 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 takings 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.
>
> (B) The term ''Level A harassment'' means harassment described in subparagraph (A)(i).
>
> (C) The term ''Level B harassment'' means harassment described in subparagraph (A)(ii).

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.

Summary of Request

On January 29, 2003, NMFS received an application from LDEO for the taking, by harassment of several species of marine mammals incidental to conducting a seismic survey program in the Hess Deep portion of the Eastern Equatorial Pacific Ocean about 600 nautical miles (nm)(690 land miles; 1111.2 km) west of the Galapagos Islands during March and April 2003, but rescheduled for July, 2003. The purpose of this survey is to obtain information on movements of the earth's plates and on formations associated with those movements. More specifically, the Hess Deep survey will obtain information on the geologic nature of boundaries of the earth's crust at fast-spreading and intermediate-spreading ridges at the boundaries of tectonic plates. Past studies have mapped these areas using manned submersibles and remotely piloted vehicles, but they have not provided a link between geologic and seismic structure. This study will provide the seismic data to assess the geologic nature of the previously mapped areas.

Description of the Activity

The seismic survey will involve a single vessel, the *R/V Maurice Ewing*, which will deploy and retrieve the Ocean Bottom Seismometers (OBSs) and conduct the seismic work. The Maurice Ewing will deploy an array of airguns as an energy source, plus a 6–km (3.2–nm) towed streamer containing hydrophones to receive the returning acoustic signals.

All planned geophysical data acquisition activities will be conducted by LDEO scientists, with the participation of scientists from the University of Texas at Austin, TX. Water depths in the Hess Deep survey area will range from approximately 2,000 to 3,400 m (6,560 to 11,150 ft). A total of 912 km (492 nm) of MCS (Multi Channel Seismic) surveys using a 10–gun array and 189 km (102 nm) of OBS surveys using a 12–gun array are planned to be conducted. These line-kilometer figures represent the planned production surveys. There will be additional operations associated with equipment testing, startup, line changes, and repeat coverage of any areas where initial data quality is sub-standard.

The procedures to be used for the 2003 seismic survey will be similar to those used during previous seismic surveys by LDEO, e.g., in the equatorial Pacific Ocean (Carbotte *et al.*, 1998, 2000). The proposed program will use conventional seismic methodology with a towed airgun array as the energy source and a towed streamer containing hydrophones as the receiver system, sometimes in combination with OBS receivers placed on the bottom. The energy to the airgun array is compressed air supplied by compressors on board the source vessel. The specific configuration of the airgun array will differ between the OBS and MCS surveys, as described later in this document. In addition, a multi-beam bathymetric sonar will be operated from the source vessel at most times during the Hess Deep survey. A lower-energy sub-bottom profiler, which is routinely operated at the same time as the multi-beam sonar during other projects, will not be operated during this cruise.

The *R/V Maurice Ewing* will be used as the source vessel. It will tow the airgun array (either 10 or 12 guns) and a streamer containing hydrophones along predetermined lines. The vessel will travel at 4–5 knots (7.4–9.3 km/hr), and seismic pulses will be emitted at intervals of 60–90 seconds (OBS lines) and approximately 20 seconds (all other lines). The 20–sec spacing corresponds to a shot interval of about 50 m (164 ft). The 60–90 sec spacing along OBS lines is to minimize previous shot noise during OBS data acquisition, and the exact spacing will depend on water depth. The 10–gun array will be used during MSC surveys and the 12–gun array will be used during OBS surveys. The airguns will be widely spaced in an approximate rectangle with dimensions 35 m (114.9 ft)(across track) by 9 m (29.5 ft)(along track). Individual airguns range

in size from 80 to 850 in3, with total volumes of the arrays being 3005 and 3721 in3 for the 10– and 12–gun arrays, respectively.

The 10–airgun array will have a peak sound source level of 248 dB re 1 µPa or 255 dB peak-to-peak (P-P). The 12–airgun array will have a peak sound source level of 250 dB re 1 µPa or 257 dB P-P. These are the nominal source levels for the sound directed downward, and represent the theoretical source level close to a single point source emitting the same sound as that emitted by the array of 10 or 12 sources. Because the actual source is a distributed sound source (10 or 12 guns) rather than a single point source, the highest sound levels measurable at any location in the water will be less than the nominal source level. Also, because of the downward directional nature of the sound from these airgun arrays, the effective source level for sound propagating in near-horizontal directions will be substantially lower.

Along selected lines, OBSs will be positioned by the *R/V Maurice Ewing* prior to the time when it begins airgun operations in that area. After OBS lines are shot, the R/V Maurice Ewing will retrieve the OBSs, download the data, and refurbish the units.

Along with the airgun operations, one additional acoustical data acquisition activity will occur throughout most of the cruise. The ocean floor will be mapped with an Atlas Hydrosweep DS–2 multi-beam 15.5–kHz bathymetric sonar. The Atlas Hydrosweep is mounted in the hull of the *R/V Maurice Ewing*, and it operates in three modes, depending on the water depth. The first mode is when water depth is <400 m (1312.3 ft). The source output is 210 dB re 1 µPa-m rms and a single 1–millisec pulse or ''ping'' per second is transmitted, with a beamwidth of 2.67 degrees fore-aft and 90 degrees in beamwidth. The beamwidth is measured to the 3 dB point, as is usually quoted for sonars. The other two modes are deep-water modes: The Omni mode is identical to the shallow-water mode except that the source output is 220 dB rms. The Omni mode is normally used only during start up. The Rotational Directional Transmission (RDT) mode is normally used during deep-water operation and has a 237 dB rms source output. In the RDT mode, each ''ping'' consists of five successive transmissions, each ensonifying a beam that extends 2.67 degrees fore-aft and approximately 30 degrees in the cross-track direction. The five successive transmissions (segments) sweep from port to starboard with minor overlap, spanning an overall cross-track angular extent of about 140 degrees, with tiny (<1 millisec) gaps between the pulses for successive 30–degree segments. The total duration of the ''ping'', including all 5 successive segments, varies with water depth but is 1 millisec in water depths >500 m (1640.4 ft) and 10 millisec in the deepest water. Additional information on the airgun array and Atlas Hydrosweep specifications is contained in the application, which is available upon request (see **ADDRESSES**).

Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the Eastern Equatorial Pacific Ocean and its associated marine mammals can be found in a number of documents referenced in the LDEO application and is not repeated here. Approximately 27 species of cetaceans and possibly two species of pinnipeds may inhabit the area of the Hess Deep. These species are the sperm whale (*Physeter macrocephalus*), pygmy sperm whale (*Kogia breviceps*), dwarf sperm whale (*Kogia sima*), Cuvier's beaked whale (*Ziphius cavirostris*), Longman's beaked whale (*Indopacetus pacificus*), pygmy beaked whale (*Mesoplodon peruvianus*), Ginkgo-toothed beaked whale (*Mesoplodon ginkgodens*), Blainville's beaked whale (*Mesoplodon densirostris*), rough-toothed dolphin (*Steno bredanensis*), bottlenose dolphin (*Tursiops truncatus*), pantropical spotted dolphin (*Stenella attenuata*), spinner dolphin (Stenella longirostris), striped dolphin (*Stenella coeruleoalba*), short-beaked common dolphin (*Delphinus delphis*), Fraser's dolphin (*Lagenodelphis hosei*), Risso's dolphin (*Grampus griseus*), melon-headed whale (*Peponocephala electra*), pygmy killer whale (*Feresa attenuata*), false killer whale (*Pseudorca crassidens*), killer whale (*Orcinus orca*), short-finned pilot whale (*Globicephala macrorhynchus*), humpback whale (*Megaptera novaeangliae*), minke whale (*Balaenoptera acutorostrata*), Bryde's whale (*Balaenoptera edeni*), sei whale (*Balaenoptera borealis*), fin whale (*Balaenoptera physalus*), and the blue whale (*Balaenoptera musculus*), Galapagos fur seal (*Arctocephalus galapagoensis*) and Galapagos sea lion (*Zalophus wollebaeki*). Additional information on most of these species is contained in Caretta *et al.* (2001, 2002) which is available at: *http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html.*

Potential Effects on Marine Mammals

As outlined in several previous NMFS documents, the effects of noise on marine mammals are highly variable, and can be categorized as follows (based on Richardson *et al.*, 1995):

(1) The noise may be too weak to be heard at the location of the animal (i.e., lower than the prevailing ambient noise level, the hearing threshold of the animal at relevant frequencies, or both);

(2) The noise may be audible but not strong enough to elicit any overt behavioral response;

(3) The noise may elicit reactions of variable conspicuousness and variable relevance to the well being of the marine mammal; these can range from temporary alert responses to active avoidance reactions such as vacating an area at least until the noise event ceases;

(4) Upon repeated exposure, a marine mammal may exhibit diminishing responsiveness (habituation), or disturbance effects may persist; the latter is most likely with sounds that are highly variable in characteristics, infrequent and unpredictable in occurrence (as are vehicle launches), and associated with situations that a marine mammal perceives as a threat;

(5) Any anthropogenic noise that is strong enough to be heard has the potential to reduce (mask) the ability of a marine mammal to hear natural sounds at similar frequencies, including calls from conspecifics, and underwater environmental sounds such as surf noise;

(6) If mammals remain in an area because it is important for feeding, breeding or some other biologically important purpose even though there is chronic exposure to noise, it is possible that there could be noise-induced physiological stress; this might (in turn) have negative effects on the well-being or reproduction of the animals involved; and

(7) Very strong sounds have the potential to cause temporary or permanent reduction in hearing sensitivity. In terrestrial mammals, and presumably marine mammals, received sound levels must far exceed the animal's hearing threshold for there to be any temporary threshold shift (TTS). For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound. Received sound levels must be even higher for there to be risk of permanent hearing impairment. In addition, intense acoustic or explosive events may cause trauma to tissues associated with organs vital for hearing, sound production, respiration and other functions. This trauma may include minor to severe hemorrhage.

Characteristics of Airgun Pulses

Airguns function by venting high-pressure air into the water. The pressure signature of an individual airgun consists of a sharp rise and then fall in pressure, followed by several positive and negative pressure excursions caused by oscillation of the resulting air bubble. The sizes, arrangement and firing times of the individual airguns in an array are designed and synchronized to suppress the pressure oscillations subsequent to the first cycle. The resulting downward-directed pulse has a duration of only 10 to 20 ms, with only one strong positive and one strong negative peak pressure (Caldwell and Dragoset, 2000). Most energy emitted from airguns is at relatively low frequencies. For example, typical high-energy airgun arrays emit most energy at 10–120 Hz. However, the pulses contain some energy up to 500–1000 Hz and above (Goold and Fish, 1998). The pulsed sounds associated with seismic exploration have higher peak levels than other industrial sounds to which whales and other marine mammals are routinely exposed. The P-P source levels of the 20–gun array (not proposed to be used for the Hess Deep work), and the 12–gun array and 10–gun arrays (that will be used for the Hess Deep), are 262, 257, and 255 dB re 1 µPa-m, respectively. These are the nominal source levels applicable to downward propagation. (The effective source level for horizontal propagation is lower.) The only sources with higher or comparable effective source levels are explosions and high-power sonars operating near maximum power.

Several important mitigating factors need to be kept in mind. (1) Airgun arrays produce intermittent sounds, involving emission of a strong sound pulse for a small fraction of a second followed by several seconds of near silence. In contrast, some other acoustic sources produce sounds with lower peak levels, but their sounds are continuous or discontinuous but continuing for much longer durations than seismic pulses. (2) Airgun arrays are designed to transmit strong sounds downward through the seafloor, and the amount of sound transmitted in near-horizontal directions is considerably reduced. Nonetheless, they also emit sounds that travel horizontally toward non-target areas. (3) An airgun array is a distributed source, not a point source. The nominal source level is an estimate of the sound that would be measured from a theoretical point source emitting the same total energy as the airgun array. That figure is useful in calculating the expected received levels in the far field (i.e., at moderate and long distances). Because the airgun array is not a single point source, there is no one location within the near field (or anywhere else) where the received level is as high as the nominal source level.

The strengths of airgun pulses can be measured in different ways, and it is important to know which method is being used when interpreting quoted source or received levels. Geophysicists usually quote P-P levels, in bar-meters or dB re 1 µPa-m. The peak (= zero-to-peak) level for the same pulse is typically about 6 dB less. In the biological literature, levels of received airgun pulses are often described based on the ''average'' or ''root-mean-square'' (rms) level over the duration of the pulse. The rms value for a given pulse is typically about 10 dB lower than the peak level, and 16 dB lower than the P-P value (Greene, 1997; McCauley *et al.*, 1998, 2000a). A fourth measure that is sometimes used is the energy level, in dB re 1 μPa^2s. Because the pulses are >1 sec in duration, the numerical value of the energy is lower than the rms pressure level (but the units are different). Because the level of a given pulse will differ substantially depending on which of these measures is being applied, it is important to be aware which measure is in use when interpreting any quoted pulse level. In the past, NMFS has commonly referenced the rms levels when discussing levels of pulsed sounds that might ''harass'' marine mammals.

Seismic sound received at any given point will arrive via a direct path, indirect paths that include reflection from the sea surface and bottom, and often indirect paths including segments through the bottom sediments. Sounds propagating via indirect paths travel longer distances and often arrive later than sounds arriving via a direct path. (However, sound travel in the bottom may travel faster than that in the water, and thus may arrive earlier than the direct arrival despite traveling a greater distance.) These variations in travel time have the effect of lengthening the duration of the received pulse. At the source, seismic pulses are about 10 to 20 ms in duration. In comparison, the pulse duration as received at long horizontal distances can be much greater. For example, for one airgun array operating in the Beaufort Sea, pulse duration was about 300 ms at a distance of 8 km (4.3 nm), 500 ms at 20 km (10.8 nm), and 850 ms at 73 km (39.4 nm) (Greene and Richardson, 1988).

Another important aspect of sound propagation is that received levels of low-frequency underwater sounds diminish close to the surface because of pressure-release and interference phenomena that occur at and near the surface (Urick, 1983; Richardson *et al.*, 1995). Paired measurements of received airgun sounds at depths of 3 m (9.8 ft) vs. 9 or 18 m (29.5 or 59 ft) have shown that received levels are typically several decibels lower at 3 m (9.8. ft)(Greene and Richardson, 1988). For a mammal whose auditory organs are within 1/2 or 1 m (1.6 or 3.3 ft) of the surface, the received level of the predominant low-frequency components of the airgun pulses would be further reduced.

Pulses of underwater sound from open-water seismic exploration are often detected 50 to 100 km (30 to 54 nm) from the source location, even during operations in nearshore waters (Greene and Richardson, 1988; Burgess and Greene, 1999). At those distances, the received levels on an approximate rms basis are low (below 120 dB re 1 mPa). However, faint seismic pulses are sometimes detectable at even greater ranges (e.g., Bowles *et al.*, 1994; Fox *et al.*, 2002). Considerably higher levels can occur at distances out to several kms from an operating airgun array. With 12–gun and 10–gun arrays, the distances at which seismic pulses are expected to diminish to received levels of 190, 180, 170 dB and 160 dB re 1 µPa, on an rms basis) are as follows:

Airgun Array	RMS Radii (m/ft)			
	190 dB	180 dB	170 dB	160 dB
12 airguns	300/984	880/2887	2680/8793	7250/23786
10 airguns	250/820	830/2723	2330/7644	6500/21325

Additional information can be found in the LDEO application.

Effects of Seismic Surveys on Marine Mammals

The LDEO application provides the following information on what is known about the effects, on marine mammals, of the types of seismic operations planned by LDEO. The types of effects considered here are (1) masking, (2) disturbance, and (3) potential hearing impairment and other physical effects. Additional discussion on species specific effects can be found in the LDEO application.

Masking

Masking effects on marine mammal calls and other natural sounds are expected to be limited. Seismic sounds are short pulses occurring for less than 1 sec every 20 or 60–90 sec in this project. Sounds from the multibeam sonar are very short pulses, occurring for 1–10 msec once every 1 to 15 sec, depending on water depth. (During operations in deep water, the duration of each pulse from the multibeam sonar as received at any one location would actually be only 1/5th or at most 2/5th of 1–10 msec, given the segmented nature of the pulses.) Some whales are known to continue calling in the presence of seismic pulses. Their calls can be heard between the seismic pulses (e.g., Richardson *et al.*, 1986; McDonald *et al.*, 1995; Greene *et al.*, 1999). Although there has been one report that sperm whales cease calling when exposed to pulses from a very distant seismic ship (Bowles *et al.*, 1994), a recent study reports that sperm whales continued calling in the presence of seismic pulses (Madsen *et al.*, 2002). Masking effects of seismic pulses are expected to be negligible in the case of the smaller odontocete cetaceans, given the intermittent nature of seismic pulses plus the fact that sounds important to them are predominantly at much higher frequencies than are airgun sounds.

Most of the energy in the sound pulses emitted by airgun arrays is at low frequencies, with strongest spectrum levels below 200 Hz and considerably lower spectrum levels above 1000 Hz. These frequencies are mainly used by mysticetes, but not by odontocetes or pinnipeds. An industrial sound source will reduce the effective communication or echolocation distance only if its frequency is close to that of the cetacean signal. If little or no overlap occurs between the industrial noise and the frequencies used, as in the case of many marine mammals vs. airgun sounds, communication and echolocation are not expected to be disrupted. Furthermore, the discontinuous nature of seismic pulses makes significant masking effects unlikely even for mysticetes.

A few cetaceans are known to increase the source levels of their calls in the presence of elevated sound levels, or possibly to shift their peak frequencies in response to strong sound signals (Dahlheim, 1987; Au, 1993; Lesage *et al.*, 1999; Terhune, 1999; reviewed in Richardson *et al.*, 1995:233*ff*, 364*ff*). These studies involved exposure to other types of anthropogenic sounds, not seismic pulses, and it is not known whether these types of responses ever occur upon exposure to seismic sounds. If so, these adaptations, along with directional hearing and preadaptation to tolerate some masking by natural sounds (Richardson *et al.*, 1995), would all reduce the importance of masking.

Disturbance by Seismic Surveys

Disturbance includes a variety of effects, including subtle changes in behavior, more conspicuous dramatic changes in activities, and displacement. Disturbance is the primary concern for this project. Based on previous determinations by NMFS regarding minor behavioral response by marine mammals, LDEO presumes here that simple exposure to sound, or brief reactions that do not disrupt behavioral patterns in a potentially significant manner, do not constitute Level B harassment or ''taking''. By potentially significant, LDEO means ''in a manner that might have deleterious effects to the well-being of individual marine mammals or their populations.''

However, there are difficulties in defining which marine mammals should be counted as ''taken by harassment''. For many species and situations, scientists do not have detailed information about their reactions to noise, including reactions to seismic (and sonar) pulses. Behavioral reactions of marine mammals to sound are difficult to predict. Reactions to sound, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors. If a marine mammal does react to an underwater sound by changing its behavior or moving a small distance, the impacts of the change may not be significant to the individual let alone the stock or the species as a whole. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on the animals could be significant. Given the many uncertainties in predicting the quantity and types of impacts of noise on marine mammals, scientists often resort to estimating how many mammals were present within a particular distance of industrial activities, or exposed to a particular level of industrial sound. This likely overestimates the numbers of marine mammals that are affected in some biologically important manner. The sound criteria used to estimate how many marine mammals might be disturbed to some biologically-important degree by a seismic program are based on behavioral observations during studies of several species. However, information is lacking for many other species. This is discussed further in the LDEO application.

Hearing Impairment and Other Physical Effects

Temporary or permanent hearing impairment is a possibility when marine mammals are exposed to very strong sounds. The minimum sound level necessary to cause permanent hearing impairment is higher, by a variable and generally unknown amount, than the level that induces barely-detectable temporary threshold shift (TTS). The level associated with the onset of TTS is often considered to be a level below which there is no danger of damage. Current NMFS policy regarding exposure of marine mammals to high-level sounds is that cetaceans and pinnipeds should not be exposed to impulsive sounds exceeding 180 and 190 dB re 1 micro Pa (rms), respectively.

Several aspects of the planned monitoring and mitigation measures for this project are designed to detect marine mammals occurring near the airgun array (and multi-beam sonar), and to avoid exposing them to sound pulses that might cause hearing impairment. In addition, many cetaceans are likely to show some avoidance of the area with ongoing seismic operations. In these cases, the avoidance responses of the animals themselves will reduce or avoid the possibility of hearing impairment.

Non-auditory physical effects may also occur in marine mammals exposed to strong underwater pulsed sound. Possible types of non-auditory physiological effects or injuries that might (in theory) occur include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage. It is possible that some marine mammal species (i.e., beaked whales) may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds.

TTS

TTS is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter, 1985). When an animal experiences TTS, its hearing threshold rises and a sound must be stronger in order to be heard. TTS can last from minutes or hours to (in cases of strong TTS) days. The magnitude of TTS depends on the level and duration of noise exposure, among other considerations (Richardson *et al.*, 1995). For sound exposures at or somewhat above the TTS threshold, hearing sensitivity recovers rapidly after exposure to the noise ends. Only a few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals.

Currently, NMFS believes that, whenever possible to avoid Level A harassment, cetaceans should not be exposed to pulsed underwater noise at received levels exceeding 180 dB re 1 µPa (rms). The corresponding limit for pinnipeds has been set at 190 dB. The predicted 180- and 190–dB distances for the airgun arrays operated by LDEO during this activity were summarized previously in this document. These sound levels are not considered to be the levels at or above which TTS might occur. Rather, they are the received levels above which, in the view of a panel of bioacoustics specialists convened by NMFS, one cannot be certain that there will be no injurious effects, auditory or otherwise, to marine mammals. It has been shown that most whales tend to avoid ships and associated seismic operations. Thus, whales will likely not be exposed to such high levels of airgun sounds. Any whales close to the trackline could move away before the sounds become sufficiently strong for there to be any potential for hearing impairment. Therefore, there is little potential for whales being close enough to an array to experience TTS. In addition, ramping up airgun arrays, which has become standard operational protocol for many seismic operators including LDEO, should allow cetaceans to move away from the seismic source and to avoid being exposed to the full acoustic output of the airgun array.

Permanent Threshold Shift (PTS)

When PTS occurs, there is physical damage to the sound receptors in the ear. In some cases, there can be total or partial deafness, while in other cases, the animal has an impaired ability to hear sounds in specific frequency ranges. Physical damage to a mammal's hearing apparatus can occur if it is exposed to sound impulses that have very high peak pressures, especially if they have very short rise times (time required for sound pulse to reach peak pressure from the baseline pressure). Such damage can result in a permanent decrease in functional sensitivity of the hearing system at some or all frequencies.

Single or occasional occurrences of mild TTS do not cause permanent auditory damage in terrestrial mammals, and presumably do not do so in marine mammals. However, very prolonged exposure to sound strong enough to elicit TTS, or shorter-term exposure to sound levels well above the TTS threshold, can cause PTS, at least in terrestrial mammals (Kryter, 1985). In terrestrial mammals, the received sound level from a single sound exposure must be far above the TTS threshold for any risk of permanent hearing damage (Kryter, 1994; Richardson *et al.*, 1995). Relationships between TTS and PTS thresholds have not been studied in marine mammals but are assumed to be similar to those in humans and other terrestrial mammals.

Some factors that contribute to onset of PTS are as follows:

(1) exposure to single very intense noises, (2) repetitive exposure to intense sounds that individually cause TTS but not PTS, and (3) recurrent ear infections or (in captive animals) exposure to certain drugs.

Cavanagh (2000) has reviewed the thresholds used to define TTS and PTS. Based on his review and SACLANT (1998), it is reasonable to assume that PTS might occur at a received sound level 20 dB or more above that which induces mild TTS. However, for PTS to occur at a received level only 20 dB above the TTS threshold, it is probable that the animal would have to be exposed to the strong sound for an extended period.

Sound impulse duration, peak amplitude, rise time, and number of pulses are the main factors thought to determine the onset and extent of PTS. Based on existing data, Ketten (1994) has noted that the criteria for differentiating the sound pressure levels that result in PTS (or TTS) are location and species-specific. PTS effects may also be influenced strongly by the health of the receiver's ear.

Given that marine mammals are unlikely to be exposed to received levels of seismic pulses that could cause TTS, it is highly unlikely that they would sustain permanent hearing impairment. If we assume that the TTS threshold for exposure to a series of seismic pulses may be on the order of 220 dB re 1 µPa (P-P) in odontocetes, then the PTS threshold might be about 240 dB re 1 µPa (P-P). In the units used by geophysicists, this is 10 bar-m. Such levels are found only in the immediate vicinity of the largest airguns (Richardson *et al.*, 1995:137; Caldwell and Dragoset, 2000). It is very unlikely that an odontocete would remain within a few meters of a large airgun for sufficiently long to incur PTS. The TTS (and thus PTS) thresholds of baleen whales and pinnipeds may be lower, and thus may extend to a somewhat greater distance. However, baleen whales generally avoid the immediate area around operating seismic vessels, so it is unlikely that a baleen whale could incur PTS from exposure to airgun pulses. Some pinnipeds do not show strong avoidance of operating airguns. However, pinnipeds are expected to be (at most) uncommon in the Hess Deep survey area. Although it is unlikely that the planned seismic surveys could cause PTS in any marine mammals, caution is warranted given the limited knowledge about noise-induced hearing damage in marine mammals, particularly baleen whales.

Strandings and Mortality

Marine mammals close to underwater detonations of high explosives can be killed or severely injured, and the auditory organs are especially susceptible to injury (Ketten et al., 1993; Ketten, 1995). Airgun pulses are less energetic and have slower rise times, and there is no evidence that they can cause serious injury, death, or stranding. However, the association of mass strandings of beaked whales with naval exercises and, in a recent case, an LDEO seismic survey has raised the possibility that beaked whales may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds.

In March 2000, several beaked whales that had been exposed to repeated pulses from high intensity, mid-frequency military sonars stranded and died in the Providence Channels of the Bahamas Islands, and were subsequently found to have incurred cranial and ear damage (NOAA and USN, 2001). Based on post-mortem analyses, it was concluded that an acoustic event caused hemorrhages in and near the auditory region of some beaked whales. These hemorrhages occurred before death. They would not necessarily have caused death or permanent hearing damage, but could have compromised hearing and navigational ability (NOAA and USN, 2001). The researchers concluded that acoustic exposure caused this damage and triggered stranding, which resulted in overheating, cardiovascular collapse, and physiological shock that ultimately

led to the death of the stranded beaked whales. During the event, five naval vessels used their AN/SQS–53C or –56 hull-mounted active sonars for a period of 16 h. The sonars produced narrow (<100 Hz) bandwidth signals at center frequencies of 2.6 and 3.3 kHz (–53C), and 6.8 to 8.2 kHz (-56). The respective source levels were usually 235 and 223 dB re 1 μ Pa, but the -53C briefly operated at an unstated but substantially higher source level. The unusual bathymetry and constricted channel where the strandings occurred were conducive to channeling sound. This, and the extended operations by multiple sonars, apparently prevented escape of the animals to the open sea. In addition to the strandings, there are reports that beaked whales were no longer present in the Providence Channel region after the event, suggesting that other beaked whales either abandoned the area or (perhaps) died at sea (Balcomb and Claridge, 2001).

Other strandings of beaked whales associated with operation of military sonars have also been reported (*e.g.,* Simmonds and Lopez-Jurado, 1991; Frantzis, 1998). In these cases, it was not determined whether there were noise-induced injuries to the ears or other organs. Another stranding of beaked whales (15 whales) happened on 24–25 September 2002 in the Canary Islands, where naval maneuvers were taking place.

It is important to note that seismic pulses and mid-frequency sonar pulses are quite different. Sounds produced by the types of airgun arrays used to profile sub-sea geological structures are broadband with most of the energy below 1 kHz. Typical military mid-frequency sonars operate at frequencies of 2 to 10 kHz, generally with a relatively narrow bandwidth at any one time (though the center frequency may change over time). Because seismic and sonar sounds have considerably different characteristics and duty cycles, it is not appropriate to assume that there is a direct connection between the effects of military sonar and seismic surveys on marine mammals. However, evidence that sonar pulses can, in special circumstances, lead to hearing damage and, indirectly, mortality suggests that caution is warranted when dealing with exposure of marine mammals to any high-intensity pulsed sound.

In addition to the sonar-related strandings, there was a recent (September 2002) stranding of two Cuvier's beaked whales in the Gulf of California (Mexico) when a seismic survey by the National Science Foundation/LDEO vessel *R/V Maurice Ewing* was underway in the general area (Malakoff, 2002). The airgun array in use during that project was the *Ewing*'s 20–gun 8490–in^3 array. This might be a first indication that seismic surveys can have effects, at least on beaked whales, similar to the suspected effects of naval sonars. However, the evidence linking the Gulf of California strandings to the seismic surveys is inconclusive, and to this date is not based on any physical evidence (Hogarth, 2002; Yoder, 2002). The ship was also operating its multi-beam bathymetric sonar at the same time but, as discussed later in this document, this sonar had much less potential than these naval sonars to affect beaked whales. Although the link between the Gulf of California strandings and the seismic (plus multi-beam sonar) survey is inconclusive, this plus the various incidents involving beaked whale strandings associated with naval exercises suggests a need for caution in conducting seismic surveys in areas occupied by beaked whales.

Non-auditory Physiological Effects

Possible types of non-auditory physiological effects or injuries that might occur in marine mammals exposed to strong underwater sound might, in theory, include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage. There is no proof that any of these effects occur in marine mammals exposed to sound from airgun arrays. However, there have been no direct studies of the potential for airgun pulses to elicit any of these effects. If any such effects do occur, they would probably be limited to unusual situations when animals mightbe exposed at close range for unusually long periods.

Long-term exposure to anthropogenic noise may have the potential to cause physiological stress that could affect the health of individual animals or their reproductive potential, which could theoretically cause effects at the population level (Gisner (ed.), 1999). However, there is essentially no information about the occurrence of noise-induced stress in marine mammals. Also, it is doubtful that any single marine mammal would be exposed to strong seismic sounds for sufficiently long that significant physiological stress would develop. This is particularly so in the case of broad-scale seismic surveys of the type planned by LDEO (see Fig. 1 in LDEO (2003)), where the tracklines are generally not as closely spaced as in many 3–dimensional industry surveys.

Gas-filled structures in marine animals have an inherent fundamental resonance frequency. If stimulated at this frequency, the ensuing resonance could cause damage to the animal. Diving marine mammals are not subject to the bends or air embolism because, unlike a human SCUBA diver, they only breath air at sea level pressure and have protective adaptations against getting the bends. There may be a possibility that high sound levels could cause bubble formation in the blood of diving mammals that in turn could cause an air embolism, tissue separation, and high, localized pressure in nervous tissue (Gisner (ed.), 1999; Houser *et al.*, 2001).

A recent workshop (Gentry (ed.), 2002) was held to discuss whether the stranding of beaked whales in the Bahamas in 2000 might have been related to air cavity resonance or bubble formation in tissues caused by exposure to noise from naval sonar. A panel of experts concluded that resonance in air-filled structures was not likely to have caused this stranding. Among other reasons, the air spaces in marine mammals are too large to be susceptible to resonant frequencies emitted by mid- or low-frequency sonar; lung tissue damage has not been observed in any mass, multi-species stranding of beaked whales; and the duration of sonar pings is likely too short to induce vibrations that could damage tissues (Gentry (ed.), 2002). Opinions were less conclusive about the possible role of gas (nitrogen) bubble formation/growth in the Bahamas stranding of beaked whales. Workshop participants did not rule out the possibility that bubble formation/growth played a role in the stranding and participants acknowledged that more research is needed in this area. The only available information on acoustically-mediated bubble growth in marine mammals is modeling that assumes prolonged exposure to sound.

In summary, little is known about the potential for seismic survey sounds to cause auditory impairment or other physical effects in marine mammals. Available data suggest that such effects, if they occur at all, would be limited to situations where the marine mm where the marine mammal is located at a short distance from the sound source. However, the available data do not allow for meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in these ways. Marine mammals that show behavioral avoidance of seismic vessels, including most baleen whales, some odontocetes, and some pinnipeds, are unlikely to incur auditory impairment or other physical effects.

Possible Effects of Mid-Frequency Sonar Signals

A multi-beam bathymetric sonar (Atlas Hydrosweep DS–2, 15.5–kHz) will be operated from the source vessel at most times during the Hess Deep survey. Sounds from the multibeam sonar are very short pulses, occurring for 1–10 msec once every 1 to 15 sec, depending on water depth. Most of the energy in the sound pulses emitted by this multi-beam sonar is at high frequencies, centered at 15.5 kHz. The beam is narrow (2.67°) in fore-aft extent, and wide (140°) in the cross-track extent. Each ping consists of five successive transmissions (segments) at different cross-track angles. Any given mammal at depth near the trackline would be in the main beam for only one or two of the five segments, i.e. for 1/5th or at most 2/5th of the 1– 10 msec.

Navy sonars that have been linked to avoidance reactions and stranding of cetaceans (1) generally are more powerful than the Atlas Hydrosweep, (2) have a longer pulse duration, and (3) are directed close to horizontally (vs. downward for the Hydrosweep). The area of possible influence of the Hydrosweep is much smaller (a narrow band below the source vessel). Marine mammals that encounter the Hydrosweep at close range are unlikely to be subjected to repeated pulses because of the narrow fore-aft width of the beam, and will receive only limited amounts of pulse energy because of the short pulses.

Masking by Mid-Frequency Sonar Signals

There is little chance that marine mammal communications will be masked appreciably by the multibeam sonar signals given the low duty cycle of the sonar and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of baleen whales, the sonar signals do not overlap with the predominant frequencies in the calls, which would avoid significant masking.

Behavioral Responses Resulting from Mid-Frequency Sonar Signals

Marine mammal behavioral reactions to military and other sonars appear to vary by species and circumstance. Sperm whales reacted to military sonar, apparently from a submarine, by dispersing from social aggregations, moving away from the sound source, remaining relatively silent and becoming difficult to approach (Watkins *et al.*, 1985). Other early and generally limited observations were summarized in Richardson *et al.* (1995, p. 301*ff*). More recently, Rendell and Gordon (1999) recorded vocal behavior of pilot whales during periods of active naval sonar transmission. The sonar signal was made up of several components each lasting 0.17 sec and sweeping up from 4 to 5 kHz. The pilot whales were significantly more vocal while the pulse trios were being emitted than during the intervening quiet periods, but did not leave the area even after several hours of exposure to the sonar.

Reactions of beaked whales near the Bahamas to mid-frequency naval sonars were summarized earlier. Following extended exposure to pulses from a variety of ships, some individuals beached themselves, and others may have abandoned the area (Balcomb and Claridge, 2001; NOAA and USN, 2001). Pulse durations from these sonars were much longer than those of the LDEO multi-beam sonar, and a given mammal would probably receive many pulses. All of these observations are of limited relevance to the present situation because exposures to multi-beam pulses are expected to be brief as the vessel passes by, and the individual pulses will be very short.

Captive bottlenose dolphins and a white whale exhibited changes in behavior when exposed to 1 sec pulsed sounds at frequencies similar to those that will be emitted by the multi-beam sonar used by LDEO (Ridgway *et al.*, 1997; Schlundt et al., 2000), and to shorter broadband pulsed signals (Finneran *et al.*, 2000, 2002). Behavioral changes typically involved what appeared to be deliberate attempts to avoid the sound exposure or to avoid the location of the exposure site during subsequent tests (Schlundt *et al.*, 2000; Finneran *et al.*, 2002). Dolphins exposed to 1–sec intense tones exhibited short-term changes in behavior above received sound levels of 178 to 193 dB re 1 μPa rms and belugas did so at received levels of 180 to 196 dB and above. Received levels necessary to elicit such reactions to shorter pulses were higher (Finneran *et al.*, 2000, 2002). Test animals sometimes vocalized after exposure to pulsed, mid-frequency sound from a watergun (Finneran *et al.*, 2002). In some instances, animals exhibited aggressive behavior toward the test apparatus (Ridgway et al., 1997; Schlundt et al., 2000). The relevance of these data to free-ranging odontocetes is uncertain. In the wild, cetaceans sometimes avoid sound sources well before they are exposed to the levels listed above, and reactions in the wild may be more subtle than those described by Ridgway *et al.* (1997) and Schlundt *et al.*(2000).

LDEO is not aware of any data on the reactions of pinnipeds to sonar sounds, although it is likely the pinniped species can detect these sounds given their hearing abilities (Kastak and Schusterman, 1995, 1998, 1999; see also a review in Richardson *et al.*, 1995). Some harp seals (*Pagophilus groenlandicus*) seemed to alter their swimming patterns (exhibited avoidance) when they were exposed to the beam of an echosounder, nominally operating at 200 kHz (Terhune, 1976); that frequency is above the range of effective hearing of seals. However, there was significant energy at lower frequencies that would be audible to a harp seal (Richardson et al., 1995). The behavior of ringed (*Phoca hispida*) and Weddell (*Leptonychotes weddelli*) seals fitted with acoustic pingers, transmitting at 60 to 69 kHz, did not seem to be affected by the sounds from these devices. Mate (1993) described experiments where aperiodic 12–17 kHz sound pulses of varying duration were effective, at source levels of 187 dB, in reducing harbor seal abundance near fish hatcheries (although a few older seals may have habituated and foraged nearby with modified techniques such that they were not seen as frequently). For California sea lions, the same system produced a dramatic initial startle response but was otherwise ineffective. Mate (1993) noted that many marine mammals will react to moving sound sources even if strong stationary sources are tolerated. Mate also noted that, by not using swept frequencies, this experimental acoustic source lost the illusion of motion that would have been simulated by Doppler-like frequency sweeps.

In summary, cetacean behavioral reactions to military and other sonars appear to vary by species and circumstance. While there may be a link between naval sonar use and changes in cetacean vocalization rates and movements, it is unclear what impact these behavioral changes (which are likely to be short-term) might have on the animals. Data on the reactions of pinnipeds to sonar sounds are lacking, but the few reports available on their reactions to other pulsed sounds suggest that they too would exhibit either no, or short-term, behavioral responses. Therefore, as mentioned previously, because simple momentary behavioral reactions that are within normal behavioral patterns for that species are not considered to be a taking, the very brief exposure of cetaceans to signals from the Hydrosweep is unlikely to result in a ''take'' by harassment.

Hearing Impairment and Other Physical Effects

Given recent stranding events that have been associated with the operation of naval sonar, there is much concern that sonar noise can cause serious impacts to marine mammals (for discussion see Effects of Seismic Surveys). It is worth noting that the multi-beam sonar proposed for use by LDEO is quite different than sonars used for navy operations. Pulse duration of the multi-beam sonar is very short relative to the naval sonars. Also, at any given location, an individual marine mammal would be in the beam of the multi-beam sonar for much less time given the generally downward orientation of the beam and its narrow fore-aft beamwidth. (Navy sonars often use near-horizontally-directed sound.) These factors would all reduce the sound energy received from the multi-beam sonar rather drastically relative to that from the sonars used by the Navy.

Estimates of Take by Harassment for the Hess Deep Cruise

As described previously in this document and in the LDEO application, animals subjected to sound levels above 160 dB may alter their behavior or distribution, and therefore might be considered to be taken by Level B harassment. However, the 160 dB criterion is based on studies of baleen whales. Odontocete hearing at low frequencies is relatively insensitive, and the dolphins generally appear to be more tolerant of strong sounds than are most baleen whales. For that reason, it has been suggested that for purposes of estimating incidental harassment of odontocetes, a 170 dB criterion might be appropriate.

Based on summer marine mammal survey data collected by NMFS and density calculations by Ferguson and Barlow (2001), LDEO used their average marine mammal density to compute a ''best estimate'' of the number of marine mammals that may be exposed to seismic sounds ≥160 dB re 1μPa (rms). The average densities were then multiplied by the proposed survey effort (912 and 189 km for the 10–gun and 12–gun array, respectively) and twice the 160 dB radius from the source vessel (the 160 dB radius was 6.5 and 7.25 km for the 10–gun and 12–gun array, respectively) to estimate the ''best estimate'' of the numbers of animals that might be exposed to sound levels ≥160 dB re 1μPa (rms) during the proposed seismic survey program. Separate estimates were made for the 10–gun and 12–gun arrays because the 160 dB radius was different for the two arrays (see Tables 5 and 6 in LDEO (2003)). Based on this method, the ''best estimate'' of the number of marine mammals that would be exposed to ≥160 dB (rms) and thus potentially taken by Level B harassment during the proposed survey is 8,901, including animals taken by both the 10–gun and 12–gun arrays. Of these, 12 animals would be endangered species, sperm whales (11) and a single blue whale. The species composition of cetaceans within the species groups shown in Tables 5 and 6 in LDEO (2003) is expected to be roughly in proportion to the densities shown for each species in Table 3 in LDEO (2003). Based on those densities, the numbers of each species that might be taken by Level B harassment are shown in Table 7 in LDEO (2003).

Dolphins would account for 96 percent of the overall estimate for potential taking by harassment (i.e., 8,532 of 8,901). While there is no agreement regarding any alternative ''take'' criterion for dolphins exposed to airgun pulses, if only those dolphins exposed to 170 dB re 1 μPa (rms) were affected sufficiently to be considered taken by Level B harassment, then the best estimate for dolphins would be 3,076 rather than 8,532. This is based on the predicted 170–dB radius around the 10– and 12–airgun arrays (2,330 and 2,680 m (7,644 and 7,742 ft), respectively), and is considered to be a more realistic estimate of the number of dolphins that may be disturbed. Therefore, the total number of animals likely to react behaviorally is considerably lower than the 8,901 that LDEO has estimated in Tables 5 and 6 (LDEO, 2003).

Conclusions—Effects on Cetaceans

Strong avoidance reactions by several species of mysticetes to seismic vessels have been observed at ranges up to 6 to 8 km and occasionally as far as 20–30 km from the source vessel. Some bowhead whales avoided waters within 30 km of the seismic operation. However, reactions at such long distances appear to be atypical of other species of mysticetes, and even for bowheads may only apply during migration.

Odontocete reactions to seismic pulses, or at least those of dolphins, are expected to extend to lesser distances than are those of mysticetes. Odontocete low-frequency hearing is less sensitive than that of mysticetes, and dolphins are often seen from seismic vessels. In fact, there are documented instances of dolphins approaching active seismic vessels. However, dolphins as well as some other types of odontocetes sometimes show avoidance responses and/or other changes in behavior when near operating seismic vessels.

Taking account of the mitigation measures that are planned, effects on cetaceans are generally expected to be limited to avoidance of the area around the seismic operation and short-term changes in behavior, falling within the MMPA definition of ''Level B harassment.'' In the cases of mysticetes, these reactions are expected to involve small numbers of individual cetaceans because few mysticetes occur in the areas where seismic surveys are proposed. LDEO's ''best estimate'' is that 10 Bryde's whales, or 0.1 percent of the estimated Eastern Equatorial Bryde's whale population, will be exposed to sound levels ≤160 dB re 1 μPa (rms) and potentially affected, and 1 blue whale, or 0.1 percent of the ''endangered'' ETP blue whale population, would receive >160 dB. Therefore, these potential takings by Level B harassment will have a negligible impact on their populations.

Larger numbers of odontocetes may be affected by the proposed activities, but the population sizes of the main species are large and the numbers potentially affected are small (<0.1 percent) relative to the population sizes. The total number of odontocetes that might be exposed to ≥160 dB re 1 μPa (rms) in the Hess Deep area is estimated as 8,890. Of these, 8,532 are delphinids, and of these about 3,076 might be exposed to ≥170 dB. These figures are <0.1 percent of the Eastern Equatorial populations of these combined species, and the 3,076 value (based on the >170 dB criterion) is believed to be a more accurate estimate of the number that could potentially be harassed under Level B.

The many cases of apparent tolerance by cetaceans of seismic exploration, vessel traffic, and some other human activities show that co-existence is possible. Mitigation measures such as controlled speed, look-outs, non-pursuit, ramp-ups, avoidance of start-ups during periods of darkness when possible, and shut-down when within defined ranges (See Mitigation) should further reduce short-term reactions to disturbance, and minimize any effects on hearing sensitivity.

Conclusions—Effects on Pinnipeds

Very few if any pinnipeds are expected to be encountered in the Hess Deep area. Thus a maximum of 20 pinnipeds in the Hess Deep area may be affected by the proposed seismic surveys. If pinnipeds are encountered, the proposed seismic activities would have, at most, a short-termed effect on their behavior and no long-term impacts on individual seals or their populations.

Responses of pinnipeds to acoustic disturbance are variable, but usually quite limited. Effects are expected to be limited to short-term and localized behavioral changes falling within the MMPA definition of Level B harassment.

Mitigation

For the proposed seismic operations in the Hess Deep, a 12–gun array with a total volume of 3721 in3 and a 10–gun array of 3005 in^3 will be used. The airguns comprising these arrays will be spread out horizontally, so that the energy from the array will be directed mostly downward. Modeled results for the 10– and 12–gun arrays indicate received levels to the 180 dB re 1 µPa (rms) isopleth (the criterion applicable to cetaceans) were 830 and 880 m (2,723 and 2,887 ft), respectively. The radii around the 10– and 12–gun arrays where the received level would be 190 dB re 1 µPa (rms) isopleth (lines of equal pressure), the criterion (applicable to pinnipeds), were estimated as 250 and 300 m (820 and 984 ft), respectively. Vessel-based observers will monitor marine mammals in the vicinity of the arrays. A calibration study planned for late May and/or June 2003 in the Gulf of Mexico is expected to determine the actual radii corresponding to each sound level. If the modeled radii have not been verified by the time of the Hess Deep surveys, LDEO proposes to use 1.5 times the 180– (cetaceans) and 190– (pinnipeds) dB radii predicted by the model as the safety radii until the radii have been verified. Thus, during the Hess Deep cruise the proposed safety radii for cetaceans are 1,245 and 1,320 m (4,085 and 4,331 ft), respectively, for the 10– and 12–gun arrays, and the proposed safety radii for pinnipeds are 375 and 450 m (1,230 and 1,476 ft), respectively. LDEO proposes to shut down the seismic source if marine mammals are observed within the proposed safety radii.

Also, LDEO proposes to use a ramp-up procedure when commencing operations. Ramp-up will begin with the smallest gun in the array that is being used (80 in^3 for the 10– and 12–gun arrays), and guns will be added in a sequence such that the source level of the array will increase at a rate no greater than 6 dB per 5–minutes.

Operational Mitigation

The directional nature of the two alternative airgun arrays to be used in this project is an important mitigating factor, resulting in reduced sound levels at any given horizontal distance than would be expected at that distance if the source were omnidirectional with the stated nominal source level. Also, the use of the 10– or 12–gun array of 3,005 or 3,721 in3 rather than the largest airgun array that the LDEO's source vessel can deploy (20 airguns totaling almost 8600 in3) is another significant mitigation measure.

Marine Mammal Monitoring

Vessel-based observers will monitor marine mammals near the seismic source vessel during all daylight airgun operations and during any nighttime startups of the airguns. Airgun operations will be suspended when marine mammals are observed within, or about to enter, designated safety zones where there is a possibility of significant effects on hearing or other physical effects. Vessel-based observers will watch for marine mammals near the seismic vessel during daylight periods with shooting, and for at least 30 minutes prior to the planned start of airgun operations. Observers will not be on duty during ongoing seismic operations at night; bridge personnel will watch for marine mammals during this period and will call for the airguns to be shut down if marine mammals are observed in or about to enter the safety radii. If the airguns are started up at night, two marine mammal observers will monitor marine mammals near the source vessel for 30 minutes prior to start up using night vision devices as described later (see Monitoring and Reporting).

Two observers will be stationed on the *R/V Maurice Ewing* during seismic operations in the Hess Deep area. The *R/V Maurice Ewing* is a suitable platform for marine mammal observations. The observer's eye level will be approximately 11 m (36 ft) above sea level when stationed on the bridge, allowing for good visibility within a 210° arc for each observer. The proposed monitoring plan is summarized later in this document.

Proposed Safety Radii

Received sound levels have been modeled for the 10–, 12–, and 20–air gun arrays (but the 20–gun array will not be used during the Hess Deep Project). Based on the modeling, estimates of the 190, 180, 170, and 160 dB re 1 µPa (rms) distances (safety radii) for these arrays have been provided previously in this document. Acoustic measurements in shallow and deep water will be taken, in order to check the modeled received sound levels from these arrays. This verification is expected to occur in June 2003 in the Gulf of Mexico. If verification of the safety radii does not occur before the start of the proposed program, then conservative safety radii will be used during the proposed Hess Deep seismic surveys. Conservative radii will be 1.5 times the distances indicated for the 10- and 12–airgun arrays to be used in the Hess Deep area. Thus, during the Hess Deep cruise the proposed conservative safety radii for cetaceans are 1,245 and 1,320 m (4,085 and 4,331 ft), for the 10– and 12–gun arrays, respectively, and the proposed conservative safety radii for pinnipeds are 375 and 450 m (1,230 and 1,476 ft), respectively.

Airgun operations will be suspended immediately when cetaceans are seen within or about to enter the appropriate 180–dB (rms) radius, or if pinnipeds are seen within or about to enter the 190–dB (rms) radius. These 190 and 180 dB criteria are consistent with guidelines listed for pinnipeds and cetaceans by NMFS (2000) and other guidance by NMFS.

Mitigation During Operations

The following mitigation measures, as well as marine mammal monitoring, will be adopted during the Hess Deep seismic survey program and the acoustic verification program, provided that doing so will not compromise operational safety requirements:

(1) Course alteration; (2) Shut-down procedures; and (3) Ramp-up procedures.

Course Alteration

If a marine mammal is detected outside the safety radius and, based on its position and the relative motion, is likely to enter the safety radius, alternative ship tracks will be plotted against anticipated mammal locations. The vessel's direct course and/or speed will be changed in a manner that also minimizes the effect to the planned science objectives. The marine mammal activities and movements relative to the seismic vessel will be closely monitored to ensure that the marine mammal does not approach within the safety radius. If the mammal appears likely to enter the safey radius, further mitigative actions will be taken, i.e., either further course alterations or shutdown of the airguns.

Shutdown Procedures

Vessel-based observers will monitor marine mammals near the seismic vessel during daylight and for 30 minutes prior to start up during darkness throughout the program. Airgun operations will be suspended immediately when marine mammals are observed within, or about to enter, designated safety zones where there is a possibility of physical effects, including effects on hearing (based on the 180 and 190 dB criteria specified by NMFS). The

shutdown procedure should be accomplished within several seconds or one shot period of the determination that a marine mammal is within or about to enter the safety zone. Airgun operations will not resume until the marine mammal is outside the safety radius. Once the safety zone is clear of marine mammals, the observer will advise that seismic surveys can re-commence. The ''ramp-up'' procedure will then be followed.

Ramp-up Procedure

A ''ramp-up'' procedure will be followed when the airgun arrays begin operating after a specified-duration period without airgun operations. Under normal operational conditions (vessel speed 4–5 knots), a ramp-up would be required after a ''no shooting'' period lasting 2 minutes or longer. At 4 knots, the source vessel would travel 247 m (810 ft) during a 2–minute period. If the towing speed is reduced to 3 knots or less, as sometimes required when maneuvering in shallow water (not a factor in Hess Deep), it is proposed that a ramp-up would be required after a ''no shooting'' period lasting 3 minutes or longer. At towing speeds not exceeding 3 knots, the source vessel would travel no more than 277 m (909 ft) in 3 minutes. These guidelines would require modification if the normal shot interval were more than 2 or 3 min, respectively, but that is not expected to occur during the Hess Deep project.

Ramp-up will begin with the smallest gun in the array that is being used (80 in^3 for the 10– and 12–gun arrays). Guns will be added in a sequence such that the source level of the array will increase in steps not exceeding 6 dB per 5–minute period over a total duration of approximately 18–20 min (10–12 gun arrays).

Monitoring and Reporting

LDEO proposes to conduct marine mammal monitoring of its 2003 seismic program in the Hess Deep and acoustical verification of safety radii, in order to satisfy the anticipated requirements of the IHA.

Vessel-based Visual Monitoring

Two observers dedicated to marine mammal observations will be stationed aboard LDEO's seismic survey vessel for the seismic survey in the Hess Deep area. It is proposed that one or both marine mammal observers aboard the seismic vessel will search for and observe marine mammals whenever seismic operations are in progress during daylight hours. When feasible, two observers will be on duty for at least 30 minutes prior to the start of seismic shooting and during ramp-up procedures. The 30–minute observation period is only required prior to commencing seismic operations following an extended shut down period.

If ramp-up procedures must be performed at night, two observers will be on duty 30 minutes prior to the start of seismic shooting and during the subsequent ramp-up procedures. Otherwise, no observers will be on duty during seismic operations at night. However, LDEO bridge personnel (port and starboard seamen and one mate) will assist in marine mammal observations whenever possible, and especially during operations at night, when designated marine mammal observers will not normally be on duty. A marine mammal observer will be on ''standby'' at night, in case bridge personnel see a marine mammal. An image-intensifier night-vision device (NVD) will be available for use at night, although past experience has shown that NVDs are of limited value for this purpose.

The observer(s) will watch for marine mammals from the bridge, the highest practical vantage point on the vessel. The observer's eye level will be approximately 11 m (36 ft) above see level when stationed on the bridge, allowing for good visibility within a 210° arc. The observer(s) will systematically scan the area around the vessel with 7 X 50 Fujinon reticle binoculars or with the naked eye during the daytime. At night, night vision equipment will be available (ITT F500 Series Generation 3 binocular image intensifier or equivalent), if required. Laser rangefinding binoculars (Bushnell Lytespeed 800 laser rangefinder with 4 optics or equivalent) will be available to assist with distance estimation. If a marine mammal is seen well outside the safety radius, the vessel may be maneuvered to avoid having the mammal come within the safety radius (see Mitigation). When mammals are detected within or about to enter the designated safety radii, the airguns will be shut down immediately. The observer(s) will continue to maintain watch to determine when the animal is outside the safety radius. Airgun operations will not resume until the animal is outside the safety radius.

The vessel-based monitoring will provide data required to estimate the numbers of marine mammals exposed to various received sound levels, to document any apparent disturbance reactions, and thus to estimate the numbers of mammals potentially taken by Level B harassment. It will also provide the information needed in order to shut down the airguns at times when mammals are present in or near the safety zone. When a mammal sighting is made, the following information about the sighting will be recorded: (1) Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to seismic vessel (e.g., none, avoidance, approach, paralleling, etc.), and behavioral pace; and (2) Time, location, heading, speed, activity of the vessel (shooting or not), sea state, visibility, cloud cover, and sun glare. The data listed under (2) will also be recorded at the start and end of each observation watch and during a watch, whenever there is a change in one or more of the variables.

All mammal observations and airgun shutdowns will be recorded in a standardized format. Data will be entered into a custom database using a laptop computer when observers are off-duty. The accuracy of the data entry will be verified by computerized validity data checks as the data are entered and by subsequent manual checking of the database. These procedures will allow initial summaries of data to be prepared during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical or other programs for further processing and archiving.

At least one experienced marine mammal observer will be on duty aboard the seismic vessel. During seismic operations in the Hess Deep area, two observers, including one qualified contract biologist and one observer appointed by LDEO, will be based aboard the vessel. Observers appointed by LDEO will complete a one-day training/refresher course on marine mammal monitoring procedures, given by a contract employee experienced in vessel-based seismic monitoring projects.

Observers will be on duty in shifts of duration no longer than 4 hours. The second observer will also be on watch part of the time, including the 30 minute periods preceding startup of the airguns and during ramp ups. Use of two simultaneous observers will increase the proportion of the marine mammals present near the source vessel that are detected. Bridge personnel additional to the dedicated marine mammal observers will also assist in detecting marine mammals and implementing mitigation requirements, and before the start of the seismic survey will be given instruction in how to do so.

Results from the vessel-based observations will provide (1) The basis for real-time mitigation (airgun shutdown); (2) Information needed to estimate the number of marine mammals potentially taken by harassment, which must be reported to NMFS; (3) Data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted; (4) Information to compare the distance and distribution of marine mammals relative to the source vessel at times with and without seismic activity; and (5) Data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

Acoustical Measurements

The acoustic measurement program is designed to verify the safety radii that will be used to determine when the air guns will be shut down to prevent marine mammals from being exposed to seismic sounds 180 (cetaceans) or 190 dB re 1µPa (rms) (pinnipeds)(see Mitigation). It will also provide the specific acoustic data needed to document the seismic sounds to which marine mammals are exposed at various distances from the seismic source, as necessary to improve the estimates of potential take by harassment and to interpret the observations of marine mammal distribution, behavior, and headings. It appears most likely that acoustical measurements will be conducted in the Gulf of Mexico during June when LDEO's vessel will be in that area for other purposes. Acoustic studies will obtain data on characteristics of the seismic survey sounds as a function of distance in deep and shallow water.

Additional details about the methods, timing and location of the acoustical verification study are provided in the LDEO application; additional information on monitoring will be provided by LDEO in an addendum to its application as plans for this effort become more specific. That addendum will address the marine mammals that might be exposed to airgun sounds during the verification study.

A report will be submitted to NMFS within 90 days after the end of the seismic program in the Hess Deep area. The end of the Hess Deep program is predicted to occur on or about July 28, 2003. The report will cover the seismic surveys in the Hess Deep area and will be submitted to NMFS, providing full documentation of methods, results, and interpretation pertaining to all monitoring tasks. The 90–day report will summarize the dates and locations of seismic operations, sound measurement data, marine mammal sightings (dates, times, locations, activities, associated seismic survey activities), and estimates of the amount and nature of potential ''take'' of marine mammals by harassment or in other ways.

Endangered Species Act (ESA)

Under section 7 of the ESA, NMFS has begun consultation on the proposed issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded prior to the issuance of an IHA.

National Environmental Policy Act (NEPA)

The NSF has prepared an EA for the Hess Deep survey. NMFS is reviewing this EA and will either adopt it or prepare its own NEPA document before making a determination on the issuance of an IHA. A copy of the NSF EA for this activity is available upon request (see **ADDRESSES**).

Preliminary Conclusions

NMFS has preliminarily determined that the short-term impact of conducting a seismic survey program in the Hess Deep portion of the Eastern Equatorial Pacific Ocean will result, at worst, in a temporary modification in behavior by certain species of marine mammals. While behavioral modifications may be made by these species as a result of seismic survey activities, this behavioral change is expected to result in no more than a negligible impact on the affected species.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential harassment takings is estimated to be small. In addition, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment is low and will be avoided through the incorporation of the mitigation measures mentioned in this document.

Proposed Authorization

NMFS proposes to issue an IHA to LDEO for conducting a seismic survey program in the Hess Deep portion of the Eastern Equatorial Pacific Ocean, 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 marine mammals; would have no more than a negligible impact on the affected marine mammal stocks; and would not have an unmitigable adverse impact on the availability of stocks for subsistence uses.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this request (see **ADDRESSES**).

Dated: April 7, 2003.

Laurie K. Allen,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–9057 Filed 4–11–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032502D]

Notice of Availability of Final Stock Assessment Reports

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of completion and availability of final marine mammal stock assessment reports; response to comments.

SUMMARY: NMFS has incorporated public comments into revisions of marine mammal stock assessment reports (SARs). The 2002 final SARs are now complete and available to the public.

ADDRESSES: Send requests for printed copies of reports to: Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226, Attn: Stock Assessments.

Copies of the Alaska Regional SARs may be requested from Robyn Angliss, Alaska Fisheries Science Center (F/AKC), NMFS, 7600 Sand Point Way, NE BIN 15700, Seattle, WA 98115–0070, e-mail Robyn.Angliss@noaa.gov.

Copies of the Atlantic and Gulf of Mexico Regional SARs may be requested from Janeen Quintal, Northeast Fisheries Science Center, 166 Water St., Woods Hole, MA 02543, e-mail Janeen.Quintal@noaa.gov or Steven Swartz, Southeast Fisheries Science Center, 75 Virginia Beach Dr., Miami, FL 33149, e-mail Steven.Swartz@noaa.gov.

Copies of the Pacific Regional SARs may be requested from Cathy Campbell, Southwest Regional Office (F/SWO3), NMFS, 501 West Ocean Boulevard, Long Beach, CA 90802–4213, e-mail Cathy.E.Campbell@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Tom Eagle, Office of Protected Resources, 301–713–2322, e-mail Tom.Eagle@noaa.gov; Robyn Angliss 206–526–4032, regarding Alaska regional stock assessments; Janeen Quintal, 508–495–2252, regarding Northwest Atlantic regional stock assessments; Steven Swartz, 305–361–4487, regarding Mid-Atlantic and Gulf of Mexico regional stock assessments; or Cathy Campbell, 562–980–4020, regarding Pacific regional stock assessments.

SUPPLEMENTARY INFORMATION:

Electronic Access

All stock assessment reports and the guidelines for preparing them are available via the Internet at *http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html*.

Background

Section 117 of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*) requires NMFS and the U.S. Fish and Wildlife Service (FWS) to prepare stock assessments for each stock of marine mammals that occurs in waters under the jurisdiction of the United States. These reports must, among other things, contain information regarding the distribution and abundance of the stock, population growth rates and trends, estimates of annual human-caused mortality and serious injury from all sources, descriptions of the fisheries with which the stock interacts, and the status of the stock. Initial reports were completed in 1995.

The MMPA requires NMFS and FWS to review the SARs at least annually for strategic stocks and stocks for which significant new information is available and at least once every 3 years for non-strategic stocks. NMFS and the FWS are required to revise a SAR if the status of the stock has changed or can be more accurately determined.

Draft 2002 SARs were made available for a 90–day public review and comment period on April 19, 2002 (67 FR 19417). Prior to their release for public review and comment, NMFS subjected the draft reports to internal technical review and to scientific review by regional Scientific Review Groups (SRGs) established under the MMPA. Following the close of the comment period, NMFS revised the reports as needed to prepare final 2002 SARs. Printed copies may be obtained by request (see **ADDRESSES**).

The FWS updated the most recent versions of the SARs for polar bears, sea otters, walrus, and manatees and they were appended to NMFS' final 2002 SARs. These reports were included so that interested constituents would have reports for all regional stocks in a single document.

Comments and Responses

NMFS received two letters, one from the National Wildlife Federation and the other from the Marine Mammal Commission (MMC) which contained comments on the draft 2002 SARs. The comments and responses below are separated according to the regional scope of the comments. Many of the comments on specific SARs addressed minor editorial points for clarification. Most of these comments were included into the final reports or will be included in future reports and are not included in the following segment of this document.

Comments on National Issues

Comment 1: Combining species groups is inconsistent with Sections 117 and 3(11) of the MMPA. Also, species with lower abundance, slower growth rates, and higher interaction (mortality and serious injury) rates may be more vulnerable to fisheries and other human activities, and the risk to those species may be increased when analyses are conducted on species groups.

Response: NMFS concurs that some populations or species may be more vulnerable to human-caused mortality than others; however, NMFS disagrees that stock assessment reports describing groups of populations or stocks are necessarily inconsistent with the MMPA. The MMPA states that stock assessment reports must be based upon the best scientific information available. In many cases, the best available information is limited to species groups. For example, in its initial SARs, NMFS reported on each species of beaked whale in a separate report, and most reports indicated that the species-specific abundance and mortality estimates used in management decisions were unknown. Thus, the species-specific reports were not informative. As a result, NMFS, in consultation with the SRGs, prepared subsequent reports for beaked whales and some other stocks as grouped reports. The information in these grouped reports must be interpreted with caution to avoid the conservation issues identified in this comment. When the methodologies to obtain data supporting stock-specific reports are available and sufficient data are collected, NMFS will use these methods to collect and analyze the appropriate information to prepare separate reports on each stock of beaked whale and other marine mammals where grouped data are used.

Comment 2: Requiring confirmation of human-caused effects to assess serious injuries and mortalities is contrary to the precautionary approach and incorporates several sources of negative bias; thus, it may not represent the best scientific information available. NMFS should report all injuries that could be serious and provide the rationale for discounting them in mortality estimates. An alternative approach, which was recommended in NMFS's 1997 workshop on differentiating serious and non-serious injuries would be to prorate cases where seriousness could not be determined using data from cases where such determination could be made. These approaches would provide a more realistic view of the uncertainty associated with the potential effects of fishing and other human activities.

Response: NMFS realizes that requiring evidence that human factors were, indeed, related to deaths of marine mammals could result in an underestimate of such mortality and may not be the most precautionary assessment of human-caused mortality. Most cases where we require such confirmation are those mortalities identified from stranded carcasses. These stranding records provide only minimum estimates of mortality, and the value of such data is related more to illustrating where quantitative data are needed rather than as substitutes for more reliable estimates. NMFS will continue using the summary approach in the SARs to realize the benefit of short documents that describe the status of each stock of marine mammal. Longer-more detailed discussion of this summary information will be contained in supporting reports and data, and this supporting information will continue to be cited in the reference section of each report.

Comment 3: The SARs are inconsistent in their use of observer data. For example, an observed mortality of one humpback whale as a result of a fishery interaction in the Pacific was not used as a basis for extrapolation because observer coverage was less than one percent; however, observer coverage of less than one percent is extrapolated for several Atlantic fisheries that appear to take large numbers of marine mammals. Also, the use of estimates based upon low levels of observer coverage and the use of a 5–year average fail to inspire confidence in the resulting estimates and are not sufficiently reliable to assess the efficacy of take reduction measures.

Response: In the case of the Central North Pacific stock of Humpback whales, the observed take was not used

because it was more than 5 years old, not because only one mortality was observed. If the single observed take had been no more than 5 years old, the observed take would have been extrapolated to a mortality estimate. Thus, both reports are consistent with existing guidelines.

Uncertainty in mortality estimates due to low levels of observer coverage does, indeed, make it difficult to assess the efficacy of take reduction measures. However, low levels of observer coverage are primarily a result of budget limitations. NMFS considers monitoring in fisheries with an existing take reduction plan or in fisheries for which take reduction plans are being developed as its highest priorities. These priorities are consistent with priorities for observer coverage provided in the MMPA. NMFS gives priority to monitoring incidental takes and development and implementation of take reduction plans for commercial fisheries that have incidental mortality and serious injury of strategic stocks of marine mammals. Unfortunately, due to insufficient funding, NMFS will continue to have some fisheries for which incidental mortality estimates are highly uncertain due to low levels of observer coverage.

Comment 4: The Atlantic and Gulf of Mexico SAR does not adhere to the requirements of the MMPA regarding inclusion of descriptive data on fisheries that interact with marine mammals.

Response: The individual Atlantic and Gulf of Mexico SARs contain summary data for fisheries that interact with marine mammals. In addition a new table (Appendix I) has been added to the 2002 report, which provides the required information in summary form. Presenting the fishery descriptions in a single table avoids unnecessary duplication in the descriptions of fisheries where the same fishery interacts with several stocks of marine mammals.

Comment 5: Data standards need to be established to set the level of observer coverage for each fishery, particularly Atlantic trawl fisheries. The development and implementation of data standards should provide assurance that the effect of fisheries and other human activities are being assessed reliably.

Response: NMFS concurs that the level of observer coverage in Atlantic trawl fisheries has been insufficient to obtain reliable bycatch estimates. However, using data standards to set observer levels is not likely to alleviate this problem because observer coverage is limited by available funding.

Alaska Regional SARs

Comment 6: The SAR for the western stock of Steller sea lions includes fishery-specific mean annual mortality levels that are more than a decade old. The report should either explain why such data are considered reliable indicators of current take levels or remove the data from the table.

Response: NMFS agrees that some estimates of fishery-specific incidental mortality are quite old. Removing the data from the table would result in an apparent decrease in take level, which could lead the reader to conclude that mortalities have not occurred incidental to these fisheries. Thus, because these take levels constitute the best available information on the level of incidental mortality in these fisheries, the data will be retained in the table.

Comment 7: It is not clear why harbor seal stock structure designations in Alaska have not yet been changed. The genetics studies that are providing the basis for the revision were initiated 4 to 5 years ago, and the studies have since provided the best available scientific information upon which to base a revision of stocks. NMFS has been fully informed of the results and should have anticipated the possibility that they would indicate a more complex stock structure than was recognized in the past. The need for a stock-specific management program seems clear based on significant harbor seal declines in a number of locations in Alaska.

Response: NMFS is evaluating the stock structure of harbor seals in Alaska through a process that includes discussions with the Alaska Native Harbor Seal Commission under a co-management agreement. NMFS and the Harbor Seal Commission have discussed the available scientific information, and the next steps include compiling and incorporating Alaska Natives' knowledge into a recommended population structure.

Comment 8: The SAR for the eastern Chukchi Sea stock of beluga whales includes an estimate of 3,710 whales which is now based on data that are more than 8 years old. This estimate should be treated as outdated unless evidence can be provided that it is still a valid estimate.

Response: NMFS agrees that the estimate of 3,710 obtained from surveys conducted in 1989–91 would generally be considered outdated. However, the maximum count from surveys in 1998 (1,172 animals) is very similar to the maximum count during the summers of 1989–91 (- 1,200 animals). In addition, both counts are similar to those conducted in the summer of 1979. These counts indicate that no major changes in abundance have occurred; thus, the use of the older estimate is consistent with SAR guidelines. The SAR for this stock will next be reviewed in 2004; at that time, NMFS will revisit whether using this information for abundance is still appropriate.

Comment 9: The SAR for the Chukchi Sea stock of beluga whales does not provide sufficient information to distinguish between two alternative hypotheses: (1) There have been no takes of beluga whales as a result of gillnet and personal-use fisheries and (2) there have been takes but they have not been reported. The conclusion drawn is consistent with the first hypothesis, but the basis for distinguishing between these hypotheses is not clear and should be explained.

Response: The only data available to distinguish between these two hypotheses are contained in injury reports. No injuries (including mortalities) have been reported; therefore, the best available data support the hypothesis that no mortality incidental to the personal-use fisheries has occurred. Most beluga whales taken in personal-use fisheries are used for subsistence purposes and are reported as subsistence takes through the Alaska Beluga Whale Committee; thus, the estimate of total human-caused mortality is not significantly affected.

Comment 10: The SAR for the Cook Inlet stock of beluga whales indicates that there were no indications that the large stranding events from 1996–1999 resulted from human interactions. However, the information provided in the SAR does not indicate the nature and extent of efforts to determine the cause, so the reader cannot distinguish between (1) the events were unrelated to human activities and (2) the events were related to human activities but the relationship was not evaluated or detected. Essentially, it is not clear that the causes of the stranding events could be determined, and if this is the case, the SAR should state as much.

Response: The exact cause of the stranding cannot be determined. Stranding records and a knowledge of the dynamics of Cook Inlet (e.g., tidal changes) indicate that human factors were not responsible for the mass strandings.

Comment 11: The SAR for the Cook Inlet stock of beluga includes a statement in the section entitled ''Habitat Concerns'' that there is no indication that municipal, commercial, and industrial activities have had a quantifiable adverse impact on the beluga whale population. The absence

of evidence in support of a particular hypothesis is not necessarily evidence that the hypothesis is false if a rigorous, powerful investigation has not been conducted.

Response: Specific investigations have not been carried out to determine whether municipal, commercial, and industrial activities have had a quantifiable adverse impact on the bowhead whale population. However, a review of the available information indicated that the observed population decline could be explained solely by subsistence harvest levels. Further, a review of available information on Cook Inlet beluga whales and their habitat did not provide any indication that activities other than the harvest were resulting in population-level effects.

Comment 12: The SAR for eastern North Pacific northern resident killer whale states that a population increases at the maximum growth rate only when the population is at extremely low levels; thus, the estimate of 2.92 percent is not a reliable estimate of Rmax. While this statement may be generally true, or at least is consistent with density-dependence theory, it is not necessarily always the case, particularly for K-selected species in fluctuating environments (e.g., where life history or vital rates are limited by biological rather than ecological factors). In these cases, growth rates could approximate Rmax at intermediate population levels.

Response: NMFS agrees that population growth rates could approximate Rmax at intermediate population levels. However, the generalized logistic model is the best available scientific information in this case. Under the logistic model, Rmax occurs only when population levels are low.

Comment 13: The AT1 group of transient killer whales is a discrete unit and should be a stock separate from the North Pacific transient killer whale stock.

Response: This comment was subsequently attached to a petition submitted to NMFS pursuant to section 115 of the MMPA requesting that the AT1 group of killer whales be recognized as a separate stock and designated as depleted. NMFS is currently evaluating the petition and will respond as required by the MMPA. If stock structure of transient killer whales in Alaska is modified as a result of this evaluation, NMFS will modify the SARs accordingly.

Comment 14: The range of observer coverage is not provided in Table 22 of the Gulf of Alaska harbor porpoise SAR. Although there is almost no observer coverage for gillnet fisheries that take harbor porpoise, the level of coverage should be provided.

Response: The SARs for harbor porpoise were not updated in 2002. These SARs will be updated in 2003 and information on the range of observer coverage will be provided at that time.

Comment 15: It is not clear how estimated mortality rates were calculated from observed mortality rates in the SARs for Dall's porpoise. For example, observed mortality in 1990 was 6, and at the 74 percent coverage, the estimated mortality should have been 8.

Response: The estimated mortality rates cannot be calculated directly by multiplying the observer coverage by the observed mortality for the Bering Sea/Aleutian Islands groundfish trawl fishery. The overall estimated mortality rates, which are provided in the SAR, were calculated by multiplying the observer coverage in each fishery management zone by the observed mortality rates in each zone and summing the estimated mortality levels per zone. The level of observer coverage reflected in the table is the average over all the zones. Thus, if the observer coverage in one area is very high, the estimated mortality level will be only slightly higher than the observed mortality level, as was the case in 1990.

Comment 16: The population size and minimum population abundance estimates for the central North Pacific humpback whale are both based on data from 1991–1993 and are, therefore, out of date.

Response: In 2002, NMFS convened a small workshop to begin the development of a new estimate for a portion of this stock, and preliminary information will be available to include in the draft SAR for 2003. Because the estimate based on the 1991–1993 information is the best available for this stock, it will be retained until a new estimate is available.

Comment 17: The SAR for the North Pacific right whale states that there are no known habitat issues for this stock and also indicates that the NMFS has been petitioned to designate critical habitat for this species. These two statements seem inconsistent. More importantly, a concern leading to the petition seems to have been ignored. The only recent observations of right whales have occurred in an area where much commercial fishing occurs. If whales are disturbed by fishing activities, their use of potentially important habitat may be precluded by the presence of fishing vessels and fishing operations that generate extensive noise.

Response: There is not necessarily an inconsistency simply because the SAR states no habitat concerns concurrently with NMFS receiving a petition to designate critical habitat. Although petitioners expressed a concern that commercial fishing vessels may disturb whales by generating excessive noise, preliminary results of studies conducted on North Atlantic right whales indicate the whales have not changed their distribution or behavior in response to vessel noise. It is premature to list vessel disturbance as a ''concern'' in the SAR until the impacts of vessel noise on behavior or distribution is better understood.

Atlantic Regional SARs

Comment 18: The section of the Western North Atlantic right whale SAR related to net productivity rates states that no population growth rate can be used because the population is in decline.

Response: NMFS changed the PBR of this stock of right whales to 0.0 in the 2000 revision of the SARs. At that time, it was estimated that the stock was not likely to recover to its Optimum Sustainable Population levels if there was any recurring human-caused mortality. Because the population remains small and critically endangered, NMFS continues to hold that position. Therefore, whether or not there is a value that could be reported for the maximum net productivity rate, NMFS maintains that the PBR for the stock is 0.0 and that this estimate is consistent with the definition of PBR.

Comment 19: The population estimate for the Western North Atlantic stock of blue whales is at least 15 years old, therefore, cannot be assumed to be a reliable, current estimate.

Response: NMFS agrees, and a blue whale PBR has not been calculated in the final report.

Comment 20: SARs should not be limited to records of mortality and serious injury that occur only in the U.S. Exclusive Economic Zone (EEZ). Similar to other species reports, all human caused mortality of Western North Atlantic blue whales should be included in the report.

Response: NMFS does not have mortality data on Western North Atlantic blue whales outside U.S. waters and is not aware of incidents of human-caused deaths or serious injury on this population.

Comment 21: The ''Fishery Interaction'' section of the SAR for common dolphins (Western North Atlantic stock) describes a pelagic longline fishery, but the level of take is not provided in the text or in Table 2.

Response: Although 16 common dolphins were killed incidental to the pelagic longline fishery between 1990–2000, no animals were killed or seriously injured during the 5–year period (1996–2000). Therefore, the data were not included in Table 2.

Pacific Regional SARs

Comment 22: For Hawaiian monk seals, the pattern of residuals in the graph showing mean number of non-pups by year suggests that the fitted model may be too linear, and other models should be investigated to provide a better fit. The title for the Y-axis overlaps the units of measurement and is difficult to read.

Response: NMFS is currently investigating other analyses to interpret the data more precisely. However, the slope of the current model provides an average rate of population decline during the entire period covered in the graph.

Comment 23: Data for population size of Hawaiian Monk Seals in 2001 are available, and it would be useful to include them in the discussion and the graph.

Response: Although the data for 2001 are currently available, the estimates resulting from these data were not completed and reviewed prior to completion of the 2002 draft SARs. The new estimates will be included in future drafts for public review and comment.

Comment 24: In the fourth paragraph in the Hawaiian monk seal section and in the section on Other Mortality, references to biotoxins (e.g., ciguatoxins) have been removed. Although mortality due to biotoxins has not been confirmed, it has long been a matter of concern stemming largely from (1) the 1978 mass mortality of seals at Laysan Island, which may have resulted from ciguatoxins, and (2) observations that monk seals consumed fish that were discarded during bottomfish operations because those fish are known to contain potentially high levels of biotoxins (i.e., were not considered fit for human consumption). The lack of confirmation that biotoxins do, in fact, cause mortality could indicate they do not, but it could also indicate that methods for detection or monitoring of such mortality are inadequate. In view of the fact that the potential threat posed to monk seals by biotoxins cannot be reliably characterized and concerns about such threats appear to be justified on the basis of the existing information on monk seals (as well as information on biotoxin effects on other marine mammal species), this potential source of mortality should be described in the report.

Response: The role of biotoxins, such as ciguatoxin, in mortality of monk seals remains speculative. Any number of other factors could also be hypothesized to cause mortality to monk seals, but are not listed because they are not confirmed. As relevant information becomes available, NMFS will include a summary of this information in the SARs, including the effects of biotoxins on monk seals.

Comment 25: In the Fisheries Information section, there was confusion over the total number of sets and hooks fished in Hawaiian waters.

Response: Two sets of values were presented: one for Hawaii-based vessels and another for vessels landing on the U.S. west coast (excluding Alaska and Hawaii). The reported value of 20.2 million hooks fished in 2000 refers to Hawaiian-based vessels, which corresponds to approximately 12,000 fishing trips, or 1,700 hooks per set. The cited value of 285 sets in year 2000 refers to boats landing on the continental U.S. west coast. Information on the number of Hawaiian-based sets will be clarified in the final stock assessment.

Comment 26: The commenter noted that the abundance of false killer whales in regions yet unsurveyed is unknown, nor has their presence been established in the Northwestern Hawaiian Islands. The commenter also suggested that it might be more accurate to state that current estimates are negatively biased, with the extent of the potential bias being unknown.

Response: The abundance of Hawaiian false killer whales outside of previously surveyed areas is unknown, but their presence has been documented through longline fishery interactions. Given even a low density of animals outside previously surveyed areas and the large expanse of the study area, new population estimates are likely to exceed the currently published estimate by an unknown amount. Thus the current aerial survey estimate represents an underestimate, owing to a lack of survey coverage throughout the stock's range. Current abundance estimates are also negatively-biased because correction factors for the proportion of animals missed by the survey aircraft due to diving (availability bias) and poor searching conditions (perception bias) are not available. A research cruise conducted in summer and autumn 2002 in the Hawaiian EEZ is expected to provide reliable estimates of abundance of false killer whales throughout the Hawaiian EEZ. Revised abundances estimates for Hawaiian cetaceans are expected to appear in the 2004 SARs, which will be reviewed by the Pacific SRG in late summer and fall of 2003 prior to public review and comment.

Comment 27: In Table 1 of the Fisheries Information section for harbor porpoise (Oregon/Washington coastal stock), estimates of mean annual take have not been included even though estimated mortality levels are included and, in most cases, are not zero. Although the observed mortality was recorded during experiments with pingers, it is not clear why the resulting take levels are not carried over into the final column.

Response: The mean annual take is included in Table 1 and is calculated as the average of the most recent 5 years of mortality estimates. The mean annual take of 9 (CV=0.62) harbor porpoise, calculated for the northern Washington marine set gillnet fishery in 1996–2000, includes mortality estimates for two of the years (1996 and 1997) in which acoustic alarm experiments were conducted in this fishery.

Dated: April 7, 2003.

Laurie K. Allen,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–9058 Filed 4–11–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040903A]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a joint public meeting via conference call of the Reef Fish Advisory Panel (AP) and Reef Fish Scientific and Statistical Committee (SSC).

DATES: The meeting will be via conference call on April 28, 2003 beginning at 10 a.m. EDT.

ADDRESSES: Listening stations will be available at the following locations:

1. NMFS Southeast Regional Office, 9721 Executive Center Drive, North, St. Petersburg, FL 33702, Contact: Larry Kelley at 727–570–5301;

2. NMFS Panama City Laboratory, 3500 Delwood Beach Road, Panama City, FL, Contact: Gary Fitzhugh at 850–234–6541, extension 214.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S.

Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Population Dynamics Statistician, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The AP and Reef Fish SSC will be convened to review and comment on a proposed Amendment 21 to the Reef Fish Fishery Management Plan (FMP) to extend the time period for the Madison/Swanson and Steamboat Lumps marine reserves beyond their June 16, 2004 expiration date.

The Madison/Swanson and Steamboat Lumps marine reserves were implemented on June 19, 2000 with a 4–year sunset provision. The Madison/Swanson site is approximately 115 square nautical miles in size and is located about 40 nautical miles southwest of Apalachicola City, FL. Steamboat Lumps is approximately 104 square nautical miles in size and is located about 95 nautical miles west of Tarpon Springs, FL. Within each area, fishing is prohibited for all species except for highly migratory species, i.e., tunas, marlin, oceanic sharks, sailfishes, and swordfish. These marine reserves were created primarily to protect a portion of the gag spawning aggregations and to protect a portion of the offshore population of male gag. The areas are also suitable habitat and provide protection for many other species, such as scamp, red grouper, warsaw grouper, speckled hind, red snapper, red porgy, and others. If action is not taken to continue the reserves, they will cease to exist after June 16, 2004.

A copy of the agenda can be obtained by contacting the Council (see addresses above).

Although non-emergency issues not contained in the agenda may come before the AP/SSC for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the MSFCMA, provided the public has been notified of the Council's intent to take final action to address the emergency.

The listening stations are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by April 21, 2003.

Dated: April 9, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–9061 Filed 4–11–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032803D]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Applications for Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of a proposal for an EFP to conduct experimental fishing; request for comments.

SUMMARY: The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that an EFP application submitted by the Mount Desert Oceanarium (MDO) of Southwest Harbor, ME, contains all of the required information and warrants further consideration. The EFP would allow one fishing vessel to fish for, retain, and land small numbers of regulated multispecies, monkfish, spiny dogfish, and several unmanaged species for the purpose of public display. NMFS has made a preliminary determination that the activities authorized under this EFP would be consistent with the goals and objectives of the Fishery Management Plans (FMPs) for the managed species. However, further review and consultation may be necessary before a final determination is made to issue the EFP. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this notification must be received at the appropriate address or fax number (see **ADDRESSES**) on or before April 29, 2003.

ADDRESSES: Comments should be sent to Patricia Kurkul, Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930. Mark on the outside of the envelope ''Comments on MDO Exempted Fishing Permit Application.''

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 978–281–9273, fax 978–281–9135, e-mail Paul.H.Jones@noaa.gov.

SUPPLEMENTARY INFORMATION: The MDO of Southwest Harbor, ME, submitted an application for an EFP on February 14, 2003, to collect several species of fish for public display. The target species would include winter flounder (blackbacks), witch flounder (dabs), yellowtail flounder, American plaice (grey sole), Atlantic halibut, monkfish, eel pouts, sculpins, sea ravens, Atlantic cod, wolfish, spiny dogfish, little skate, barndoor skate, and various species of the Phyla Arthropoda (not including lobsters) and Echinodermata.

A single chartered vessel would use a shrimp trawl with 2–inch (5.08–cm) mesh to collect marine fish with approximately 2–tows per day over a 2–day period from May 12, 2003, through May 20, 2003, and over a 2–day period from June 23, 2003, through June 30, 2003. Tow lengths would be between 10 minutes to 1 hour. The specimens would be cared for in chilled and aerated seawater while on board the fishing vessel and would be transferred live to tanks the day they are caught. The fish would be brought to shore, maintained in tanks for public display for a period of time not to exceed 5 months, and would be returned to the sea in October 2003.

Collection would be made using a 2–inch (5.08–cm) mesh shrimp net within the Small Mesh Northern Shrimp Fishery Exemption Area (Area) off Maine. Since the shrimp fishery would be closed at the time of collection, an exemption from the Northeast multispecies minimum mesh regulation of 6–inch (15.24–cm) diamond/6.5–inch (16.51–cm) square mesh at 50 CFR 648.80(a)(2) for vessels operating in the Area would be required. If the target species cannot be found in the Area, an exemption from the Northeast multispecies minimum mesh regulation of 6–inch (15.24–cm) diamond/6.5–inch (16.51–cm) square mesh at 50 CFR 648.80(a)(2) would be required to allow collection farther east and southeast in portions of the Gulf of Maine/Georges Bank Regulated Mesh Area.

In addition, the applicant has requested exemptions from monkfish and multispecies days-at-sea requirements at 50 CFR 648.92 and 648.82. The target species would include winter flounder (blackbacks), witch flounder (dabs), yellowtail flounder, American plaice (grey sole), Atlantic halibut, monkfish, eel pouts, sculpins, sea ravens, Atlantic cod, wolfish, spiny dogfish, little skate,

barndoor skate, and various species of the Phyla Arthropoda (not including lobsters) and Echinodermata.

The applicant would retain a maximum of six fish per species, juveniles and adults combined with the exception of Atlantic halibut. The applicant would only be permitted to retain a total of one Atlantic halibut with a minimum length of 36 inches (91.44 cm). The applicant has requested exemption from minimum fish sizes and possession limits at 50 CFR 648.83, 648.86, 648.89, 648.93, 648.94 (multispecies and monkfish fisheries); 648.103, 648.105 (summer flounder fishery); 648.124, 648.125 (scup fishery); and 648.143, 648.145 (black sea bass fishery).

Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 8, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–9060 Filed 4–11–03; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Commercial Availability Request under the African Growth and Opportunity Act (AGOA)

April 10, 2003.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for public comments concerning a request for a determination that certain light- and medium-weight dyed warp pile cotton velvet, for use in apparel articles, cannot be supplied by the domestic industry in commercial quantities in a timely manner.

SUMMARY: On April 8, 2003, the Chairman of CITA received a petition from Crystal Apparel Limited of Hong Kong and Sinotex Mauritius Limited in Mauritius alleging that certain light- and medium-weight dyed warp pile cotton velvet for use in men's and boys' jackets and pants and women's and girls' jackets, dresses, skirts, pants, and shorts cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requests that such apparel articles of such fabrics be eligible for preferential treatment under the AGOA. CITA hereby solicits public comments on this request, in particular with regard to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by April 29, 2003, to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, Washington, D.C. 20230.

EFFECTIVE DATE: April 14, 2003.

FOR FURTHER INFORMATION CONTACT: Anna Flaaten, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 112(b)(5)(B) of the AGOA, Section 1 of Executive Order No. 13191 of January 17, 2001.

Background

The AGOA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns or fabrics formed in the United States or a beneficiary country. The AGOA also provides for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries from fabric or yarn that is not formed in the United States or a beneficiary sub-Saharan African country, if it has been determined that such fabric or yarns cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures in the Federal Register that it will follow in considering requests. (66 FR 13502).

On April 8, 2003, the Chairman of CITA received a petition from Crystal Apparel Limited of Hong Kong and Sinotex Mauritius Limited in Mauritius alleging that certain light- and medium-weight dyed warp pile cotton velvet, classified in subheading 5801.25.00 of the Harmonized System of the United States, with the following specifications, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the AGOA for certain jackets, dresses, skirts, pants and shorts, that are cut and sewn in one or more beneficiary sub-Saharan African countries from such fabrics:

1. Name: light-weight dyed warp pile velvet
   HTS subheading: 5801.25.00
   Fiber Composition: 100 percent combed cotton
   Yarn: 230 g/m2 to 260 g/m2
   Construction:
   Woven Fabric - 96 x 98
   Warp - 42/2 ply + 42/2 ply
   Weft - 32 single yarn

   Woven Fabric - 96 x 102
   Warp - 42/2 ply + 60/2 ply
   Weft - 32 single yarn

2. Name: medium-weight dyed warp pile velvet
   HTS subheading: 5801.25.00
   Fiber Composition: 97 to 98 percent cotton, up to 3 percent spandex yarn
   Yarn: 280 g/m2 to 330 g/m2
   Construction:
   Woven Fabric - 110 x 84
   Warp - 42/2 ply + 50/2 ply
   Weft - 30 single yarn + 40 denier spandex

   Woven Fabric - 126 x 84
   Warp - 42/2 ply + 50/2 ply
   Weft - 30 single yarn + 40 denier spandex

CITA is soliciting public comments regarding this request, particularly with respect to whether such fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Also relevant is whether other products that are supplied by the domestic industry in commercial quantities in a timely manner are substitutable for the fabrics for the purposes of the intended use. Comments must be received no later than April 29, 2003. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

If a comment alleges that such fabrics can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the yarn or fabric stating that it produces the fabrics that are the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked business confidential from disclosure for the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230.

Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.03–9204 Filed 4–10–03; 3:18 pm]

BILLING CODE 3510–DR–S

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 14, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren_Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: April 8, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.

Title: National Assessment of Educational Progress: Foreign Language Assessment, Field Test 2003 and Full Scale 2004.

Frequency: One-time.

Affected Public: Individuals or household; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 16,064.

Burden Hours: 5,623.

Abstract: The National Assessment of Educational Progress Foreign Language Assessment will assess the current status of the foreign language skills of high school seniors in the U.S. as well as collecting information about foreign language programs, instructional practices, and attitudes towards learning foreign languages.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2222. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to (202) 708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Katrina Ingalls at (703) 620–3655 or via her e-mail address *Katrina.Ingalls@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. 03–8999 Filed 4–11–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Leader, Regulatory 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: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by April 14, 2003. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before June 13, 2003.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren_Wittenberg@omb.eop.gov.* .

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and

proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: April 9, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Preparing Tomorrow's Teachers to Use Technology.

Abstract: Capacity Building and Catalyst grants will be awarded for two years to prepare future teachers to use modern learning technologies. These grants will address critical issues in the integration of technology into the classroom curriculum. These issues include (1) access to modern educational tools; (2) support in the preparation of well-qualified, technology proficient teachers; (3) and bridging the digital equity to ensure access to modern learning technology and qualified teachers for all students

Additional Information: Congress surprised this program with substantial funding during their staff reengineering. This information collection needs to reach the public soon in order to avoid staff conflicts within the schools.

Frequency: Annually.

Affected Public: Not-for-profit institutions; businesses or other for-profit; State, Local, or Tribal Gov't, SEAs or LEAs

Reporting and Recordkeeping Hour Burden:

Responses: 450.

Burden Hours: 18,000.

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 2253. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements, contact Joseph Schubart at (202) 708–9266 or via his e-mail address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–9121 Filed 4–11–03; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–074]

ANR Pipeline Company; Notice of Negotiated Rate Filing

April 7, 2003.

Take notice that on April 1, 2003, ANR Pipeline Company (ANR), tendered for filing and approval a Service Agreement between ANR and Dynegy Marketing and Trade pursuant to ANR's Rate Schedule FTS–3 (the Agreement). ANR requests that the Commission accept and approve the Agreement to be effective on April 1, 2003.

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 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: April 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9102 Filed 4–11–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–329–000]

ANR Pipeline Company; Notice of Tariff Filing

April 3, 2003.

Take notice that on March 31, 2003, ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of May 1, 2003:

Ninth Revised Sheet No. 10
Fifth Revised Sheet No. 46
Third Revised Sheet No. 47
Second Revised Sheet No. 48
Fifth Revised Sheet No. 49
First Revised Sheet No. 49A
Second Revised Sheet No. 50
Fourth Revised Sheet No. 51
Third Revised Sheet No. 80
Fifth Revised Sheet No. 84
Sixth Revised Sheet No. 85
Fifth Revised Sheet No. 91
First Revised Sheet No. 96
Second Revised Sheet No. 101A
Original Sheet No. 101B

ANR states that the revised tariff sheets are being filed in order to provide more flexibility to its current firm storage service, by primarily modifying the time frame within which storage service can be sold. ANR also proposes to adopt a time line defining under which circumstances ANR must consider requests and accept or reject requests for any service at maximum rates.

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 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in

determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: April 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9259 Filed 4–11–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–332–000]

CenterPoint Energy Gas Transmission Company; Notice of Filing

April 7, 2003.

Take notice that on April 1, 2003, CenterPoint Energy Gas Transmission Company (CEGT) submitted its Annual Revenue Crediting Filing pursuant to its FERC Gas Tariff, Sixth Revised Volume No. 1, section 5.7(c)(ii)(2)B (Imbalance Cash Out), section 23.2(b)(iv) (IT, SBS and PHS Revenue Crediting) and section 23.5 (IT Revenue Credit).

CEGT states that its filing addresses the period from February 1, 2002, through January 31, 2003. CEGT states that the IT and FT Cash Balancing Revenue Credits and the IT Revenue Credit for the period reflected in this filing are zero. CEGT further states that since CEGT's current tariff sheets already reflect zero Cash Balancing and IT Revenue Credits, no tariff revisions are necessary.

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 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: April 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9100 Filed 4–11–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–74–000]

Dominion Cove Point LNG, LP; Notice of Application

April 7, 2003.

Take notice that on March 28, 2003, Dominion Cove Point LNG, LP (Dominion Cove Point), 120 Tredegar Street, Richmond, Virginia 23219, filed with the Federal Energy Regulatory Commission (Commission) in Docket No. CP03–74–000, an application pursuant to section 7(c) of the Natural Gas Act and part 157 of the Comission's regulations for authorization to construct, install, own, operate, and maintain two new compressor stations, Loudoun Station and Pleasant Valley Station (Cove Point East Project), to be located in Loudoun and Fairfax Counties, Virginia, respectively, as more fully described in the application. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Specifically, Dominion Cove Point requests authorization to construct the Loudoun Station, consisting of two 4,735 horsepower (hp) gas-fired compressor units and one 2,370 hp gas-fired compressor unit, and the Pleasant Valley Station, consisting of one 4,750 hp electric driven compressor unit and one 2,750 hp electric driven compressor unit, as well as appurtenant facilities at both stations. Dominion Cove Point states that both proposed new compressor stations will be constructed on land owned by Dominion Cove Point, and estimates the total cost of the project to be approximately $43.5 million. Dominion Cove Point proposes to price the new service incrementally and to establish an electric tracker applicable to customers of the proposed project.

Dominion Cove Point explains that, as part of an uncontested settlement approved by the Commission on February 27, 2003, Dominion Cove Point was required to file an application, on or before March 31, 2003, for certificate authority to construct facilities necessary to create firm transportation capacity from west to east on its system. By this application, Dominion Cove Point proposes to create such west to east transportation service. Dominion Cove Point states that it has entered into precedent agreements with two shippers for all 445,000 Dth/d of the project's incremental capacity.

Dominion Cove Point requests that the Commission issue a final order by September 30, 2003.

Any questions regarding this application should be directed to Mr. Sean R. Sleigh, Certificates Manager, Dominion Cove Point LNG, LP, 120 Tredegar Street, Richmond, Virginia 23219, or call (304)627–3462 or FAX (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 the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of

all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Protests and interventions may be filed electronically via the internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

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.

Comment Date: April 28, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9091 Filed 4–11–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–485–004]

Enbridge Pipelines (KPC); Notice of Compliance Filing

April 7, 2003.

Take notice that on April 2, 2003, Enbridge Pipelines (KPC) (KPC) tendered for filing revised tariff sheets listed on Appendix A which are to be included in its FERC gas Tariff, First Revised Volume No. 1. KPC requests that these tariff sheets be made effective April 1, 2003.

KPC states that the purpose of the filing is to comply with the Commission's Order on Rehearing issued on March 19, 2003, wherein the Commission ordered KPC to reduce its cost of long-term debt from 8.64% to 8.45%.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: April 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9103 Filed 4–11–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–75–000]

Freeport LNG Development, L.P.; Notice of Application

April 7, 2003.

Take notice that on March 28, 2003, Freeport LNG Development, L.P., (Freeport LNG), 1200 Smith Street, Suite 600, Houston, Texas 77002, filed an application pursuant to section 3 of the Natural Gas Act (NGA) and parts 153 and 380 of the Commission's regulations for authorization to site, construct and operate a liquefied natural gas (LNG) receiving terminal and associated facilities in the Freeport, Texas area as a place of entry for the importation of LNG, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659.

Freeport LNG states that it proposes to construct the Freeport LNG Terminal in response to the growing demand for natural gas in Texas intrastate markets. Freeport LNG explains that the Freeport LNG Terminal will be comprised of an LNG receiving facility (including docking facilities and associated piping appurtenances); an LNG storage and vaporization facility (including two LNG storage tanks, vaporization units and associated piping and control

equipment; and 9.38 miles of 36-inch diameter send out pipeline as well as metering facilities and associated appurtenances.

Freeport LNG states that the Freeport LNG Terminal will be located on Quintana Island, southeast of Freeport, Brazoria County, Texas. Freeport LNG avers that the Freeport LNG Terminal will not be used to provide jurisdictional interstate transportation service. Freeport LNG states that the facilities will instead be used to engage in commerce between the State of Texas and foreign nations. Freeport LNG maintains that since it does not intend to use the proposed facilities to import LNG on its own behalf, but rather, to provide terminal services to third parties, shippers utilizing the Freeport LNG facilities will be required to obtain authorization from the Department of Energy/Office of Fossil Energy for the import of natural gas.

Freeport LNG states that LNG will be transported through a send out pipeline from Quintana Island to the Stratton Ridge meter station, which will serve as the terminus of the Freeport LNG Termination. Freeport LNG states that interconnection facilities will be constructed between the Stratton Ridge meter station and certain intrastate systems with facilities in close proximity to the Stratton Ridge meter station in order to connect the report LNG terminal with Texas markets. Freeport LNG states that the interconnection facilities will be constructed by the respective intrastate pipelines. In addition, Freeport LNG states that the Freeport LNG Terminal is anticipated to be completed and placed in service in time to meet natural gas demand during the 2006–2007 winter heating season.

Any questions regarding this application should be directed to Lisa M Tonery, King & Spalding LLP, 1185 Avenue of the Americas, New York, New York 10036–4003, at (212) 556–2100, fax (212) 556–2222.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding. with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

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 the section 3 authorization will be issued.

Comment Date: April 29, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9092 Filed 4–11–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–115–000]

Neptune Regional Transmission System, LLC, Complainant v. Reliant Energy New Jersey Holdings, LLC, and Reliant Resources, Inc., Respondents; Notice of Complaint

April 8, 2003.

Take notice that on April 4, 2003, Neptune Regional Transmission

System, LLC (NeptuneRTS(TM)) tendered for filing a Complaint pursuant to Sections 201, 202, 203, 210, and 306 of the Federal Power Act against Reliant Energy New Jersey Holdings, LLC and Reliant Resources, Inc. (Reliant). The Complaint asks the Commission to grant the request of NeptuneRTST for fast track processing and seeks an order directing Reliant to execute, within 7 days of the Order, certain agreements relating to access to jurisdictional transmission assets located on property owned by Reliant. The complaint alleges that Reliant is exercising its control over easements to preclude competitors from accessing the transmission system. Among other things, the complaint raises the issue of what entity has jurisdiction to order access to Reliant's property.

NeptuneRTS(TM) states that copies of the filing were served upon Reliant; FirstEnergy Corp.; Pennsylvania-Jersey-Maryland Interconnection, LLC; Consolidated Edison Company of New

York, Inc.; the New Jersey Board of Public Utilities; the New Jersey Department of Environmental Protection; and the New York Department of Public Service.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before comment date. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link.

Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: April 23, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9106 Filed 4–11–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–037]

PG&E Gas Transmission, Northwest Corporation; Notice of Negotiated Rates

April 7, 2003.

Take notice that on April 1, 2003, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Second Revised Volume No. 1-A., Sixth Revised Sheet No. 15, Second Revised Sheet No. 18, Third Revised Sheet No. 19, Second Revised Sheet No. 20, and Original Sheet No. 2, with an effective date of April 1, 2003.

GTN states that these sheets are being filed to reflect the implementation of three Negotiated Rate Agreements and the removal of three Negotiated Rate Agreements that have expired.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

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 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Comment Date: April 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9104 Filed 4–11–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER03–305–000]

Quonset Point Cogen, L.P.; Notice of Issuance of Order

April 7, 2003.

Quonset Point Cogen, L.P. (Quonset) filed an application for market-based rate authority, with an accompanying tariff. The proposed tariff provides for the sale of capacity and energy at market-based rates. Quonset also requested waiver of various Commission regulations. In particular, Quonset requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Quonset.

On April 2, 2003, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Quonset 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).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 2, 2003.

Absent a request to be heard in opposition by the deadline above, Quonset are authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Quonset, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Quonset's issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov* , using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9094 Filed 4–11–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–116–000]

Reliant Energy Mid-Atlantic Power Holdings, LLC, Complainant, v. PJM Interconnection, L.L.C., Respondent; Notice of Complaint

April 7, 2003.

Take notice that on April 2, 2003, Reliant Energy Mid-Atlantic

Power Holdings, LLC (Reliant) tendered for filing a complaint pursuant to section 206 of the Federal Power Act against PJM Interconnection, L.L.C. (PJM) complaining that the price caps on certain of its generation facilities in the PJM operating area subject to chronic transmission constraints were not just and reasonable and requesting approval of a Formula Price Cap Mitigation Proposal (Proposal) applicable to those facilities. Reliant requested that the proposal be accepted by May 30, 2003.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before the comment date. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: April 22, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9093 Filed 4–11–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. PA02–2–000, EL00–95–048, EL00–98–042, and EL01–10–007]

Fact Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices, San Diego Gas & Electric Company, Complainant, v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents; Investigation of Practices of the California Independent System Operator and the California Power Exchange Puget Sound Energy, Inc., et al., Complainant, v. All Jurisdictional Sellers of Energy and/or Capacity at Wholesale Into Electric Energy and/or Capacity Markets in the Pacific Northwest, Including Parties to the Western Systems Power Pool Agreement, Respondent (Not Consolidated); Notice Regarding Public Accessibility of Data and Further Requests for Comments

April 7, 2003.

On March 5, 2003, the Commission issued a notice that it intended to release to the public information collected in its investigation into manipulation of energy prices in the West, and sought, by March 12, 2003, comments from those companies and individuals who submitted information during the course of the investigation. Eighteen companies or organizations, as well as the United States Attorney for the Southern District of Texas, filed comments or otherwise responded. Enron Corporation was not among those respondents. On March 21, 2003, the Commission issued an order addressing the comments and responses to its March 12, 2003, notice, and further announced that it would release the information, except as noted in the order, in no less than five days after issuance of the order. One exception to the release was personal personnel information that was raised by three of the commenters. In this regard, the Commission asked that companies or individuals provide specifics by March 24, 2003, so that such information could be excluded from the public release. One company provided such details. Thereafter, on March 26, 2003, the Commission released the remaining information. 102 FERC ¶ 61,311.

Subsequent to the release of the information, on March 28, 2003, the Commission received the first of several motions from Enron asking that certain parts of the released information be removed from public access. These motions in particular attempted to identify Enron employees' personal information, including social security numbers. The Commission also received calls on its Enforcement Hotline from Enron employees who were concerned about their personal information being available on the internet. Finally, the Commission was contacted by a consulting firm which had given Enron information with security implications, which Enron in turn had given the Commission's staff during the investigation. As quickly as possible, the Commission staff accommodated the requests involving personal and security related information.

On April 4, 2003, the Commission was notified that Enron had filed a petition for writ of mandamus and an emergency motion to stay the March 21, 2003, order in the United States Court of Appeals for the Fifth Circuit. Enron states that it seeks only one thing: that all Enron e-mails posted on the Commission's Web site be removed for a period of 10 days, or for such longer period as the Court may deem appropriate, so that certain information could be removed from the e-mails.

The Commission hereby gives notice that it will remove temporarily, until April 24, 2003, Enron emails from the agency's web site. During that time, the Commission will consider any requests that certain personal information or information with security implications be permanently removed from public accessibility. With respect to claims regarding supposed trade secrets, the Commission has already considered and denied requests that such information should be removed.

The Commission stresses that all comments filed in response to this notice must be detailed and specific, and should provide sufficient information that the documents can be readily located. Generalized comments or concerns will not be considered sufficient grounds for removal of information from public accessability. All comments must be filed by April 17, 2003.

Comments due: April 17, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9096 Filed 4–11–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–324–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Tariff Filing

April 3, 2003.

Take notice that on March 31, 2003, Southern Star Central Gas Pipeline, Inc. (Southern Star) tendered for filing as part of its FERC Gas Tariff, Original Volume No.1, Original Sheet No. 0 through Original Sheet No. 514, to become effective April 30, 2003.

Southern Star states that the purpose of this filing is to restate Southern Star's FERC Gas Tariff, Original Volume No. 1 to reflect its name change to Southern Star Central Gas Pipeline, LLC rather than Williams Gas Pipelines Central, Inc. as currently on file with the Commission. Southern Star states that the instant filing reflects the change to Southern Star, the repagination of tariff sheets and minor modifications to the text of various tariff sheets to reflect the repagination. Southern Star also states that the instant filing makes no changes to the Rates, Rate Schedules, General Terms and Conditions or Form of Service Agreements.

Southern Star further states that copies of the transmittal letter and appendices (excluding Appendix C) are being mailed to Southern Star's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: April 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9098 Filed 4–11–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–120]

Tennessee Gas Pipeline Company; Notice of Negotiated Rates

April 7, 2003.

Take notice that on March 31, 2003, Tennessee Gas Pipeline Company (Tennessee), tendered for filing: (1) A Gas Transportation Agreement between Tennessee and BP Energy Company (BP), dated January 1, 2003; (2) a Firm Transportation Negotiated Rate Letter Agreement between Tennessee and BP, dated January 8, 2003; (3) a Gas Transportation Agreement between Tennessee and Consolidated Edison Energy, Inc. (CON ED), dated September 5, 2002; and (4) a Firm Transportation Negotiated Rate Letter Agreement between Tennessee and CON ED, dated February 11, 2003. The filed agreements represent negotiated rate arrangements between Tennessee and BP, and Tennessee and CON ED, for which Tennessee is requesting Commission approval, effective May 1, 2003. In addition, Tennessee states that the negotiated rate arrangements are being filed in compliance the Commission's ''Order Issuing the Certificates and Approving Abandonments'' issued on June 28, 2002, in Docket Nos. CP02–46 and CP02–47. Dominion Transmission, Inc., *et al.*, 99 FERC • 61,367 (2002).

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 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: April 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9101 Filed 4–11–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–72–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application

April 8, 2003.

Take notice that on March 27, 2003, Transcontinental Gas Pipe Line Corporation (Transco), filed in Docket No. CP03–72–000, an application, in abbreviated form, pursuant to Section 7(b) of the Natural Gas Act, as amended, and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission), for an order permitting and approving abandonment of certain firm sales service provided to Virginia Natural Gas, Inc. (VNG) under Transco's Rate Schedule FS, as more fully set forth in the application which is on file with the Commission and open to public inspection.

In such application, Transco states that it entered into a firm sales agreement with United Cities Gas Company, South Carolina Division, on August 1, 1991, under which Transco sells gas to VNG, successor to United Cities Gas Company, under Rate Schedule FS, with Buyer's Daily Sales Entitlement amount listed on Exhibit ''A'' to the agreement (FS Agreement).

In accordance with Paragraph 1 of Article IV of the FS Agreement, Transco delivers gas to VNG at various upstream points of delivery. Transco acts as agent for Piedmont for the purpose of arranging for the transportation of gas purchased from the points of delivery to

the points of redelivery identified in the FS Agreement.

In the instant application, Transco seeks authorization to abandon the FS Agreement to VNG, effective April 1, 2004, pursuant to Piedmont's election to terminate its FS Agreement.

Transco states that the Primary Term of the FS Agreement ended on March 31, 2001. By letter dated March 6, 2002, VNG provided Transco with a two-year notice to terminate the subject FS Agreement as of April 1, 2004.

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 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: April 28, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9105 Filed 4–11–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–331–000]

Vector Pipeline L.P.; Notice of Proposed Withdrawal of Tariff Sheets

April 7, 2003.

Take notice that on April 1, 2003, Vector Pipeline L.P. (Vector), gave notice of the withdrawal of Original Sheet Nos. 173 and 174 of its FERC Gas Tariff, Volume No. 1 and the substitution therefore of place holder tariff sheets. These tariff sheets summarize negotiated rate transactions that have terminated. Vector requests an effective date of April 1, 2003, for the withdrawal. Vector further requests a waiver of the 30-day notice period so that the proposed place holder tariff sheets can go into effect on April 1, 2003.

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 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: April 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9099 Filed 4–11–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2407–060]

Alabama Power Company; Notice of Availability of Environmental Assessment

April 7, 2003.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, the Office of Energy Projects has reviewed the application filed June 8, 2001, requesting the Commission's authorization to amend the project license. An environmental assessment (EA) is available for public review. The EA analyzes the environmental impacts of approving Alabama Power Company's (licensee for the Yates/Thurlow Project, FERC No. 2407) request to amend the project license to increase the generation capacity and hydraulic capacity to the as-built capacities.

A copy of the EA is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Anyone may file comments on the EA. The public, Federal and State resource agencies are encouraged to provide comments. All written comments must be filed within 45 days of the issuance date of this notice shown above. Send an original and eight copies of all comments marked with the docket number P–2407–060 to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. If you have any questions regarding this notice, please contact Sean Murphy at telephone: (202) 502–6145 or email: *sean.murphy@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9095 Filed 4–11–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–13–000]

Northwest Pipeline Corporation; Notice of Availability of the Environmental Assessment for the Proposed Clackamas River Project

April 7, 2003.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed to be abandoned by Northwest Pipeline Corporation (Northwest) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff

concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of:

- Abandoning in place a 5,850-foot-long segment of pipeline on the north side of Clackamas River;
- Abandoning by removal a 370-foot-long segment of pipeline in the Clackamas River. No disturbance of Northwest's parallel 20-inch-diameter loop is required;
- Abandoning in place a 1,267-foot-long segment of pipeline on the south side of the Clackamas River; and
- Constructing and operating a temporary pig launching facility within the existing fenced-in yard of the Southeast Portland Meter Station and a temporary pig receiving facility just north of the Oregon City Compressor Station.

The purpose of the proposed project is to remove a hazard (an exposed pipeline) from the Clackamas River.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Gas

Branch 2, PJ11.2;

- Reference Docket No. CP03–013–000; and
- Mail your comments so that they will be received in Washington, DC on or before May 5, 2003.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. The Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on ''Login to File'' and then ''New User Account.''

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to rule 214 of the Commission's rules of practice and procedures (18 CFR 385.214). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to Federal, State and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208-FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202)5 02–8659. The FERRIS link on the FERC Internet website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9090 Filed 4–11–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

April 7, 2003.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of prohibited and exempt communications recently received in the Office of the Secretary. The communications listed are grouped by docket numbers. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket number	Date filed	Presenter or requester
Prohibited:		
CP02–396–000	4–4–03	Retha Warren
2. CP02–396–000	4–4–03	Retha Warren
Exempt:		
1. Project No. 5018–004	4–3–03	Shannon Dunn/Stephen Kulik
2. Project No. 5018–004	4–3–03	Shannon Dunn/Scott Ryan

Magalie R. Salas,

Secretary.

[FR Doc. 03–9097 Filed 4–11–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7482–9]

Agency Information Collection Activities: Proposed Collection; Comment Request; Drinking Water Regulations Compliance and Cost Retrospective Survey

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Environmental Protection Agency (EPA) is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Drinking Water Regulations Compliance and Cost Retrospective Survey (EPA ICR No. 2101.01). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described as follows.

DATES: Comments must be submitted on or before June 13, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Send comments to Water Docket, Environmental Protection Agency, Mail Code 4101T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. OW–2002–0051. Follow the detailed instructions as provided in section I.C. of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: John Bennett of the EPA Office of Ground Water and Drinking Water at (202) 564–4690, or by facsimile: (202) 564–3760, or e-mail: *bennett.johnb@epa.gov.* For general information, contact the Safe Drinking Water Hotline, (800) 426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding Federal Holidays, from 9 a.m. to 5:30 p.m.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be potentially affected by this action if you are a public water system. Public water systems are those systems that provide piped water for human consumption to at least 15 service connections or serve an average of at least 25 people for at least 60 days each year. Therefore, respondents will be both traditional water systems as well as water suppliers that do not supply water as their primary business. Potentially affected categories and entities may include, but are not limited to:

Type of business	NAICS code
Investor-Owned Water Systems	22131
Publicly Owned Water Systems	92411

This table lists the types of entities that EPA is now aware of that could potentially be affected. Other types of entities not listed in this table could also be affected. If you have questions regarding the applicability of this action to a particular entity, consult one of the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Copies of the ICR Supporting Statement and Other Related Information?

1. *Docket.* EPA has established an official public docket for this ICR under Docket ID No. OW–2002–0051. The official public docket consists of the documents specifically referenced in the ICR, any public comments received, and other information related to this ICR. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Office of Water Docket is (202) 566–2426.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section I.B.

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

copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

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

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

i. EPA Dockets. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Docket at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in Docket ID No. OW–2002–0051. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. E-mail. Comments may be sent by electronic mail (e-mail) to *OW–Docket@epa.gov,* Attention Docket ID No. OW–2002–0051. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. Disk or CD ROM. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send an original and three copies of your comments to: Water Docket, Environmental Protection Agency, Mail Code: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. OW–2002–0051.

3. *By Hand Delivery or Courier.* Deliver your comments to: Water Docket, Environmental Protection Agency, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. OW–2002–0051. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Section I.B.1.

D. What Should I Consider as I Prepare My Comments for EPA?

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

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. What Information Collection Activity or ICR Does This Action Apply to?

EPA is seeking comments on the following ICR:

Title: Drinking Water Regulations Compliance and Cost Retrospective Survey (EPA ICR No. 2101.01).

Abstract: The Safe Drinking Water Act (SDWA) (1412(b)) requires EPA to analyze the costs related to the promulgation of drinking water regulations. Since the reauthorization of SDWA in 1996, EPA has proposed and promulgated national primary drinking water regulations for several contaminants. Each of these final and proposed rules has a supporting ''Economic Analysis,'' which includes an analysis of compliance costs. The cost analysis includes capital and operations and maintenance (O&M) costs for treatment and other compliance measures taken by systems with Maximum Contaminant Level (MCL) violations or from systems that are subject to treatment technique requirements, as well as costs related to start-up, training and monitoring for all regulated systems.

Key to the accurate estimation of costs is an understanding of the compliance decision process of Public Water Systems (PWS). In this survey, EPA's Office of Ground Water and Drinking Water (OGWDW) plans to collect information from PWSs on their compliance decisions and associated costs for a set of rulemakings. A compliance decision is a decision made in direct response to the implementation of a drinking water regulation to come into compliance with the regulation. Examples of compliance decisions include installing a new treatment technology; modifying an existing treatment technology; using a non-treatment approach; and, finding a new water source. EPA plans to collect information on which compliance alternatives were considered, and which were chosen from that set of alternatives, along with information on associated capital, operating and maintenance, and add-on costs. Responses are voluntary and will not be considered confidential. EPA plans to use the results of the survey to update its cost estimation process for future rulemakings.

The survey will target systems in two categories: systems which have had violations of one or more chosen rulemakings and systems which have not had violations (but have made compliance decisions to prevent a violation). An initial short survey will be used to identify a sample of systems that have made compliance decisions in response to the representative rulemakings without actually having been out of compliance. The full survey (including a pilot study phase) will be sent to these systems, as well as to a sample of systems that have recorded violations. We estimate that the initial survey (known as a screener survey, since it will identify respondents appropriate for the full survey) will provide data from 1,875 respondents indicating whether or not they made some type of compliance decision associated with the representative rulemakings. We estimate that the full survey (including a pilot study phase), sent to systems with and without recorded violations, will provide data from 718 respondents.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, via the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

III. What Are EPA's Burden and Cost Estimates for This ICR?

The following is a summary of the burden and cost estimates associated with this proposed information collection effort. Burden and cost estimates are taken from the ICR, which provides a detailed explanation of the burden estimates summarized in this notice. EPA anticipates that the only entities affected by this information request will be public water systems. The total number of estimated potential respondents is 1,875 for the screener survey and 718 for the full survey. Respondents to the screener survey will only have to respond to that survey once. Respondents to the full survey will only have to respond to the full survey once. Some respondents, however, will have to respond to both the screener survey and the full survey. EPA estimates that 1,567 respondents will respond once to the screener survey, 410 respondents will respond once to the full survey, and 308 respondents will respond once to both the screener survey and the full survey.

The annual public burden for this collection of information is estimated to average 0.25 hours per screener survey response; 1 hour per full survey response for small public water systems; 2 hours per full survey response for medium public water systems; and 3 hours per full survey response for large public water systems. The estimated total annual respondent burden for screener survey respondents is 469 hours with a current annual cost of $10,742; the estimated total annual respondent burden for full survey respondents is 1,304 hours with a current annual cost of $34,204. Total estimated annual respondent burden associated with the complete information collection effort is 1,773 hours with a current annual cost of $44,946.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: March 21, 2003.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 03–9046 Filed 4–11–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL –7482–8]

Science Advisory Board, Clean Air Scientific Advisory Committee, Notification of Public Advisory Committee Meeting; Teleconference Consultation on Risk Analysis Plans for Coarse Particulate Matter ($PM_{10–2.5}$) and PM_{10}

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA), Science Advisory Board (SAB), announces the conduct of a publically-accessible teleconference of the Clean Air Scientific Advisory Committee (CASAC) Particulate Matter (PM) Review Panel to review the Agency's risk analysis plans for coarse-fraction $PM_{10–2.5}$ and PM_{10}.

DATES: The conference call meeting will take place on Thursday, May 1, 2003, from 10 a.m. to 12 p.m. eastern time. Participation will be by teleconference only.

ADDRESSES: Members of the public who wish to obtain the call-in number and access code to participate must contact Ms. Delores Darden, EPA Science Advisory Board Staff, at telephone/voice mail: (202) 564–2282, via e-mail at: *darden.delores@epa.gov;* or at mailing address: EPA Science Advisory Board, U.S. Environmental Protection Agency (1400A), 1200 Pennsylvania Avenue, NW., Washington, DC, 20460 (FedEx/Courier Zip Code: 20004), in order to register.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information about this conference call should contact Mr. Fred Butterfield, Designated Federal Officer (DFO), EPA Science Advisory Board Staff; at telephone/voice mail: (202) 564–4561; or via e-mail at: *butterfield.fred@epa.gov.* General information concerning the CASAC or the EPA Science Advisory Board can be found on the EPA Web site at: *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

1. Summary. The Clean Air Scientific Advisory Committee was established by 42 U.S.C. 7409 in part to provide advice, information and recommendations on the scientific and technical aspects of issues related to the criteria for national ambient air quality standards (NAAQS). The CASAC Particulate Matter Review Panel will report to the Administrator of EPA through the CASAC, which is

administratively located under the EPA Science Advisory Board. The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. Both the CASAC and the SAB are Federal advisory committees chartered under the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App.). The CASAC Particulate Matter Review Panel will comply with the provisions of FACA and all appropriate SAB procedural policies.

On April 9, 2003, EPA's Office of Air Quality Planning and Standards (OAQPS) will make available for public review and comment a draft memorandum, ''Preliminary Recommended Methodology for PM_{10} and $PM_{10–2.5}$ Risk Analyses in Light of Reanalyzed Study Results'' (hereafter, draft Risk Analysis Methodology for PM_{10} and $PM_{10–2.5}$). This document outlines the overall scope proposed for the quantitative risk assessments for PM_{10} and coarse-fraction PM ($PM_{10–2.5}$) that will be conducted as part of the periodic review of the NAAQS for PM, pursuant to sections 108 and 109 of the Clean Air Act (CAA).

2. Background. On January 28, 2002 (67 FR 3897), OAQPS made available for public and CASAC review a draft document, ''Proposed Methodology for Particulate Matter Risk Analyses for Selected Urban Areas'' (hereafter, draft PM Risk Analysis Methodology), that describes EPA's plans and approach for conducting PM health risk analyses primarily for fine particles ($PM_{2.5}$). The PM risk analyses will be performed to assist in the preparation of the OAQPS PM Staff Paper, the purpose of which is to evaluate the policy implications of the key scientific and technical information contained in the Agency's PM Air Quality Criteria Document (AQCD) and identify critical elements that EPA staff believe should be considered in reviewing the PM NAAQS. The Staff Paper is intended to ''bridge the gap'' between the scientific review contained in the AQCD and the public health and welfare policy judgments required of the Administrator in reviewing the NAAQS. On February 27, 2002, the CASAC PM Review Panel met via public teleconference to provide advice to EPA on the proposed methodology; and, on May 23, 2002, the CASAC issued an Advisory providing its advice to the EPA Administrator entitled, ''Review of the Agency's Draft Proposed Methodology for Particulate Matter Risk Analysis for Selected Urban Areas; an Advisory by the Clean Air Scientific Advisory Committee (EPA–SAB–CASAC–ADV–02–002), located on the EPA Science Advisory Board Web site at: *http://www.epa.gov/sab/pdf/casacadv02002.pdf.*

In response to the advice provided in the May 2002 CASAC Advisory, OAQPS has proposed to expand the scope of the PM health risk analyses to include risk analyses for PM_{10}. The charge to the CASAC PM Panel during their consultation on May 1, 2003, is to provide feedback on the scope and approach proposed by EPA for the PM_{10} and $PM_{10–2.5}$ components of the risk analyses. EPA is making available the draft Risk Analysis Methodology for PM_{10} and $PM_{10–2.5}$ to facilitate discussion and review of the proposed approach by the CASAC and general public. This draft document takes into consideration the availability of reanalyses using alternative statistical approaches for some PM health effect studies identified by EPA as being of high priority for policy considerations (*see* the following URL: *http://www.epa.gov/ncea/partmatt.htm,* for more information). This document outlines the overall scope proposed for the quantitative risk assessments for PM_{10} and $PM_{10–2.5}$ including health endpoints to be analyzed, health studies that serve as the source of concentration-response functions, and cities to be examined.

Following the May 1, 2003, CASAC Particulate Matter Review Panel teleconference to review the draft Risk Analysis Methodology for PM_{10} and $PM_{10–2.5}$, EPA will prepare a technical report describing the risk analysis methodology in greater detail and including preliminary risk estimates taking into account public and CASAC comments. The methodology and preliminary estimates will be summarized in the next draft of the OAQPS PM Staff Paper, which will be released for public and CASAC review later this year.

Any questions concerning the draft Risk Analysis Methodology for PM_{10} and $PM_{10–2.5}$ should be directed to Mr. Harvey Richmond, OAQPS's Health and Ecosystems Effects Group, at telephone/voice mail: (919) 541–5271; or via e-mail at: *richmond.harvey@epa.gov.*

3. Availability of Additional Meeting Materials. A copy of the draft memorandum, ''Preliminary Recommended Methodology for PM_{10} and $PM_{10–2.5}$ Risk Analyses in Light of Reanalyzed Study Results'' will be available through EPA's Technology Transfer Network (TTN) Web site under the technical area for National Ambient Air Quality Standards, under the heading of ''Particulate Matter—Technical Documents'' at the following URL address: *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_cr_td.html* after April 9, 2003. In addition, the draft agenda for the teleconference that is the subject of this notice will be posted on the EPA Science Advisory Board Web Site at: *http://www.epa.gov/sab* (under the ''Agendas'' subheading) approximately 10 days before the publically-accessible teleconference.

4. Providing Oral or Written Comments at SAB Meetings. It is the policy of the EPA Science Advisory Board (SAB) to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA SAB expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of 10 minutes (unless otherwise indicated). For conference call meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than 15 minutes total. Interested parties should contact the CASAC DFO, Mr. Fred Butterfield, at the telephone number or e-mail address provided above, at least one week prior to the meeting in order to be placed on the public speaker list for the meeting. Speakers may attend the meeting and provide comment up to the meeting time. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the review panel for their consideration. Written comments should be supplied to Ms. Delores Darden, EPA Science Advisory Board Staff, at the e-mail address or mailing address provided above, or via fax at: (202) 501–0582, in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution. Any written comments supplied at the meeting should be provided to the DFO up to or

immediately following the meeting. The SAB allows a grace period of 48 hours after adjournment of the public meeting to provide written comments supporting any verbal comments stated at the public meeting to be made a part of the public record.

5. *Meeting Access.* Individuals requiring special accommodation to access this teleconference should contact Ms. Delores Darden, EPA Science Advisory Board Staff, at the telephone or e-mail address provided above, at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: April 7, 2003.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–9040 Filed 4–11–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7483–1]

Notice of Extension of Public Comment Period on the Draft Final Guidelines for Carcinogen Risk Assessment and the Draft Supplemental Guidance for Assessing Cancer Susceptibility From Early-Life Exposure to Carcinogens

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension of public comment period.

SUMMARY: This notice extends the comment period for the Draft Final Guidelines for Carcinogen Risk Assessment and the draft Supplemental Guidance for Assessing Cancer Susceptibility from Early-Life Exposure to Carcinogens. The availability of these documents was originally announced in the **Federal Register** on March 3, 2003 (68 FR 10012).

DATES: Comments must be received by Monday, June 2, 2003.

ADDRESSES: The documents are available via the Internet from *www.epa.gov/ncea/raf/cancer2003.htm*. Instructions for submitting comments are provided at this website and in the March 3, 2003 **Federal Register** notice.

FOR FURTHER INFORMATION CONTACT: Dr. William P. Wood, Risk Assessment Forum (mail code 8601D), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460, telephone 202–564–3361, or send electronic mail inquiries to *risk.forum@epa.gov*.

SUPPLEMENTARY INFORMATION: In the March 3, 2003 **Federal Register** (68 FR 10012), EPA announced the availability of, and opportunity to comment on, the Draft Final Guidelines for Carcinogen Risk Assessment (February 2003, NCEA–F–0644A) and the draft Supplemental Guidance for Assessing Cancer Susceptibility from Early-Life Exposure to Carcinogens (EPA/630/R–03/003). The comment period was scheduled to close on May 1, 2003. This notice extends the comment period until June 2, 2003. EPA will consider all comments received by this date in completing final Guidelines and supplemental guidance.

As announced in the **Federal Register** on April 11, 2003, a panel of EPA's Science Advisory Board (SAB) will meet to review the draft Supplemental Guidance on May 12 to 14, 2003. EPA will provide all public comments on the draft Supplemental Guidance that EPA has received by May 1, 2003 to the SAB review panel prior to its meeting. Comments received by EPA by June 2, 2003 but after May 1, 2003 will also be forwarded to the SAB for consideration by the review panel in completing its report. Comments may also be submitted directly to the SAB in the manner described in the **Federal Register** notice announcing the SAB meeting. It is the policy of the SAB to accept written comments and accommodate oral public comments wherever possible at its public meetings.

Dated: April 8, 2003.

Paul Gilman,

Assistant Administrator for Research and Development.

[FR Doc. 03–9048 Filed 4–11–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

April 4, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 13, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0208.

Title: Section 73.1870, Chief Operators.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities; Not-for-profit institutions.

Number of Respondents: 14,500.

Estimated Time per Response: 26 hours.

Frequency of Response: Recordkeeping; Third party disclosure.

Total Annual Burden: 379,407.

Total Annual Costs: $0.00.

Needs and Uses: 47 CFR 73.1870 requires that the licensee of an AM, FM, or TV broadcast station designate a chief operator of the station. Section 73.1870(b)(3) requires that this designation must be in writing and posted with the station license. Section 73.1230 requires that all licensees post station licenses ''at the place the licensee considers the principal control point of the transmitter'' generally at the transmitter site. Agreements with chief operators serving on a contract basis must be in writing with a copy kept in

the station files. Section 73.1870(c)(3) requires that the chief operator, or personnel delegated and supervised by the chief operator, review the station records at least once each week to determine if required entries are being made correctly, and verify that the station has been operated in accordance with FCC rules and the station authorization. Upon completion of the review, the chief operator must date and sign the log, initiate corrective action, which may be necessary, and advise the station licensee of any condition, which is repetitive. The posting of the designation of the chief operator is used by interested parties to readily identify the chief operator. The review of the station records is used by the chief operator, and FCC staff in investigations, to assure that the station is operating in accordance with its station authorization and the FCC rules and regulations.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 03–8969 Filed 4–11–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

[No. 2003–N–4]

Federal Home Loan Bank Members Selected for Community Support Review

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Board (Finance Board) is announcing the Federal Home Loan Bank (Bank) members it has selected for the 2002–03 fifth quarter review cycle under the Finance Board's community support requirements regulation. This notice also prescribes the deadline by which Bank members selected for review must submit Community Support Statements to the Finance Board.

DATES: Bank members selected for the 2002–03 fifth quarter review cycle under the Finance Board's community support requirements regulation must submit completed Community Support Statements to the Finance Board on or before May 26, 2003.

ADDRESSES: Bank members selected for the 2002–03 fifth quarter review cycle under the Finance Board's community support requirements regulation must submit completed Community Support Statements to the Finance Board either by regular mail at the Federal Housing Finance Board, Office of Supervision, Community Investment and Affordable Housing, 1777 F Street, NW., Washington, DC 20006, or by electronic mail at *fitzgeralde@fhfb.gov.*

FOR FURTHER INFORMATION CONTACT: Emma J. Fitzgerald, Program Analyst, Office of Supervision, Community Investment and Affordable Housing, by telephone at 202/408–2874, by electronic mail at *fitzgeralde@fhfb.gov,* or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Selection for Community Support Review

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires the Finance Board to promulgate regulations establishing standards of community investment or service Bank members must meet in order to maintain access to long-term advances. *See* 12 U.S.C. 1430(g)(1). The regulations promulgated by the Finance Board must take into account factors such as the Bank member's performance under the Community Reinvestment Act of 1977 (CRA), 12 U.S.C. 2901 *et seq.,* and record of lending to first-time homebuyers. *See* 12 U.S.C. 1430(g)(2). Pursuant to section 10(g) of the Bank Act, the Finance Board has promulgated a community support requirements regulation that establishes standards a Bank member must meet in order to maintain access to long-term advances, and review criteria the Finance Board must apply in evaluating a member's community support performance. *See* 12 CFR part 944. The regulation includes standards and criteria for the two statutory factors—CRA performance and record of lending to first-time homebuyers. 12 CFR 944.3. Only members subject to the CRA must meet the CRA standard. 12 CFR 944.3(b). All members, including those not subject to CRA, must meet the first-time homebuyer standard. 12 CFR 944.3(c).

Under the rule, the Finance Board selects approximately one-eighth of the members in each Bank district for community support review each calendar quarter. 12 CFR 944.2(a). The Finance Board will not review an institution's community support performance until it has been a Bank member for at least one year. Selection for review is not, nor should it be construed as, any indication of either the financial condition or the community support performance of the member.

Each Bank member selected for review must complete a Community Support Statement and submit it to the Finance Board by the May 26, 2003 deadline prescribed in this notice. 12 CFR 944.2(b)(1)(ii) and (c). On or before April 28, 2003, each Bank will notify the members in its district that have been selected for the 2002–03 fifth quarter community support review cycle that they must complete and submit to the Finance Board by the deadline a Community Support Statement. 12 CFR 944.2(b)(2)(i). The member's Bank will provide a blank Community Support Statement Form, which also is available on the Finance Board's web site: *http://www.fhfb.gov.* Upon request, the member's Bank also will provide assistance in completing the Community Support Statement.

The Finance Board has selected the following members for the 2002–03 fifth quarter community support review cycle:

Federal Home Loan Bank of Boston—District 1

People's Bank, Bridgeport, Connecticut
Farmington Savings Bank, Farmington, Connecticut
Savings Bank of Manchester, Manchester, Connecticut
Liberty Bank, Middletown, Connecticut
Naugatuck Savings Bank, Naugatuck, Connecticut
The Citizens National Bank, Putnam, Connecticut
Simsbury Bank and Trust Company, Simsbury, Connecticut
Windsor Federal Savings & Loan, Windsor, Connecticut
Windsor Locks Community Bank, FSL, Windsor Locks, Connecticut
United Kingfield Bank, Bangor, Maine
Ocean Communities Federal Credit Union, Biddeford, Maine
St. Joseph's Credit Union, Biddeford, Maine
The First National Bank of Damariscotta, Damariscotta, Maine
Gardiner Savings Institution FSB, Gardiner, Maine
Machias Savings Bank, Machias, Maine
Katahdin Federal Credit Union, Millinocket, Maine
St. Croix Federal Credit Union, Woodland, Maine
Tremont Credit Union, Boston, Massachusetts
University Credit Union, Boston, Massachusetts
Brockton Credit Union, Brockton, Massachusetts
Broadway National Bank, Chelsea, Massachusetts
Dedham Co-operative Bank, Dedham, Massachusetts
Everett Credit Union, Everett, Massachusetts
Worker's Credit Union, Fitchburg, Massachusetts

Framingham Co-operative Bank, Framingham, Massachusetts
The Benjamin Franklin Savings Bank, Franklin, Massachusetts
Dean Cooperative Bank, Franklin, Massachusetts
Greenfield Savings Bank, Greenfield, Massachusetts
UMassFive College Federal Credit Union, Hadley, Massachusetts
Hanscom Federal Credit Union, Hanscom AFB, Massachusetts
Economy Co-operative Bank, Merrimac, Massachusetts
Mayflower Cooperative Bank, Middleborough, Massachusetts
Millbury Federal Credit Union, Millbury, Massachusetts
Compass Bank for Savings, New Bedford, Massachusetts
First Citizens' Federal Credit Union, New Bedford, Massachusetts
North Shore Bank, A Co-Operative Bank, Peabody, Massachusetts
Berkshire Bank, Pittsfield, Massachusetts
The Pittsfield Cooperative Bank, Pittsfield, Massachusetts
Sharon Co-operative Bank, Sharon, Massachusetts
Slade's Ferry Trust Company, Somerset, Massachusetts
Central Cooperative Bank, Somerville, Massachusetts
Savers Co-operative Bank, Southbridge, Massachusetts
Southbridge Savings Bank, Southbridge, Massachusetts
Stoneham Co-operative Bank, Stoneham, Massachusetts
The Martha's Vineyard Co-operative Bank, Vineyard Haven, Massachusetts
Ware Co-operative Bank, Ware, Massachusetts
United Cooperative Bank, West Springfield, Massachusetts
Westfield Savings Bank, Westfield, Massachusetts
Winthrop Federal Credit Union, Winthrop, Massachusetts
Flagship Bank and Trust Company, Worcester, Massachusetts
Connecticut River Bank N.A. Charleston, New Hampshire
Claremont Savings, Claremont, New Hampshire
Triangle Credit Union, Nashua, New Hampshire
Sugar River Savings Bank, Newport, New Hampshire
Lake Sunapee Bank, Newport, New Hampshire
Piscataqua Savings Bank, Portsmouth, New Hampshire
Service Credit Union, Portsmouth, New Hampshire
The Washington Trust Company, Westerly, Rhode Island
The Bank of Bennington, Bennington, Vermont
Factory Point National Bank, Manchester Center, Vermont
Heritage Family Credit Union, Rutland, Vermont
Passumpsic Savings Bank, St. Johnsbury, Vermont

Federal Home Loan Bank of New York—District 2

Ocwen Federal Bank FSB, West Palm Beach, Florida
American Savings Bank of NJ, Bloomfield, New Jersey
Clifton Savings Bank, S.L.A., Clifton, New Jersey
Sussex Bank, Franklin, New Jersey
First Hope Bank, a national banking association, Hope, New Jersey
Magyar Savings Bank, New Brunswick, New Jersey
Lusitania Savings Bank, fsb, Newark, New Jersey
Roebling Bank, Roebling, New Jersey
Penn Federal Savings Bank, West Orange, New Jersey
Monroe Savings Bank, S.L.A., Williamstown, New Jersey
Franklin Savings Bank, Woodstown, New Jersey
BSB Bank & Trust Company, Binghamton, New York
Ponce De Leon Federal Bank, Bronx, New York
Atlantic Liberty Savings, Brooklyn, New York
Community Capital Bank, Brooklyn, New York
The Bank of Castile, Castile, New York
Fulton Savings Bank, Fulton, New York
Astoria Federal Savings & Loan Association, Lake Success, New York
Pittsford Federal Credit Union, Mendon, New York
First Federal Savings of Middletown, Middletown, New York
Amalgamated Bank, New York, New York
United Orient Bank, New York, New York
Northfield Savings Bank, Staten Island, New York
Empire Federal Credit Union, Syracuse, New York
Wallkill Valley FS&LA, Wallkill, New York
The Bank & Trust of Puerto Rico, San Juan, Puerto Rico

Federal Home Loan Bank of Pittsburgh—District 3

Citicorp Trust Bank, FSB, Newark, Delaware
Wilmington Savings Fund Society, FSB, Wilmington, Delaware
C & G Savings Bank, Altoona, Pennsylvania
Ambler Savings & Loan Association, Ambler, Pennsylvania
First Star Savings Bank, Bethlehem, Pennsylvania
First FS&LA of Bucks County, Bristol, Pennsylvania
Alliance Bank, Broomall, Pennsylvania
Sharon Savings Bank, Darby, Pennsylvania
ESB Bank, Ellwood City, Pennsylvania
County Savings Association, Essington, Pennsylvania
Stonebridge Bank, Exton, Pennsylvania
Bank of Hanover and Trust Company, Hanover, Pennsylvania
Fox Chase Bank, Hatboro, Pennsylvania
Hatboro Federal Savings, Hatboro, Pennsylvania
First Federal Bank, Hazleton, Pennsylvania
William Penn Savings and Loan Association, Levittown, Pennsylvania
Willow Grove Bank, Maple Glen, Pennsylvania
First Keystone Federal Savings Bank, Media, Pennsylvania
Morton Savings Bank, Morton, Pennsylvania
Nesquehoning Savings Bank, Nesquehoning, Pennsylvania
Third Federal Bank, Newtown, Pennsylvania
Malvern Federal Savings Bank, Paoli, Pennsylvania
First Savings Bank of Perkasie, Perkasie, Pennsylvania
Asian Bank, Philadelphia, Pennsylvania
Pennsylvania Business Bank, Philadelphia, Pennsylvania
Second FS&LA of Philadelphia, Philadelphia, Pennsylvania
Washington Savings Association, Philadelphia, Pennsylvania
Bell FS&LA of Bellevue, Pittsburgh, Pennsylvania
Great American Federal, Pittsburgh, Pennsylvania
National City Bank of Pennsylvania, Pittsburgh, Pennsylvania
Progressive Home FS&LA, Pittsburgh, Pennsylvania
Patriot Bank, Pottstown, Pennsylvania
The Quakertown National Bank, Quakertown, Pennsylvania
Mercer County State Bank, Sandy Lake, Pennsylvania
North Penn Savings & Loan Association, Scranton, Pennsylvania
Penn Security Bank, & Trust Company, Scranton, Pennsylvania
Slovenian S&LA of Canonsburg, Strabane, Pennsylvania
First National Bank of West Chester, West Chester, Pennsylvania
First Heritage Bank, Wilkes-Barre, Pennsylvania
WNB Bank, Williamsport, Pennsylvania
First Century Bank, Bluefield, West Virginia
Pioneer Community Bank, Iaeger, West Virginia
Bank of Mount Hope, Inc., Mount Hope, West Virginia

Community Bank of Parkersburg, Parkersburg, West Virginia
First National Bank, Spencer, West Virginia
Pleasants County Bank, St. Marys, West Virginia
Poca Valley Bank, Walton, West Virginia

Federal Home Loan Bank of Atlanta—District 4

Covington County Bank, Andalusia, Alabama
United Bank, Atmore, Alabama
AmSouth Bank, Birmingham, Alabama
Bank of Alabama, Birmingham, Alabama
New South Federal Savings Bank, Birmingham, Alabama
Community Bank, Blountsville, Alabama
BankTrust, Brewton, Alabama
Cullman Savings Bank, Cullman, Alabama
Peoples Bank of North Alabama, Cullman, Alabama
First American Bank, Decatur, Alabama
The Citizens Bank, Enterprise, Alabama
Commerce South Bank, Eufala, Alabama
EvaBank, Eva, Alabama
First Gulf Bank, Gulf Shores, Alabama
Merchants Bank, Jackson, Alabama
Farmers & Merchants Bank, Lafayette, Alabama
Southwest Bank of Alabama, Inc., McIntosh, Alabama
Bank Trust, Mobile, Alabama
Community Spirit Bank, Red Bay, Alabama
Valley State Bank, Russellville, Alabama
The Peoples Bank and Trust Company, Selma, Alabama
Sweet Water State Bank, Sweet Water, Alabama
First Federal of the South, Sylacauga, Alabama
First Citizens Bank, Talladega, Alabama
The First National Bank of Talladega, Talladega, Alabama
First United Security Bank, Thomasville, Alabama
City First Bank of D.C., N.A., Washington, D. C.
Citrus and Chemical Bank, Bartow, Florida
Mackinac Savings Bank, FSB, Boynton Beach, Florida
First FSB of the Glades, Clewiston, Florida
First Bank of Clewiston, Clewiston, Florida
First National Bank of Crestview, Crestview, Florida
Regent Bank, Davie, Florida
Dunnellon State Bank, Dunnellon, Florida
Landmark Bank, N.A., Ft. Lauderdale, Florida
Premier Community Bank of South Florida, Ft. Lauderdale, Florida
Old Florida Bank, Fort Myers, Florida
First City Bank of Florida, Fort Walton Beach, Florida
Desjardins Federal Savings Bank, Hallandale, Florida
First National Bank of South Florida, Homestead, Florida
Florida Community Bank, Immokalee, Florida
The Bank of Inverness, Inverness, Florida
Educational Community Credit Union, Jacksonville, Florida
First Guaranty Bank and Trust Company, Jacksonville, Florida
Monticello Bank, Jacksonville, Florida
Publix Employees FCU, Lakeland, Florida
First FSB of Lake County, Leesburg, Florida
First Federal Savings Bank, Live Oak, Florida
Commercial Bank of Florida, Miami, Florida
Eastern National Bank, Miami, Florida
Helm Bank, Miami, Florida
Tropical Financial Credit Union, Miami, Florida
Pelican National Bank, Naples, Florida
American National Bank, Oakland Park, Florida
CNL Bank, Orlando, Florida
First Community Bank of Palm Beach County, Pahokee, Florida
Peoples First Community Bank, Panama City, Florida
Century Bank, a Federal Savings Bank, Sarasota, Florida
Highlands Independent Bank, Sebring, Florida
Eastern Financial Florida Credit Union, South Florida, Florida
Raymond James Bank, FSB, St. Petersburg, Florida
United Southern Bank, Umatilla, Florida
Marine Bank and Trust, Vero Beach, Florida
Sterling Bank, F.S.B., West Palm Beach, Florida
Montgomery County Bank, Ailey, Georgia
Chattahoochee National Bank, Alpharetta, Georgia
First Colony Bank, Alpharetta, Georgia
Citizens Trust Bank, Atlanta, Georgia
First Bank of Georgia, Augusta, Georgia
United Community Bank, Blairsville, Georgia
First National Bank of Georgia, Buchanan, Georgia
Bank of Chickamauga, Chickamauga, Georgia
Peoples Community Bank of Colquitt, Colquitt, Georgia
Peoples Community Bank, Colquitt, Georgia
First Bank of Dalton, Dalton, Georgia
Bank of Dudley, Dudley, Georgia
The Peoples Bank, Eatonton, Georgia
Pinnacle Bank, N.A., Elberton, Georgia
Gainesville Bank and Trust, Gainesville, Georgia
First Citizens Bank, Glennville, Georgia
South Georgia Bank, Glennville, Georgia
SunMark Community Bank, Hawkinsville, Georgia
Community Trust Bank, Hiram, Georgia
Northeast Georgia Bank, Lavonia, Georgia
Peoples Bank, Lithonia, Georgia
The Community Bank, Loganville, Georgia
Rivoli Bank & Trust, Macon, Georgia
First Security National Bank, Norcross, Georgia
Family Bank, Pelham, Georgia
The Citizens National Bank of Quitman, Quitman, Georgia
Wilcox County State Bank, Rochelle, Georgia
Citizens First Bank, Rome, Georgia
Farmers and Merchants Community Bank, Senoia, Georgia
Quantum National Bank, Suwanee, Georgia
Bank of Thomas County, Thomasville, Georgia
Citizens Bank & Trust, Trenton, Georgia
Farmers and Merchants Bank, Washington, Georgia
First Piedmont Bank, Winder, Georgia
Bay-Vanguard Federal Savings Bank, Baltimore, Maryland
Hull Federal Savings Bank, Baltimore, Maryland
Ideal Federal Savings Bank, Baltimore, Maryland
State Employees Credit Union, Baltimore, Maryland
Susquehanna Bank, Baltimore, Maryland
Vigilant Federal Savings Bank, Baltimore, Maryland
F&M Bank—Allegiance, Bethesda, Maryland
TMB Federal Credit Union, Cabin John, Maryland
Cecil Federal Bank, Elkton, Maryland
The Back and Middle River FS&L, Essex, Maryland
County National Bank, Glen Burnie, Maryland
North Arundel FSB, FSB, Pasadena, Maryland
Provident State Bank of Preston, Preston, Maryland
IR Federal Credit Union, Riverdale, Maryland
Randolph Bank & Trust Company, Asheboro, North Carolina
First Commerce Bank, Charlotte, North Carolina
First Union Direct Bank, N.A., Charlotte, North Carolina
Rowan Savings Bank, SSB, China Grove, North Carolina
Mechanics and Farmers Bank, Durham, North Carolina

Gateway Bank & Trust Company, Elizabeth City, North Carolina
Macon Bank, Franklin, North Carolina
First Gaston Bank of North Carolina, Gastonia, North Carolina
Carolina Bank, Greensboro, North Carolina
MountainBank, Hendersonville, North Carolina
Hertford Savings Bank, SSB, Hertford, North Carolina
The Little Bank, Kinston, North Carolina
Industrial Federal Savings Bank, Lexington, North Carolina
Lexington State Bank, Lexington, North Carolina
Liberty Savings and Loan Association, Liberty, North Carolina
First Savings and Loan Association, Mebane, North Carolina
American Community Bank, Monroe, North Carolina
Mount Gilead S&LA, Mount Gilead, North Carolina
State Employees' Credit Union, Raleigh, North Carolina
Taylorsville Savings Bank, SSB, Taylorsville, North Carolina
Anson Bank & Trust Company, Wadesboro, North Carolina
Waccamaw Bank, Whiteville, North Carolina
Cooperative Bank for Svgs, Inc., SSB, Wilmington, North Carolina
Loyal American Life Insurance Company, Cincinnati, Ohio
People's Community Bank of S.C., Aiken, South Carolina
Home Federal Savings and Loan Assn, Bamberg, South Carolina
Florence National Bank, Florence, South Carolina
GrandSouth Bank, Fountain Inn, South Carolina
Bank of Greeleyville, Greeleyville, South Carolina
County Bank, Greenwood, South Carolina
Greer State Bank, Greer, South Carolina
First National Bank of South Carolina, Holly Hill, South Carolina
Kingstree FS&LA, Kingstree, South Carolina
The Bank of Clarendon, Manning, South Carolina
Southcoast Community Bank, Mt. Pleasant, South Carolina
Anderson Brothers Bank, Mullins, South Carolina
Pickens Savings & Loan Association, Pickens, South Carolina
Bank of Travelers Rest, Travelers Rest, South Carolina
Napus Federal Credit Union, Alexandria, Virginia
The Blue Grass Valley Bank, Blue Grass, Virginia
The Bank of Southside Virginia, Carson, Virginia
Second Bank & Trust, Culpeper, Virginia
Apple Federal Credit Union, Fairfax, Virginia
Chesapeake Bank, Kilmarnock, Virginia
Imperial Savings and Loan Association, Martinsville, Virginia
Navy Federal Credit Union, Merrifield, Virginia
Bank of the Commonwealth, Norfolk, Virginia
Lee Bank and Trust Company, Pennington Gap, Virginia
First , Virginia Bank—Colonial, Richmond, Virginia
The Marathon Bank, Winchester, Virginia

Federal Home Loan Bank of Cincinnati—District 5

Farmers Bank & Trust Company, Bardstown, Kentucky
Wilson & Muir Bank and Trust Company, Bardstown, Kentucky
Bank of Cadiz and Trust Company, Cadiz, Kentucky
Bank of Columbia, Columbia, Kentucky
First Federal Savings Bank, Cynthiana, Kentucky
The Harrison Deposit Bank and Trust Company, Cynthiana, Kentucky
Kentucky National Bank, Elizabethtown, Kentucky
Farmers Bank, Hardinsburg, Kentucky
Hancock Bank and Trust Company, Hawesville, Kentucky
Peoples Bank & Trust Company of Hazard, Hazard, Kentucky
Heritage Bank, Hopkinsville, Kentucky
Planters Bank, Inc., Hopkinsville, Kentucky
Bank of Jamestown, Jamestown, Kentucky
THE BANK—Oldham County, Inc., LaGrange, Kentucky
Leitchfield Deposit Bank and Trust Company, Leitchfield, Kentucky
Central Bank & Trust Company, Inc., Lexington, Kentucky
L&N Federal Credit Union, Louisville, Kentucky
River City Bank, Louisville, Kentucky
Farmers Bank & Trust Company of Marion, Kentucky, Marion, Kentucky
Monticello Banking Company, Monticello, Kentucky
Pioneer Bank, Munfordville, Kentucky
South Central Bank of Daviess County, Inc., Owensboro, Kentucky
The Salt Lick Deposit Bank, Owingsville, Kentucky
Blue Grass Federal Savings and Loan Association, Paris, Kentucky
First Commonwealth Bank of Prestonsburg, Inc., Prestonsburg, Kentucky
Fort Knox National Bank, Radcliff, Kentucky
Belpre Savings Bank, Belpre, Ohio
The Farmers Citizens Bank, Bucyrus, Ohio
Eagle Savings Bank, Cincinnati, Ohio
The Mercantile Savings Bank, Cincinnati, Ohio
Union Savings Bank, Cincinnati, Ohio
The Winton Savings and Loan Company, Cincinnati, Ohio
Conneaut Savings Bank, Conneaut, Ohio
The Commercial Bank, Delphos, Ohio
The Fort Jennings State Bank, Fort Jennings, Ohio
The Hamler State Bank, Hamler, Ohio
Morgan Bank, N.A., Hudson, Ohio
The Fahey Banking Company of Marion, Marion, Ohio
Citizens National Bank of McConnelsville, McConnelsville, Ohio
Great Lakes Bank, Mentor, Ohio
The American Savings Bank, Middletown, Ohio
First National Bank of New Holland, New Holland, Ohio
The Farmers State Bank, New Washington, Ohio
First National Bank, Orrville, Ohio
The Republic Banking Company, Republic, Ohio
Chippewa Valley Bank, Rittman, Ohio
Mutual Federal Savings Bank, Sidney, Ohio
The Security National Bank and Trust Company, Springfield, Ohio
Central Federal Savings and Loan Association of Wellsville, Wellsville, Ohio
The Peoples Savings and Loan Company, West Liberty, Ohio
The Union Banking Company, West Mansfield, Ohio
Farmers State Bank, West Salem, Ohio
First Community Bank, Whitehall, Ohio
The Wilmington Savings Bank, Wilmington, Ohio
The Wayne Savings Community Bank, Wooster, Ohio
Brighton Bank, Brighton, Tennessee
Cumberland Bank, Carthage, Tennessee
Highland Federal Savings and Loan Association Of Crossville, Crossville, Tennessee
Security Federal Bank, Elizabethton, Tennessee
The Lauderdale County Bank, Halls, Tennessee
Carroll Bank & Trust, Huntingdon, Tennessee
First National Bank, Manchester, Tennessee
The Coffee County Bank, Manchester, Tennessee
The Home Bank of Tennessee, Maryville, Tennessee
Memphis Area Teachers' Credit Union, Memphis, Tennessee
The Bank of Moscow, Moscow, Tennessee
Johnson County Bank, Mountain City, Tennessee

Bank of Murfreesboro, Murfreesboro, Tennessee
Home Banking Company, Selmer, Tennessee

Federal Home Loan Bank of Indianapolis—District 6

Bedford Federal Savings Bank, Bedford, Indiana
Franklin County National Bank, Brookville, Indiana
Union Federal Savings & Loan Association, Crawfordsville, Indiana
Decatur Bank and Trust Company, Decatur, Indiana
United Fidelity Bank, Evansville, Indiana
Fowler State Bank, Fowler, Indiana
First Federal Savings Bank, Huntington, Indiana
Campbell & Fetter Bank, Kendallville, Indiana
United Community Bank, Lawrenceburg, Indiana
River Valley Financial Bank, Madison, Indiana
Fidelity FSB, Marion, Indiana
State Bank of Markle, Markle, Indiana
First State Bank of Middlebury, Middlebury, Indiana
Citizens Financial Services, FSB, Munster, Indiana
Regional Federal Savings Bank, New Albany, Indiana
Community Bank of Southern Indiana, New Albany, Indiana
Ameriana Bank and Trust, New Castle, Indiana
AmericanTrust FSB, Peru, Indiana
Mid-Southern Savings Bank, FSB, Salem, Indiana
Spencer County Bank, Santa Claus, Indiana
Jackson County Bank, Seymour, Indiana
Shelby County Bank, Shelbyville, Indiana
Sobieski Bank, South Bend, Indiana
Security Federal Bank, FSB, St. John, Indiana
Terre Haute Savings Bank, Terre Haute, Indiana
Frances Slocum Bank, Wabash, Indiana
Homestead Savings Bank, FSB, Albion, Michigan
Ann Arbor Commerce Bank, Ann Arbor, Michigan
Charlevoix State Bank, Charlevoix, Michigan
Dearborn Federal Savings Bank, Dearborn, Michigan
Financial Health Credit Union, East Lansing, Michigan
Firstbank-Lakeview, Lakeview, Michigan
State Employees Credit Union, Lansing, Michigan
Independent Bank South Michigan, Leslie, Michigan
State Savings Bank, Manistique, Michigan
Mason State Bank, Mason, Michigan
Community Federal Credit Union, Plymouth, Michigan
Team One Credit Union, Saginaw, Michigan
Sidney State Bank, Sidney, Michigan
Standard Federal Bank National Association, Troy, Michigan
Flagstar Bank, Troy, Michigan
Research Federal Credit Union, Warren, Michigan
1st Bank, West Branch, Michigan

Federal Home Loan Bank of Chicago—District 7

Oxford Bank and Trust, Addison, Illinois
Bank of Bellwood, Bellwood, Illinois
Heartland Bank & Trust Company, Bloomington, Illinois
Peoples Bank of Kankakee County, Bourbonnais, Illinois
Bridgeview Bank and Trust, Bridgeview, Illinois
Southe Pointe Bank, Carbondale, Illinois
United Community Bank, Chatham, Illinois
Amalgamated Bank of Chicago, Chicago, Illinois
Austin Bank of Chicago, Chicago, Illinois
Builders Bank, Chicago, Illinois
Burling Bank, Chicago, Illinois
Community Bank of Lawndale, Chicago, Illinois
First Savings Bank of Hegewisch, Chicago, Illinois
Foster Bank, Chicago, Illinois
State Bank of Countryside, Countryside, Illinois
First Savings Bank, Danville, Illinois
Clover Leaf Bank, Edwardsville, Illinois
Effingham State Bank, Effingham, Illinois
Illinois Community Bank, Effingham, Illinois
Washington Savings Bank, Effingham, Illinois
Elgin Financial Savings Bank, Elgin, Illinois
First American Bank, Elk Grove Village, Illinois
Forest Park National Bank & Trust Company, Forest Park, Illinois
Harris Bank Frankfort, Frankfort, Illinois
Union Savings Bank, Freeport, Illinois
Central Bank Illinois, Geneseo, Illinois
Bank of Gibson City, Gibson City, Illinois
Northside Community Bank, Gurnee, Illinois
UnionBank/Northwest, Hanover, Illinois
Parkway Bank & Trust Company, Harwood Heights, Illinois
North Central Bank, Hennepin, Illinois
State Bank of Herscher, Herscher, Illinois
First State Bank of Heyworth, Heyworth, Illinois
The Farmers State Bank and Trust Company, Jacksonville, Illinois
First FS&LA of Kewanee, Kewanee, Illinois
Logan County Bank, Lincoln, Illinois
Twin Oaks Savings Bank, Marseilles, Illinois
Citizens Community Bank, Mascoutah, Illinois
Okaw Building and Loan, s.b., Mattoon, Illinois
Middletown State Bank, Middleton, Illinois
Blackhawk State Bank, Milan, Illinois
Parish Bank and Trust Company, Momence, Illinois
First State Bank of Monticello, Monticello, Illinois
BankPlus, Morton, Illinois
George Washington Savings Bank, Oak Lawn, Illinois
The First National Bank of Ogden, Ogden, Illinois
The First National Bank of Okawville, Okawville, Illinois
First National Bank in Olney, Olney, Illinois
The Edgar County Bank & Trust Company, Paris, Illinois
First FS&LA of Pekin, Pekin, Illinois
First National Bank in Pinckneyville, Pinckneyville, Illinois
State Street Bank & Trust Company, Quincy, Illinois
Mercantile Trust and Savings Bank, Quincy, Illinois
North County Savings Bank, Red Bud, Illinois
First Crawford State Bank, Robinson, Illinois
American Bank and Trust Company, Rock Island, Illinois
Stillman BancCorp, N.A., Rockford, Illinois
First Savanna Savings Bank, Savanna, Illinois
First State Bank of Shannon-Polo, Shannon, Illinois
Security Bank, sb, Springfield, Illinois
UmbrellaBank, FSB, Summit, Illinois
The National Bank & Trust Company of Sycamore, Sycamore, Illinois
Alpha Community Bank, Toluca, Illinois
Villa Park Trust & Savings Bank, Villa Park, Illinois
Citizens First State Bank, Walnut, Illinois
The Hill Dodge Banking Company, Warsaw, Illinois
State Bank of Waterloo, Waterloo, Illinois
Cardunal Savings Bank, FSB, West Dundee, Illinois
First American Credit Union, Beloit, Wisconsin
Jackson County Bank, Black River Falls, Wisconsin
State Bank of Cross Plains, Cross Plains, Wisconsin

State Financial Bank, National Association, Hales Corners, Wisconsin
AM Community Credit Union, Kenosha, Wisconsin
Time Federal Savings Bank, Medford, Wisconsin
M&I Marshall & Ilsley Bank, Milwaukee, Wisconsin
Marine Bank, Pewaukee, Wisconsin
Community Bank Spring Green & Plain, Spring Green, Wisconsin
Tomahawk Community Bank SSB, Tomahawk, Wisconsin

Federal Home Loan Bank of Des Moines—District 8

Peoples Trust & Savings Bank, Adel, Iowa
Security State Bank, Anamosa, Iowa
State Savings Bank, Baxter, Iowa
Farmers Trust and Savings Bank, Buffalo Center, Iowa
Linn Area Credit Union, Cedar Rapids, Iowa
United Security Savings Bank, F.S.B., Cedar Rapids, Iowa
Citizens State Bank, Clarinda, Iowa
Clear Lake Bank & Trust Company, Clera Lake, Iowa
Gateway State Bank, Clinton, Iowa
Cresco Union Savings Bank, Cresco, Iowa
Denver Savings Bank, Denver, Iowa
DeWitt Bank & Trust Company, DeWitt, Iowa
Premier Bank, Dubuque, Iowa
Liberty Trust and Savings Bank, Durant, Iowa
Farmers Trust & Savings Bank, Earling, Iowa
Hardin County Savings Bank, Eldora, Iowa
Peoples State Bank, Elkader, Iowa
Bank Plus Estherville, Iowa
NorthStar Bank, Estherville, Iowa
Fort Madison Bank & Trust Company, Fort Madison, Iowa
Security Savings Bank, Gowrie, Iowa
Midstates Bank, NA, Harlan, Iowa
Hills Bank and Trust Company, Hills, Iowa
First State Bank, Huxley, Iowa
First State Bank, Ida Grove, Iowa
Peoples Savings Bank, Indianola, Iowa
Iowa Falls State Bank, Iowa Falls, Iowa
Kerndt Brothers Savings Bank, Lansing, Iowa
Libertyville Savings Bank, Libertyville, Iowa
First State Bank, Lynnville, Iowa
First National Bank, Manning, Iowa
Valley Bank & Trust, Mapleton, Iowa
Maquoketa State Bank, Maquoketa, Iowa
Maynard Savings Bank, Maynard, Iowa
Union State Bank, Monona, Iowa
Citizens State Bank, Monticello, Iowa
Wayland State Bank, Mount Pleasant, Iowa
Mount Vernon Bank, and Trust Company, Mount Vernon, Iowa
Community Bank, Muscatine, Iowa
Horizon Federal Savings Bank, Oskaloosa, Iowa
First National Bank Midwest, Oskaloosa, Iowa
Pella State Bank, Pella, Iowa
First State Bank, Riceville, Iowa
Peoples Bank, Rock Valley, Iowa
Union State Bank, Rockwell City, Iowa
Rolfe State Bank, Rolfe, Iowa
Security State Bank, Sheldon, Iowa
First Community Bank, Sidney, Iowa
St. Ansgar State Bank, St. Ansgar, Iowa
Victor State Bank, Victor, Iowa
Washington State Bank, Washington, Iowa
Citizens State Bank, Waukon, Iowa
Iowa State Bank, West Bend, Iowa
GuideOne Life Insurance Company, West Des Moines, Iowa
GuideOne Mutual Insurance Company, West Des Moines, Iowa
GuideOne Specialty Insurance Company, West Des Moines, Iowa
Wilton Savings Bank, Wilton, Iowa
Sterling State Bank, Austin, Minnesota
White Rock Bank, Cannon Falls, Minnesota
Currie State Bank, Currie, Minnesota
State Bank of Danvers, Danvers, Minnesota
State Bank of Delano, Delano, Minnesota
Voyager Bank, Eden Prairie, Minnesota
Inter Savings Bank, fsb, Edina, Minnesota
Stearns Bank Evansville, NA, Evansville, Minnesota
1st United Bank, Faribault, Minnesota
Border State Bank of Greenbush, Greenbush, Minnesota
Citizens State Bank of Hayfield, Hayfield, Minnesota
Farmers State Bank of Hoffman, Hoffman, Minnesota
Fortress Bank National Association, Houston, Minnesota
Security State Bank of Howard Lake, Howard Lake, Minnesota
Key Community Bank, Inver Grove Heights, Minnesota
First Security Bank—Lake Benton, Lake Benton, Minnesota
Lake City Federal Savings and Loan Association, Lake City, Minnesota
Lake Area Bank, Lindstrom, Minnesota
Wells Fargo, MN N.A., Minneapolis, Minnesota
Bayside Bank, Minnetonka, Minnesota
First National Bank of Moose Lake, Moose Lake, Minnesota
United Prairie Bank, Mountain Lake, Minnesota
American Bank of the North, Nashwauk, Minnesota
State Bank of New Prague, New Prague, Minnesota
ProGrowth Bank, Nicollet, Minnesota
Midwest Bank NA, Parkers Prairie, Minnesota
First National Bank of Pine City, Pine City, Minnesota
Premier Bank Rochester, Rochester, Minnesota
Citizens State Bank of Roseau, Roseau, Minnesota
Bremer Bank, N.A., St. Cloud, Minnesota
St. James Federal Savings and Loan Association, St. James, Minnesota
Liberty State Bank, St. Paul, Minnesota
Nicollet County Bank of Saint Peter, St. Peter, Minnesota
Farmers State Bank of Trimont, Trimont, Minnesota
The First National Bank of Walker, Walker, Minnesota
Roundbank, Waseca, Minnesota
Community Bank Winsted, Winsted, Minnesota
First Independent Bank of Wood Lake, Wood Lake, Minnesota
Citizens Bank of Amsterdam, Amsterdam, Missouri
Bank of Jacomo, Blue Springs, Missouri
Community State Bank of Bowling Green, Bowling Green, Missouri
Pony Express Bank, Braymer, Missouri
Mississippi County Savings & Loan Association,Charleston, Missouri
CSB Bank, Claycomo, Missouri
Citizens Union State Bank and Trust, Clinton, Missouri
First National Bank & Trust, Columbia, Missouri
Meramec Valley Bank, Ellisville, Missouri
New Era Bank, Fredericktown, Missouri
Bank Star One, Fulton, Missouri
America Loan and Savings Association, Hannibal, Missouri
The Central Trust Bank, Jefferson City, Missouri
Macon-Atlanta State Bank, Macon, Missouri
Regional Missouri Bank, Marceline, Missouri
Nodaway Valley Bank, Maryville, Missouri
Independent Farmers Bank, Maysville, Missouri
Heritage State Bank, Nevada, Missouri
Southwest Community Bank, Ozark, Missouri
Palmyra State Bank, Palmyra, Missouri
Farley State Bank, Parkville, Missouri
Perry State Bank, Perry, Missouri
Citizens Community Bank, Pilot Grove, Missouri
Farmers Bank of Portageville, Portageville, Missouri
Pulaski Bank, Saint Louis, Missouri
Bank of Salem, Salem, Missouri
The Merchants & Farmers Bank of Salisbury, Salisbury, Missouri
Community Bank of Pettis County, Sedalia, Missouri

Empire Bank, Springfield, Missouri
Liberty Bank, Springfield, Missouri
Signature Bank, Springfield, Missouri
Bank Star of the Bootheel, Steele, Missouri
The Tipton Latham Bank, N.A., Tipton, Missouri
Bank of Washington, Washington, Missouri
West Plains Savings and Loan Association, West Plains, Missouri
First and Farmers Bank, Portland, North Dakota
First International Bank & Trust, Watford City, North Dakota
Wells Fargo South Dakota, Sioux Falls, South Dakota

Federal Home Loan Bank of Dallas—District 9

Southbank, A Federal Savings Bank, Huntsville, Alabama
Community Bank, Cabot, Arkansas
Farmers Bank and Trust Company, Clarksville, Arkansas
First State Bank, Conway, Arkansas
Bank of Eureka Springs, Eureka Springs, Arkansas
McIlroy Bank & Trust, Fayetteville, Arkansas
First National Bank of Fort Smith, Arkansas, Fort Smith, Arkansas
Peoples Bank of Imboden, Imboden, Arkansas
Bank of Lake Village, Lake Village, Arkansas
Bank of the Ozarks, Little Rock, Arkansas
First State Bank, Lonoke, Arkansas
Union Bank of Mena, Mena, Arkansas
First Bank of Montgomery County, Mount Ida, Arkansas
Newport Federal Savings Bank, Newport, Arkansas
First State Bank, Parkin, Arkansas
First Arkansas Valley Bank, Russellville, Arkansas
Bank of Salem, Salem, Arkansas
First Security Bank, Searcy, Arkansas
Simmons First Bank of Searcy, Searcy, Arkansas
Springdale Bank & Trust, Springdale, Arkansas
The Bank of Yellville, Yellville, Arkansas
Fidelity Bank & Trust Company, Baton Rouge, Louisiana
Globe Homestead FSA, Metairie, Louisiana
State-Investors Bank, Metairie, Louisiana
Home Federal Savings and Loan Association, Shreveport, Louisiana
Citizens Bank and Trust Company of Vivian, LA, Inc., Vivian, Louisiana
Cleveland Community Bank, s.s.b., Cleveland, Mississippi
First Federal Bank for Savings, Columbia, Mississippi
Citizens Bank & Trust Company, Louisville, Mississippi
Quitman Tri-County Federal Credit Union, Marks, Mississippi
Community First National Bank, Las Cruces, New Mexico
Pioneer Bank, Roswell, New Mexico
First National Bank of Santa Fe, Santa Fe, New Mexico
Liberty Bank, SSB, Austin, Texas
International Bank of Commerce, Brownsville, Texas
First American Bank Texas, SSB, Bryan, Texas
American Bank, NA, Corpus Christi, Texas
Bluebonnet Savings Bank FSB, Dallas, Texas
Guaranty Bank, Dallas, Texas
State Bank and Trust Company, Dallas, Dallas, Texas
The Bank & Trust, Del Rio, Texas
Western Bank and Trust, Duncanville, Texas
Bank of the West, El Paso, Texas
Government Employees Credit Union, El Paso, Texas
OmniBank, N.A., Houston, Texas
Houston Savings Bank, fsb, Houston, Texas
New Era Life Insurance Company, Houston, Texas
Southwest Bank of Texas, N.A., Houston, Texas
The First National Bank of Hughes Springs, Hughes Springs, Texas
Village Bank and Trust Company, Inc., Lakeway, Texas
International Bank of Commerce, Laredo, Texas
First State Bank, Moulton, Texas
Liberty Bank, North Richland Hills, Texas
Interstate Bank, ssb, Perryton, Texas
Cypress Bank, FSB, Pittsburg, Texas
Community Credit Union, Plano, Texas
First National Bank in Quanah, Quanah, Texas
Benchmark Bank, Quinlan, Texas
Peoples State Bank, Rocksprings, Texas
Crockett National Bank, San Angelo, Texas
Texas State Bank, San Angelo, Texas
Frost National Bank, San Antonio, Texas
State Bank & Trust of Seguin, Texas, Seguin, Texas
Cedar Creek Bank, Seven Points, Texas
Citizens Bank, Slaton, Texas
Texas National Bank, Tomball, Texas
First National Bank of Olney, Trinity, Texas
Southside Bank, Tyler, Texas
First Victoria National, Victoria, Texas
TexasBank, Weatherford, Texas
International Bank of Commerce, Zapata, Texas

Federal Home Loan Bank of Topeka—District 10

Gateway Credit Union, Aurora, Colorado
FirstBank of Avon, Avon, Colorado
Canon National Bank, Canon City, Colorado
Ent Federal Credit Union, Colorado Springs, Colorado
First State Bank, Colorado Springs, Colorado Springs, Colorado
Peoples National Bank Colorado, Colorado Springs, Colorado
Citizens State Bank, Cortez, Colorado
Guaranty Bank and Trust Company, Denver, Colorado
The State Bank, Rocky Ford, Colorado
FirstBank of Vail, Vail, Colorado
Community State Bank, Coffeyville, Kansas
Conway Bank, NA, Conway Springs, Kansas
The City State Bank, Fort Scott, Kansas
The Liberty Savings Association, FSA, Fort Scott, Kansas
First FS&LA, Independence, Kansas
First National Bank, Independence, Kansas
MidAmerican Bank & Trust Company, na, Leavenworth, Kansas
Kansas State Bank of Manhattan, Manhattan, Kansas
Stockgrowers State Bank, Maple Hill, Kansas
Citizens State Bank of Marysville, Marysville, Kansas
First Bank of Medicine Lodge, Medicine Lodge, Kansas
Montezuma State Bank, Montezuma, Kansas
Kansas State Bank, Overbrook, Kansas
1st Financial Bank, Overland Park, Kansas
First National Bank in Pratt, Pratt, Kansas
Rose Hill Bank, Rose Hill, Kansas
The Bennington State Bank, Salina, Kansas
First National Bank of Scott City, Scott City, Kansas
Security State Bank, Scott City, Kansas
Centera Bank, Sublette, Kansas
First Federal Savings & Loan Association of WaKeeney, WaKeeney, Kansas
First National Bank of Wamego, Wamego, Kansas
Kaw Valley State Bank, Wamego, Kansas
Fidelity Bank, Wichita, Kansas
First National Bank and Trust of Fullerton, Fullerton, Nebraska
Geneva State Bank, Geneva, Nebraska
Equitable Federal Savings Bank of Grand Island, Grand Island, Nebraska
Home FS&LA of Grand Island, Nebraska, Grand Island, Nebraska
Harvard State Bank, Harvard, Nebraska
Hershey State Bank, Hershey, Nebraska
Nebraska National Bank, Kearney, Nebraska
Platte Valley State Bank and Trust Company, Kearney, Nebraska

Bank of Keystone, Keystone, Nebraska
Home FS&LA of Nebraska, Lexington, Nebraska
Lincoln Federal Savings Bank of Nebraska, Lincoln, Nebraska
Security Federal Savings, Lincoln, Nebraska
Sherman County Bank, Loup City, Nebraska
First National Bank Northeast, Lyons, Nebraska
The Bank of Madison, Madison, Nebraska
Madison County Bank, Madison, Nebraska
BankFirst, Norfolk, Nebraska
First National Bank, North Platte, North Platte, Nebraska
Nebraskaland National Bank, North Platte, Nebraska
Pender State Bank, Pender, Nebraska
Midwest Bank, N.A., Pierce, Nebraska
The Ravenna Bank, Ravenna, Nebraska
Sidney Federal Savings & Loan Association, Sidney, Nebraska
Dakota County State Bank, South Sioux City, Nebraska
Springfield State Bank, Springfield, Nebraska
Bank of St. Edward, St. Edward, Nebraska
Tecumseh Building and Loan Association, Tecumseh, Nebraska
First National Bank Utica NE, Utica, Nebraska
Farmers State Bank, Wallace, Nebraska
Saline State Bank, Wilber, Nebraska
Citizens National Bank of Wisner, Wisner, Nebraska
66 Federal Credit Union, Bartlesville, Oklahoma
Bank of Cordell, Cordell, Oklahoma
Bank of Hydro, Hydro, Oklahoma
Armstrong Bank, Muskogee, Oklahoma
Citizens State Bank, Okemah, Oklahoma
First Enterprise Bank, Oklahoma City, Oklahoma
Union Bank, NA, Oklahoma City, Oklahoma
The First National Bank of Texhoma, Texhoma, Oklahoma
Community Bank & Trust Company, Tulsa, Oklahoma
Energy One Federal Credit Union, Tulsa, Oklahoma
Grand Lake Bank, Tulsa, Oklahoma
First Bank & Trust Company, Wagoner, Oklahoma
Weleetka State Bank, Weleetka, Oklahoma
Canadian State Bank, Yukon, Oklahoma

Federal Home Loan Bank of San Francisco—District 11

BankUSA, fsb, Phoenix, Arizona
Fremont Investment & Loan, Anaheim, California
Vista Federal Credit Union, Burbank, California
La Jolla Bank, F.S.B., Escondido, California
Eastern International Bank, Los Angeles, California
Chevron Federal Credit Union, Oakland, California
Wescom Credit Union, Pasadena, California
Summit State Bank, Rohnert Park, California
California Bank and Trust, San Diego, California
San Diego County Credit Union, San Diego, California
United Commercial Bank, San Francisco, California
Patelco Credit Union, San Francisco, California
Luther Burbank Savings, Santa Rosa, California
Community Banks of Tracy, Tracy, California
Yolo Community Bank, Woodland, California
Redding Bank of Commerce, Yuba City, California

Federal Home Loan Bank of Seattle—District 12

Wells Fargo, Anchorage, Alaska
First Bank, Ketchikan, Alaska
Central Pacific Bank, Honolulu, Hawaii
Territorial Savings and Loan Assn, Honolulu, Hawaii
Farmers and Merchants State Bank, Boise, Idaho
Home FS&LA of Nampa, Nampa, Idaho
Valley Bank of Helena, Helena, Montana
American Bank of Montana, Livington, Montana
LibertyBank, Eugene, Oregon
NW Community Credit Union, Eugene, Oregon
Chetco Federal Credit Union, Harbor, Oregon
West Coast Bank, Lake Oswego, Oregon
Premier West Bank, Medford, Oregon
McKay Dee Hospital Credit Union, Ogden, Utah
Centennial Bank, Ogden, Utah
American Investment Bank, Salt Lake City, Utah
Mountain America Credit Union, Salt Lake City, Utah
Zions First National Bank, Salt Lake City, Utah
Kitsap Community FCU, Bremerton, Washington
State Bank of Concrete, Concrete, Washington
Washington State Bank NA, Federal Way, Washington
Issaquah Bank, Issaquah, Washington
First Community Bank of Washington, Lacey, Washington
Spokane Teachers Credit Union, Liberty Lake, Washington
Cowlitz Bank, Longview, Washington
Heritage Savings Bank, Olympia, Washington
United Savings and Loan Bank, Seattle, Washington
Viking Community Bank, Seattle, Washington
Wheatland Bank, Spokane, Washington
Sound Banking Company, Tacoma, Washington
TAPCO Credit Union, Tacoma, Washington
Banner Bank, Walla Walla, Washington
Security First Bank, Cheyenne, Wyoming
Cowboy State Bank, Ranchester, Wyoming
First State Bank of Thermopolis, Thermopolis, Wyoming

II. Public Comments

To encourage the submission of public comments on the community support performance of Bank members, on or before April 28, 2003, each Bank will notify its Advisory Council and nonprofit housing developers, community groups, and other interested parties in its district of the members selected for community support review in the 2002–03 fifth quarter review cycle. 12 CFR 944.2(b)(2)(ii). In reviewing a member for community support compliance, the Finance Board will consider any public comments it has received concerning the member. 12 CFR 944.2(d). To ensure consideration by the Finance Board, comments concerning the community support performance of members selected for the 2002–03 fifth quarter review cycle must be delivered to the Finance Board on or before the May 26, 2003 deadline for submission of Community Support Statements.

Dated: April 7, 2003.

Arnold Intrater,

General Counsel.

[FR Doc. 03–9020 Filed 4–11–03; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 8, 2003.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Central Financial Corporation, Hutchinson, Kansas; to acquire up to 7.45 percent of the voting shares of Royal Palm Bank of Florida, Naples, Florida.

Board of Governors of the Federal Reserve System, April 8, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–9000 Filed 4–11–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Solicitation of Public Review and Comment on Research Protocol: Alcohol, Sleep, and Circadian Rhythms in Young Humans, Study 2—Effects of Evening Ingestion of Alcohol on Sleep, Circadian Phase, and Performance as a Function of Parental History of Alcohol Abuse/Dependence

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office for Human Research Protections.

ACTION: Notice.

SUMMARY: The Office for Human Research Protections (OHRP), Office of Public Health and Science, HHS is soliciting public review and comment on a proposed research protocol entitled ''Effects of Evening Ingestion of Alcohol on Sleep, Circadian Phase, and Performance as a Function of Parental History of Alcohol Abuse/Dependence.'' The proposed research would be supported by a grant awarded by the National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism. Public review and comment are solicited regarding the proposed research protocol pursuant to the requirements of HHS regulations at 45 CFR 46.407.

DATES: To be considered, written or electronic comments on the proposed research must be received on or before 4:30 p.m. May 29, 2003.

ADDRESSES: Submit written comments to: Ms. Kelley Booher, Division of Policy, Planning, and Special Projects, Office for Human Research Protections, 1101 Wootton Parkway, Suite 200, The Tower Building, Rockville, MD 20852, telephone number (301) 402–5942 (not a toll-free number). Comments also may be sent via facsimile at (301) 402–0527 or by e-mail to: *407panel01@osophs.dhhs.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Leslie K. Ball, Office for Human Research Protections, The Tower Building, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852; telephone (301) 496–7005; fax (301) 402–0527; e-mail *LBall@osophs.dhhs.gov.*

SUPPLEMENTARY INFORMATION: All studies conducted or supported by HHS which are not otherwise exempt and which propose to involve children as subjects require institutional review board (IRB) review in accordance with the provisions of HHS regulations for the protection of human subjects at 45 CFR part 46, subpart D. Pursuant to HHS regulations at 45 CFR 46.407, if an IRB reviewing a protocol to be conducted or supported by HHS does not believe that the proposed research involving children as subjects meets the requirements of HHS regulations at 45 CFR 46.404, 46.405, or 46.406, the research may proceed only if the following conditions are met: (a) the IRB finds and documents that the research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of children; and (b) the Secretary, after consultation with a panel of experts in pertinent disciplines (for example: science, medicine, education, ethics, law) and following opportunity for public review and comment, determines either: (1) that the research in fact satisfies the conditions of 45 CFR 46.404, 46.405, or 46.406, or (2) that the following conditions are met: (i) the research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of children; (ii) the research will be conducted in accordance with sound ethical principles; and (iii) adequate provisions are made for soliciting the assent of children and the permission of their parents or guardians, as set forth in 45 CFR 46.408.

HHS received a request from the Lifespan Office of Research Administration, Rhode Island Hospital, to review a protocol entitled ''Effects of Evening Ingestion of Alcohol on Sleep, Circadian Phase, and Performance as a Function of Parental History of Alcohol Abuse/Dependence'' pursuant to the provisions of HHS regulations at 45 CFR 46.407. This research protocol proposes to study the effects of a small or moderate evening dose of alcohol on sleep, waking performance, and circadian phase in a total of 64 adolescents (15 to 16 years of age) and young adults (21 to 22 years of age), and examine how the effects may differ between individuals who have a parent with a history of alcohol dependence and those who do not. The research protocol is proposed to take place at E.P. Bradley Hospital, an affiliate of Lifespan, the parent corporation of Rhode Island Hospital, and was reviewed by the Rhode Island Hospital IRB. The Rhode Island Hospital IRB is the IRB of record for E.P. Bradley Hospital.

After reviewing this research proposal, the Rhode Island Hospital IRB determined that this study involving children as research subjects could not be approved under HHS regulations at 45 CFR 46.404, 46.405, or 46.406, but was suitable for review under 45 CFR 46.407. The Rhode Island Hospital IRB found that the research presented a reasonable opportunity to further the understanding, prevention or alleviation of a serious problem affecting the health or welfare of children. Experts in relevant disciplines have reviewed this protocol and each have provided recommendations to the Secretary. Public review and comment are hereby solicited pursuant to the requirements of 45 CFR 46.407. The Secretary will consider the experts' recommendations and the public comments in making a final determination regarding whether HHS may support this research.

In particular, comments are solicited on the following questions: (1) What are the potential benefits of the research, if any, to the subjects and to children in general; (2) what are the types and degrees of risk that this research presents to the subjects; (3) are the risks to the subjects reasonable in relation to

the anticipated benefits, if any, to the subjects, and the importance of the knowledge that may reasonably be expected to result; and (4) does the research present a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of children?

All written comments concerning this matter should be submitted to Ms. Kelley Booher, Division of Policy, Planning, and Special Projects, Office for Human Research Protections, 1101 Wootton Parkway, Suite 200, The Tower Building, Rockville, MD 20852, telephone number (301) 402–5942 (not a toll-free number). Comments also may be sent via facsimile at (301) 402–2071 or by e-mail to: *407panel01@osophs.dhhs.gov.*

Materials available for review on the OHRP web page (available at: *http://ohrp.osophs.dhhs.gov/panels/407–01pnl/pindex.htm*) include: relevant sections of the grant application; sample consent, parental permission and assent documents; the Rhode Island Hospital IRB's deliberations on the protocol; an explanation of Rhode Island Hospital's Pediatric Risk Categories; and OHRP's January 13, 2003, letter to the principal investigator, Dr. Mary Carskadon, explaining why review pursuant to 46.407 is restricted to Study 2. A paper copy of the information referenced here is available upon request.

Dated: April 7, 2003.

Richard H. Carmona,

Surgeon General and Acting Assistant, Secretary for Health.

[FR Doc. 03–9051 Filed 4–11–03; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–03–58]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Importation and Shipping of Etiologic Agents (42 CFR 71.54 and part 72) OMB Control No. 0920–0199—Extension—Office of the Director (OD), Centers for Disease Control and Prevention (CDC).

The importation of etiological agents, hosts, and vectors of human disease are regulated by 42 CFR 71.54 and requires that the importation of such materials must be accompanied by a permit issued by the CDC. Interstate shipment of etiologic agents are regulated by 42 CFR part 72. This regulation establishes minimal packaging requirements for all viable micro-organisms, illustrates the appropriate shipping label, and provides reporting instructions regarding damaged packages and failure to receive a shipment. This request is for the information collection requirements contained in 42 CFR 71.54, 72.3(e), 72.3(f), and 72.4 which relate to the importation and interstate shipment of etiologic agents. Respondents include laboratory facilities such as those operated by government agencies, universities, research institutions, and commercial entities. The only cost to respondents is their time to complete the application for permit to import form and report problems with shipment of etiologic agents.

CFR section	Number of respondents	Number of responses per respondent	Avg. burden per response (in hrs.)	Total burden hours
72.54 Application Permit	2,000	1	20/60	666
72.3(e) Damaged Package	50	1	6/60	5
72.3(f) Shipping Requirement	200	10	12/60	400
72.4 Failure to Receive	20	1	12/60	4
Total	2,270			1,075

Dated: April 7, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–9018 Filed 4–11–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–03–59]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information

is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Possession, Use, and Transfer of Select Agents and Toxins (OMB Control No. 0920–0576)—Extension—Office of the Director (OD), Centers for Disease Control and Prevention (CDC).

The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Pub. L. 107–188) specifies that the Secretary of Health and Human Services shall provide for the establishment and enforcement of standards and procedures governing the possession, use, and transfer of select biological agents and toxins. The Act specifies that facilities that possess, use, and transfer select agents register with the Secretary. The Secretary has designated CDC as the agency responsible for collecting this information.

CDC is requesting continued OMB approval to collect this information through the use of five separate forms. These forms are: (1) Application for Registration; (2) Facility Notification Form; (3) Request for Exemption; (4) Transfer of Select Agent form; and (5) Clinical and Diagnostic Laboratory Reporting Form.

The Application for Registration will be used by facilities to register with CDC. The Application for Registration requests facility information, a list of select agents in use, possession, or for transfer by the facility, characterization of the select agent, and laboratory information. Estimated average time to complete this form is 3 hours, 45 minutes for an entity with one principal investigator working with one select agent. CDC estimates that entities will need an additional 45 minutes for each additional investigator or select agent. This is an increase of 1 hour, 45 minutes over the previous form due to new reporting requirements for security and identification of those individuals the entity has designated to have a legitimate need to handle or use such agents.

Facilities may amend their registration if any changes occur in the information submitted to the Secretary. To apply for an amendment to a certificate of registration, an entity must obtain the relevant portion of the application package and submit the information requested in the package to CDC. Estimated time to amend a registration package is 60 minutes.

The Facility Notification Form must be completed by facilities whenever there is release of a select agent or theft or loss of a select agent. This is a new form. Estimated average time to complete this form is 60 minutes.

The Request for Exemption form will be used by facilities that are using select agents in investigational new drug testing or in cases of public health emergency. This is a new form. Estimated average time to complete this form is 70 minutes.

The Transfer of Select Agent Form will be used by facilities requesting transfer of a select agent to their facilities and by the facility transferring the agent. This is a modification of an existing form approved under OMB Control No. 0920–0199. Estimated average time to complete this form is 1 hour, 45 minutes. This is an increase of 75 minutes due to procedural changes.

The Clinical and Diagnostic Laboratory Exemption Report will be used by clinical and diagnostic laboratories to notify the Secretary that select agents identified as the result of diagnosis or proficiency testing have been properly disposed of. This is a new form. Estimated average time to complete this form is 60 minutes.

In addition to the standardized forms, this regulation also outlines situations in which an entity must notify or make a request of the Secretary in writing and CDC is requesting OMB approval to collect this information. The regulation states that an entity must notify the Secretary in writing at least five business days before destroying all select agent or toxin covered by a certificate of registration. The estimated time to gather the information and submit this notification is 30 minutes.

An entity may also apply to the Secretary for an expedited review of an individual by the Attorney General. To apply for this expedited review, an entity must submit a request in writing to the Secretary establishing the need for such action. The estimated time to gather the information and submit this request is 30 minutes. Entities should be aware that CDC is not developing standardized forms to use in these situations. Rather, the entity should provide the information as requested in the appropriate section of the regulation.

As part of the safety requirements of this regulation, the Responsible Official is required to conduct regular inspections (at least annually) of the laboratory where select agents and toxins are stored. The results of these inspections must be documented. CDC estimates that, on the average, such documentation will take 1 hour.

Also, as part of the safety requirements of this regulation, the entity is required to record the identity of the individual trained, the date of training, and the means used to verify that the employee understood the training. Estimated time for this documentation is 2 hours per principal investigator.

An entity or an individual may request administrative review of a decision denying or revoking either a certification of registration or approval based on a security risk assessment. This request must be in writing within 30 calendar days after the adverse decision. This request should include a statement of the factual basis for the review. CDC estimates the time to prepare and submit such a request is 4 hours.

Finally, an entity must implement a system to ensure that certain records and databases are accurate and that the authenticity of records may be verified. The time to implement such a system is estimated to average 4 hours.

The cost to respondents is their time to complete the forms and comply with the reporting and recordkeeping components of the Act plus a one-time purchase of a file cabinet (estimated cost $400) to maintain records.

CFR reference	Data collection	Number of respondents	Responses per respondent	Avg burden per response (in hrs.)	Total annual burden (in hrs.)
73.7(b)	Registration application	1,000	1	3.75	6,262
73.7(e)	Amendment to registration application	1,000	2	1	2,000
73.17 (a)(e).	Notification form	10	1	1	10

CFR reference	Data collection	Number of respondents	Responses per respondent	Avg burden per response (in hrs.)	Total annual burden (in hrs.)
73.6 (c–e)	Request for exemption	17	1	70/60	20
73.14	Transfer of select agent	1,000	5	1.75	8,750
73.6 (a)(2)	Clinical and diagnostic laboratory exemption report.	1,000	4	1	4,000
73.7(i)	Notification of inactivation	6	1	30/60	3
73.8(g)	Request expedited review	6	1	30/60	3
73.10(b)	Documentation of self-inspection	1,000	1	1	1,000
73.13(f)	Documentation of training	1,000	1	2	8,700
73.18	Administrative review	14	1	4	56
73.15(d)	Ensure secure recordkeeping system	1,000	1	30/60	4,000
Total		1,000			34,804

Dated: April 7, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–9019 Filed 4–11–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 78N–0377 and 98P–1041; DESI 7661]

Certain Estrogen-Androgen Combination Drugs; Drugs for Human Use; Drug Efficacy Study Implementation; Amendment and Opportunity for Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending a previous **Federal Register** notice to reclassify certain estrogen-androgen combination drugs as lacking substantial evidence of effectiveness for the treatment of moderate to severe vasomotor symptoms associated with the menopause in those patients not improved by estrogen alone. The agency is taking this action because for this indication there is not substantial evidence of the contribution of each component to the effectiveness of these combination drugs. FDA is offering an opportunity for a hearing to persons affected by this action.

DATES: Requests for hearings are due on or before May 14, 2003. Data in support of hearing requests are due June 13, 2003.

ADDRESSES: Communications in response to this notice should be identified with the reference number DESI 7661 and directed to the attention of the appropriate office named below. A request for hearing, supporting data, and other comments should be identified with Docket No. 76N–0377 and submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. A request for an opinion on the applicability of this notice to a specific drug product should be directed to the Division of New Drugs and Labeling Compliance (HFD–310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David T. Read, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** of September 8, 1972 (37 FR 18225), FDA announced its evaluation of the various indications claimed for the following combination drugs that contain an estrogen and an androgen:

1. Halodrin Tablets (NDA 11–267), containing fluoxymesterone and ethinyl estradiol;

2. Tylosterone Injection (NDA 8–099), containing diethylstilbestrol and methyltestosterone;

3. Tylosterone Tablets (NDA 7–661), containing diethylstilbestrol and methyltestosterone;

4. Tace with Androgen Capsules (NDA 10–597), containing chlorotrianisene and methyltestosterone;

5. Deladumone Injection and Deladumone OB Injection (NDA 9–545), containing testosterone enanthate and estradiol valerate.

As announced in that 1972 notice, FDA found these drugs to be safe and effective for the ''prevention of postpartum breast engorgement and ''for the menopausal syndrome in those patients not improved by estrogen alone.''

In the **Federal Register** of December 17, 1998 (63 FR 69631), FDA withdrew approval of estrogen-containing drugs insofar as they are indicated for postpartum breast engorgement because estrogens have not been shown to be safe for this use. That **Federal Register** notice included, among others, four of the five NDAs listed above. (NDA 11–267 was not included because the drug product covered by that application, Halodrin Tablets, was not labeled for use for postpartum breast engorgement.) Given this December 17, 1998 notice, the following discussion relates only to the second indication found safe and effective in the 1972 notice, i.e., ''for the menopausal syndrome in patients not improved by estrogen alone.''

In the **Federal Register** of September 29, 1976 (41 FR 43112), the agency announced that the menopausal indication for combination drugs containing an estrogen and an androgen was revised to read as follows:

> Moderate to severe vasomotor symptoms associated with the menopause in those patients not improved by estrogen alone. (There is no evidence that estrogens are effective for nervous symptoms or depression which might occur during menopause, and they should not be used to treat these conditions.) 41 FR 43112 at 43113. (emphasis in original)

This action was taken as one part of a large agency undertaking with respect to the labeling (patient-directed as well as physician-directed) for all estrogen-containing drug products. The following documents were also published in the **Federal Register** of September 29, 1976: (1) 41 FR 43110 (DESI 2238; Certain Preparations for Vaginal Use); (2) 41 FR 43114 (DESI 1543; Certain Estrogen-Containing Drugs for Oral or Parenteral Use); (3) 41 FR 43117 (DESI 740, 1543, 2238, and 7661; Physician Labeling and Patient Labeling for Estrogens for General Use); and (4) 41 FR 43108 (a proposed rule that would require certain patient-directed labeling for estrogens for general use).

The five applications listed below were approved on the basis of the 1976 notice, and their approvals are withdrawn in a notice published elsewhere in today's issue of the **Federal Register**:

1. NDA 17–968 and ANDA 85–603 (testosterone cypionate 50 milligrams/milliliter (mg/mL) and estradiol cypionate 2 mg/mL injection).
2. ANDA 85–860 and ANDA 86–423 (testosterone enanthate 180 mg/mL and estradiol valerate 8 mg/mL injection).
3. ANDA 85–865 (testosterone enanthate 90 mg/mL and estradiol valerate 4 mg/mL injection).

In 1981, the Center for Drug Evaluation and Research (CDER) (then the Bureau of Drugs) determined in response to requests from the sponsors that the effectiveness finding of the 1976 DESI 7661 **Federal Register** notice could be applied to two combination drug products that were not listed in the 1976 notice, but were being marketed at the time: (1) Conjugated estrogens and methyltestosterone and (2) esterified estrogens and methyltestosterone. Based on this finding, FDA filed (i.e., accepted for review) abbreviated new drug applications (ANDAs) for these drug products. Wyeth-Ayerst submitted ANDA 85–515 for a drug product containing 0.625 mg conjugated estrogens and 5 mg methyltestosterone, and ANDA 87–824 for a drug product containing 1.25 mg conjugated estrogens and 10 mg methyltestosterone. Reid-Provident Laboratories (subsequently acquired by Solvay Pharmaceuticals, Inc.) submitted ANDA 87–212 for a drug product containing 0.625 mg esterified estrogens and 1.25 mg methyltestosterone (Estratest H.S.), and ANDA 87–597 for a drug product containing 1.25 mg esterified estrogens and 2.5 mg methyltestosterone (Estratest).

In 1996, FDA withdrew Wyeth-Ayerst's two pending applications under 21 CFR 314.65 because the applications had been inactive for many years and Wyeth-Ayerst had stopped marketing the products. Solvay continues to market Estratest and Estratest H.S. The ANDAs for the Estratest products have not been approved and are still pending.

FDA has withdrawn approval of all five new drug applications (NDAs) named in the 1972 and 1976 notices. The agency withdrew approval of NDA 10–597 (Tace with Androgen Capsules containing chlorotrianisene and methyltestosterone) and NDA 11–267 (Halodrin Tablets containing fluoxymesterone and ethinyl estradiol) in **Federal Register** notices of June 25, 1993 (58 FR 34466), and March 2, 1994 (59 FR 9989), respectively. The agency withdrew approval of NDA 7–661 (Tylosterone Tablets) and NDA 8–099 (Tylosterone Injection), both containing diethylstilbestrol and methyltestosterone, and NDA 9–545 (Deladumone OB Injection and Deladumone Injection, each containing testosterone enanthate and estradiol valerate) in a notice published in the **Federal Register** of October 29, 1998 (63 FR 58053).

In response to the notice of October 29, 1998, on November 24, 1998, Solvay Pharmaceuticals submitted a citizen petition (Docket No. 98P–1041) requesting that FDA determine that the products covered by the three applications withdrawn in the October 21, 1998, notice were not withdrawn for reasons of safety or effectiveness. As FDA is doing for the five estrogen-androgen combination products whose approvals are being withdrawn in a notice published elsewhere in today's issue of the **Federal Register**, the agency is deferring to the outcome of this proceeding to amend the 1976 notice the determination of whether the products covered by the three applications named in Solvay's petition were withdrawn for reasons of safety or effectiveness. If the proceeding to amend the 1976 notice determines that there is substantial evidence of effectiveness of the estrogen-androgen combination products for the treatment of moderate to severe vasomotor symptoms associated with the menopause in those patients not improved by estrogen alone, then the products covered by the three applications named in Solvay's petition, as well as the five products referred to in a notice published elsewhere in today's issue of the **Federal Register**, will be regarded as not withdrawn for reasons of effectiveness.

As mentioned previously, there are two pending ANDAs for Solvay's Estratest and Estratest H.S., originally filed in 1981. However, as described in detail below, FDA no longer believes that estrogen-androgen combination drug products are effective for the treatment of moderate to severe vasomotor symptoms associated with the menopause in those patients not improved by estrogen alone. FDA, therefore, has initiated this proceeding to amend the DESI finding of effectiveness for these products. This proceeding is limited to a determination of whether there is substantial evidence of the effectiveness of estrogen-androgen combination drug products for the treatment of moderate to severe vasomotor symptoms associated with the menopause in those patients not improved by estrogen alone. The use of these combination drug products for any other use, including but not limited to the treatment of other menopausal symptoms, will not be considered in this proceeding. The effectiveness of estrogen-androgen combination products for indications not covered by this proceeding should be addressed through the new drug application process.

II. The Safety and Effectiveness of Estrogen-Androgen Combination Drug Products for the Treatment of Vasomotor Symptoms Associated With Menopause in Patients Not Improved by Estrogen Alone

The agency took a renewed interest in estrogen-androgen combination drug products when concerns were raised about the effect of androgens in lowering high-density lipoproteins (Refs.

1 and 2). It is believed that oral androgens can reverse the favorable impact of estrogen on lipoproteins (Ref. 3). Other safety concerns were virilization (Refs. 4 and 5) and possible liver toxicity (Refs. 6, 7, and 8).

FDA concluded that the negative effects androgens may have on lipid profile may be offset by a potential positive effect on bone mineral density (Refs. 1, 9, and 10).

With respect to virilization (i.e., hirsutism, acne, deepening of the voice, alopecia, and clitoromegaly), FDA observed that the incidence varied widely in clinical studies and appeared to be dose and duration dependent. In a 2–year trial of 33 women treated with methyltestosterone 2.5 mg and esterified estrogen 1.25 mg daily, 36 percent reported a hair disorder and 30 percent reported acne (Ref. 1). In the same 2–year trial of 33 women treated with esterified estrogen 1.25 mg daily, 3 percent reported a hair disorder and 6 percent reported acne (Ref. 1). In another trial at 24 months, 10 of the 154 women treated with methyltestosterone and esterified estrogens and 3 of the 157 women treated with esterified estrogens reported hirsutism (Ref. 9).

FDA does not believe there is a serious risk for possible liver toxicity at the relatively low doses of androgen administered in standard oral estrogen-androgen combination therapies (Refs. 11, 12, and 13).

An agency review of the literature regarding safety concerns led to scrutiny of the labeled indication, that is, moderate to severe vasomotor symptoms associated with the menopause in those patients not improved by estrogen alone.

Estrogen-alone drug products are approved for the treatment of moderate to severe vasomotor symptoms associated with the menopause. Vasomotor symptoms associated with the menopause are, simply put, ''hot flushes.'' A hot flush is a sudden feeling of heat, usually on the face, neck, shoulders, and chest. Hot flushes have been described as ''recurrent, transient periods of flushing, sweating, and a sensation of heat, often accompanied by palpitation, feeling of anxiety, and sometimes followed by chills'' (Ref. 14). When hot flushes occur at night, they are often called night sweats.

The indication for estrogen-androgen combination drug products is limited to that subset of women with ''moderate to severe vasomotor symptoms associated with the menopause'' that are ''*not improved by estrogen alone*'' (emphasis added). The precise wording of the indication quite narrowly defines the intended population. Thus, to be found effective for this narrow indication, there would need to be reliable evidence that estrogen-androgen combination products are effective in treating the population of menopausal women whose vasomotor symptoms are not relieved by estrogen alone.

FDA believes that substantial evidence is lacking that the addition of an androgen can improve the effectiveness of estrogen alone in the treatment of vasomotor symptoms (i.e., hot flushes). An early randomized, placebo-controlled, five-arm, two-period crossover clinical trial by Sherwin and Gelfand (Ref. 15) compared the effects on surgically menopausal women of immediate postoperative parenteral administration of estrogen alone (n=11), androgen alone (n=10), estrogen and androgen in combination (n=12), and placebo (n=10) to hysterectomy controls (n=10) and found that the androgen alone, estrogen-androgen combination, and control hysterectomy groups had lower (i.e., lower frequency and severity) menopausal somatic symptoms scores than the estrogen alone and placebo groups. The menopausal somatic symptoms score evaluated a constellation of symptoms including hot flushes, cold sweats, weight gain, rheumatic pains, cold hands and feet, breast pains, headaches, numbness and tingling, and skin crawls. A single-center, double-blind randomized, 6–month study by Hickok, Toomey, and Speroff (Ref. 2) compared the effects of treating surgically menopausal women with esterified estrogens alone (n=13) or in combination with methyltestosterone (n=13) on a similar constellation of menopausal symptoms, but found no statistically significant difference between the two treatments. The 15 menopausal symptoms evaluated were hot flushes, cold sweats, vaginal dryness, cold hands and feet, breast pain or tenderness, numbness and tingling, skin crawls, edema, increased facial or body hair, voice deepening, acne, trouble sleeping, pounding of the heart, dizzy spells, and pressure or tightness in the head or body. A 2–year, multicenter, double-blind, randomized, parallel group study (Ref. 9) comparing the effects of 2 doses of conjugated equine estrogen and 2 doses of esterified estrogen plus methyltestosterone in a total of 311 surgically menopausal women found no differences among the groups in relief of hot flashes, sweats, and vaginal dryness.

Clinical studies that evaluated the effect of estrogen-androgen combination therapy specifically on hot flushes found that the combination does not reduce the frequency of vasomotor symptoms more than estrogen alone. Watts et al. (Ref. 1) compared treatment with esterified estrogens alone and treatment with esterified estrogens and methyltestosterone in a 2–year, multicenter, double-blind, randomized, parallel group study conducted in 66 surgically menopausal women. The authors found no significant difference in the mean reduction from baseline in the number of hot flushes between the two groups. Sarrel et al. (Ref. 17) found no meaningful differences in relief from hot flushes when 20 postmenopausal women were treated for 8 weeks with esterified estrogens or an esterified estrogens-androgen combination in a single-center, double-blind, randomized, parallel group study. Burger (Ref. 18) administered subcutaneous implants of estradiol and testosterone to 17 menopausal women who complained that symptoms persisted, particularly loss of libido, despite treatment with conjugated equine estrogens. There was no statistically significant change from baseline in hot flushes after treatment. Myers et al. (Ref. 19) conducted a 10–week, double-blind, placebo controlled, parallel group study in 40 naturally menopausal women comparing 4 treatments: Conjugated estrogens alone, conjugated estrogens and medroxyprogesterone, conjugated estrogens and androgen, and placebo. The study found that the estrogen and estrogen/medroxyprogesterone groups had significantly fewer hot flashes than the estrogen/androgen or placebo groups. The authors concluded: ''This result is consistent with other studies showing no effect of androgen alone on hot flashes'' (Ref. 19, p. 1129).

Other authors affirm the conclusion that estrogen-androgen combination drug products are not superior to estrogen in reducing vasomotor symptoms (Refs. 3, 20 through 23). Rosenberg summarized the evidence concerning the alleviation of vasomotor symptoms as follows: ''Studies suggest that estrogen is primarily responsible for reductions in vasomotor symptoms and that the addition of androgen neither improves nor detracts from this beneficial effect'' (Ref. 24, p. 400).

III. FDA's Conclusions Concerning the Safety and Effectiveness of Estrogen-Androgen Combination Drug Products

For the reasons discussed previously, FDA no longer regards combination drug products containing estrogen(s) and androgen(s) as having been shown to be effective for the treatment of moderate to severe vasomotor symptoms associated with the menopause in those patients not improved by estrogen alone. The agency has closely examined the data and information that formed the basis for the 1976 finding that such combinations were effective for this indication, as well as the subsequent literature, and has determined that there is a lack of substantial evidence that this combination is effective for ''moderate to severe vasomotor symptoms associated with the menopause in those patients not improved by estrogen alone.''

IV. References

The following references have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Watts, N. B. et al., ''Comparison of Oral Estrogens and Estrogens Plus Androgen on Bone Mineral Density, Menopausal Symptoms, and Lipid-Lipoprotein Profiles in Surgical Menopause,'' *Obstetrics & Gynecology*, 85:529–537, 1995.

2. Hickok, L. R., C. Toomey, and L. Speroff, ''A Comparison of Esterified Estrogens With and Without Methyltestosterone: Effects on Endometrial Histology and Serum Lipoproteins in Postmenopausal Women,'' *Obstetrics & Gynecology*, 82:919–924, 1993.

3. Kaunitz, A. M., ''The Role of Androgens in Menopausal Hormonal Replacement,'' *Endocrinology and Metabolism Clinics of North America*, 26(2):391–397, 1997.

4. ACOG Committee on Gynecologic Practice, ''Committee Opinion: Androgen Treatment of Decreased Libido,'' *2002 Compendium of Selected Publications*, American College of Obstetricians and Gynecologists, Washington, DC, pp. 5–6, 2002.

5. Gelfand, M. M., and B. Wiita, ''Androgen and Estrogen-Androgen Hormone

Replacement Therapy: A Review of the Safety Literature, 1941 to 1996,'' *Clinical Therapeutics*, 19(3):383–399, 1997.

6. Westaby, D. et al, ''Liver Damage from Long-Term Methyltestosterone,'' *Lancet*, 2:262–263, 1977.

7. Turani, H. et al., ''Hepatic Lesions in Patients on Anabolic Androgenic Therapy,'' *Israel Journal of Medical Sciences*, 19:332–337, 1983.

8. Lucey, M. R., and R. H. Moseley, ''Severe Cholestasis Associated With Methyltestosterone: A Case Report,'' *American Journal of Gastroenterology*, 82:461–462, 1987.

9. Barrett-Connor, E. et al, ''A Two-Year, Double-Blind Comparison of Estrogen-Androgen and Conjugated Estrogens in Surgically Menopausal Women,'' *Journal of Reproductive Medicine*, 44:1012–1020, 1999.

10. Raisz, L. G. et al, ''Comparison of the Effects of Estrogen Alone and Estrogen Plus Androgen on Biochemical Markers of Bone Formation and Resorption in Postmenopausal Women,'' *Journal of Clinical Endocrinology and Metabolism*, 81:37–43, 1996.

11. Gitlin, N., P. Korner, and H. Yang, ''Liver Function in Postmenopausal Women on Estrogen-Androgen Hormone Replacement Therapy: A Meta-Analysis of Eight Clinical Trials,'' *Menopause*, 6(3):216–224, 1999.

12. Ettinger, B., ''Letter: Estrogen-Androgen Hepatotoxicity,'' *American Journal of Obstetrics and Gynecology*, 178(3):627–628, 1998.

13. Phillips, E., and C. Bauman, ''Safety Surveillance of Esterified Estrogens-Methyltestosterone (ESTRATEST and ESTRATEST HS) Replacement Therapy in the United States,'' *Clinical Therapeutics*, 19(5):1070–1084, 1997.

14. Kronenberg, F., ''Hot Flashes: Epidemiology and Physiology,'' *Annals of the New York Academy of Sciences*, 592:52–86, 1990.

15. Sherwin, B., and M. Gelfand, ''Differential Symptom Response to Parenteral Estrogen and/or Androgen Administration in the Surgical Menopause,'' *American Journal of Obstetrics and Gynecology*, 151(2):153–160, 1985.

16. Barrett-Connor, E., ''Efficacy and Safety of Estrogen/Androgen Therapy,'' *Journal of Reproductive Medicine*, 43(8–Suppl.):746–752, 1998.

17. Sarrel, P. et al., ''Estrogen and Estrogen-Androgen Replacement in Postmenopausal Women Dissatisfied with Estrogen-Only Therapy,'' *Journal of Reproductive Medicine*, 43(10):847–856, 1998.

18. Burger, H. et al., ''The Management of Persistent Menopausal Symptoms with Oestradiol-Testosterone Implants: Clinical, Lipid and Hormonal Results,'' Maturitas, 6:351–358, 1984.

19. Myers, L. S. et al., ''Effects of Estrogen, Androgen and Progestin on Sexual Psychophysiology and Behavior in Postmenopausal Women,'' *Journal of Clinical Endocrinology and Metabolism*, 70(4):1124–1131, 1990.

20. Greenblatt, R. B. et al., ''Evaluation of an Estrogen, Androgen, Estrogen-Androgen Combination, and a Placebo in the Treatment of the Menopause,'' *Journal of Clinical Endocrinology and Metabolism*, 10:1547–1558, 1950.

21. McNagny, S. E., ''Prescribing Hormone Replacement Therapy for Menopausal Symptoms,'' *Annals of Internal Medicine*, 131(8):605–616, 1999.

22. Barlow, D. H. et al., ''Long-Term Hormone Implant Therapy—Hormonal and Clinical Effects,'' *Obstetrics & Gynecology*, 67:321–325, 1986.

23. Rymer, J., and E. Morris, ''Menopausal Symptoms,'' *Clinical Evidence*, 5: 1308–1310, June 2001.

24. Rosenberg, M. J., T. D. N. King, and M. C. Timmons, ''Estrogen-Androgen for Hormone Replacement: A Review,'' *Journal of Reproductive Medicine*, 42(7):394–404, 1997.

V. Amendment

Based on the findings discussed in section II of this document, FDA is amending the **Federal Register** notice of September 29, 1976 (41 FR 43112), to reclassify estrogen-androgen combination drugs as lacking substantial evidence of effectiveness for moderate to severe vasomotor symptoms associated with the menopause in those patients not improved by estrogen alone.

Drug products covered by this notice (i.e., estrogen-androgen combination drugs) are regarded as new drugs (section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) 21 U.S.C. 321(p)). An approved NDA is required for marketing.

VI. Notice of Opportunity for a Hearing

Any manufacturer or distributor of a drug product affected by this notice is hereby offered an opportunity for a hearing to show why estrogen-androgen combination drugs should not be reclassified as lacking substantial evidence of effectiveness for moderate to severe vasomotor symptoms associated with the menopause in those patients not improved by estrogen alone.

This notice applies to the particular estrogen-androgen combination drugs named in this notice and to any identical, related, or similar drug product under § 310.6 (21 CFR 310.6), whether or not it is the subject of an approved NDA or ANDA. Estrogen-androgen combination drugs subject to this notice include, but are not limited to, the following combination drugs: fluoxymesterone and ethinyl estradiol; diethylstilbestrol and methyltestosterone; chlorotrianisene and methyltestosterone; testosterone enanthate and estradiol valerate; testosterone cypionate and estradiol cypionate; and esterified estrogens and methyltestosterone.

It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product that the person manufactures or distributes. Any person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division of New Drugs and Labeling Compliance (see **ADDRESSES**).

A request for a hearing may not rest upon mere allegations or denials but must set forth specific facts showing that a genuine and substantial issue of fact requires a hearing, together with a well-organized and full factual analysis of the clinical and other investigational data that the objector is prepared to prove in a hearing. Any data submitted in response to this notice must be previously unsubmitted and include data from adequate and well-controlled clinical investigations as described in 21 CFR 314.126.

This notice of opportunity for hearing encompasses all issues relating to the legal status of the drug products subject to it (including identical, related, or similar drug products as defined in § 310.6), e.g., any contention that any such drug product is not a new drug because it is generally recognized as safe and effective within the meaning of section 201(p) of the act or because it is exempt from part or all of the new drug provisions of the act under the exemption for drug products marketed before June 25, 1938, in section 201(p) of the act, or under section 107(c)of the Drug Amendments of 1962, or for any other reason. With respect to the issue of effectiveness, however, this notice is limited to whether there is substantial evidence of the effectiveness of estrogen-androgen combination drug products for the treatment of moderate to severe vasomotor symptoms associated with the menopause in those patients not improved by estrogen alone. The use of these drug products for any indication other than for the treatment of moderate to severe vasomotor symptoms associated with the menopause in those patients not improved by estrogen alone will not be considered in this proceeding.

Any person subject to this notice who decides to seek a hearing shall file: (1) On or before May 14, 2003, a written notice of appearance and request for hearing, and (2) on or before June 13, 2003, the data, information, and analyses relied on to demonstrate that there is a genuine issue of material fact to justify a hearing. Any other interested person may also submit comments on this notice. The procedures and requirements governing this notice of opportunity for a hearing, a notice of

appearance and request for a hearing, information and analyses to justify a hearing, other comments, and a grant or denial of a hearing are contained in § 314.200 (21 CFR 314.200) and in 21 CFR part 12.

The failure of any person subject to this notice to file a timely written notice of appearance and request for hearing, as required by § 314.200, constitutes an election by that person not to use the opportunity for a hearing concerning the action proposed and a waiver of any contentions concerning the legal status of that person's drug product(s). Any new drug product marketed without an approved new drug application is subject to regulatory action at any time, but any person subject to this notice who files a timely written notice of appearance and request for hearing and who remains a party to this proceeding will not be subject to regulatory action for matters covered by this notice until the conclusion of this proceeding. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that there is no genuine and substantial issue of fact to justify a hearing, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who requests the hearing, making findings and conclusions, and denying a hearing.

All submissions under this notice of opportunity for a hearing are to be filed in four copies. Except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, the submissions may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 21 U.S.C. 352, 355) and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.100).

Dated: April 4, 2003.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 03–9065 Filed 4–10–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 98N–0718 and 76N–0377]

Pharmacia & Upjohn et al.; Withdrawal of Approval of One New Drug Application and Four Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of one new drug application (NDA) and four abbreviated new drug applications (ANDAs). The holders of the applications notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

EFFECTIVE DATE: May 14, 2003.

FOR FURTHER INFORMATION CONTACT: David T. Read, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The holders of the applications listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their requests, waived their opportunity for a hearing.

Application No.	Drug	Applicant
NDA 17–968	Depo-Testadiol (testosterone cypionate and estradiol cypionate) Injection, 50 milligrams/milliliter (mg/mL) and 2 mg/mL.	Pharmacia & Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001–0199.
ANDA 85–603	Testosterone Cypionate-Estradiol Cypionate Injection.	Steris Laboratories, Inc., 620 North 51st Ave., Phoenix, AZ 85043–4706.
ANDA 85–860	Testosterone Enanthate and Estradiol Valerate Injection, 180 mg/mL and 8 mg/mL.	Do.
ANDA 85–865	Testosterone Enanthate and Estradiol Valerate Injection, 90 mg/mL and 4 mg/mL.	Do.
ANDA 86–423	Ditate-DS (testosterone enanthate and estradiol valerate) Injection, 180 mg/mL and 8 mg/mL.	Savage Laboratories, 60 Baylis Rd., Melville, NY 11747.

The applications listed in the table in this document, all estrogen-androgen combination products, were submitted following a finding by the FDA published in the **Federal Register** of September 29, 1976 (41 FR 43112). Elsewhere in today's issue of the **Federal Register**, FDA is initiating a proceeding in which it proposes to amend the 1976 notice. That proceeding will determine if there is substantial evidence of effectiveness of the estrogen-androgen combination products specifically named in the notice proposing to amend the 1976 notice, as well as of any products that are identical, related, or similar (including but not limited to the five products listed in this notice). The agency, therefore, is deferring until the outcome of that proceeding the determination, under § 314.161 (21 CFR 314.161), of whether the five products listed in this notice were withdrawn for reasons of safety or effectiveness.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.105), approval of the applications listed in the table in this document, and all amendments and supplements thereto, is hereby withdrawn, effective May 14, 2003.

Dated: April 4, 2003.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 03–9064 Filed 4–10–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Antiviral Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Antiviral Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on May 13 and 14, 2003, from 8 a.m. to 5 p.m.

Location: Holiday Inn, The Ballrooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Tara P. Turner, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, e-mail: *TurnerT@cder.fda.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12531. Please call the Information Line for up-to-date information on this meeting.

Agenda: On May 13, 2003, the committee will discuss new drug applications (NDA) 21–567 and 21–568, REYATAZ (atazanavir sulfate) capsules and powder for oral use, Bristol-Myers Squibb Co., proposed for the treatment of human immunodeficiency virus (HIV) infection in combination with other antiretroviral agents. On May 14, 2003, the committee will discuss supplemental new drug application (SNDA) 20–550/S–019, VALTREX (valacyclovir hydrochloride) caplets, GlaxoSmithKline, proposed for reduction of the risk of transmission of genital herpes with the use of suppressive therapy.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by May 6, 2003. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on May 13, 2003, and between approximately 11 a.m. and 12 noon on May 14, 2003. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before May 6, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Tara Turner at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 7, 2003.

Linda Arey Skladany,

Associate Commissioner for External Relations.

[FR Doc. 03–9031 Filed 4–11–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Peripheral and Central Nervous System Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Peripheral and Central Nervous System Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on May 16, 2003, from 8 a.m. to 5 p.m.

Location: Holiday Inn, Versailles Ballrooms, 8120 Wisconsin Ave., Bethesda, MD, 301–652–2000.

Contact Person: Karen M. Templeton-Somers, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, or e–mail: *SomersK@cder.fda.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area) code 12543. Please call the Information Line for up to date information on this meeting.

Agenda: The committee will discuss supplemental new drug application (sNDA) 20–690, supplement SE1–020, ARICEPTR (donepezil hydrochloride tablets), Eisai Medical Research Inc., indicated for the treatment of vascular dementia. The background material will become available no later than the day before the meeting and will be posted under the Peripheral and Central Nervous System Drugs Advisory Committee docket site at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm.* (Click on the year 2003 and scroll down to the Peripheral and Central Nervous System Drugs Advisory Committee meetings.)

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by May 9, 2003. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 2:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before May 9, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Karen Templeton-Somers at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 7, 2003.

Linda Arey Skladany,

Associate Commissioner for External Relations.

[FR Doc. 03–9032 Filed 4–11–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Manufacturing Subcommittee of the Advisory Committee for Pharmaceutical Science; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Manufacturing Subcommittee of the Advisory Committee for Pharmaceutical Science.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on May 21 and 22, 2003, from 8:30 a.m. to 5 p.m.

Location: Marriott Washingtonian Center, Ballrooms A, B, C, and D, 9751 Washingtonian Blvd., Gaithersburg, MD.

Contact Person: Kathleen Reedy, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, e-mail: *REEDYK@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12539. Please call the Information Line for up-to-date information on this meeting.

Agenda: On May 21, 2003, the subcommittee will discuss: (1) The mission of the subcommittee; and (2) direction of the Pharmaceutical Current Good Manufacturing Practices (CGMPs) for the 21st Century: A Risk-Based Approach. On May 22, 2003, the subcommittee will discuss: (1) The regulatory approaches regarding aseptic manufacturing; and (2) process analytical technologies and transition from the Advisory Committee for Pharmaceutical Science—Process Analytical Technologies Subcommittee to Manufacturing Subcommittee.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Written submissions may be made to the contact person by May 13, 2003. Oral presentations from the public will be scheduled between approximately 11:30 a.m. and 12:30 p.m. on both days. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before May 13, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kathleen Reedy at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 7, 2003.

Linda Arey Skladany,

Associate Commissioner for External Relations.

[FR Doc. 03–9029 Filed 4–11–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0134]

Team Biologics Program Effectiveness; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following public meeting: Team Biologics Program Effectiveness. The Center for Biologics Evaluation and Research and the Office of Regulatory Affairs, FDA, are sponsoring an open public meeting to solicit views and comments in an effort to measure the effectiveness of the Team Biologics Program as it relates to the inspections of manufacturers of vaccines, allergenics, fractionated plasma products, licensed in vitro diagnostics, and therapeutic products. The goal of the public meeting is to give stakeholders the opportunity to provide input on how they think the agency should measure the effectiveness of the Team Biologics Program. We will use the information obtained to identify criteria to prospectively evaluate the Team Biologics Program.

DATES: The public meeting will be held on Wednesday, May 21, 2003, from 8 a.m. to 12 noon.

Submit requests via fax or e-mail by May 1, 2003, to make an oral presentation. Submit a copy of all presentation materials by May 15, 2003. If you are not making an oral presentation, submit registration information by May 12, 2003.

Submit written or electronic comments by June 10, 2003.

ADDRESSES: The public meeting will be held at the Parklawn Bldg., conference room D, 5600 Fishers Lane, Rockville, MD 20857.

Submit requests to make an oral presentation, registration information, and any presentation material to Melanie Whelan (*see* **FOR FURTHER INFORMATION CONTACT**). The requested registration information is listed in section II of this document.

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

FOR FURTHER INFORMATION CONTACT: Melanie N. Whelan, Center for Biologics Evaluation and Research (HFM–43), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–2000, FAX 301–827–3079, or e-mail: *Whelan@cber.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Scope of Public Meeting

FDA is seeking input on ways to evaluate the Team Biologics Program. The Team Biologics Program, established in 1997, is a partnership between FDA's Center for Biologics Evaluation and Research and the Office of Regulatory Affairs, which uses the diverse skills and knowledge of both organizations to focus resources on inspectional and compliance issues in the biologics area. Comments are sought at this public meeting about specific methods, tools, criteria, and metrics that could be used in this effort. In presentations we ask that you

specifically address criteria that FDA may consider in assessing the following areas:

1. Industry compliance with applicable laws and regulations,
2. The consistency of our inspection and compliance activities,
3. The effects of our inspection and compliance activities on product quality, and
4. The impact of our approach on public health.

II. Registration and Requests for Oral Presentations

You must preregister by May 1, 2003, if you would like to make an oral presentation. Please send your name, title, affiliation, street address, e-mail address, and telephone and fax numbers, along with a short description of the topics you wish to address, to Melanie Whelan. Due to the time constraints of this meeting, only 15 oral presentation requests can be accepted, and each presentation will be limited to 10 minutes. Each person who submits a request will receive a response by May 6, 2003, stating whether they have been included in the program. Please submit a copy of all presentation materials to Melanie Whelan by May 15, 2003.

We encourage early registration because seating is limited to the first 100 registrants. Registration closes on Monday, May 12, 2003. Please send your name and affiliation to Melanie Whelan. You will receive confirmation of your registration. There is no registration fee.

If you need special accommodations due to a disability, please contact Melanie Whelan at least 7 days in advance.

III. Request for Comments

The agency has established a docket to receive any ideas regarding the Team Biologics Program. Regardless of attendance at the public meeting, interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments. Submit a single copy of electronic comments or two copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

IV. Transcripts

Transcripts of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page. The transcript of the public meeting will be available for review at the Dockets Management Branch and on the Internet at *http://www.fda.gov/ohrms/dockets*. The transcript will also be placed on the Internet at *http://www.fda.gov/cber/minutes/workshop-min.htm*.

Dated: April 8, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–9063 Filed 4–11–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Vaccines and Related Biological Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on May 8, 2003, from 1:30 p.m. to 4 p.m.

Location: Food and Drug Administration, 29 Lincoln Dr., bldg. 29B, conference room A, Bethesda, MD. This meeting will be held by a telephone conference call. The public is welcome to attend the open session of the meeting at the specified location.

Contact Person: Jody G. Sachs or Denise H. Royster, Food and Drug Administration, Center for Biologics Evaluation and Research (HFM–71), 301 827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12391. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will review and discuss the intramural research programs of the Laboratory of Mycobacterial Diseases & Cellular Immunology and the Laboratory of Method Development, in the Office of Vaccines Research and Review.

Procedure: On May 8, 2003, from 1:30 p.m. to 3:30 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by April 25, 2003. Oral presentations from the public will be scheduled between approximately 2:30 p.m. and 3:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before April 25, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On May 8, 2003, from 3:30 p.m. to 4 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The meeting will be closed to discuss personal information concerning individuals associated with the intramural laboratory research programs.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Jody G. Sachs or Denise H. Royster at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 7, 2003.

Linda Arey Skladany,

Associate Commissioner for External Relations.

[FR Doc. 03–9030 Filed 4–11–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Poison Control Program; Poison Control Centers Stabilization and Enhancement Grant Program, Financial Stabilization Supplemental Grants (PCCFS); Availability of Funds in the HRSA Preview; Withdrawal (CFDA Number 93.253)

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice; withdrawal.

SUMMARY: In the **Federal Register** notice of Friday, August 9, 2002, in Part VI ''Availability of Funds Announced in the HRSA Preview'' of FR Doc. 02–20021, on page 52087, the grant category beginning in the first column under the heading ''Poison Control Centers Stabilization and Enhancement Grant Program, Financial Stabilization Supplemental Grants (PCCFS), CFDA Number 93.253,'' is withdrawn from competition due to the discovery of unanticipated complex issues that are not resolvable within a timeframe which would permit the awarding of these grants during fiscal year 2003.

FOR FURTHER INFORMATON: Carol A. Delany, Division of Children, Adolescent and Family Health, Maternal and Child Health Bureau, Health Resources and Services Administration, Room 18A–38, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857; telephone, (301) 443–5848.

Dated: April 7, 2003.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–8973 Filed 4–11–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Federal Grant Use by the Ohio Department of Natural Resources

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to gather information to conduct a 30-day comment period to solicit public response for a National Environmental Policy Act (NEPA) decision on approval of two federal grant proposal renewals. The action to be evaluated is the continuation of two grants funded under the comprehensive management plan (CMP) option and the cumulative effects of activities that are funded under the grants. The grants are awarded to the Ohio Department of Natural Resources (ODNR), Division of Wildlife (DOW).

The Service's categorical exclusion [516 DM 6, Appendix 1, Section 1.4.E(1)] applies to this action; however, the Service is seeking public comments in this instance in order to determine whether any exceptions to the categorical exclusion (516 DM 2, Appendix 2) may apply, especially for controversial environmental effects (2.3) or cumulative effects (2.5), thereby necessitating the development of an Environmental Assessment (EA). Primary focus for this review is to address statewide cumulative and secondary effects of activities conducted by the ODNR, DOW that are funded under Federal Aid in Wildlife Restoration Act (WR) Grant Number W–134–P and Federal Aid in Sport Fish Restoration Act (SFR) Grant Number F–69–P and administered by the Region 3 Federal Aid Division of the U.S. Fish and Wildlife Service. A secondary focus is to address the processes used by the ODNR, DOW to select and complete those activities. Each individual project, or group of projects, will continue to receive site specific NEPA review when it is submitted for funding. Therefore the scope of this review is broad and directed at impacts that may not be detected with individual projects along with consideration of the overall planning system utilized by Ohio. Comments on site specific projects are not within the scope of this review although comments regarding the affects of types of projects would be appropriate.

DATES: Written comments should be received on or before May 14, 2003.

Public Involvement: The public is invited to participate in the comment process. Locations for supporting reference information are provided under **SUPPLEMENTARY INFORMATION**. Written comments should be received within 30 days from the date of publication of this Notice of Intent. All comments received from individuals become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act and the Council on Environmental Quality's NEPA regulations [40 CFR 1506.6(f)]. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. If a respondent wishes us to withhold his/her name and/or address, this must be stated prominently at the beginning of the comment.

ADDRESSES: Comments should be addressed to: Michael Vanderford or Jon Parker, U.S. Fish and Wildlife Service, Division of Federal Aid, 1 Federal Drive, Fort Snelling, MN 55111–4056. Electronic mail comments may also be submitted within the comment period to: *ohdnrgrants@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Jon Parker (Wildlife Restoration, Wildlife Conservation and Restoration) or Michael Vanderford (Sport Fish Restoration). U.S. Fish And Wildlife Service, Federal Aid Division, 1 Federal Drive, Fort Snelling, MN 5511; telephone: 612/713–5130.

SUPPLEMENTARY INFORMATION: These grants are subject to the requirements of the Sport Fish and Wildlife Restoration Acts, federal regulations (50 CFR part 80 and 43 CFR part 12) and the Service's Federal Aid Handbook. Administration of these grants uses a management system identified in the Grant Proposal consistent with a plan for fish, wildlife and habitat. This plan provides program direction in Ohio and types of activities that may constitute projects subject to an annual application for funds process. The comprehensive management system is described in the Grant Proposal which includes a description of the ODNR, DOW *strategic planning* process, its *operational planning* process and its control/evaluation process. Copies of the Grant Proposals for fish management and wildlife management are available at: *http://midwest.fws.gov/NEPA*. Hard copies of the supporting Strategic Plan, Tactical Plans, and the Comprehensive Management System (CMS) Handbook and addendum are available for review at: Ohio Division of Wildlife, Department of Natural Resources, Public Lobby Reception Desk, Building G, 1840 Belcher Drive, Columbus, Ohio (near Morse Road and Cleveland Avenue). It would be helpful if persons wishing to review these documents would contact Verdie Abel at 614/265–7020 ahead of time.

The Service may choose to analyze the impacts of the two federal grants separately because their intended purposes are different. The Service is using this notification as it considers approving continuation of the CMP option for the next six years. The intent of the notice is to obtain suggestions and additional information from other agencies and the public on the scope of

issues to be considered. Comments and participation in this comment process are solicited.

The ODNR, DOW has utilized SFR and WR funds since Congress enacted the programs in 1950 and 1937, respectively. This will be the third year that DOW will use Wildlife Conservation and Restoration (WCR) funds which Congress approved for a one-year period during the federal fiscal year beginning October 1, 2000. The public is requested to inform the Service of concerns regarding the ODNR, DOW management systems, their administration of the comprehensive management system grants in Ohio and the cumulative effects of activities funded under these federal grants.

The ODNR, DOW has administered its SFR and WR grant programs using the CMP option for the past 11 years. ODNR, DOW began administering the WCR grant program using the CMP option July 1, 2001. During the past 11 years, the ODNR, DOW conducted numerous public information and input processes, as well as Service review regarding its programs, including: The development and periodic revision of a Strategic Plan; development of tactical plans for fish, wildlife and habitat for Ohio; use of biennial work planning processes; program and management reviews; financial audits and periodic field reviews conducted jointly by ODNR, DOW and Service staff regarding implementation of the CMP.

Some projects that will be subject to NEPA review as part of the annual grant process will be conducted on lands that may be eligible for listing on the National Register of Historic Places. The National Historic Preservation Act and other laws require these properties and resources be identified and considered in project planning. The public is requested to inform the FWS of concerns about archeological sites, buildings and structures, historic events, sacred and traditional areas, and other historic preservation concerns.

Authority: 42 U.S.C. 4321–4347.

TJ Miller,

Acting Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, MN.

[FR Doc. 03–8994 Filed 4–11–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Class III Gaming Procedures and Tribal Revenue Allocation Plans: Submission to OMB

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Indian Affairs (BIA) is submitting two information collection requests for review and renewal by the Office of Information and Regulatory Affairs, OMB. The two collections are: Class III Gaming Procedures, 1076–0149, and Tribal Revenue Allocation Plans, 1076–0152.

DATES: Submit your comments and suggestions on or before May 14, 2003 to be assured of consideration.

ADDRESSES: Written comments should be sent directly to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, 725 17th Street NW, Washington, DC 20503. Send a copy of your comments to: George Skibine, Bureau of Indian Affairs, Office of Indian Gaming Management, Mail Stop 4543–MIB, 1849 C Street, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Interested persons may obtain copies of the information collection requests without charge by contacting George Skibine at 202–219–4066 or facsimile number 202–273–3153.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 provides an opportunity for interested parties to comment on proposed information collection requests. We did not receive any comments during the request for comments period published December 13, 2002 (67 FR 76753). The Bureau of Indian Affairs, Office of Indian Gaming Management is proceeding with requesting an information collection clearance from OMB. Each request contains (1) type of review, (2) title, (3) summary of the collection, (4) respondents, (5) frequency of collection, (6) reporting and record keeping requirements. OMB has 60 days to act on this information request, but may act after 30 days of review; therefore, your comments will receive the greatest consideration the closer they are to the 30 day minimum review period.

Please note that we will not sponsor nor conduct, and you need not respond to, a request for information unless we display the OMB control number and the expiration date.

Class III Gaming Procedures

Type of review: Extension of a currently approved collection.

Title: Class III Gaming Procedures 25 CFR 291.

Summary: The collection of information will ensure that the provisions of IGRA, the relevant provisions of State laws, Federal law and the trust obligations of the United States are met when Federally recognized tribes submit Class III procedures for review and approval by the Secretary of the Interior. Sections 291.4, 291.10, 291.12 and 291.15 of 25 CFR part 291 Class III Gaming Procedures, specifies the information collection requirement. An Indian tribe must ask the Secretary to issue Class III gaming procedures. The information to be collected includes: name of Tribe and State; tribal documents, State documents, regulatory schemes, the proposed procedures and other documents deemed necessary. Collection of this information is currently authorized under an approval by OMB (OMB Control Number 1076–0149). All information is collected when the tribe makes a request for Class III gaming procedures. Annual reporting and record keeping burden for this collection of information is estimated to occur one time on an annual basis. The estimated number of annual requests is 12 tribes seeking Class III gaming procedures. The estimated time to review instructions and complete each application is 320 hours. Thus, the total annual reporting and record keeping burden for this collection is estimated to be 3,840 hours.

Frequency of Collection: Annually.

Description of Respondents: Federally recognized tribes.

Total Respondents: 12.

Response Hours per Application: 320.

Total Annual Burden Hours: 3,840.

Tribal Revenue Allocation Plans

Type of review: Extension of a currently approved collection.

Title: Tribal Revenue Allocation Plans 25 CFR 290.

Summary: In order for Indian tribes to distribute net gaming revenues in the form of per capita payments, information is needed by the BIA to ensure that Tribal Revenue Allocation Plans include assurances that certain statutory requirements are met, a breakdown of the specific uses to which net gaming revenues will be allocated, eligibility requirements for participation, tax liability notification and the assurance of the protection and

preservation of the per capita share of minors and legal incompetents. Sections 290.12, 290.17, 290.24 and 290.26 of 25 CFR part 290, Tribal Revenue Allocation Plans, specifies the information collection requirement. An Indian tribe must ask the Secretary to approve a Tribal Revenue Allocation Plan. The information to be collected includes: name of Tribe, tribal documents, the allocation plan and other documents deemed necessary. Collection of this information is currently authorized under an approval by OMB (OMB Control Number 1076–0152). All information is collected when the tribe submits a Tribal Revenue Allocation Plan. Annual reporting and record keeping burden for this collection of information is estimated to average between 75–100 hours for approximately 20 respondents, including the time for reviewing instructions, researching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total annual reporting and record keeping burden for this collection is estimated to be 1,500—2,000 hours. We are using the higher estimate for purposes of estimating the public burden.

Frequency of Collection: Annually.

Description of Respondents: Federally recognized tribes.

Total Respondents: 20.

Total Annual Responses: 100.

Total Annual Burden Hours: 2,000 hours.

Request for Comments

The Bureau of Indian Affairs solicits comments in order to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the bureau, including whether the information will have practical utility;

(2) Evaluate the bureau's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collection of the information on those who are to respond.

Dated: April 4, 2003.

Aurene M. Martin,

Assistant Secretary—Indian Affairs.

[FR Doc. 03–9068 Filed 4–11–03; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–912–03–1120–PG–24–1A]

Notice of Resource Advisory Council Meeting and Field Tour

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Utah Resource Advisory Council (RAC) meeting.

SUMMARY: The purpose of this notice is to announce a Resource Advisory Council Meeting and field tour scheduled for May 1–2, 2003, Price, Utah.

The Bureau of Land Management's (BLM) Utah Statewide Resource Advisory Council (RAC) will be meeting at the Holiday Inn (located at 838 Westwood Blvd) on May 1, 2003, 9:30 a.m., for a field tour of the northern portion of the San Rafael Swell. Issues to be discussed will be Easter weekend status (camping, law enforcement, etc); tour of the Buckhorn Wash (partnership with Emery County, OHV route designation plan, and WSAs); and a tour of the Wedge Overlook (wildlife and T/E species).

On May 2, from 8 a.m. until 2:30 p.m., the Council will meet in the conference room at the Holiday Inn in Price. There will be reports from the RAC subgroups, a discussion on wild and scenic rivers, and an overview of the grazing regulations and policy changes.

A public comment period is scheduled from 2 p.m.–2:30 p.m. where members of the public may address the Council. Written comments may be mailed to the Bureau of Land Management at the address listed below.

All meetings are open to the public; however, transportation, lodging, and meals are the responsibility of the participating public.

FOR FURTHER INFORMATION CONTACT: Sherry Foot, Special Programs Coordinator, Utah State Office, Bureau of Land Management, 324 South State Street, Salt Lake City, Utah, 84111; phone (801) 539–4195.

Dated: April 4, 2003.

Linda Colville,

Acting State Director.

[FR Doc. 03–9062 Filed 4–11–03; 8:45 am]

BILLING CODE 4310–$$–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–989 (Final)]

Ball Bearings From China

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from China of certain ball bearings and parts thereof, provided for in subheadings 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.50, 8431.20.00, 8431.39.00, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.25, 8482.99.35, 8482.99.65, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.60, 8708.93.30, 8708.93.60, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.40, 8708.99.49, 8708.99.58, 8708.99.80, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective February 13, 2002, following receipt of a petition filed with the Commission and Commerce by the American Bearing Manufacturers Association, Washington, DC. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of ball bearings from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 23, 2002 (67 FR 65142), as amended on December 2,

[1] The record is defined in sec. 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

2002 (67 FR 71588). The hearing was held in Washington, DC, on March 6, 2003, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on April 21, 2003. The views of the Commission are contained in USITC Publication 3593 (April 2003), entitled Ball Bearings from China: Investigation No. 731–TA–989 (Final).

By order of the Commission.

Issued: April 7, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–8967 Filed 4–11–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–491]

In the Matter of: Certain Display Controllers and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on March 10, 2003, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Genesis Microchip (Delaware) Inc. of Alviso, California. A letter supplementing the complaint was filed on March 28, 2003. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain display controllers and products containing same by reason of infringement of claims 13 and 15 of U.S. Patent No. 6,078,361, claims 19–22 of U.S. Patent No. 5,953,074, and claims 1 and 9 of U.S. Patent No. 6,177,922. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, at the conclusion of the investigation, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Anne Goalwin, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2574.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2002).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on April 7, 2003, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain display controllers or products containing same by reason of infringement of claims 13 or 15 of U.S. Patent No. 6,078,361, claims 19, 20, 21, or 22 of U.S. Patent No. 5,953,074, or claims 1 or 9 of U.S. Patent No. 6,177,922, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Genesis Microchip (Delaware) Inc., 2150 Gold Street, Alviso, California 94002.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Media Reality Technologies, Inc., 107 Min Chuan East Road, Section 2, Taipei, Taiwan.

Media Reality Technologies, Inc., 767 North Mary Avenue, Sunnyvale, California 94086.

Trumpion Microelectronics, Inc., 11F, No. 17 Cheng-Teh Rd. Sec.1, Taipei City, Taiwan.

(c) Anne Goalwin, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Delbert R. Terrill, Jr. is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further notice to that respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against that respondent.

By order of the Commission.

Issued: April 8, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–8970 Filed 4–11–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–1014 and 1017 (Final)]

Polyvinyl Alcohol From China and Korea

AGENCY: International Trade Commission.

ACTION: Scheduling of the final phase of antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigations Nos. 731-TA–1014 and 1017 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China and Korea of polyvinyl alcohol, provided for in subheading 3905.30.00 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of these investigations, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: March 20, 2003.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that imports of polyvinyl alcohol from China and Korea are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on September 5, 2002, by Celanese Chemicals, Ltd. of Dallas, TX and E.I. du Pont de Nemours & Co. of Wilmington, DE.

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on April 24, 2003, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on May 8, 2003, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 1, 2003. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on May 5, 2003, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is May 1, 2003. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is May 15, 2003; witness testimony must be filed

[1] For purposes of these investigations, the Department of Commerce has defined the subject merchandise as all polyvinyl alcohol (''PVA'') hydrolyzed in excess of 80 percent, whether or not mixed or diluted with commercial levels of defoamer or boric acid, except as noted below.

The following products are specifically excluded from the scope of these investigations:

(1) PVA in fiber form.

(2) PVA with hydrolysis less than 83 mole percent and certified not for use in the production of textiles.

(3) PVA with hydrolysis greater than 85 percent and viscosity greater than or equal to 90 cps.

(4) PVA with a hydrolysis greater than 85 percent, viscosity greater than or equal to 80 cps but less than 90 cps, certified for use in an ink jet application.

(5) PVA for use in the manufacture of an excipient or as an excipient in the manufacture of film coating systems which are components of a drug or dietary supplement, and accompanied by an end-use certification.

(6) PVA covalently bonded with cationic monomer uniformly present on all polymer chains in a concentration equal to or greater than one mole percent.

(7) PVA covalently bonded with carboxylic acid uniformly present on all polymer chains in a concentration equal to or greater than two mole percent, certified for use in a paper application.

(8) PVA covalently bonded with thiol uniformly present on all polymer chains, certified for use in emulsion polymerization of non-vinyl acetic material.

(9) PVA covalently bonded with paraffin uniformly present on all polymer chains in a concentration equal to or greater than one mole percent.

(10) PVA covalently bonded with silan uniformly present on all polymer chains certified for use in paper coating applications.

(11) PVA covalently bonded with sulfonic acid uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

(12) PVA covalently bonded with acetoacetylate uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

(13) PVA covalently bonded with polyethylene oxide uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

(14) PVA covalently bonded with quaternary amine uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before May 15, 2003. On May 30, 2003, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before June 3, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. In addition, parties may submit comments concerning the Department of Commerce's final determinations on China and Korea only, on or before August 19, 2003. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: April 7, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–8968 Filed 4–11–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the CJIS Advisory Policy Board

AGENCY: Federal Bureau of Investigation (FBI), Justice.

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce the meeting of the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB). The CJIS APB is responsible for reviewing policy issues, uniform crime reports, and appropriate technical and operational issues related to the programs administered by the FBI's CJIS Division, and thereafter, make appropriate recommendations to the FBI Director. The programs administered by the FBI CJIS Division are: the Integrated Automated Fingerprint Identification System, the Interstate Identification Index, Law Enforcement Online, National Crime Information Center, the National Instant Criminal Background Check System, the National Incident-Based Reporting System, and Uniform Crime Reporting.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public wishing to file a written statement concerning the FBI's CJIS Division programs or wishing to address this session should notify the Designated Federal Employee, Mr. Roy G. Weise at (304) 625–2730, at least 24 hours prior to the start of the session.

The notification should contain the requester's name, corporate designation, and consumer affiliation or government designation along with a short statement describing the topic to be addressed and the time needed for the presentation. A requestor will ordinarily be allowed no more than 15 minutes to present a topic.

DATES: The APB will meet in open session from 9 a.m. until 5 p.m., on June 4–5, 2003.

ADDRESSES: The meeting will take place at the Renaissance Cleveland Hotel, 24 Public Square, Cleveland, Ohio, telephone (216) 696–5600.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Mrs. Margery E. Broadwater, Management Analyst, Advisory Groups Management Unit, Programs Development Section, FBI CJIS Division, Module C3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306–0149, telephone (304) 625–2446, facsimile (304) 625–5090.

Dated: April 2, 2003.

Roy G. Weise,

Designated Federal Employee, Criminal Justice Information Services Division, Federal Bureau of Investigation.

[FR Doc. 03–9045 Filed 4–11–03; 8:45 am]

BILLING CODE 4410–02–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–041)]

NASA Advisory Council, Biological and Physical Research Advisory Committee, Commercial Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Biological and Physical Research Advisory Committee, Commercial Advisory Subcommittee (CAS).

DATES: Monday, April 28, 2003, 9 a.m. to 5 p.m.

ADDRESSES: NASA Ames Research Center, Moffet Field, California, the CEE Conference Room 261, Building 213, in the Systems Engineering Division.

FOR FURTHER INFORMATION CONTACT: Ms. Candace Livingston, Code US, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–0697.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. Advance notice of attendance to the Executive Secretary is requested. The agenda for the meeting will include the following topics:

—Introduction/Remarks
—Report from the Space Station Utilization Advisory Subcommittee
—Knowledge Mapping Activities
—Decision Rules
—Status of International Space Station Research Institute
—Legislative Issues/Research Re-planning Activities
—Commercial Participating in OBPR Strategic Road Mapping
—Committee Discussion
—Wrap-Up/Recommendations

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide the following information: Full name; gender; date/place of birth; citizenship; visa/greencard information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, phone); title/position of attendee. To expedite

admittance, attendees can provide identifying information in advance by contacting Ms. Shirley Berthold via e-mail at *sberthold@mail.arc.nasa.gov* or by telephone at (650) 604–1654. Attendees will be escorted at all times.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 03–8991 Filed 4–11–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before May 29, 2003. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–837–3698 or by e-mail to *records.mgt@nara.gov*. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Paul M. Wester, Jr., Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–3120. E-mail: *records.mgt@nara.gov*.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Animal and Plant Health Inspection Service (N1–463–03–1, 4 items, 4 temporary items). User fee records, including forms and background documents. Also included are electronic copies of records created using electronic mail and word processing that are associated with all record series in the Fiscal Affairs category of the agency's records disposition schedule.

2. Department of the Air Force, Agency-wide (N1–AFU–03–4, 2 items, 2 temporary items). Duplicate copies of time and attendance sheets pertaining to Air Reserve Technicians. Also included are electronic copies of records created using electronic mail and word processing.

3. Department of the Air Force, Agency-wide (N1–AFU–03–5, 2 items, 2 temporary items). Biographical records on personnel used in public affairs programs. Records include information concerning individual service members such as name, current rank, marital status, and local address. Also included are electronic copies of records created using electronic mail and word processing.

4. Department of Defense, Defense Finance and Accounting Service (N1–507–02–1, 93 items, 93 temporary items). Records relating to payroll and other financial transactions, safety and hazardous materials, security, personnel, property, planning, publications and forms, Congressional inquiries, audiovisual activities, and various administrative matters. Included are such records as employee pay records, central procurement accounting system records, government purchase card records, safety program planning records, accident reports, records of fire prevention inspections, hazardous material management and training records, industrial hygiene and occupational health surveys, pollution prevention plans and data, reports on security investigations of personnel, audiovisual productions not relating to the agency's mission, and case files

pertaining to coordination of Department of Defense issuances. Also included are electronic copies of documents created using electronic mail and word processing.

5. Department of Defense, National Imagery and Mapping Agency (N1–537–03–9, 16 items, 16 temporary items). Records relating to the production of nautical charts and publications. Records pertain to such matters as the measurement and description of the physical features and attributes of bodies of water and their adjoining coastal areas and the preparation and evaluation of maritime safety information. Also included are electronic copies of records created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

6. Department of Defense, National Imagery and Mapping Agency (N1–537–03–13, 11 items, 9 temporary items). Records relating to the general management and evolution of geospatial policy and arrangements, including such matters as classification decisions and security policy regarding the disclosure and release of geospatial data and products. Also included are electronic copies of records created using electronic mail and word processing. Records proposed for permanent retention include recordkeeping copies of files pertaining to international and interagency arrangements and to geospatial policy. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

7. Department of Defense, National Imagery and Mapping Agency (N1–537–03–14, 19 items, 19 temporary items). Distribution and storage files pertaining to maps, charts, and other cartographic products produced by the agency. Records relate to such subjects as inspections of stored items, stock levels, and requisitions. Also included are electronic copies of records created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

8. Department of Health and Human Services, Food and Drug Administration (N1–88–03–3, 3 items, 3 temporary items). Case files relating to seizures and prosecutions involving agency-approved products. Included are such records as copies of labels, promotional materials, seizure and analytical reports, notices of hearings, and additional prosecution records. Also included are electronic copies of records created using electronic mail and word processing.

9. Department of Homeland Security, Directorate of Border and Transportation Security (N1–563–03–1, 5 items, 2 temporary items). Inputs and outputs of an electronic system relating to immigration enforcement activities. The complete master file and a public use version are proposed for permanent retention along with the related system documentation.

10. Department of Justice, Justice Management Division (N1–60–03–2, 5 items, 4 temporary items). Input reports submitted by agency components and other supporting documentation created in connection with producing the agency's annual Performance and Accountability Report, which includes such materials as consolidated financial statements and the annual performance report required by the Government Performance and Results Act. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of the report are proposed for permanent retention.

11. Department of Justice, Drug Enforcement Administration (N1–170–03–4, 3 items, 3 temporary items. Records relating to the content and management of the agency's Web site, including electronic copies of records created using electronic mail and word processing.

12. Department of Labor, Officer of the Solicitor (N1–174–02–02, 62 items, 57 temporary items). Records relating to litigation, advice and opinions, and office administration. Included are such records as legal advice and opinion files and legislative case files lacking historical significance, copies of rulemaking records, recommendations to file appeals or amicus briefs, Freedom of Information Act reports, and electronic systems used to track office software and resource allocation for cases. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of such records as significant advice and opinion files, significant litigation case files, directives, and speeches and congressional testimony.

13. Department of Transportation, Research and Special Programs Administration (N1–467–01–2, 20 items, 14 temporary items). Records of the Office of the Associate Administrator for Innovation, Research and Education, including such records as grant files, copies of publications, and web site records. Also included are electronic copies of records created using word processing and electronic mail. Recordkeeping copies of research reports from institutions receiving grants, committee records, and publications are proposed for permanent retention.

14. Small Business Administration, Office of Business Development (N1–309–03–04, 12 items, 10 temporary items). Inputs, outputs, and back up files of an electronic records system used for monitoring the status of small businesses owned by economically and socially disadvantaged individuals. Also included are electronic copies of documents created using electronic mail and word processing. Master files and system documentation are proposed as permanent.

Dated: April 7, 2003.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 03–8974 Filed 4–11–03; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Geosciences (1755).

Dates: April 30–May 2, 2003.

Time: Noon–5:30 p.m. Wednesday, April 30, 2003, 8:30 a.m.–5:30 p.m. Thursday, May 1, 2003, 8:30 a.m.–noon Friday, May 2, 3003.

Place: National Science Foundation, 4201 Wilson Boulevard, Suite 375, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Dr. Thomas Spence, Directorate for Geosciences, National Science Foundation, Suite 705, 4201 Wilson Boulevard, Arlington, Virginia 22230, Phone 703–292–8500.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for research, education, and human resources development in the geosciences.

Agenda:

Day 1: Education and Diversity Subcommittee Meeting; Directorate activities and plans.

Day 2: Division Subcommittee Meetings; Directorate initiatives. Cross-directorate programs;

Day 3: Observational activities; Communications.

Dated: April 8, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–8990 Filed 4–11–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 30–35594–CivP (EA 02–072), ASLBP No. 03–811–02–CivP]

Advanced Medical Imaging and Nuclear Services; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the FR, 37 FR 28,710 (1972), and §§ 2.205, 2.700, 2.702, 2.714, 2.714a, 2.717, 2.721, and 2.772(j) of the Commission's regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding:

Advanced Medical Imaging and Nuclear Services, Easton, Pennsylvania; Order Imposing Civil Monetary Penalty.

This Board is being established pursuant to the request of Advanced Medical Imaging and Nuclear Services, for a hearing regarding an order issued by the NRC staff, dated February 19, 2003, entitled ''Order Imposing Civil Monetary Penalty'' (68 FR 10,040 (Mar. 3, 2003)).

The Board is comprised of the following administrative judges:

Thomas S. Moore, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. Charles N. Kelber, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. Peter S. Lam, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents and other materials shall be filed with the Panel Judges in accordance with 10 CFR 2.701.

Issued at Rockville, Maryland, this 8th day of April 2003.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 03–9025 Filed 4–11–03; 8:45 am]

BILLING CODE 7590–01–U

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reclearance of an Information Collection: SF 2817

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) will submit to the Office of Management and Budget (OMB) a request for review of an information collection. SF 2817, Life Insurance Election, is used by Federal employees and assignees (those who have acquired control of an employee/annuitant's coverage through an assignment or ''transfer'' of the ownership of the life insurance). Clearance of this form for use by active Federal employees is not required according to the Paperwork Reduction Act (Pub. L. 98–615). The Public Burden Statement meets the requirements of 5 CFR 1320.8(b)(3). Therefore, only the use of this form by assignees, *i.e.,* members of the public, is subject to the Paperwork Reduction Act.

Approximately 100 forms are completed annually by assignees. Each form takes approximately 15 minutes to complete. The annual estimated burden is 25 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via E-mail to *mbtoomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received on or before May 14, 2003.

ADDRESSES: Send or deliver comments to—

Christopher N. Meuchner, Program Planning & Evaluation Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3425, Washington, DC 20415–3660

and

Stuart Shapiro, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Cyrus S. Benson, Team Leader, Desktop Publishing and Printing Team, Center for Retirement and Insurance Services, (202) 606–0623.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03–9023 Filed 4–11–03; 8:45 am]

BILLING CODE 6325–50–U

RAILROAD RETIREMENT BOARD

Proposed Data Collection Available for Public Comment and Recommendations

SUMMARY: In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection:

Employer's Deemed Service Month Questionnaire; OMB 3220–0156.

Section 3(i) of the Railroad Retirement Act (RRA), as amended by Pub. L. 98–76, provides that the Railroad Retirement Board (RRB), under certain circumstances, may deem additional months of service in cases where an employee does not actually work in every month of the year, provided the employee satisfies certain eligibility requirements, including the existence of an employment relation between the employee and his or her employer. The procedures pertaining to the deeming of additional months of service are found in the RRB's regulations at 20 CFR part 210, Creditable Railroad Service.

The RRB utilizes Form GL–99, Employers Deemed Service Month Questionnaire, to obtain service and compensation information from railroad employers needed to determine if an employee can be credited with additional deemed months of railroad service. Completion is mandatory. One response is required for each RRB inquiry.

The RRB proposes minor non-burden impacting changes to Form GL–99. The completion time for Form GL–99 is

estimated at 2 minutes per response. The RRB estimates that approximately 4,000 responses are received annually.

ADDITIONAL INFORMATION OR COMMENTS: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa.

Clearance Officer.

[FR Doc. 03–8993 Filed 4–11–03; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47643; File No. SR–Amex–2000–49]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by the American Stock Exchange LLC to Permanently Approve Its Pilot Program Relating to Facilitation Cross Transactions

April 7, 2003

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 22, 2000, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change to revise and permanently approve its pilot program relating to facilitation cross transactions. On August 29, 2000, October 15, 2002, and January 29, 2003, respectively, the Amex filed Amendment Nos. 1, 2, and 3 to the proposed rule change.[3] On March 18, 2003, the Amex filed Amendment No. 4 to the proposed rule change, in which the Exchange replaced the original proposal and previous amendments with a proposal to permanently adopt the pilot program in its present form, and added a clarification concerning specialist participation in facilitation transactions.[4] The proposed rule change, as amended by Amendment No. 4, is described in Items I and II below, which Items have been prepared by the Exchange. On April 1, 2003, the Amex filed Amendment No. 5 to the proposed rule change, requesting that the Commission accelerate approval of the proposal.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to permanently approve its pilot program relating to facilitation cross transactions, with an added clarification concerning specialist participation in such transactions. The text of the proposed rule change is set forth below. Additions are italicized; deletions are in brackets.

* * * * *

Rule 950—Rules of General Applicability

(a)–(c) No change.

(d) The provisions of Rule 126, with the exception of subparagraphs (a) and (b) thereof, shall apply to Exchange options transactions and the following additional commentary shall also apply.

* * * Commentary

.01 No change.

.02 A member who holds both an order for a public customer of a member organization and a facilitation order may cross such orders if:

(a)–(c) No change.

(d)(1) notwithstanding paragraph (c) above, a member firm seeking to facilitate its own public customer's equity option order for the eligible order size will be permitted to participate in the firm's proprietary account as the contra-side of that order to the extent of the percentages set forth below:

(i) 20% of the order if the order is traded at the best bid or offer given by the trading crowd in response to a floor broker's request for a market; or

(ii) 40% of the order if the member firm improves the market that was provided by the trading crowd in response to a floor broker's request and the order is traded at that best bid or offer.

If, however, a public customer order on the specialist's book or represented in the trading crowd has priority over the facilitation order, the member firm may participate in only those contracts remaining after the public customer's order has been filled.

(2) No change.

(3) if a facilitation transaction pursuant to this subparagraph (d) occurs at the specialist's bid or offer, [then] *the specialist shall be allocated the greater of either (i) 20% of the executed contracts if the facilitating member firm, pursuant to subparagraph (d)(1)(i), has participated to the extent of 20% of the executed contracts; or (ii) a share of the executed contracts that have been divided equally among the specialist and other participants to the trade. T*[t]he specialist's participation allocation [pursuant to trading floor practices,] shall only apply to the number of contracts remaining after all public customer orders and the member firm's facilitation order have been satisfied. However, the total number of contracts guaranteed to be allocated to the member firm and the specialist in the aggregate shall not exceed 40% of the facilitation transaction. If the facilitation transaction occurs at a price at which the specialist is not on parity, the specialist is entitled to no guaranteed participation allocation.

(4) No change.

.03–.07 No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex 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 III below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to permanently approve its pilot program

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Claire P. McGrath, Vice President and Special Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated August 28, 2000, and letters from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Elizabeth King, Associate Director, Division, Commission, dated October 14, 2002, and January 28, 2003.

[4] *See* letter from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Elizabeth King, Associate Director, Division, Commission, dated March 17, 2003. The proposed rule change, as originally filed, and Amendment Nos. 1, 2, and 3 contained significant proposed revisions to the pilot program that the Exchange in Amendment No. 4 determined to delete.

[5] *See* letter from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Elizabeth King, Associate Director, Division, Commission, dated March 31, 2003.

relating to facilitation cross transactions, with an added clarification concerning specialist participation in such transactions. The pilot program was initially approved by the Commission on June 2, 2000, was most recently extended on January 10, 2003, and is due to expire on April 7, 2003.[6]

Commentary .02(d) to Amex Rule 950(d) established a pilot program to allow facilitation cross transactions in equity options.[7] The pilot program entitles a floor broker, under certain conditions, to cross a specified percentage of a customer order with an order for the member firm's proprietary account before specialists and/or registered options traders in the crowd can participate in the transaction. The provision generally applies to orders of 400 contracts or more. However, the Exchange is permitted to establish smaller eligible order sizes, on a class-by-class basis, provided that the eligible order size is not for fewer than 50 contracts.

The amount of the guaranteed participation percentage depends upon a comparison of the original market quoted by the trading crowd in response to a request from the floor broker and the price at which the orders are traded. If the order is traded at the best bid or offer provided by the trading crowd in response to the floor broker's initial request for a market, then the floor broker is entitled to cross 20% of the order. If the order is traded at a price that improves the market provided by the trading crowd (*i.e.*, at a price between the best bid and offer) in response to the floor broker's initial request for a market, then the floor broker is entitled to cross 40% of the order. In addition, the facilitating member firm may only participate in the executed contracts after public customer orders on the specialist's book or represented by a floor broker in the crowd have been filled.

In addition to its proposal to adopt the pilot program permanently, the Exchange proposes to revise subparagraph (d)(3) of Commentary .02 to Amex Rule 950(d) to clarify the participation of the specialist in executed contracts allocated after all public customer orders and the member firm's facilitation order have been satisfied.[8] Subparagraph (d)(3) would provide that the specialist shall be allocated the greater of either: (i) 20% of the executed contracts if the facilitating member firm, pursuant to the subparagraph (d)(1)(i) of Commentary .02, has participated to the extent of 20% of the executed contracts; or (ii) a share of the executed contracts that have been divided equally among the specialist and other participants to the trade.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(5) of the Act[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. 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 the filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2000–49 and should be submitted by May 5, 2003.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] In its approval of the pilot program,[12] the Commission detailed its reasons for finding the program's substantive features consistent with the Act, and, in particular, the requirements of Sections 6(b)(5) and 6(b)(8) of the Act.[13] The Commission has previously approved rules on other exchanges that establish substantially similar programs on a permanent basis,[14] and the establishment of the pilot as a permanent program on the Amex raises no new regulatory issues for consideration by the Commission.

The Commission notes that, in approving member firms participation rights and other guaranteed participations in the past, it has found that rules entitling a market participant(s) to up to 40% of an order are not inconsistent with the statutory standards of competition and free and open markets.[15] The Commission has raised concerns, on the other hand, about participation guarantees that ''lock up'' a larger percentage of an order, and thereby reduce the number of

[6] *See* Securities Exchange Act Release Nos. 42894 (June 2, 2000), 65 FR 36850 (June 12, 2000); 43229 (August 30, 2000), 65 FR 54572 (September 8, 2000); 44019 (February 28, 2001), 66 FR 13819 (March 7, 2001); 44538 (July 11, 2001), 66 FR 37507 (July 18, 2001); 44924 (October 11, 2001), 66 FR 53456 (October 22, 2001); 45241 (January 7, 2002), 67 FR 1524 (January 11, 2002); 45703 (April 8, 2002), 67 FR 18272 (April 15, 2002); 46176 (July 9, 2002), 67 FR 47007 (July 17, 2002); 46630 (October 9, 2002), 67 FR 64425 (October 18, 2002); and 47153 (January 10, 2003), 68 FR 2378 (January 16, 2003).

[7] Facilitation cross transactions occur when a floor broker representing the order of a public customer of a member firm crosses that order with a contra side order from the firm's proprietary account.

[8] In addition to the clarification provided by the proposed rule change, subparagraph (d)(3) would continue to include the general statement that if the facilitation transaction occurred at the specialist's bid or offer, the total number of contracts guaranteed to the member firm and the specialist in the aggregate could not exceed 40% of the facilitation transaction. If the facilitation transaction occurred at a price at which the specialist was not on parity, the specialist would be entitled to no guaranteed participation allocation.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] *See supra,* note 6.

[13] 15 U.S.C. 78f(b)(5) and (b)(8).

[14] *See, e.g.*, Securities Exchange Act Release Nos. 42835 (May 26, 2000), 65 FR 35683 (June 5, 2000), and 42848 (May 26, 2000), 65 FR 36206 (June 7, 2000).

[15] *See, e.g.*, Securities Exchange Act Release Nos. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000); 42894 (June 2, 2000), 65 FR 36850 (June 12, 2000); 42835 (May 26, 2000), 65 FR 35683 (June 5, 2000); 42848 (May 26, 2000), 65 FR 36206 (June 7, 2000).

contracts for which the trading crowd can compete.[16] The Amex facilitation program guarantees an allocation of no more than 40% of an order to a member firm seeking to facilitate an order. Moreover, the Amex rule includes a provision that limits the number of contracts to be allocated to the facilitating firm and the specialist in the aggregate to no more than 40% of the order. The rule for which the Amex seeks permanent approval is consistent with the Commission's position with respect to participation guarantees.

The language that the Amex proposes to add to the rule would clarify that, if the facilitating firm has participated in the 20% of the contracts to which it is entitled when the order is traded at the best bid or offer provided by the trading crowd in response to the floor broker's initial request for a market, the specialist would be allocated either the greater of 20% of the executed contracts or a share of the executed contracts that have been divided equally among the specialist and other participants in the trade. This provision is consistent with the Commission's position regarding participation guarantees and comports with the Commission's understanding of how the Amex rule was to be applied when the Commission approved the rule on a pilot basis.

As noted above, the Exchange has requested that the Commission grant accelerated approval to the proposed rule change. The Exchange states that the pilot program has been in effect for almost three years without incident and that substantially similar rules are in place at the Chicago Board Options Exchange, the Pacific Exchange, and the International Securities Exchange.[17] The Exchange adds that accelerated approval would obviate the need to extend the pilot program beyond its current expiration date of April 7, 2003.

The Commission finds good cause, consistent with Sections 6(b) and 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The proposal raises no new regulatory issue and will make permanent a pilot program that comports with the facilitation cross rules of other exchanges.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–Amex–2000–49), as amended, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8997 Filed 4–11–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47648; File No. SR–NASD–2003–53]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Modify Nasdaq Test Facility Pricing Under Rule 7050 for NASD Members

April 8, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 24, 2003, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposal as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization under section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify Nasdaq Test Facility pricing under Rule 7050 for NASD members.[5] Nasdaq will implement the proposed rule change on April 1, 2003. The text of the proposed rule change is below. Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

7050. Other Services

(a) No change.

(b) No change.

(c) No change.

(d) Nasdaq Testing Facility [(NTF)]

(1) Subscribers that conduct tests of their computer-to-computer interface (CTCI), NWII application programming interface (API), or market data vendor feeds through the Nasdaq Testing Facility (NTF) [of The Nasdaq Stock Market, Inc. (Nasdaq)] shall pay the following charges:

$285/hour—For *an Active Connection for* CTCI/NWII API testing [between 9 a.m. and 5 p.m. E.T. on business days] *during the normal operating hours of the NTF;*

$75/hour—For an Idle Connection for CTCI/NWII API testing during the normal operating hours of the NTF, unless such an Idle Connection is over a dedicated circuit;

No charge—For an Idle Connection for CTCI/NWII API testing if such an Idle Connection is over a dedicated circuit during the normal operating hours of the NTF;

$333/hour—For CTCI/NWII API testing (*for both Active and Idle Connections*) at all [other] times *other than the normal operating hours of the NTF* [on business days, or on weekends and holidays].

(2)*(A) An ''Active Connection'' commences when the user begins to send and/or receive a transaction to and from the NTF and continues until the earlier of disconnection or the commencement of an Idle Connection.*

(B) An ''Idle Connection'' commences after a Period of Inactivity and continues until the earlier of disconnection or the commencement of an Active Connection. If a Period of Inactivity occurs immediately after subscriber's connection to the NTF is established and is then immediately followed by an Idle Connection, then such Period of Inactivity shall also be deemed a part of the Idle Connection.

(C) A ''Period of Inactivity'' is an uninterrupted period of time of specified length when the connection is open but the NTF is not receiving from or sending to subscriber any transactions. The length of the Period of Inactivity shall be such period of time between 5 minutes and 10 minutes in length as Nasdaq may specify from time to time by giving notice to users of the NTF.

(3) The foregoing hourly fees shall not apply to market data vendor feed testing, or testing occasioned by:

(A) new or enhanced services and/or software provided by Nasdaq[.] *or*

[16] *See, e.g.,* Securities Exchange Act Release No. 43100 (July 31, 2000), 65 FR 48778 (August 9, 2000).

[17] *See* Amendment No. 5.

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] Nasdaq is also submitting a proposed rule change to establish an identical fee for non-members. *See* SR–NASD–2003–54.

(B) modifications to software and/or services initiated by Nasdaq in response to a contingency[.]*; or*

(C) testing by a subscriber of a Nasdaq service that the subscriber has not used previously, except if more than 30 days have elapsed since the subscriber commenced the testing of such Nasdaq service.

([3]*4*) Subscribers that conduct CTCI/API or market data vendor feed tests using a dedicated circuit shall pay a monthly fee, in addition to any applicable hourly fee described in section (d)(1) above, in accordance with the following schedule:

Service	Description	[Proposed] price
NTF Market Data	Test Market Data Vendor Feeds over a 56kb dedicated circuit	$1,100/circuit/month.
NTF NWII API	NWII API service to an onsite test SDP over a 56kb dedicated circuit.	$1,100/circuit/month.
NTF CTCI	CTCI service over a 56kb dedicated circuit	$1,100/circuit/month.
NTF Test Suite	NWII API service and CTCI service over two 56kb circuits (128 kb).	$1,800/2 circuits/month.
NTF Circuit Installation	Installation of any service option including SDP configuration	$700/circuit/installation.

([4]*5*) New NTF subscribers that sign a one-year agreement for dedicated testing service shall be eligible to receive 90-calendar days free dedicated testing service.

([5]*6*) ''New NTF subscribers'' are subscribers that

(A) have never had dedicated testing service; or

(B) have not had dedicated testing service within the last 6 calendar months.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change seeks to make certain modifications to the pricing of testing services provided through the Nasdaq Test Facility (''NTF''). The objectives of the pricing changes are to reduce barriers to entry for new Nasdaq subscribers and to address feedback from subscribers regarding current test fees. In some instances, the current charges are not cost efficient for subscribers, and as a consequence, firms may choose not to test through NTF or elect not to connect to Nasdaq's systems at all. The proposed rule change seeks to encourage subscribers to make greater use of Nasdaq services.

The proposed rule distinguishes between active and idle connections to the NTF. An active connection is in effect while transactions are actually being transmitted and for a brief period of inactivity thereafter. The existing hourly rate ($285 per hour) remains unchanged with respect to the times when the connection is active during the NTF's normal operating hours. However, if no transactions are being transmitted over an open connection, then, after a certain period of inactivity, that connection would be deemed idle and a newly established lower rate ($75 per hour) will apply. Initially, the period during which a connection needs to remain inactive before it will be deemed idle will be 10 minutes. However, Nasdaq reserves the right to adjust this time within a range of 5 to 10 minutes by giving notice of the change to NTF subscribers. The idle connection rate will not apply outside of NTF's normal operating hours, when the existing rate ($333 per hour) remains unchanged for both active and idle connections.

The proposed rule also eliminates idle connection charges during the NTF's normal operating hours for NTF subscribers with dedicated circuit connections and waives hourly charges during the times over an initial 30-day period when a subscriber is using NTF to test a Nasdaq service that the subscriber has not used previously.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[6] including section 15A(b)(5) of the Act,[7] which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. By adopting a pricing structure that is responsive to subscriber needs and market demands, the proposed rule supports efficient use of existing systems and ensures that the charges associated with such use are allocated equitably.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become immediately effective pursuant to section 19(b)(3)(A)(ii) of the Act,[8] and subparagraph (f)(2) of Rule 19b–4 thereunder,[9] in that it establishes or changes a due, fee, or other charge imposed by the self-regulatory organization. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

[6] 15 U.S.C. 78o–3.

[7] 15 U.S.C. 78o–3(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

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 NASD. All submissions should refer to File No. SR–NASD–2003–53 and should be submitted by May 5, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9036 Filed 4–11–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47645; File No. SR–NASD–2003–58]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the National Association of Securities Dealers, Inc. Eliminating Certain Eligibility Requirements for Participating in the Primex Auction System as a Primex Auction System Market Maker

April 8, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and rule 19b–4 [2] thereunder, notice is hereby given that on March 27, 2003, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), submitted to the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is filing this proposed rule change in order to eliminate the requirement that Primex Auction System Market Makers (''PAMMs'') submit a minimum percentage of certain orders to the Primex Auction System (''Primex'' or ''System'') in order to retain their status as PAMMs.

The text of the proposed rule change appears below. Proposed new language is underlined; proposed deletions are in brackets.

5010. NASDAQ Application of the Primex Auction System

5011. Definitions

For purposes of this Rule Series, unless the context requires otherwise:

* * * * *

(a) [''Mandatory Eligible Order'' means a public customer order, as more fully defined in rule 5020, that a Primex Auction Market Maker must submit to the System for exposure in order for the Primex Auction Market Maker to maintain its status as such, subject to any exclusions or minimum permissible amount provided therein.] *Reserved.*

* * * * *

5020. Market Maker Participation [3]

(a) No Changes.

(b) With respect to each security in which a Participant is registered as a Primex Auction Market Maker, the Participant shall:

(1) if the security is a Nasdaq-listed security, be registered as a Nasdaq market maker (1) if the security is a Nasdaq-listed security, be registered as a Nasdaq market maker in such security (or become so registered), and at all times comply with all applicable NASD rules and interpretations relating to Nasdaq market makers, including the requirement to enter and maintain two-sided quotations in Nasdaq for such security, subject to the excused withdrawal procedures set forth in Rule 4619;

(2) if the security is an ITS/CAES eligible security, be registered as an ITS/CAES Market Maker (or become so registered) in such security, and at all times comply with all applicable NASD rules and interpretations relating to ITS/CAES Market Makers, including the requirement to enter and maintain two-sided quotations in CQS for such security, subject to the excused withdrawal procedures set forth in Rule 6350; *and*

[(3) submit to the Application a minimum of 80%[*] of the number of its Mandatory Eligible Orders (including customer orders of another broker-dealer that has directed such orders to the Participant) as soon as practicable upon receipt by the Participant, for the purpose of exposing such orders to the Primex Crowd. Mandatory Eligible Orders do not include:

(A) Any customer order that is greater than 1099 shares at origination, except that nothing in these rules prohibits a Participant from submitting orders of greater size at any time;

(B) Any customer order that, when initially received by the Participant, is a Fixed Price Order with a specified price that is not eligible for acceptance by the Application because it is priced outside the NBBO and is not otherwise marketable pursuant to Rule 5013(a)(2), regardless of whether or not the order

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The rule text provided herein includes corrections of typographical errors from the rule text that Nasdaq submitted in Exhibit 1 of the proposed rule change. Telephone conversation between Peter R. Geraghty, Associate Vice President and Associate General Counsel, Office of General Counsel, Nasdaq, and Tim Fox, Attorney, Division of Market Regulation, Commission on April 7, 2003.

[*] The 80% test will be applied on a quarterly basis, and will be phased in as follows: For the calendar quarters commencing on October 1, 2001; January 1, 2002; April 1, 2002; July 1, 2002; and October 1, 2002; any participant may register in any eligible security as a Primex Auction Market Maker and maintain that status during such calendar quarters without regard to the percentage of its orders it submits to the System for such security during that time, provided it also satisfies all other requirements of a Primex Auction Market Maker pursuant to these rules.

Beginning with the calendar quarter that commences on January 1, 2003, a participant previously registered as a Primex Auction Market Maker for a particular security may maintain its status as such until March 30, 2003 only if it submitted at least 50% of its Mandatory Eligible Orders during the calendar quarter that commences on October 1, 2002 (or during such portion of the calendar quarter that commences on October 1, 2002 in which the participant was so registered if the participant registered in mid quarter), provided it also satisfies all other requirements of a Primex Auction Market Maker pursuant to these rules. A participant that is newly registering as a Primex Auction Market Maker for a particular security any time after the start of the calendar quarter that commences on January 1, 2003 may maintain its status as such until the end of the calendar quarter in which it registered without regard to the percentage of its orders it submits to the System for such security during that time.

Beginning with the calendar quarter that commences on April 1, 2003, and each calendar quarter thereafter, a participant previously registered as a Primex Auction Market Maker for a particular security may maintain its status as such until the end of that calendar quarter only if it submitted at least 80& of its Mandatory Eligible Orders during the previous calendar quarter (or during the portion of such previous calendar quarter in which it was so registered if the participant registered in mid quarter), provided it also satisfies all other requirements of a Primex Auction Market Maker pursuant to these rules.]

becomes eligible for acceptance and exposure at a subsequent point in time;

(C) Any customer order placed by a customer who authorizes the Participant to not expose the order, either at the time the order is placed or prior thereto pursuant to an individually negotiated agreement with respect to such customer's orders;

(D) Any customer order that is an odd lot order (*e.g.*, less than 100 shares);

(E) Any customer order to be executed outside of the hours of operation of the Application; or

(F) Any other order that would not fall within the definition of the term ''covered order'' as defined in Exchange Act Rule 11Ac1–5(a)(8).]

(*3*[4]) not attach a condition for Minimum Relative Price Improvement to any order submitted to the Application solely for its own principal account and not involving a customer order.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Presently, NASD Rule 5020(b)(3) requires PAMMS to submit 80% of their Mandatory Eligible Orders to Primex in order to retain their status as PAMMs (''Percentage Test'').[4] Members registered as PAMMs can utilize certain matching features and are eligible for fee sharing, which are features not available to members that do not participate as PAMMs (*i.e.*, Crowd Participants).[5]

The purpose of the Percentage Test was to achieve a mix of trading interest that would result in retail orders being exposed to other market participants that would compete for the orders by providing price improvement. Ultimately, the Percentage Test was a balance between continuing to provide PAMMs flexibility in how they execute their customer orders and the desire to provide a cross section of orders that would generate crowd participation and competition for orders. However, members have indicated that the Percentage Test complicates their order handling decisions, creating a disincentive to participating in Primex. Therefore, Nasdaq is proposing to eliminate the Percentage Test and allow members to participate as PAMMs irrespective of the number of orders they submit to the System.

The proposal to eliminate the Percentage Test does not modify any other aspect of Primex. For example, PAMMs must continue to comply with the other requirements of NASD Rule 5020 that govern PAMM eligibility, and PAMMs will continue to have the right to use the matching features and to participate in the fee sharing arrangements that are not available to Crowd Participants.

2. Statutory Basis

Nasdaq believes the proposed rule change is consistent with section 15A(b)(6) of the Act,[6] which requires that NASD's rules be designed, among other things, to remove impediments to and perfect the mechanism of a free and open market and national market system, and, in general, protect investors and the public interest. Nasdaq believes the proposal to eliminate the Percentage Test is consistent with NASD's obligations under section 15A(b)(6) of the Act because it will remove an impediment to using Primex, which should result in greater participation in the System and increased liquidity and opportunities for price improvement.

When originally implemented, Nasdaq believed the requirement would promote liquidity by ensuring a cross section of order flow from each PAMM, which in turn would encourage non-market makers to participate in Primex and offer opportunities for price improvement. Nasdaq represents that promoting liquidity and price improvement opportunities are consistent with the protection of investors. However, instead of fostering liquidity, members have indicated that the requirement is a disincentive to using Primex. Members desire flexibility in making order routing decisions and the rule complicates these decisions. Therefore, Nasdaq staff is proposing to eliminate the Percentage Test, which will eliminate an impediment to using Primex. As a result, Nasdaq expects that more members will participate in Primex, which should increase liquidity and opportunities for price improvement.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq 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

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has been designated by NASD as effecting a change in an existing order-entry or trading system of NASD that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not have the effect of limiting the access to or availability of the system. The proposed rule change has therefore become effective pursuant to section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(5)[8] thereunder. The Nasdaq believes that the proposal to eliminate the Percentage Test complies with the requirements of Rule 19b–4(f)(5) under the Act because it effects a change in Primex, an existing trading system. In addition, the proposal does not modify how Primex operates. Therefore, it does not significantly affect the protection of investors or the public interest. Instead, the proposal eliminates a requirement that is viewed as an impediment to using Primex. In this regard, the proposal does not have the effect of limiting the access or availability of the System, but instead should promote access to it, which should increase participation in the System and promote competition for orders exposed in the System.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and

[4] The term ''Mandatory Eligible Order'' is defined in NASD Rule 5011(l).

[5] PAMMS can enter Clean Cross orders and use the Two Cent Match, 50% Match, and Block Facilitation Match features. These features are described in NASD Rule 5014. In addition, pursuant to NASD Rule 7010(r)(1), a PAMM can share in the Primex fees charged to members when the PAMMs order interacts with crowd interest in Primex.

[6] 15 U.S.C. 78*o*–3(b)(6).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(5).

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 NASD. All submissions should refer to File No. SR–NASD–2003–58 and should be submitted by May 5, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9037 Filed 4–11–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47646; File No. SR–Phlx–2003–18]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Equal Firm Quotation Size and AUTO–X Guarantees for Customer and Broker-Dealer Orders

April 8, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 20, 2003, the Philadelphia Stock Exchange, Inc. (''Exchange'' or ''Phlx'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The proposed rule change has been filed by the Phlx as a ''non-controversial'' rule change under Rule 19b–4(f)(6) under the Act.[3] On April 7, 2003, the Phlx filed Amendment No. 1 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to implement an options program to be firm for, and to automatically execute eligible orders against, the Exchange's disseminated size for both customer and broker-dealer orders. Specifically, the Exchange proposes to amend Exchange Rule 1082, Firm Quotations, to provide that all Phlx options quotations would be firm for all incoming customer and broker-dealer orders for their full disseminated size.

The Exchange further proposes to amend Exchange Rule 1080, Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X),[5] to provide automatic executions for eligible customer and off-floor broker-dealer orders up to the Exchange's disseminated size, subject to a maximum guaranteed AUTO–X size of 250 contracts. Options on the Nasdaq-100 Index Tracking Stock (''QQQ''SM) [6] would continue to have a maximum guaranteed AUTO–X size of 2,000 contracts in the first two near term expiration months, and 1,000 contracts for all other expiration months.[7]

Below is the text of the proposed rule change. Proposed new language is in *italics;* proposed deletions are in brackets.

* * * * *

Firm Quotations

Rule 1082. (a) No change.

(b) Except as provided in paragraph (c) of this Rule, all quotations made available by the Exchange and displayed by quotation vendors shall be firm for customer *and broker-dealer* orders at the disseminated price in an amount up to the disseminated size. Responsible brokers or dealers bidding (or offering) at the disseminated price shall be collectively required to execute orders presented to them at such price up to the disseminated size in accordance with Rule 1015, or, if the responsible broker or dealer is representing (as agent) a limit order, such responsible broker or dealer shall be responsible (as agent) up to the size of such limit order, but may be responsible as principal for all or a portion of the excess of the disseminated size over the size of such limit order to the extent provided in Rule 1015.

(c) No change.

(d) [In accordance with paragraph (d)(l)(ii) of the SEC Quote Rule, the quotation size for a disseminated price with respect to an order for the account of a broker or dealer (''broker-dealer order'') shall be one (1) contract (''quotation size''), and all quotations made available by the Exchange and displayed by quotation vendors shall be firm for broker-dealer orders at the disseminated price in an amount up to the quotation size. The quotation size for broker-dealer orders provided in this paragraph (d) shall be periodically published by the Exchange. Responsible brokers or dealers bidding (or offering) at the disseminated price shall be collectively required to execute broker-dealer orders at such price up to the quotation size. (e)] If responsible brokers or dealers receive an order to buy or sell a listed option at the disseminated price in an amount greater than the disseminated size [(for customer orders)

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx, to Deborah Lassman Flynn, Assistant Director, Division of Market Regulation, Commission, dated April 4, 2003 (''Amendment No. 1''). In Amendment No. 1, Phlx deleted certain proposed language stating that ''[t]he minimum guaranteed AUTO–X size is 1 contract, and the current maximum AUTO–X size is 250 contracts, except for QQQ options''; retained current language that the minimum and maximum guaranteed AUTO–X sizes for each option will be posted in the Phlx's website; and retained current language that there be a minimum guaranteed AUTO–X size and maximum guaranteed AUTO–X size, as determined by the specialist and subject to approval of the Options Committee.

[5] AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO–X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor. *See* Exchange Rule 1080.

[6] The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq®, The Nasdaq Stock Market®, Nasdaq-100 SharesSM, Nasdaq-100 TrustSM, Nasdaq-100 Index Tracking StockSM, and QQQSM are trademarks or service marks of Nasdaq and have been licensed for use for certain purposes by the Philadelphia Stock Exchange pursuant to a License Agreement with Nasdaq. The Nasdaq-100 Index® (the Index) is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 TrustSM, or the beneficial owners of Nasdaq-100 SharesSM. Nasdaq has complete control and sole discretion in determining, comprising, or calculating the Index or in modifying in any way its method for determining, comprising, or calculating the Index in the future.

[7] *See* Securities Exchange Act Release No. 46531 (September 23, 2002), 67 FR 61370 (September 30, 2002) (SR–Phlx–2002–47).

or the quotation size (for broker-dealer orders)], such responsible broker or dealer shall, within thirty (30) seconds of receipt of the order, (i) execute the entire order at the disseminated price (or better), or (ii) execute that portion of the order equal to the disseminated size [(in the case of a customer order) or the quotation size (in the case of a broker-dealer order)] at the disseminated price (or better), and revise its bid or offer.

Commentary:

.01. For purposes of this Rule 1082, the term ''broker-dealer orders'' includes orders for the account(s) of market makers on another exchange and Registered Options Traders (''ROTs'') on the Exchange.

* * * * *

Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X)

Rule 1080. (a)–(b) No change.

(c) AUTO–X.—AUTO–X is a feature of AUTOM that automatically executes eligible market and marketable limit orders up to the number of contracts permitted by the Exchange for certain strike prices and expiration months in equity options and index options, unless the Options Committee determines otherwise. AUTO–X automatically executes eligible orders using the Exchange disseminated quotation (except if executed pursuant to the NBBO Feature in sub-paragraph (i) below) and then automatically routes execution reports to the originating member organization. AUTOM orders not eligible for AUTO–X are executed manually in accordance with Exchange rules. Manual execution may also occur when AUTO–X is not engaged, such as pursuant to sub-paragraph (iv) below. An order may also be executed partially by AUTO–X and partially manually.

The Options Committee may for any period restrict the use of AUTO–X on the Exchange in any option or series provided that the effectiveness of any such restriction shall be conditioned upon its having been approved by the Securities and Exchange Commission pursuant to Section 19(b) of the Securities Exchange Act of 1934 and the rules and regulations thereunder. Any such restriction on the use of AUTO–X approved by the Options Committee will be clearly communicated to Exchange membership and AUTOM users through an electronic message sent via AUTOM and through an Exchange information circular. Such restriction would not take effect until after such communication has been made.

Currently, the Exchange's maximum allowable AUTO–X guarantee is 250 contracts. With respect to options on the Nasdaq-100 Index Tracking Stock (''QQQ'')SM, orders of up to 2,000 contracts in the first two (2) near term expiration months, and 1,000 contracts for all other expiration months, are eligible for AUTO–X.

For each option, there shall be a minimum guaranteed AUTO–X size and a maximum guaranteed AUTO–X size. Such minimum and maximum sizes may be for a different number of contracts for customer orders than for broker-dealer orders], as determined by the specialist and subject to the approval of the Options Committee.

The Exchange shall provide automatic executions for eligible *customer and broker-dealer* orders up to the Exchange's disseminated size as defined in Exchange Rule 1082, subject to a minimum guaranteed AUTO–X size and a maximum guaranteed AUTO–X size (up to a size of 250 contracts).

- If the Exchange's disseminated size is greater than the minimum guaranteed AUTO–X size, and less than the maximum guaranteed AUTO–X size, inbound eligible orders shall be automatically executed up to Exchange's disseminated size. Remaining contracts shall be executed manually by the specialist or placed on the limit order book.
- If the Exchange's disseminated size is less than the minimum guaranteed AUTO–X size for that option, inbound eligible orders shall be automatically executed up to such minimum guaranteed AUTO–X size. Remaining contracts shall be executed manually by the specialist or placed on the limit order book.
- If the Exchange's disseminated size is greater than the maximum guaranteed AUTO–X size, inbound eligible orders shall be automatically executed up to such maximum guaranteed AUTO–X size. Remaining contracts shall be executed manually by the specialist.

The minimum and maximum guaranteed AUTO–X size applicable to each option shall be posted on the Exchange's web site.

The Options Committee may, in its discretion, increase the size of orders in one or more classes of multiply-traded equity options eligible for AUTO–X to the extent necessary to match the size of orders in the same options eligible for entry into the automated execution system of any other options exchange, provided that the effectiveness of any such increase shall be conditioned upon its having been filed with the Securities and Exchange Commission pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934.

(i)–(v) No change.

(d)–(j) No change.

Commentary

01–.04 No change.

.05 Off-floor broker-dealer limit orders delivered through AUTOM must be represented on the Exchange Floor by a floor member. Off-floor broker-dealer orders delivered via AUTOM shall be for a minimum size of one (1) contract. Off-floor broker-dealer limit orders are subject to the following other provisions:

(i)–(iii) No Change

(iv) [(a) The minimum guaranteed AUTO–X size shall be at least 10 contracts for off-floor broker-dealer limit orders in the 120 most actively traded equity options (the ''Top 120 Options''). A Top 120 Option is defined as one of the 120 most actively traded equity options in terms of the total number of contracts that were traded nationally for a specified month based on volume reflected by The Options Clearing Corporation (''OCC'').

(b) With respect to all other options, off-floor broker-dealer limit orders may be eligible for automatic execution via AUTO–X on an issue-by-issue basis, subject to the approval of the Options Committee.

(c) The AUTO–X guarantee for off-floor broker-dealer limit orders may be for a different number of contracts, on an issue-by-issue basis, than the AUTO–X guarantee for public customer orders, subject to the approval of the Options Committee. (v)] Off-floor broker-dealer AUTO–X eligible limit orders may be eligible for the Exchange's National Best Bid or Offer (''NBBO'') Step-Up Feature on an issue-by-issue basis, subject to the approval of the Options Committee.

* * * * *

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 Phlx 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 Phlx 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 Phlx proposes to require that all Phlx quotations would be firm for all incoming customer and broker-dealer orders for their full disseminated size, thus eliminating any distinction between customer orders and broker-dealer orders respecting firm quotation size. The Phlx also proposes to provide that all Phlx guaranteed AUTO–X sizes would be the same for both customer and broker-dealer orders.

a. Firm Quotation Size

Currently, Exchange Rule 1082(b) requires that all quotations made available by the Exchange and displayed by quotation vendors shall be firm for customer orders at the disseminated price in an amount up to the disseminated size. Exchange Rule 1082(d) sets forth a different ''quotation size'' of one contract applicable to broker-dealer orders, which is distinguished from the ''disseminated size'' for which responsible brokers or dealers are firm for customer orders.[8] The Exchange proposes to amend Exchange Rule 1082(b) to require that all quotations made available by the Exchange and displayed by quotation vendors shall be firm for customer orders and broker-dealer orders at the disseminated price in an amount up to the disseminated size, thus eliminating any distinction between customer orders and broker-dealer orders with respect to the size for which Exchange option quotations are firm.

The Exchange would also delete any references to ''quotation size'' and ''broker-dealer'' from Exchange Rule 1082(e). This would be to require all quotations made available by the Exchange and displayed by quotation vendors to be firm at the disseminated price in an amount up to the disseminated size for both customers and broker-dealers. The Phlx represents that the purpose of this provision is to provide both customers and broker-dealers with full access to the entire disseminated size of the Exchange's quotations. Thus, the Exchange proposes to eliminate any distinction between the size for which its quotes are firm, whether for customers or broker-dealers, including market makers on other exchanges and Registered Options Traders (''ROTs'').

b. Automatic Executions at the Disseminated Size for Eligible Customer and Broker-Dealer Orders

In November 2002, the Commission approved an Exchange proposal to provide automatic executions for eligible orders at the Exchange's disseminated size, subject to a minimum and maximum eligible size range to be determined by the specialist and subject to approval of the Options Committee, on an issue-by-issue basis.[9] The Exchange now proposes to amend Exchange Rule 1080(c) by deleting the provision that such minimum and maximum sizes may be for a different number of contracts for customer orders than for broker-dealer orders. Corresponding sections of the Commentary to Exchange Rule 1080 concerning AUTO–X eligibility and different guaranteed AUTO–X sizes for customers and broker-dealers would also be deleted. This would result in automatic executions for both eligible customer orders and eligible broker-dealer orders at the Exchange's disseminated size.

The Exchange proposes to eliminate the distinction among customer orders and broker-dealer orders respecting AUTO–X guarantees. In order to ensure that customer and broker-dealer orders receive the same AUTO–X size guarantee, the Phlx proposes to delete the current provisions in Exchange Rule 1080, Commentary .05 requiring a minimum guaranteed AUTO–X size of ten contracts for off-floor broker-dealer orders in Top 120 options. Additionally, the current Commentary includes a provision that, with respect to all other options, off-floor broker-dealer limit orders may be eligible for automatic execution via AUTO–X on an issue-by-issue basis, subject to the approval of the Options Committee. The Exchange proposes to delete this provision in order to enable all eligible broker-dealer orders to be treated the same as eligible customer orders with respect to the Exchange's guaranteed AUTO–X size.

Finally, the Exchange proposes to delete from the Commentary the provision that the AUTO–X guarantee for off-floor broker-dealer limit orders may be for a different number of contracts, on an issue-by-issue basis, than the AUTO–X guarantee for public customer orders, subject to the approval of the Options Committee.

c. Conclusion

The Exchange believes that this proposed ''one size fits all'' approach, as set forth in subsections a. and b. above, should enable the Exchange to compete for broker-dealer orders by ensuring that there would be no distinction between broker-dealer and customer orders with respect to: (i) the size for which the Exchange is firm at its disseminated price; and (ii) the Exchange's guaranteed AUTO–X size. Furthermore, the Exchange believes that the proposal should enhance the transparency of its markets and result in a larger number of orders automatically executed.

2. Statutory Basis

The Exchange believes the proposed rule change, as amended, is consistent with Section 6(b) of the Act[10] in general, and furthers the objectives of Section 6(b)(5) of the Act[11] in particular, because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and protect investors and the public interest by requiring Exchange specialists and ROTs to be firm for up to the Exchange's disseminated size for all orders, and providing automatic executions at the same guaranteed size for all eligible orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition that is not necessary in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such

[8] Rule 11Ac1–1(d)(1)(ii) under the Act provides that an exchange or association may establish by rule and periodically publish a quotation size, which shall not be for less than one contract, for which responsible brokers or dealers who are members of such exchange or association are obligated under paragraph (c)(2) of this section to execute an order to buy or sell a listed option for the account of a broker or dealer that is in an amount different from the quotation size for which it is obligated to execute an order for the account of a customer. 17 CFR 240.11Ac1–1(d)(1)(ii).

[9] *See* Securities Exchange Act Release No. 46886 (November 22, 2002), 67 FR 72015 (December 3, 2002) (SR–Phlx–2002–39).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)[12] of the Act and Rule 19b–4(f)(6)[13] thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Phlx seeks to have the proposed rule change become operative immediately upon filing so that the Exchange may remain competitive with other exchanges with similar rules in effect.

The Commission, consistent with the protection of investors and the public interest, has determined to waive the 30-day operative date and make the proposed rule change operative immediately upon filing, in order to allow the Phlx to compete for broker-dealer orders by removing any distinction between broker-dealer and customer orders with respect to the size for which the Exchange is firm at its disseminated price and the Exchange's guaranteed AUTO–X size.[15] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. 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 Phlx. All submissions should refer to File No. SR–Phlx–2003–18 and should be submitted by May 5, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9034 Filed 4–11–03; 8:45 am]

BILLING CODE 8010–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter period as designated by the Commission.

[15] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47647; File No. SR–Phlx–2003–20]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Adopt a License Fee for Transactions in DIAMONDS® Exchange Traded Funds

April 8, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 28, 2003, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II 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 its Summary of Equity Charges to adopt a license fee of $0.00025 per share per trade side for sides greater than 500 shares, with no maximum fee per trade side charged to Non-PACE Customers[3] and Electronic Communications Networks (''ECNs''),[4] and a license fee of $0.0005 per share per trade side, with no maximum fee per trade side charged to specialists for transactions on the Phlx in the DIAMONDS® Exchange Traded Funds (''DIAMONDS'').[5] The Exchange also proposes to make minor, technical changes to its equity fee

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] PACE is the acronym for the Exchange's Automated Communication and Execution System, which is the Exchange's order routing, delivery, execution and reporting system for its equity trading floor. *See* Exchange Rules 229 and 229A.

[4] ECNs shall mean any electronic system that widely disseminates to third parties orders entered therein by an Exchange market maker or over-the-counter (''OTC'') market maker, and permits such orders to be executed against in whole or in part; except that the term ECN shall not include: any system that crosses multiple orders at one or more specified times at a specified price set by the ECN, algorithm, or by any derivative pricing mechanism and does not allow orders to be crossed or executed against directly by participants outside of such times; or, any system operated by or on behalf of an OTC market-maker or exchange market-maker that executes customer orders primarily against the account of such market maker as principal, other than riskless principal.

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[6] These charges may include equity transaction charges, an equity floor brokerage assessment, an equity floor brokerage transaction fee, an off-Exchange trade information fee, an SEC fee, a remote information access fee, an Electronic Communications Network fee, an outbound Inter-Market Trading System (''ITS'') fee and a net inbound ITS credit. Additionally, the PACE Specialist charge does not apply because specialists are not eligible for further PACE volume discounts. *See* Securities Exchange Act No. 44259 (May 4, 2001), 66 FR 23962 (May 10, 2001) (SR–Phlx–2001–41).

[7] The license fees will not be eligible for the monthly credit of up to $1,000 to be applied against certain fees, dues and charges and other amounts owed to the Exchange by certain members. *See* Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR–Phlx–2001–49).

schedule to make corresponding references to the proposed fees. All other equity charges currently assessed by the Phlx will be imposed where applicable.[6]

The Exchange proposes to implement this fee as of April 1, 2003, the date that it began trading in the DIAMONDS.[7]

Text of the proposed rule change is set forth below. New text is in italics. Deleted text is in brackets.

Summary of Equity Charges (p 1/3)*

EQUITY TRANSACTION CHARGE I

[Based on total shares per transaction with the exception of specialist trades and PACE trades.[1]]

Monthly transaction value	Rate per share
First 500 shares	$0.00
Next 2,000 shares	0.0075
Next 7,500 shares	0.005
Remaining shares	0.004
$50 maximum fee per trade side.	

License Fee

SPDRs, Standard & Poor's Depositary Receipts**

Customer Non-PACE and Electronic Communications Network E (''ECN'') License Fee:
$0.00025 per share per trade side for sides greater than 500 shares
No maximum fee per trade side

Specialist License Fee:
$0.00035 per share per trade side
No maximum fee per trade side

*DIAMONDS® Exchange Traded Funds***

Customer Non-PACE and Electronic Communications Network E (''ECN'') License Fee:
$0.00025 per share per trade side for sides greater than 500 shares
No maximum fee per trade side

Specialist License Fee:
$0.0005 per share per trade side
No maximum fee per trade side

See Appendix A for additional fees.
I denotes fee eligible for monthly credit of up to $1,000.
* Not applicable to transactions in Nasdaq-100 Index Tracking Stock℠ (see page 4 for fees).

Summary of Equity Charges (p 2/3)*

PACE Specialist Charge [2] I
$.20 per PHLX Specialist Trade against PACE Executions (Not applicable to PACE trades on the opening)

Equity Floor Brokerage Assessment I
$250 monthly charge [3]

Equity Floor Brokerage Transaction Fee I
$.05 per 100 shares or fraction thereof, for floor broker executing transactions for their own member firms.

SEC Fee
The amount shall be determined by Section 31 of the Securities Exchange Act of 1934.

Off-Exchange Trade Information Fee I
$.10 per DOT trade

Remote Information Access Fee I
$300.00 per month

Electronic Communications Network E (''ECN'') Fee
$2,500.00 per month (in lieu of equity transaction charges)

Outbound ITS Fee I (also applicable to transactions in Nasdaq-100 Index Tracking Stock℠) [4]

For PACE orders sent over ITS with the customer information attached:

500 shares or less	$0.60 per 100 shares.
501 to 4,999 shares	0.30 per 100 shares.

Summary of Equity Charges (p 3/3)

[3] PACE is the acronym for the Exchange's Automated Communication and Execution System, which is the Exchange's order routing, delivery, execution and reporting system for its equity trading floor. *See* Exchange Rules 229 and 229A.

[4] ECNs shall mean any electronic system that widely disseminates to third parties orders entered therein by an Exchange market maker or over-the-counter (''OTC'') market maker, and permits such orders to be executed against in whole or in part; except that the term ECN shall not include: any system that crosses multiple orders at one or more specified times at a specified price set by the ECN, algorithm, or by any derivative pricing mechanism and does not allow orders to be crossed or executed against directly by participants outside of such times; or, any system operated by or on behalf of an OTC market-maker or exchange market-maker that executes customer orders primarily against the account of such market maker as principal, other than riskless principal.

Net Inbound ITS Credit (also applicable to transactions in Nasdaq-100 Index Tracking Stock SM) [5]

$0.30 per 100 shares on the excess, if any, of the number of inbound ITS shares executed over the number of outbound ITS shares sent and executed on a monthly basis.

See Appendix A for additional fees.

I denotes fee eligible for monthly credit of up to $1,000.

* Not applicable to transactions in Nasdaq-100 Index Tracking StockSM (see next page for fees).

E ECNs shall mean any electronic system that widely disseminates to third parties orders entered therein by an Exchange market maker or over-the-counter (''OTC'') market maker, and permits such orders to be executed against in whole or in part; except that the term ECN shall not include: Any system that crosses multiple orders at one or more specified times at a specified price set by the ECN, algorithm, or by any derivative pricing mechanism and does not allow orders to be crossed or executed against directly by participants outside of such times; or, any system operated by or on behalf of an OTC market-maker or exchange market-maker that executes customer orders primarily against the account of such market maker as principal, other than riskless principal.

Any fees, credits, discounts and other charges in the Exchange's fee schedule which are based upon an equity specialist's specialist activity apply to competing specialists.

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[1] However, this charge applies where an order, after being delivered to the Exchange by the PACE system is executed by the specialist by way of an outbound commitment, when such outbound ITS commitment reflects the PACE order's clearing information, but does not apply where a PACE trade was executed against an inbound ITS commitment.

[2] This charge does not apply to transactions in Nasdaq-100 Index Tracking StockSM [and] SPDRs *and DIAMONDS®.*

[3] Applies to each member who derives at least 80% of gross income generated from Phlx floor based activities from his/her floor brokerage business conducted on the Exchange. Floor brokerage business conducted on the Exchange includes orders that are received on the Phlx, even if those orders are executed on an exchange other than the Phlx. The 5% floor brokerage assessment is waived until Dec. 31, 2003 and is scheduled to be reinstated Jan. 1, 2004.

[4] This fee will only apply when the specialist sends an order received over PACE to ITS and receives an execution, if the specialist used the PACE customer's clearing information on the outbound ITS commitment.

[5] This credit will include all inbound and outbound ITS executions, including both PACE and non-PACE and both proprietary and customer commitments.

* * * * *

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 III 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 adopt a license fee that will apply to trading DIAMONDS on the Exchange. The Exchange recently determined to begin trading DIAMONDS. The license fees should help off-set licensing fees incurred by the Exchange associated with the trading of these products on the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(4) of the Act,[9] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members. The Exchange believes that charging members that trade these products a licensing fee is an equitable means of recovering a portion of the licensing fees incurred by the Exchange.[10]

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[6] These charges may include equity transaction charges, an equity floor brokerage assessment, an equity floor brokerage transaction fee, an off-Exchange trade information fee, an SEC fee, a remote information access fee, an Electronic Communications Network fee, an outbound Inter-Market Trading System (''ITS'') fee and a net inbound ITS credit. Additionally, the PACE Specialist charge does not apply because specialists are not eligible for further PACE volume discounts. *See* Securities Exchange Act No. 44259 (May 4, 2001), 66 FR 23962 (May 10, 2001) (SR–Phlx–2001–41).

[7] The license fees will not be eligible for the

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or charge imposed by the Exchange and, therefore, has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act [11] and Rule 19b–4(f)(2) thereunder.[12] At any

[9] 15 U.S.C. 78f(b)(4).

[10] With regard to the distinction between Customer PACE and Non-PACE license fees, the Exchange states that it is consistent with its current practice to not impose customer charges for equity transactions delivered through PACE, but to impose customer charges for Non-PACE executions. *See, e.g.,* Securities Exchange Act Release Nos. 47385 (February 20, 2003), 68 FR 10295 (March 4, 2003) (SR–Phlx–2003–06); 44381 (June 1, 2001), 66 FR 31264 (June 11, 2001) (SR–Phlx–2001–57); and 43776 (December 28, 2000), 66 FR 1166 (January 5, 2001) (SR–Phlx–2000–103). Also, consistent with its current practice, the Exchange charges customer transaction fees and specialist transaction fees at different rates. *See, e.g.,* Securities Exchange Act

Continued

time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. 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 at 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–Phlx–2003–20 and should be submitted by May 5, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9035 Filed 4–11–03; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3483]

State of West Virginia; Amendment # 2

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective April 4, 2003, the above numbered declaration is hereby amended to include Braxton, Harrison, Lewis, Logan, Monroe and Putnam Counties in the State of West Virginia as disaster areas due to damages caused by a severe winter storm, record snow, heavy rains, flooding and landslides occurring on February 16, 2003, and continuing through March 28, 2003.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Doddridge, Marion, Taylor and Wetzel in the State of West Virginia; and Craig County in the Commonwealth of Virginia may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary county have been previously declared.

All other information remains the same, *i.e.,* the deadline for filing applications for physical damage is May 13, 2003, and for economic injury the deadline is December 15, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: April 7, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–9056 Filed 4–11–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

Office of Visa Services

[Public Notice 4333]

60-Day Notice of Proposed Information Collection: Form DS–3052, Nonimmigrant V Visa Application; OMB Control Number 1405–0128

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal to be submitted to OMB:

Type of Request: Extension of currently approved collection.

Originating Office: Bureau of Consular Affairs, Department of State (CA/VO).

Title of Information Collection: Nonimmigrant V Visa Application.

Frequency: Once per respondent.

Form Number: DS–3052.

Respondents: Nonimmigrant visa applicants applying for a V visa.

Estimated Number of Respondents: 100,000 per year.

Average Hours Per Response: 1 hour.

Total Estimated Burden: 100,000 hours per year.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

For Additional Information: Public comments, or requests for additional information regarding the collection listed in this notice should be directed to Brendan Mullarkey of the Office of Visa Services, U.S. Department of State, 2401 E St., NW., RM L–703, Washington, DC 20520, who may be reached at 202–663–1163.

Dated: March 24, 2003.

Janice L. Jacobs,

Deputy Assistant Secretary of State for Visa Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 03–9053 Filed 4–11–03; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

Office of Recruitment, Examinations and Employment (HR/REE)

[Public Notice 4334]

60-Day Notice of Proposed Information Collection: Form DS–1998, Department of State Registration Form; OMB Control Number 1405–0008

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. The process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Continuation of a currently approved collection.

Originating Office: Bureau of Human Resources (HR/REE).

Title of Information Collection: Registration for the Foreign Service Written Examination.

Frequency: Annually.

Form Number: DS–1998.

Respondents: Registrants for the Foreign Service Officer Written Examination.

Estimated Number of Respondents: 27,585 per year.

Average Hours Per Response: 20 minutes.

Total Estimated Burden: 9,195 hrs.

Public Comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Beatrice E. Smotherman, Bureau Of Human Resources, Examination Division, Foreign Service Written Examination, U.S. Department of State, Washington, DC 20522, who may be reached at (202) 261–8883.

Dated: February 28, 2003.

Ruben Torres,

Executive Director, Bureau of Human Resourses, Department of State.

[FR Doc. 03–9054 Filed 4–11–03; 8:45 am]

BILLING CODE 4710–15–P

DEPARTMENT OF STATE

[Public Notice 4336]

Bureau of Democracy, Human Rights and Labor Request for Grant Proposals: Human Rights and Democratization Initiatives in the Middle East and North Africa

SUMMARY: The Office for the Promotion of Human Rights and Democracy of the Bureau of Democracy, Human Rights and Labor (DRL) announces an open competition for one or more assistance awards. Organizations may submit grant proposals that address programs and activities that foster democracy, human rights, press freedoms, women's political development and the rule of law in countries with a significant Muslim population in the Middle East and North Africa, and where such programs and activities would be important to United States efforts to respond to, deter, or prevent acts of international terrorism.

Awards are contingent upon the availability of funds. Funding may be available at a level of up to $4,000,000 under the Economic Support Funds through the Bureau's Human Rights and Democracy Fund (HRDF) for projects that address Bureau objectives in predominantly Muslim countries in this region. The Bureau anticipates awarding between 4–10 grants in amounts of $250,000–$1,000,000.

Background: The Human Rights and Democracy Fund (HRDF) supports innovative, cutting-edge programs which uphold democratic principles, support and strengthen democratic institutions, promote human rights, and build civil society in countries and regions of the world that are geo-strategically important to the U.S. HRDF funds projects that have an immediate impact but that have potential for continued funding beyond HRDF resources. HRDF projects must not duplicate or simply add to efforts by other entities.

Additional Information

Proposed programs must address at least one of the following specific themes and priority countries. Regional programs that include priority countries are also welcome:

(1) Support to civil society, with emphasis on political actors and advocacy groups that involve women: Egypt, Jordan, Bahrain, Algeria, Oman, Saudi Arabia, Qatar, Iran.

(2) Access to information through freedom of the press, freedom of speech, and enhanced public awareness of human rights and democracy issues: Saudi Arabia, Egypt, Jordan, Morocco, Tunisia.

(3) Elections: strengthening institutional capacity, training political parties, NGOs and newly elected officials, raising civic awareness: Qatar, Oman, Bahrain, Jordan, Morocco.

(4) Rule of law with emphasis on civil liberties, governmental accountability, and administration of justice: Egypt, Jordan, Morocco, Tunisia.

Project Criteria

- Project implementation should begin no earlier than late summer 2003.
- Projects should not exceed two years in duration. Shorter projects with more immediate outcomes may receive preference.
- Projects must take place in-country or in a third country. U.S.-based or exchange projects are discouraged.
- Projects that have a strong academic or research focus will not be highly considered. DRL will not fund health, technology, environmental, or scientific projects unless they have an explicit democracy, human rights, or rule of law component. Conferences likewise will not be highly considered.
- Projects should include a follow-on plan that extends beyond the grant period ensuring that Bureau-supported programs are not isolated events.

In order to avoid the duplication of activities and programs, proposals should also indicate knowledge of similar projects being conducted in the region and how the submitted proposal will complement them.

Applicant/Organization Criteria

Organizations applying for a grant should meet the following criteria:

- Be a U.S. public or private non-profit organization meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).
- Have demonstrated experience administering successful projects in the region in which it is proposing to administer a project.
- Have existing, or the capacity to develop, active partnerships with in-country organization(s).

Note: Organizations are welcome to submit more than one proposal, but should know that DRL wishes to reach out to as many different organizations as possible with its limited funds.

Budget Guidelines

Please refer to the Proposal Submission Instructions for complete budget guidelines and formatting instructions.

Deadline for Proposals

All proposals must be received at the Bureau of Democracy, Human Rights and Labor by 5 p.m. Eastern Standard Time (EST) on Wednesday, May 14, 2003. Please refer to the PSI for specific delivery instructions.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the PSI. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for

advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements.

Final technical authority for assistance awards resides with the Office of Acquisition Management's Grants Officer.

Review Criteria

Eligible applications will be competitively reviewed according to the criteria stated below. Fuller explanation of these criteria are included in the PSI. These criteria are not rank ordered and all carry equal weight in the proposal evaluation: quality of the program idea; program planning and ability to achieve program objectives; multiplier effect/impact; institution's record/ability/capacity; cost-effectiveness.

FOR FURTHER INFORMATION, CONTACT: The Office for the Promotion of Human Rights and Democracy of the Bureau of Democracy, Human Rights and Labor, DRL/PHD. Please specify Sondra Govatski (202)–647–9734 on all inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download A Solicitation Package Via Internet

The Solicitation Package includes this RFP plus the Proposal Submission Instructions (PSI) which contains detailed award criteria, specific budget instructions, and standard guidelines for proposal preparation. The entire RFP and PSI may be downloaded from the Bureau's Web site at *http://www.state.gov/g/drl/*.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any Bureau representative.

Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: April 7, 2003.

Lorne W. Craner,

Assistant Secretary for Democracy, Human Rights and Labor, Department of State.

[FR Doc. 03–9055 Filed 4–11–03; 8:45 am]

BILLING CODE 4710–18–P

DEPARTMENT OF STATE

[Public Notice 4302]

Advisory Commission on Public Diplomacy Notice of Meeting

The Department of State announces a meeting of the U.S. Advisory Commission on Public Diplomacy on Tuesday, April 29, 2003, in Room 600, 301 4th St., SW., Washington, DC from 9 a.m. to 11 a.m.

The Commission, reauthorized pursuant to Pub. L. 106–113 (H.R. 3194, Consolidated Appropriations Act, 2000), will have a retrospective discussion about the viewpoints Commissioners developed on public diplomacy during their terms in office.

Members of the general public may attend the meeting, though attendance of public members will be limited to the seating available. Access to the building is controlled, and individual building passes are required for all attendees.

The U.S. Advisory Commission on Public Diplomacy is a bipartisan Presidentially appointed panel created by Congress in 1948 to provide oversight of U.S. Government activities intended to understand, inform and influence foreign publics. The Commission reports its findings and recommendations to the President, the Congress and the Secretary of State and the American people. Current Commission members include Harold Pachios of Maine, who is the chairman; Charles Dolan of Virginia, who is the vice chairman; Lewis Manilow of Illinois; Penne Korth Peacock of Washington, DC and Maria Elena Torano of Florida.

For more information or to attend the meeting, please contact Matt Lauer at (202) 619–4457.

Dated: April 9, 2003.

Matthew Lauer,

Executive Director, U.S. Advisory Commission on Public Diplomacy, Department of State.

[FR Doc. 03–9052 Filed 4–11–03; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34327]

Richard J. Corman—Continuance in Control Exemption—R.J. Corman Railroad Company/Central Kentucky Lines

Richard J. Corman (Corman), a noncarrier individual, has filed a verified notice of exemption to continue in control of R.J. Corman Railroad Company/Central Kentucky Lines (RJCC), upon RJCC's becoming a Class III rail carrier.

Corman reported that the parties intended to consummate the transaction on or soon after March 28, 2003, the effective date of the exemption (7 days after the exemption was filed).

This transaction is related to two simultaneously filed notices of exemption: STB Finance Docket No. 34325, *R.J. Corman Equipment Company, LLC-Acquisition Exemption-Line of Lexington & Ohio Railroad Co., Inc.,* wherein R.J. Corman Equipment Company, LLC (RJCE) seeks to acquire approximately 14.9 miles of rail line from the Lexington & Ohio Railroad Co., Inc.; and STB Finance Docket No. 34326, *R.J. Corman Railroad Company/Central Kentucky Lines-Lease and Operation Exemption—Line of R. J. Corman Equipment Company, LLC,* wherein R.J. Corman Railroad Company/Central Kentucky Lines seeks to lease and operate the rail line being acquired by RJCE in STB Finance Docket No. 34325.

Corman controls through stock ownership eight Class III rail carriers: R.J. Corman Railroad Company/Pennsylvania Lines, Inc., operating in Pennsylvania; R.J. Corman Railroad Company/Memphis Line, operating in Tennessee and Kentucky; R.J. Corman Railroad Company/Western Ohio Line, operating in Ohio; R.J. Corman Railroad Company/Cleveland Line operating in Ohio; R.J. Corman Railroad Company/Bardstown Line, operating in Kentucky; R.J. Corman Railroad Company/Allentown Lines, Inc., operating in Pennsylvania and New York; Clearfield and Mahoning Railway Company, operating in Pennsylvania; and R.J. Corman Equipment Company, LLC, a nonoperating common carrier which owns and leases track in Kentucky and Ohio.

Corman states that the rail line to be leased and operated by RJCC will not connect with the rail lines of any existing rail carrier in the Corman corporate family, this control transaction is not part of a series of

anticipated transactions that would result in such a connection, and this control transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval of requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings referring to STB Finance Docket No. 34327, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Edward J. Fishman, Kirkpatrick & Lockhart LLP, 1800 Massachusetts Avenue—2nd Floor, Washington, DC 20036.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: April 4, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–8925 Filed 4–11–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34325]

R.J. Corman Equipment Company, LLC—Acquisition Exemption—Line of Lexington & Ohio Railroad Co., Inc.

R.J. Corman Equipment Company, LLC (RJCE), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire approximately 14.9 miles of rail line from the Lexington & Ohio Railroad Co., Inc. located between approximately milepost 23.9 LL in Lexington, KY, and approximately milepost 9.0 LL in Versailles, KY, in Fayette and Woodford Counties, KY. RJCE certifies that its projected revenues as a result of this transaction will not result in the creation of a Class I or Class II rail carrier.

RJCE reported that the parties intended to consummate the transaction on or soon after March 28, 2003, the effective of the exemption (7 days after the exemption was filed).

This transaction is related to a simultaneously filed verified notice of exemption in STB Finance Docket No. 34326, *R.J. Corman Railroad Company/Central Kentucky Lines—Lease and Operation Exemption—Line of R.J. Corman Equipment Company, LLC,* wherein R.J. Corman Railroad Company/Central Kentucky Lines seeks to lease and operate the line being acquired by RJCE here.

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34325, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Edward J. Fishman, Kirkpatrick & Lockhart LLP, 1800 Massachusetts Avenue—2nd Floor, Washington, DC 20036.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: April 4, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–8924 Filed 4–11–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34326]

R.J. Corman Railroad Company/Central Kentucky Lines—Lease and Operation Exemption—Line of R.J. Corman Equipment Company, LLC

R.J. Corman Railroad Company/Central Kentucky Lines (RJCC), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease and operate approximately 14.9 miles of rail line from R.J. Corman Equipment Company, LLC (RJCE) between approximately milepost 23.9 LL in Lexington, KY, and approximately 9.0 LL in Versailles, KY, in Fayette and Woodford Counties, KY. RJCC certifies that the projected revenues as a result of this transaction will not result in the creation of a Class I or Class II rail carrier.

RJCC reported that the parties intended to consummate the transaction on or soon after March 28, 2003, the effective date of the exemption (7 days after the exemption was filed).

This transaction is related to two simultaneously filed notices of exemption: STB Finance Docket No. 34325, *R.J. Corman Equipment, LLC—Acquisition Exemption—Line of Lexington & Ohio Railroad Co., Inc.,* wherein RJCE seeks to acquire the same 14.9 miles of rail line involved in the instant notice from Lexington & Ohio Railroad Co., Inc.; and STB Finance Docket No. 34327, *R.J. Corman—Continuance in Control Exemption—R.J. Corman Railroad Company/Central Kentucky Lines,* wherein Richard J. Corman seeks to continue in control of RJCC upon RJCC's becoming a Class III rail carrier pursuant to this notice.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34326, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Edward J. Fishman, Kirkpatrick & Lockhart LLP, 1800 Massachusetts Avenue—2nd Floor, Washington, DC 20036.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: April 4, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–8927 Filed 4–11–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1986, the Department

of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Review Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

Bahrain
Iraq
Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Republic of

Dated: April 3, 2003.

Barbara Angus,

International Tax Counsel (Tax Policy).

[FR Doc. 03–8992 Filed 4–11–03; 8:45 am]

BILLING CODE 4810–25–M

Corrections

Federal Register

Vol. 68, No. 71

Monday, April 14, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Yaudat Mustafa Talyi, a.k.a. Joseph Talyi, and International Business Services, Ltd. and Top Oil Tools, Ltd.

Correction

In notice document 03–7858 beginning on page 15982 in the issue of Wednesday, April 2, 2003, make the following correction:

On page 15982, in the second column, in the fifth line, ''800'' should read, ''888''.

[FR Doc. C3–7858 Filed 4–11–03; 8:45 am]

BILLING CODE 1505–01–D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 171

RIN 3150–AH14

Revision of Fee Schedules; Fee Recovery for FY 2003

Correction

In proposed rule document 03–7814 beginning on page 16374 in the issue of Thursday, April 3, 2003, make the following correction:

§ 171.16 [Corrected]

On page 16389, in § 171.16, in the second table, in the second column, in the fourth entry, ''1,957,00'' should read, ''1,957,000''.

[FR Doc. C3–7814 Filed 4–11–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14644; Airspace Docket No. 03–AGL–01]

Proposed Modification of Class E Airspace; Kenton, OH; Proposed Rescission of Class E Airspace; Bellefontaine, OH

Correction

In proposed rule document 03–7663 beginning on page 15388 in the issue of Monday, March 31, 2003, make the following correction:

§71.1 [Corrected]

On page 15389, in the third column, in §71.1, under the heading **AGL OH E5 Kenton, OH [Revised]**, in the fifth line, ''long. 83° 57′′W.,'' should read '' 83°30′57′′W.,''.

[FR Doc. C3–7663 Filed 4–11–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
April 14, 2003

Part II

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for Stationary Gas Turbines; Direct Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[OAR–2002–0053, FRL–7476–5]

RIN 2060–AK35

Standards of Performance for Stationary Gas Turbines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendments.

SUMMARY: This action promulgates amendments to several sections of the standards of performance for stationary gas turbines. The amendments will codify several alternative testing and monitoring procedures that have routinely been approved by EPA. The amendments will also reflect changes in nitrogen oxides (NO_X) emission control technologies and turbine design since the standards were originally promulgated.

DATES: The direct final rule will be effective May 29, 2003, unless we receive adverse comments by May 14, 2003. If such comments are received, then EPA will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective and which provisions are being withdrawn due to adverse comment. Any distinct amendment, paragraph or section of the direct final rule for which we do not receive adverse comment will become effective on the date set above, notwithstanding any adverse comment on any other distinct amendment, paragraph, or section of the direct final rule. The incorporation by reference of certain publications in the direct final rule is approved by the Director of the Office of the Federal Register as of May 29, 2003.

ADDRESSES: Comments. By U.S. Postal Service, send comments (in duplicate, if possible) to: EPA Docket Center (6102T), Attention Docket Number OAR–2002–0053, 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, Attention Docket Number OAR–2002–0053, U.S. EPA, 1301 Constitution Avenue, NW., Room B–108, Washington, DC 20460. We request that a separate copy also be sent to the contact person listed below (*see* **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Mr. Jaime Pagan, Combustion Group, Emission Standards Division (C439–01), U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5340; facsimile number (919) 541–5450; electronic mail address *pagan.jaime@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Entities potentially regulated by this action are those that own and operate stationary gas turbines, and are the same as the existing rule in 40 CFR part 60, subpart GG. Regulated categories and entities include:

Category	NAICS	SIC	Examples of regulated entities
Any industry using a stationary combustion turbine as defined in the direct final rule.	2211	4911	Electric services.
	486210	4922	Natural gas transmission.
	211111	1311	Crude petroleum and natural gas.
	211112	1321	Natural gas liquids.
	221	4931	Electric and other services, combined.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 60.330 of the final rule. If you have questions regarding the applicability of this action to a particular entity, consult the contact person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Docket. EPA has established an official public docket for this action under Docket ID No. OAR–2002–0053. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air Docket in the EPA Docket Center, Room B108, 1301 Constitution Ave., NW., Washington, DC 20460. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744. The telephone number for the Air Docket is (202) 566–1742.

Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

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

Comments. We are publishing the direct final rule without prior proposal because we view this as a noncontroversial amendment and do not anticipate adverse comments. However, in the proposed rules section of this **Federal Register**, we are publishing a separate document that will serve as the proposal in the event that adverse comments are filed. If we receive any adverse comments on a specific element of the direct final rule, we will publish a timely withdrawal in the **Federal Register** informing the public which amendments will become effective and which amendments are being withdrawn due to adverse comment. We will address all public comments in a subsequent final rule based on the proposed rule. Any of the distinct amendments in this direct final rule for which we do not receive adverse comment will become effective on the date set out above. We will not institute a second comment period on the direct final rule. Any parties interested in commenting must do so at this time.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of the direct final rule is also available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the promulgated direct final rule will be posted on the TTN's policy and

guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

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

I. Background

Under section 111 of the CAA, 42 U.S.C. 7411, the EPA promulgated standards of performance for stationary gas turbines (40 CFR part 60, subpart GG). The standards were originally promulgated on September 10, 1979 (44 FR 52798). Since that time, many changes in the design of the NO_X emission controls used for and the composition of the fuels fired in gas turbines have occurred. Additional test methods have also been developed to measure emissions from gas turbines and the sulfur content of gaseous fuels. As a result of these changes, we have had many requests for case-by-case approvals of alternative testing and monitoring procedures for subpart GG. We are promulgating the amendments to subpart GG to codify the alternatives that have been routinely approved. Additionally, we are attempting to harmonize, where appropriate, the provisions of subpart GG with the monitoring provisions of 40 CFR part 75, the continuous emission monitoring requirements of the acid rain program under title IV of the CAA, since many existing and new gas turbines are subject to both regulations.

II. Discussion of Revisions

A. Continuous Monitoring Options

Under the original provisions of subpart GG, any affected unit with a water injection system was required to install and operate a continuous monitoring system to monitor and record the fuel consumption and the ratio of water to fuel being fired in the turbine. These operating parameters demonstrate that a turbine continues to operate under the same performance conditions as those documented during the initial and any subsequent compliance tests, thus providing reasonable assurance of compliance with the NO_X standard. We are revising the regulation to allow the use of NO_X continuous emission monitoring systems (CEMS) to demonstrate compliance, as detailed in the following paragraphs.

Owners or operators of turbines that commenced construction, reconstruction, or modification after October 3, 1977, but before May 29, 2003, and that use water or steam injection to control NO_X emissions can continue to use the NO_X monitoring system which is currently being used, or may elect to use a NO_X CEMS. The CEMS must be installed, operated, and maintained according to the appropriate performance specification requirements in 40 CFR part 60, appendix B. Alternatively, sources may choose to use data from a NO_X CEMS that is certified according to the requirements of 40 CFR part 75. Any owners or operators of turbines constructed, reconstructed, or modified in this time period that do not use water or steam injection and that have received EPA approval of an alternative monitoring strategy can continue to follow the conditions of the petition approval.

For new turbines constructed after the effective date of the direct final rule and using water or steam injection for NO_X control, owners/operators can elect to use either the existing requirements for continuous water or steam to fuel ratio monitoring or may elect to use a CEMS to monitor NO_X. The CEMS must be installed, operated, and maintained according to Performance Specifications (PS) 2 and 3 of 40 CFR part 60, appendix B. Alternatively, sources may choose to use data from a NO_X CEMS that is certified according to the requirements of 40 CFR part 75, appendix A.

Owners or operators of new turbines that commence construction after the effective date of the direct final rule and do not use water or steam injection to control NO_X emissions can use a NO_X CEMS as an alternative to continuously monitoring fuel consumption and water or steam to fuel ratio, provided the CEMS is installed, operated, and maintained according to PS 2 and 3 of 40 CFR part 60, appendix B and 40 CFR 60.13 or the requirements of 40 CFR part 75, appendix A. An acceptable alternative to installation of a NO_X CEMS is continuous parameter monitoring. If this option is chosen, owners or operators of uncontrolled diffusion flame turbines must continuously monitor at least four parameters indicative of the unit's NO_X formation characteristics. For lean premix turbines, continuous monitoring of parameters that indicate whether the turbine is operating in the lean premixed combustion mode is required. Examples of these parameters may include percentage of full load, turbine exhaust temperature, combustion reference temperature, compressor discharge pressure, fuel and air valve positions, dynamic pressure pulsations, internal guide vane position, and flame detection or flame scanner conditions. Definitions for diffusion flame turbine and lean premix turbine have been added to the definitions section of the final rule. Parameters that indicate proper operation of the emission control device must be monitored for turbines that use selective catalytic reduction. In all cases, the acceptable values and ranges for the parameters must be established during the initial performance test for the turbine and recorded in a parameter monitoring plan, to be kept on-site.

If the option to use a NO_X CEMS is chosen, we have specified the minimum data requirements. For full operating hours, each monitor must complete at least one cycle of operation (including sampling, analyzing, and data recording) for each 15-minute quadrant of the hour. For partial unit operating hours, one valid data point must be obtained for each quadrant of the hour for which the unit is operating. Two valid data points are required for hours in which required quality assurance and maintenance activities are performed on the CEMS. This data must be reduced to hourly averages for purposes of identifying excess emissions. The data

acquisition and handling system must record the hourly NO_X emissions as well as the International Organization for Standardization (ISO) standard conditions (if applicable).

In lieu of recording the ISO standard conditions, a worst case ISO correction factor can be calculated using historical ambient data. For the purpose of this calculation, substitute the maximum humidity of ambient air (H_o), minimum ambient temperature (T_a), and minimum combustor inlet absolute pressure (P_o) into the ISO correction equation. By using worst case parameters in this equation, the owner/operator can ensure compliance in all situations without having to continuously monitor temperature, humidity and pressure. Several case-by-case determinations performed by EPA have accepted this methodology as an alternative to continuous monitoring of atmospheric conditions.

No data generated using the data substitution methodology in 40 CFR part 75 may be used. Instead, these periods of missing data are identified and summarized in the excess emissions and monitoring report required in 40 CFR 60.13. For turbines using NO_X CEMS, we have defined excess emissions as any unit operating hour during which the 4-hour rolling average NO_X concentration exceeds the applicable emission limit.

The averaging time selected for combustion turbine NO_X CEMS to define the periods of excess emissions is a period of 4 hours averaged each hour. The 4-hour period is representative of the overall elapsed time in a typical EPA Method 20 of 40 CFR part 60, appendix A, source test. This period has been found adequate to represent the performance of combustion turbine NO_X emissions and NO_X emission control systems. The 4-hour period is a relatively short averaging time compared to 24-hour and monthly averaging times used for other types of combustion devices to account for the NO_X emissions variability, particularly in solid fuels. Combustion turbines typically use natural gas or No. 2 distillate oil, which have a relatively uniform fuel nitrogen content, therefore, a relatively short averaging time such as 4 hours is appropriate. An averaging time of 1 hour was also considered but was rejected since 4 hours more closely represent the typical duration of a combustion turbine stack test and includes the ability to account for a small amount of nitrogen variability.

A 1-hour period was selected as the recurring (rolling) period for which the 4-hour averages are calculated since it is already required to be reported under 40 CFR part 75 and is convenient and appropriate to use.

We are allowing the use of NO_X CEMS as an alternative to continuously monitoring fuel consumption and water or steam to fuel ratio because the majority of new turbines do not rely on water injection for NO_X control. Therefore, for those turbines, the monitoring originally required by subpart GG is not appropriate. The use of a NO_X CEMS will show compliance with the NO_X standard of subpart GG over all operating ranges. Additionally, many of the units affected by subpart GG are already required to install and certify CEMS for NO_X under other requirements, such as the acid rain monitoring regulation in 40 CFR part 75, or through conditions in various permit requirements. To reduce the burden on these units, we are allowing the use of CEMS units that are certified according to the requirements of 40 CFR part 75. The 40 CFR part 75 testing procedures to certify the CEMS are nearly identical to those in 40 CFR part 60, and 40 CFR part 75 has rigorous quality assurance and quality control standards. We, therefore, believe it is appropriate to allow the use of 40 CFR part 75 CEMS data for subpart GG compliance demonstration. A definition of unit operating hour, which includes the concepts of ''full'' and ''partial'' operating hours, is needed to clarify how to validate an hour when using CEMS and for the purpose of defining excess emissions, deviations, and periods of monitor downtime.

B. Optional Fuel-Bound Nitrogen Allowance

The NO_X emission standard in 40 CFR 60.332 includes a NO_X emission allowance for fuel-bound nitrogen. The use of this allowance for fuel-bound nitrogen will be optional upon promulgation of the direct final rule. Owners or operators will be able to choose to accept a value of zero for the NO_X emission allowance. The NO_X emission limitations in many State permits are much more stringent than those of subpart GG. Many turbines are required by their permits to be fired only with pipeline quality natural gas, which is almost free of fuel-bound nitrogen. Therefore, these facilities are not likely to use the fuel-bound nitrogen credit.

C. Frequency of Fuel Nitrogen and Sulfur Content Sampling

Several revisions to the sampling frequency requirements for fuel nitrogen content and fuel sulfur content are being made.

1. Nitrogen Content for Turbines That Do Not Claim the Allowance for Fuel Bound Nitrogen

We are amending subpart GG so that sources are required to monitor the nitrogen content of the fuel being fired in the turbine only if they claim the allowance for fuel bound nitrogen. For sources that do not seek to use the fuel-bound nitrogen credit, the sampling requirements to determine the daily fuel nitrogen concentrations are not required.

2. Nitrogen and Sulfur Content for Turbines Firing Fuel Oil

The sampling frequency for determining the nitrogen and sulfur content of fuel oil has been revised. Previously for bulk storage fuels, sampling and analysis was required each time new fuel was added. The requirement to sample the nitrogen and sulfur content of the fuel each time fuel is transferred to the storage tank from any other source can be burdensome for a facility if there are one or more large bulk storage tanks which are filled by tanker trucks or isolated from the turbines during the filling process. If the fuel is not fed to the turbines during the filling process, no environmental benefit is gained by sampling every time oil is added from a tanker truck. Similarly, no environmental benefit is gained by sampling a tank which remains isolated from feeding turbines until it is filled. It is less burdensome to allow a tank to be filled completely, regardless of how many tanker trucks it takes, and then drawing a sample of the combined fuel. In the end, this mixture of fuel is what will be fed to the turbines. Thus, we are eliminating the requirement to sample each time new fuel is added and are allowing the use of any of the four sampling options from 40 CFR part 75, appendix D. The four options are as follows: daily sampling, flow proportional sampling, sampling from a unit's storage tank, or sampling each delivery.

3. Sulfur Content for Turbines Firing Natural Gas

A definition for natural gas has been added to the definitions section. It is consistent with the latest definition in 40 CFR part 72. Owners and operators of turbines that are combusting natural gas are now provided with alternatives to demonstrate that the fuel meets the sulfur content requirement. We believe that sulfur sampling is unnecessary for fuels that qualify as natural gas. As defined in the direct final rule, natural gas contains 20.0 grains or less of total sulfur per 100 standard cubic feet,

which equates to about 0.06 weight percent sulfur or 600 parts per million by weight (ppmw). When natural gas is combusted, there is no possibility of exceeding the subpart GG sulfur limit of 0.8 weight percent.

4. Sulfur and Nitrogen Content for Turbines Firing Gaseous Fuels Other Than Natural Gas

Units that fire a gaseous fuel that is supplied without intermediate bulk storage, but is not natural gas, must determine and record the sulfur content and (if applicable) nitrogen content once per day. Alternatively, these units may follow one of two custom sulfur sampling schedules outlined in the direct final rule, or they may develop a custom schedule that is approved by the Administrator. One custom schedule requires daily sampling for 30 consecutive unit operating days. Provided the data indicate compliance, the frequency can then be reduced according to specific criteria. Unit operating day is now defined in 40 CFR 60.331.

Units may also follow a custom schedule based on the 720-hour sulfur sampling demonstration described in 40 CFR part 75, appendix D. Under both schedules, if the margin of compliance is large, the sampling frequency can eventually be reduced to annually. We are codifying these two custom schedules that have routinely been approved under the subpart GG provision that allows sources to develop custom schedules for fuel sampling that must be approved by the Administrator.

D. Steam Injection

Sources that are using water injection currently can monitor the ratio of water to fuel, as well as fuel consumption, to demonstrate compliance with the NO_X standard. We are allowing sources that are using steam injection to monitor the ratio of steam to fuel and fuel consumption to demonstrate compliance. Steam injection is another method of NO_X control, and water and steam injection are the wet methods usually used. Steam injection monitoring is an acceptable type of parametric emission monitoring method.

E. Test Methods for Sulfur Content and Nitrogen Content of Fuel

When subpart GG was originally promulgated, no test methods were specified for monitoring the nitrogen content of the fuel. We are specifying American Society of Testing and Materials (ASTM) D2597–94(1999), ASTM D6366–99, ASTM D4629–02, or ASTM D5762–02 as acceptable methods for liquid fuels. As the National Technology Transfer and Advancement Act requires, we have identified these voluntary consensus standards and are citing them for use. We are not adding any methods for determining the fuel-bound nitrogen content of the fuel being fired for gaseous fuels because none were identified. We do not expect any source owner to use a gaseous fuel with sufficient fuel bound nitrogen present to claim a credit. Any source owner proposing credit for fuel bound nitrogen in a gaseous fuel will have to document an acceptable method. We have amended subpart GG to allow the use of most of the methods specified in sections 2.2.5 and 2.3.3.1.2 of 40 CFR part 75, appendix D to determine the total sulfur content of gaseous fuel. The alternative methods for total sulfur provide more flexibility and harmonize with the requirements in 40 CFR part 75. The method ASTM D3031–81 has been deleted from the final rule because it was discontinued by the ASTM in 1990 with no replacement. If the total sulfur content of the fuel being fired in the turbine is less than 0.4 weight percent, we are adding a provision that the following methods may be used to measure the sulfur content of the fuel: ASTM D4084–82 or 94, D5504–01, D6228–98, or the Gas Processors Association Method 2377–86. This provision is consistent with the provision in 40 CFR 60.13(j)(1) allowing alternatives to reference method tests to determine relative accuracy of CEMS for sources with emission rates demonstrated to be less than 50 percent of the applicable standard.

F. Performance Testing

To measure the NO_X and diluent concentration during the performance test, we are adding EPA Method 7E of 40 CFR part 60, appendix A used in conjunction with EPA Method 3 or 3A of 40 CFR part 60, appendix A as an acceptable alternative to EPA Method 20. In addition, we are adding ASTM D6522–00 as another alternative to EPA Method 20. If ASTM D6522–00 or EPA Methods 7E and 3 or 3A are used, sampling must be conducted at a minimum of three traverse points, due to concerns about potential stratification of pollutant concentrations in the turbine stack.

Subpart GG previously required the NO_X initial compliance testing to be conducted at four different loads across the unit's operating range. This testing was required because of the difficulty in predicting which operating load will represent worst case conditions when monitoring operational data. Testing, therefore, was done across the operating range to determine the water to fuel ratio and fuel consumption needed to maintain NO_X compliance across the unit's normal operating range. One of the tests was required to be conducted at 100 percent of peak load. We are revising the final rule to allow one test point at 90 to 100 percent of peak load. Due to conditions that are beyond the control of the turbine operator, such as ambient conditions, it is often not possible for a turbine to be operated at 100 percent of the manufacturer's design capacity. Therefore, the requirement to test at 100 percent of peak load has been made more flexible.

Another change is that the initial performance test can be performed at 90 to 100 percent of peak load only, instead of at four different loads, if the owner or operator chooses to use the NO_X CEMS monitoring option. The NO_X CEMS will provide realtime data on NO_X emissions for any given time of operation. This data provides credible evidence which can be used to determine the unit's compliance status on a continuous basis following the initial test. The availability of this continuous information through the use of NO_X CEMS after the initial performance testing justifies testing at a single load for the initial compliance testing. We are also clarifying how data collected during a relative accuracy test audit (RATA) of the NO_X CEMS may be used to demonstrate compliance with the performance tests required by 40 CFR 60.8. The RATA consists of a minimum of nine 21-minute runs using EPA reference test methods, for a total of 189 minutes or just over 3 hours. This amount of sampling accompanied by sampling at multiple traverse points during a RATA provides enough representative emissions data to determine the unit's compliance status.

Finally, a statement has been added to clarify that if the turbine combusts both oil and gas, separate performance testing is required for each type of fuel combusted by the turbine, except for emergency fuel. We believe that this is appropriate due to the fact that NO_X emissions vary by fuel type.

G. Measurement After Duct Burner

For sources that are combined cycle turbine systems using supplemental heat, we have added an option that the turbine NO_X emissions may be measured after the duct burner rather than directly after the turbine. No additional NO_X allowance is given. A definition for duct burner has also been added to the definitions section of the final rule. For combined cycle units, there are several concerns with testing and monitoring NO_X at the turbine

outlet. For example, it is questionable whether the turbine outlet location is suitable for installation of CEMS. Moreover, due to the high temperature and pressure of the turbine exhaust at that location, it may be difficult to conduct an EPA Method 20 performance test at the turbine outlet of a combined cycle unit. In addition, any combined cycle units that are subject to NO_X CEMS requirements for 40 CFR part 75 or subparts Da and Db of 40 CFR part 60 will most likely have installed the CEMS after the duct burner, on the heat recovery steam generator (HRSG) stack. Another reason to allow measurement of NO_X emissions after the duct burner is that add-on NO_X control systems such as selective catalytic reduction (SCR) are generally located after the duct burner; turbine NO_X performance testing should be conducted after the NO_X control device and would, therefore, include emissions from the duct burner.

H. Option To Not Use International Organization for Standardization (ISO) Correction

We have added an option to not use the ISO correction equation for the following units: lean premix combustor turbines, units used in association with heat recovery steam generators equipped with duct burners, and units with add-on emission controls. This option was added based on discussions with the Gas Turbine Association (GTA). The GTA indicated in letters to EPA on April 16, 2002, and May 30, 2002, that the ISO correction equation was not necessary for these units. These letters can be found in the docket.

I. Accuracy of Continuous Monitoring System (CMS) for Fuel Consumption and the Water or Steam to Fuel Ratio

The requirement that the CMS for the fuel consumption and water or steam to fuel ratio for the turbine be accurate to within 5 percent has been removed. The numerical value of water to fuel ratio that serves as a surrogate for the acceptable NO_X concentration is established at each facility. This is accomplished by simultaneously measuring the NO_X concentration and using a CMS to monitor the water or steam to fuel ratio that achieves that NO_X level at various turbine loads at the specific facility during a performance test. This calibration serves to assure that if the water or steam to fuel ratio is maintained above this surrogate value using the same CMS, then acceptable NO_X concentration levels are attained even if the actual numerical value is not correct. Hence, the requirement to be accurate within plus or minus 5 percent is not necessary.

J. Deviations, Excess Emissions, and Monitor Downtime

The excess emission reporting provisions under 40 CFR 60.334 have been revised to include definitions of deviations, excess emissions, and monitor downtime periods for the various emissions and parameter monitoring requirements. To be consistent with other 40 CFR part 60 rules, we are including provisions for deviations, which are associated with parametric monitoring. A deviation indicates the possibility that an excess emission has occurred. Periods of monitor downtime were not previously defined, so we have added definitions for those periods. New provisions have been added for CEMS and parametric monitoring for certain units; therefore, it is necessary to define the excess emissions, deviations, and monitor downtime for turbines using these new monitoring options.

K. Other Clarifications

Several other minor clarifications have been made to the final rule. They are as follows: (1) Indicated that the sulfur content standard in 40 CFR 60.333(b) of 0.8 percent by weight is equivalent to 8000 ppmw; (2) clarified the NO_X standard in 40 CFR 60.332(a)(1) to indicate that it is an emission concentration and should be ISO corrected (if required); and (3) clarified the NO_X emission concentration equation in 40 CFR 60.335(b)(1) to indicate it is a concentration instead of a rate and that it is on a dry basis.

III. Environmental and Economic Impacts

We believe that the amendments will not have any significant economic or environmental impacts. The changes have been made primarily to codify routine testing and monitoring alternatives that have previously been approved by us. We are not introducing any new emission limitations, control requirements, or monitoring requirements. We are attempting to reduce the testing, monitoring, and reporting burden by harmonizing with the requirements of 40 CFR part 75, since many gas turbines are subject to it as well as subpart GG.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether a regulatory action is ''significant'' and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, we have determined that the amendments do not constitute a ''significant regulatory action'' because they do not meet any of the above criteria. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The revisions contain no changes to the information collection requirements of the current New Source Performance Standards (NSPS) that would increase the burden to sources, and the currently approved OMB information collection

requests are still in force for the amended rule. Some changes in the final rule, such as allowing the use of CEMS to measure NO_X emissions, are provided as an option to sources, and should reduce burden to those sources who already have a CEMS in place for other regulatory reasons, such as the Acid Rain requirements in 40 CFR part 75. Other changes, such as the allowance of parametric monitoring in place of water to fuel ratio monitoring, do not result in additional recordkeeping and reporting requirements beyond those already required.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of the direct final rule on small entities, small entity is defined as: (1) A small business whose parent company has fewer than 100 or 1,000 employees, or fewer than 4 billion kW-hr per year of electricity usage, depending on the size definition for the affected North American Industry Classification System (NAICS) code; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. It should be noted that small entities in six NAICS codes may be affected by the direct final rule, and the small business definition applied to each industry by NAICS code is that listed in the Small Business Administration (SBA) size standards (13 CFR part 121).

After considering the economic impacts of the direct final rule on small entities, we certify that this action will not have a significant economic impact on a substantial number of small entities. This certification is based primarily upon the estimated cost savings to turbine owners and operators as a result of the revisions to 40 CFR part 60, subpart GG that are presented earlier in this preamble. These cost savings will be experienced by turbines owned and operated by small entities as well as large ones. Using the existing combustion turbines inventory as a measure of which industries may install new turbines in the future, presuming the existing mix of combustion turbines currently is a good approximation of the mix of turbines that will be installed and affected by the direct final rule up to 2007, 2.5 percent of new turbines overall will likely be owned and operated by small entities. Of these entities, a majority of these are owned and operated by small communities.

For more information on the results of the analysis of small entity impacts, please refer to the economic impact analysis in the docket.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost effective, or least burdensome alternative that achieves the objective of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the direct final rule amendments contain no Federal mandates 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 one year. Thus, the amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that the amendments contain no regulatory requirements that might significantly or uniquely affect small governments because they contain no requirements that apply to such governments or impose obligations upon them. Therefore, the direct final rule amendments are not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires us to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

The direct final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's action codifies alternative testing and monitoring procedures that have routinely been approved by EPA. There are minimal, if any, impacts associated with this action. Thus, Executive Order 13132 does not apply to the direct final rule amendments.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal

implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

The direct final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. We do not know of any stationary gas turbines owned or operated by Indian tribal governments. However, if there are any, the effect of the direct final rule on communities of tribal governments would not be unique or disproportionate to the effect on other communities. Thus, Executive Order 13175 does not apply to the direct final rule.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives.

We interpret 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 direct final rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

The direct final rule is not subject to Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law No. 104–113; 15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The direct final rule involves technical standards. The EPA cites the following standards in the direct final rule: EPA Methods 3, 3A, 7E, and 20 of 40 CFR part 60, appendix A; PS 2 and 3 of 40 CFR part 60, appendix B.

In addition, the direct final rule cites the following voluntary consensus standards: ASTM D129–00 (incorporated by reference (IBR) in 40 CFR part 60, section 17), ASTM D1072–80 or –90 (Reapproved 1999) (IBR in 40 CFR part 60, section 17), ASTM D1266–98 (IBR in 40 CFR part 60, section 17), ASTM D1552–01 (IBR in 40 CFR part 60, section 17), ASTM D2597–94 (Reapproved 1999), ASTM D2622–98 (IBR in 40 CFR part 60, section 17), ASTM D3246–81 or –92 or –96 (IBR in 40 CFR part 60, section 17), ASTM D4084–82 or –94 (IBR in 40 CFR part 60, section 17), ASTM D4294–02, ASTM D4468–85 (Reapproved 2000), ASTM D4629–02, ASTM D5453–00, ASTM D5504–01, ASTM D5762–02, ASTM D6228–98, ASTM D6366–99, ASTM D6522–00, ASTM D6667–01; and Gas Processors Association Standard 2377–86.

Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to the EPA methods. No applicable voluntary consensus standards were identified for EPA PS 3. The search and review results have been documented and are placed in the docket (OAR–2002–0053) for the direct final rule.

One voluntary consensus standard was found acceptable as an alternative to EPA test methods for the purposes of the direct final rule. The voluntary consensus standard ASTM D6522–00, ''Standard Test Method for the Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas-Fired Reciprocating Engines, Combustion Turbines, Boilers and Process Heaters Using Portable Analyzers' was identified as an acceptable alternative to EPA Methods 3A, 7E, and 20 for identifying nitrogen oxide and oxygen concentration for the direct final rule when the fuel is natural gas.

In addition to the voluntary consensus standards EPA uses in the direct final rule, the search for emissions measurement procedures identified six other voluntary consensus standards. The EPA determined that these six standards identified for measuring emissions subject to emission standards were impractical alternatives to EPA test methods for the purposes of the direct final rule. Therefore, EPA does not intend to adopt these standards for this purpose. The reasons for this determination for the six methods are in the docket.

Section 60.335 to 40 CFR part 60, subpart GG, lists the EPA testing methods included in the final rule. Under 40 CFR 63.7(f) and 63.8(f), a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any of the EPA testing methods, performance specifications, or procedures.

J. Congressional Review Act

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

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: March 27, 2003.

Christine Todd Whitman,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 60, of the Code of Federal Regulations is amended to read as follows:

PART 60—[AMENDED]

■ 1. The authority citation for part 60 continues to read as follows:

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

Subpart A—[AMENDED]

■ 2. Section 60.17 is amended by:
■ a. Removing and reserving paragraph (a)(38);
■ b. Revising paragraph (a) introductory text;
■ c. Revising paragraph (a)(8);
■ d. Revising paragraph (a)(15);
■ e. Revising paragraph (a)(18);
■ f. Revising paragraph (a)(20);
■ g. Revising paragraph (a)(33);
■ h. Revising paragraph (a)(43);
■ i. Revising paragraph (a)(50);
■ j. Adding paragraphs (a)(65) through (a)(75); and
■ k. Adding paragraph (m).

The revisions and additions read as follows:

§ 60.17 Incorporation by Reference.

* * * * *

(a) The following materials are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428–2959; or ProQuest, 300 North Zeeb Road, Ann Arbor, MI 48106.

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(8) ASTM D129–64, 78, 95, 00, Standard Test Method for Sulfur in Petroleum Products (General Bomb Method), IBR approved for Appendix A: Method 19, 12.5.2.2.3; §§ 60.106(j)(2) and 60.335(b)(10)(i).

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(15) ASTM D1072–80, 90 (Reapproved 1994), Standard Test Method for Total Sulfur in Fuel Gases, IBR approved for § 60.335(b)(10)(ii).

* * * * *

(18) ASTM D1266–87, 91, 98, Standard Test Method for Sulfur in Petroleum Products (Lamp Method), IBR approved for §§ 60.106(j)(2) and 60.335(b)(10)(i).

* * * * *

(20) ASTM D1552–83, 95, 01, Standard Test Method for Sulfur in Petroleum Products (High-Temperature Method), IBR approved for Appendix A: Method 19, Section 12.5.2.2.3; §§ 60.106(j)(2) and 60.335(b)(10)(i).

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(33) ASTM D2622–87, 94, 98, Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry,'' IBR approved for §§ 60.106(j)(2) and 60.335(b)(10)(i).

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(43) ASTM D3246–81, 92, 96, Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry, IBR approved for § 60.335(b)(10)(ii).

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(50) ASTM D4084–82, 94, Standard Test Method for Analysis of Hydrogen Sulfide in Gaseous Fuels (Lead Acetate Reaction Rate Method), IBR approved for § 60.334(h)(1).

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(65) ASTM D2597–94 (Reapproved 1999), Standard Test Method for Analysis of Demethanized Hydrocarbon Liquid Mixtures Containing Nitrogen and Carbon Dioxide by Gas Chromatography, IBR approved for § 60.335(b)(9)(i).

(66) ASTM D4294–02, Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-Ray Fluorescence Spectrometry, IBR approved for § 60.335(b)(10)(i).

(67) ASTM D4468–85 (Reapproved 2000), Standard Test Method for Total Sulfur in Gaseous Fuels by Hydrogenolysis and Rateometric Colorimetry, IBR approved for § 60.335(b)(10)(ii).

(68) ASTM D4629–02, Standard Test Method for Trace Nitrogen in Liquid Petroleum Hydrocarbons by Syringe/Inlet Oxidative Combustion and Chemiluminescence Detection, IBR approved for § 60.335(b)(9)(i).

(69) ASTM D5453–00, Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Motor Fuels and Oils by Ultraviolet Fluorescence, IBR approved for § 60.335(b)(10)(i).

(70) ASTM D5504–01, Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Chemiluminescence, IBR approved for § 60.334(h)(1).

(71) ASTM D5762–02, Standard Test Method for Nitrogen in Petroleum and Petroleum Products by Boat-Inlet Chemiluminescence, IBR approved for § 60.335(b)(9)(i).

(72) ASTM D6228–98, Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Flame Photometric Detection, IBR approved for § 60.334(h)(1).

(73) ASTM D6366–99, Standard Test Method for Total Trace Nitrogen and Its Derivatives in Liquid Aromatic Hydrocarbons by Oxidative Combustion and Electrochemical Detection, IBR approved for § 60.335(b)(9)(i).

(74) ASTM D6522–00, Standard Test Method for Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas-Fired Reciprocating Engines, Combustion Turbines, Boilers, and Process Heaters Using Portable Analyzers, IBR approved for § 60.335(a).

(75) ASTM D6667–01, Standard Test Method for Determination of Total Volatile Sulfur in Gaseous Hydrocarbons and Liquefied Petroleum Gases by Ultraviolet Fluorescence, IBR approved for § 60.335(b)(10)(ii).

* * * * *

(m) This material is available for purchase from at least one of the following addresses: The Gas Processors Association, 6526 East 60th Street, Tulsa, OK, 74145; or Information Handling Services, 15 Inverness Way East, P.O. Box 1154, Englewood, CO 80150–1154. You may inspect a copy at EPA's Air and Radiation Docket and Information Center, Room B108, 1301 Constitution Ave., NW., Washington, DC 20460.

(1) Gas Processors Association Method 2377–86, Test for Hydrogen Sulfide and Carbon Dioxide in Natural Gas Using Length of Stain Tubes, IBR approved for § 60.334(h)(1).

(2) [Reserved]

* * * * *

Subpart GG—[AMENDED]

■ 3. Section 60.331 is amended by adding paragraphs (s) through (aa) to read as follows:

§ 60.331 Definitions.

* * * * *

(s) *Unit operating hour* means a clock hour during which any fuel is combusted in the affected unit. If the unit combusts fuel for the entire clock hour, it is considered to be a full unit operating hour. If the unit combusts fuel for only part of the clock hour, it is considered to be a partial unit operating hour.

(t) *Deviation* means a unit operating hour during which the recorded value of a particular monitored parameter is outside the acceptable range specified in the parameter monitoring plan for the affected unit.

(u) *Excess emissions* means a specified averaging period over which either (1) the NO_X emissions are higher

than the applicable emission limit in § 60.332; or (2) the total sulfur content of the fuel being combusted in the affected facility exceeds the limit specified in § 60.333.

(v) *Natural gas* means a naturally occurring fluid mixture of hydrocarbons (*e.g.*, methane, ethane, or propane) produced in geological formations beneath the Earth's surface that maintains a gaseous state at standard atmospheric temperature and pressure under ordinary conditions. Natural gas contains 20.0 grains or less of total sulfur per 100 standard cubic feet. Additionally, natural gas must either be composed of at least 70 percent methane by volume or have a gross calorific value between 950 and 1100 Btu per standard cubic foot. Natural gas does not include the following gaseous fuels: Landfill gas, digester gas, refinery gas, sour gas, blast furnace gas, coal-derived gas, producer gas, coke oven gas, or any gaseous fuel produced in a process which might result in highly variable sulfur content or heating value.

(w) *Duct burner* means a device that combusts fuel and that is placed in the exhaust duct from another source, such as a stationary gas turbine, internal combustion engine, kiln, etc., to allow the firing of additional fuel to heat the exhaust gases before the exhaust gases enter a heat recovery steam generating unit.

(x) *Lean premix stationary combustion turbine* means any stationary combustion turbine where the air and fuel are thoroughly mixed to form a lean mixture before delivery to the combustor.

(y) *Diffusion flame stationary combustion turbine* means any stationary combustion turbine where fuel and air are injected at the combustor and are mixed only by diffusion prior to ignition.

(z) *Unit operating day* means a 24-hour period between 12 midnight and the following midnight during which any fuel is combusted at any time in the unit. It is not necessary for fuel to be combusted continuously for the entire 24-hour period.

■ 4. Section 60.332 is amended by:

■ a. Revising the terms to the equations in paragraphs (a)(1) through (3);

■ b. Redesignating paragraph (a)(3) as (a)(4); and

■ c. Adding a new paragraph (a)(3).

The revisions and additions read as follows:

§ 60.332 Standard for nitrogen oxides.

(a) * * *

(1) * * *

where:

STD = allowable ISO corrected (if required as given in 60.335(b)(1)) NO_X emission concentration (percent by volume at 15 percent oxygen and on a dry basis),

Y = manufacturer's rated heat rate at manufacturer's rated load (kilojoules per watt hour) or, actual measured heat rate based on lower heating value of fuel as measured at actual peak load for the facility. The value of Y shall not exceed 14.4 kilojoules per watt hour, and

F = NO_X emission allowance for fuel-bound nitrogen as defined in paragraph (a)(4) of this section.

(2) * * *

where:

STD = allowable ISO corrected (if required as given in 60.335(b)(1)) NO_X emission concentration (percent by volume at 15 percent oxygen and on a dry basis),

Y = manufacturer's rated heat rate at manufacturer's rated load (kilojoules per watt hour) or, actual measured heat rate based on lower heating value of fuel as measured at actual peak load for the facility. The value of Y shall not exceed 14.4 kilojoules per watt hour, and

F = NO_X emission allowance for fuel-bound nitrogen as defined in paragraph (a)(4) of this section.

(3) The use of F in § 60.332(a)(1) and (2) is optional. That is, the owner or operator may choose to apply a NO_X allowance for fuel-bound nitrogen and determine the appropriate F-value in accordance with § 60.332(a)(4) or may accept an F-value of zero.

(4) If the owner or operator elects to apply a NO_X emission allowance for fuel-bound nitrogen, F shall be defined according to the nitrogen content of the fuel during the most recent performance test required under § 60.8 as follows:

Fuel-bound nitrogen (percent by weight)	F (NO_X percent by volume)
N≤0.015	0
0.015<N≤0.1	0.04(N)
0.1<N≤0.25	0.004+0.0067(N–0.1)
N>0.25	0.005

where:

N = the nitrogen content of the fuel (percent by weight).

or:

Manufacturers may develop and submit to EPA custom fuel-bound nitrogen allowances for each gas turbine model they manufacture. These fuel-bound nitrogen allowances shall be substantiated with data and must be approved for use by the Administrator before the initial performance test required by § 60.8. Notices of approval of custom fuel-bound nitrogen allowances will be published in the **Federal Register**.

* * * * *

■ 5. Section 60.333 is amended by revising paragraph (b) to read as follows:

§ 60.333 Standard for sulfur dioxide.

* * * * *

(b) No owner or operator subject to the provisions of this subpart shall burn in any stationary gas turbine any fuel which contains total sulfur in excess of 0.8 percent by weight (8000 ppmw).

■ 6. Section 60.334 is amended by:

■ a. Revising paragraphs (a) and (b);

■ b. Redesignating paragraph (c) as paragraph (j);

■ c. Adding a new paragraph (c);

■ d. Adding paragraphs (d) through (i);

■ e. Revising newly designated paragraphs (j) introductory text, (j)(1) and (j)(2); and

■ f. Adding paragraph (j)(5).

The revisions and additions read as follows:

§ 60.334 Monitoring of operations.

(a) Except as provided in paragraph (b) of this section, the owner or operator of any stationary gas turbine subject to the provisions of this subpart and using water or steam injection to control NO_X emissions shall install, certify and operate a continuous monitoring system to monitor and record the fuel consumption and the ratio of water or steam to fuel being fired in the turbine.

(b) The owner or operator of any stationary gas turbine that commenced construction, reconstruction or modification after October 3, 1977, but before May 29, 2003, and which uses water or steam injection to control NO_X emissions may, as an alternative to operating the continuous monitoring system described in paragraph (a) of this section, install, certify, maintain, operate, and quality-assure a continuous emission monitoring system (CEMS) consisting of NO_X and O_2 monitors. If this option is chosen, the CEMS shall be installed, certified, maintained, operated and quality-assured as follows:

(1) Each CEMS must be installed and certified according to PS 2 and 3 (for diluent) of 40 CFR part 60, appendix B or in accordance with the requirements of appendix A to part 75 of this chapter. The relative accuracy test audit (RATA) of the NO_X and O_2 monitors may be performed individually or on a combined basis, *i.e.*, the relative accuracy tests of the CEMS may be performed either:

(i) On a ppm basis (for NO_X) and a percent O_2 basis for oxygen; or

(ii) On a ppm at 15 percent O_2 basis.

(2) As specified in § 60.13(e)(2), during each full unit operating hour, each monitor must complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each 15-minute quadrant of the hour, to validate the hour. For partial unit operating hours, at least one valid data point must be obtained for each quadrant of the hour in which the unit operates. For unit operating hours in which required quality assurance and maintenance activities are performed on the CEMS, a minimum of two valid data points (one in each of two quadrants) are required to validate the hour.

(3) For purposes of identifying excess emissions, CEMS data must be reduced to hourly averages as specified in § 60.13(h).

(i) For each unit operating hour in which a valid hourly average, as described in paragraph (b)(2) of this section, is obtained for both NO_X and O_2, the data acquisition and handling system must calculate and record the hourly NO_X emissions in the units of the applicable NO_X emission standard under § 60.332(a), *i.e.*, percent NO_X by volume, dry basis, corrected to 15 percent O_2 and International Organization for Standardization (ISO) standard conditions (if required as given in § 60.335(b)(1)).

(ii) A worst case ISO correction factor may be calculated and applied using historical ambient data. For the purpose of this calculation, substitute the maximum humidity of ambient air (H_o), minimum ambient temperature (T_a), and minimum combustor inlet absolute pressure (P_o) into the ISO correction equation.

(iii) The missing data substitution methodology provided for at 40 CFR Part 75, subpart D may not be used for purposes of identifying excess emissions. Instead periods of missing CEMS data are to be reported as monitor downtime in the excess emissions and monitoring performance report required in § 60.7(c).

(4) Data from the CEMS shall be quality-assured, either in accordance with § 60.13, or in accordance with appendix B to part 75 of this chapter (or, if applicable, § 75.74(c)(2) and (3) of this chapter).

(c) For any new turbine that commenced construction, reconstruction or modification after October 3, 1977, but before May 29, 2003, and which does not use steam or water injection to control NO_X emissions, the owner or operator may, for purposes of determining excess emissions, use a CEMS that meets the requirements of paragraph (b) of this section. Also, if the owner or operator has previously submitted and received EPA approval of a petition for an alternative procedure of continuously monitoring compliance with the applicable NO_X emission limit under § 60.332, that approved procedure may continue to be used, even if it deviates from paragraph (a) of this section.

(d) The owner or operator of any new turbine constructed after May 29, 2003, and which uses water or steam injection to control NO_X emissions may elect to use either the requirements in paragraph (a) of this section for continuous water or steam to fuel ratio monitoring or may use a NO_X CEMS installed, certified, operated, maintained, and quality-assured as described in paragraph (b) of this section.

(e) The owner or operator of any new turbine that commences construction after May 29, 2003, and which does not use water or steam injection to control NO_X emissions may elect to use a NO_X CEMS installed, certified, operated, maintained, and quality-assured as described in paragraph (b) of this section. An acceptable alternative to installing a CEMS is described in paragraph (f) of this section.

(f) The owner or operator of a new turbine who elects not to install a CEMS under paragraph (e) of this section, may instead perform continuous parameter monitoring as follows:

(1) For a diffusion flame turbine without add-on selective catalytic reduction controls (SCR), the owner or operator shall define at least four parameters indicative of the unit's NO_X formation characteristics and shall monitor these parameters continuously.

(2) For any lean premix stationary combustion turbine, the owner or operator shall continuously monitor the appropriate parameters to determine whether the unit is operating in the lean premixed (low-NO_X) combustion mode. The parameters described in § 75.19(c)(1)(iv)(H)(2) of this chapter are acceptable for this purpose.

(3) For any turbine that uses SCR to reduce NO_X emissions, the owner or operator shall continuously monitor appropriate parameters to verify the proper operation of the emission controls.

(g) The steam or water to fuel ratio or other parameters that are continuously monitored as described in paragraphs (a), (d) or (f) of this section shall be monitored during the performance test required under § 60.8, to establish acceptable values and ranges. The owner or operator shall develop and keep on-site a parameter monitoring plan which explains the procedures used to document proper operation of the NO_X emission controls. The plan shall include the parameter(s) monitored and the acceptable range(s) of the parameter(s) as well as the basis for designating the parameter(s) and acceptable range(s).

(h) The owner or operator of any stationary gas turbine subject to the provisions of this subpart:

(1) Shall monitor the total sulfur content of the fuel being fired in the turbine, except as provided in paragraph (h)(3) of this section. The sulfur content of the fuel must be determined using total sulfur methods described in § 60.335(b)(10). Alternatively, if the total sulfur content of the gaseous fuel during the most recent performance test was less than 0.4 weight percent (4000 ppmw), ASTM D4084–82, 94, D5504–01, D6228–98, or Gas Processors Association Standard 2377–86 (all of which are incorporated by reference-see § 60.17), which measure the major sulfur compounds may be used; and

(2) Shall monitor the nitrogen content of the fuel combusted in the turbine, if the owner or operator claims an allowance for fuel bound nitrogen (*i.e.*, if an F-value greater than zero is being or will be used by the owner or operator to calculate STD in § 60.332). The nitrogen content of the fuel shall be determined using methods described in § 60.335(b)(9) or an approved alternative.

(3) Notwithstanding the provisions of paragraph (h)(1) of this section, the owner or operator may elect not to monitor the total sulfur content of the gaseous fuel combusted in the turbine, if the gaseous fuel is demonstrated to meet the definition of natural gas in § 60.331(v), regardless of whether an existing custom schedule approved by the administrator for subpart GG requires such monitoring. The owner or operator shall use one of the following sources of information to make the required demonstration:

(i) The gas quality characteristics in a current, valid purchase contract, tariff sheet or transportation contract for the gaseous fuel, specifying that the maximum total sulfur content of the fuel is 20.0 grains/100 scf or less; or

(ii) Representative fuel sampling data which show that the sulfur content of the gaseous fuel does not exceed 20 grains/100 scf. At a minimum, the amount of fuel sampling data specified in section 2.3.1.4 or 2.3.2.4 of appendix D to part 75 of this chapter is required.

(4) For any new turbine that commenced construction, reconstruction or modification after October 3, 1977, but before May 29, 2003, and for which a custom fuel monitoring schedule has previously

been approved, the owner or operator may, without submitting a special petition to the Administrator, continue monitoring on this schedule.

(i) The frequency of determining the sulfur and nitrogen content of the fuel shall be as follows:

(1) *Fuel oil.* For fuel oil, use one of the total sulfur sampling options and the associated sampling frequency described in sections 2.2.3, 2.2.4.1, 2.2.4.2, and 2.2.4.3 of appendix D to part 75 of this chapter (*i.e.*, flow proportional sampling, daily sampling, sampling from the unit's storage tank after each addition of fuel to the tank, or sampling each delivery prior to combining it with fuel oil already in the intended storage tank). If an emission allowance is being claimed for fuel-bound nitrogen, the nitrogen content of the oil shall be determined and recorded once per unit operating day.

(2) *Gaseous fuel.* Any applicable nitrogen content value of the gaseous fuel shall be determined and recorded once per unit operating day. For owners and operators that elect not to demonstrate sulfur content using options in paragraph (h)(3) of this section, and for which the fuel is supplied without intermediate bulk storage, the sulfur content value of the gaseous fuel shall be determined and recorded once per unit operating day.

(3) *Custom schedules.* Notwithstanding the requirements of paragraph (i)(2) of this section, operators or fuel vendors may develop custom schedules for determination of the total sulfur content of gaseous fuels, based on the design and operation of the affected facility and the characteristics of the fuel supply. Except as provided in paragraphs (i)(3)(i) and (i)(3)(ii) of this section, custom schedules shall be substantiated with data and shall be approved by the Administrator before they can be used to comply with the standard in § 60.333.

(i) The two custom sulfur monitoring schedules set forth in subparagraphs (A) through (D) of this paragraph, (i)(3)(i), and in paragraph (i)(3)(ii) of this section are acceptable, without prior Administrative approval:

(A) The owner or operator shall obtain daily total sulfur content measurements for 30 consecutive unit operating days, using the applicable methods specified in this subpart. Based on the results of the 30 daily samples, the required frequency for subsequent monitoring of the fuel's total sulfur content shall be as specified in paragraph (i)(3)(i)(B), (C), or (D) of this section, as applicable.

(B) If none of the 30 daily measurements of the fuel's total sulfur content exceeds 0.4 weight percent (4000 ppmw), subsequent sulfur content monitoring may be performed at 12 month intervals. If any of the samples taken at 12-month intervals has a total sulfur content between 0.4 and 0.8 weight percent (4000 and 8000 ppmw), follow the procedures in paragraph (i)(3)(i)(C) of this section. If any measurement exceeds 0.8 weight percent (8000 ppmw), follow the procedures in paragraph (i)(3)(i)(D) of this section.

(C) If at least one of the 30 daily measurements of the fuel's total sulfur content is between 0.4 and 0.8 weight percent (4000 and 8000 ppmw), but none exceeds 0.8 weight percent (8000 ppmw), then:

(*1*) Collect and analyze a sample every 30 days for three months. If any sulfur content measurement exceeds 0.8 weight percent (8000 ppmw), follow the procedures in paragraph (i)(3)(i)(D) of this section. Otherwise, follow the procedures in paragraph (i)(3)(i)(C)(*2*) of this section.

(*2*) Begin monitoring at 6-month intervals for 12 months. If any sulfur content measurement exceeds 0.8 weight percent (8000 ppmw), follow the procedures in paragraph (i)(3)(i)(D) of this section. Otherwise, follow the procedures in paragraph (i)(3)(i)(C)(*3*) of this section.

(*3*) Begin monitoring at 12-month intervals. If any sulfur content measurement exceeds 0.8 weight percent (8000 ppmw), follow the procedures in paragraph (i)(3)(i)(D) of this section. Otherwise, continue to monitor at this frequency.

(D) If a sulfur content measurement exceeds 0.8 weight percent (8000 ppmw), immediately begin daily monitoring according to paragraph (i)(3)(i)(A) of this section. Daily monitoring shall continue until 30 consecutive daily samples, each having a sulfur content no greater than 0.8 weight percent (8000 ppmw), are obtained. At that point, the applicable procedures of paragraph (i)(3)(i)(B) or (C) of this section shall be followed.

(ii) The owner or operator may use the data collected from the 720-hour sulfur sampling demonstration described in section 2.3.6 of appendix D to part 75 of this chapter to determine a custom sulfur sampling schedule, as follows:

(A) If the maximum fuel sulfur content obtained from the 720 hourly samples does not exceed 20 grains/100 scf (*i.e.*, the maximum total sulfur content of natural gas as defined in § 60.331(v)), no additional monitoring of the sulfur content of the gas is required, for the purposes of this subpart.

(B) If the maximum fuel sulfur content obtained from any of the 720 hourly samples exceeds 20 grains/100 scf, but none of the sulfur content values (when converted to weight percent sulfur) exceeds 0.4 weight percent (4000 ppmw), then the minimum required sampling frequency shall be one sample at 12 month intervals.

(C) If any sample result exceeds 0.4 weight percent sulfur (4000 ppmw), but none exceeds 0.8 weight percent sulfur (8000 ppmw), follow the provisions of paragraph (i)(3)(i)(C) of this section.

(D) If the sulfur content of any of the 720 hourly samples exceeds 0.8 weight percent (8000 ppmw), follow the provisions of paragraph (i)(3)(i)(D) of this section.

(j) For each affected unit required to continuously monitor parameters or emissions, or to periodically determine the fuel sulfur content or fuel nitrogen content under this subpart, the owner or operator shall submit reports of excess emissions (or deviations, as applicable) and monitor downtime, in accordance with § 60.7(c). For the purpose of reports required under § 60.7(c), periods of excess emissions (or deviations) and monitor downtime that shall be reported are defined as follows:

(1) Nitrogen oxides.

(i) For turbines using water or steam to fuel ratio monitoring:

(A) A deviation shall be any unit operating hour for which the average steam or water to fuel ratio, as measured by the continuous monitoring system, falls below the acceptable steam or water to fuel ratio needed to demonstrate compliance with § 60.332, as established during the performance test required in § 60.8. Any unit operating hour in which no water or steam is injected into the turbine shall also be considered a deviation.

(B) A period of monitor downtime shall be any unit operating hour in which water or steam is injected into the turbine, but the essential parametric data needed to determine the steam or water to fuel ratio are unavailable or invalid.

(C) Each report shall include the average steam or water to fuel ratio, average fuel consumption, ambient conditions (temperature, pressure, and humidity), gas turbine load, and (if applicable) the nitrogen content of the fuel during each deviation.

(ii) If the owner or operator elects to take an emission allowance for fuel bound nitrogen, then deviations and periods of monitor downtime are as described in paragraphs (j)(1)(ii)(A) and (B) of this section.

(A) A deviation shall be the period of time during which the fuel-bound nitrogen (N) is greater than the value

measured during the performance test required in § 60.8 and used to determine the allowance. The deviation begins on the date and hour of the sample which shows that N is greater than the performance test value, and ends with the date and hour of a subsequent sample which shows a fuel nitrogen content less than or equal to the performance test value.

(B) A period of monitor downtime begins when a required sample is not taken by its due date. A period of monitor downtime also begins on the date and hour that a required sample is taken, if invalid results are obtained. The period of monitor downtime ends on the date and hour of the next valid sample.

(iii) For turbines using NO_X and O_2 CEMS:

(A) An hour of excess emissions shall be any unit operating hour in which the 4-hour rolling average NO_X concentration exceeds the applicable emission limit in § 60.332(a)(1) or (2). For the purposes of this subpart, a ''4-hour rolling average NO_X concentration'' is the arithmetic average of the quality-assured average NO_X concentration measured by the CEMS for a given hour (corrected to 15 percent O_2 and, if required under § 60.335(b)(1), to ISO standard conditions) and the three quality-assured unit operating hour average NO_X concentrations immediately preceding that unit operating hour.

(B) A period of monitor downtime shall be any unit operating hour in which sufficient data are not obtained to validate the hour, for either NO_X concentration or percent O_2 (or both).

(C) Each report shall include the ambient conditions (temperature, pressure, and humidity) at the time of the excess emission period and (if the owner or operator has claimed an emission allowance for fuel bound nitrogen) the nitrogen content of the fuel during the period of excess emissions.

(iv) For turbines required under paragraph (f) of this section to monitor combustion parameters or parameters that document proper operation of the NO_X emission controls:

(A) A deviation shall be a 4-hour rolling unit operating hour average in which any monitored parameter does not achieve the target value or is outside the acceptable range defined in the parameter monitoring plan for the unit.

(B) A period of monitor downtime shall be a unit operating hour in which any of the required parametric data are either not recorded or are invalid.

(2) Sulfur dioxide. If the owner or operator is required to monitor the sulfur content of the fuel under paragraph (h) of this section:

(i) For samples of gaseous fuel and for oil samples obtained using daily sampling, flow proportional sampling, or sampling from the unit's storage tank, an excess emission period shall begin on the date and hour of any sample for which the sulfur content of the fuel being fired in the gas turbine exceeds 0.8 weight percent. The excess emission period ends on the date and hour that a subsequent sample is taken that demonstrates compliance with the sulfur limit.

(ii) If the option to sample each delivery of fuel oil has been selected, the owner or operator shall immediately switch to one of the other oil sampling options (*i.e.*, daily sampling, flow proportional sampling, or sampling from the unit's storage tank) if the sulfur content of a delivery exceeds 0.8 weight percent. The owner or operator shall continue to use one of the other sampling options until all of the oil from the delivery has been combusted, and shall evaluate excess emissions according to paragraph (j)(2)(i) of this section. When all of the fuel from the delivery has been burned, the owner or operator may resume using the as-delivered sampling option.

(iii) A period of monitor downtime begins when a required sample is not taken by its due date. A period of monitor downtime also begins on the date and hour of a required sample, if invalid results are obtained. The period of monitor downtime ends on the date and hour of the next valid sample.

* * * * *

(5) All reports required under § 60.7 (c) shall be postmarked by the 30th day following the end of each calendar quarter.

■ 7. Section 60.335 is amended by:

■ a. Removing paragraphs (a), (d) and (e);

■ b. Redesignating paragraphs (b) and (c) as paragraphs (a) and (b), respectively;

■ c. Revising the new paragraphs (a) and (b);

■ d. Redesignating paragraph (f) as paragraph (c); and

■ e. Revising the new paragraph (c)(1).

The revisions and additions read as follows:

§ 60.335 Test methods and procedures.

(a) The owner or operator shall conduct the performance tests required in § 60.8, using either EPA Method 20, ASTM D6522–00 (incorporated by reference, *see* § 60.17), or EPA Method 7E and either EPA Method 3 or 3A in appendix A to this part, to determine NO_X and diluent concentration, except as provided in § 60.8(b). If ASTM D6522–00 (incorporated by reference, *see* § 60.17) or EPA Methods 7E and 3A (or 3) are used, the owner or operator shall perform a stratification test for NO_X and diluent pursuant to the procedures specified in section 6.5.6.1(a) through (e) appendix A to part 75 of this chapter. Once the stratification sampling is completed, the owner or operator shall analyze the data using the procedures in section 6.5.6.3(a) and (c) to determine if subsequent RATA testing will occur along a short (0.4, 1.2 and 2.0 meters from the stack or duct wall) or long (16.7, 50.0, and 83.3 percent of the way across the stack or duct) reference measurement line. The short or long reference method measurement line, as determined above, will serve in lieu of the sampling points usually required by EPA Method 20. In no case shall the RATA be based on fewer than three sample points as specified in section 8.1.3.2 of PS 2 in appendix B to this part. Other acceptable alternative reference methods and procedures are given in paragraph (c) of this section.

(b) The owner or operator shall determine compliance with the applicable nitrogen oxides emission limitation in § 60.332 and shall meet the performance test requirements of § 60.8 as follows:

(1) For each run of the performance test, the nitrogen oxides emission concentration (NO_{XO}) obtained using EPA Method 20, ASTM D6522–00 (incorporated by reference, see § 60.17), or EPA Method 7E shall be corrected to ISO standard conditions using the following equation. Notwithstanding this requirement, use of the correction equation is optional for: lean premix stationary combustion turbines; units used in association with heat recovery steam generators (HRSG) equipped with duct burners; and units equipped with add-on emission control devices:

$$NO_X = (NO_{XO})\,(P_r/P_o)^{0.5}\,e^{19(Ho - 0.00633)}\,(288°K/T_a)^{1.53}$$

where:

NO_X = emission concentration of NO_X at 15 percent O_2 and ISO standard ambient conditions, ppm by volume, dry basis,

NO_{XO} = observed NO_X concentration, ppm by volume, dry basis, at 15 percent O_2, corrected using either EPA Method 20 or Method 3 or 3A data,

P_r = reference combustor inlet absolute pressure at 101.3 kilopascals ambient pressure, mm Hg,

P_o = observed combustor inlet absolute pressure at test, mm Hg,

H_o = observed humidity of ambient air, g H_2O/g air,

e = transcendental constant, 2.718, and T_a = ambient temperature, °K.

(2) The 3-run performance test required by § 60.8 must be performed within ±5 percent at 30, 50, 75, and 90-to-100 percent of peak load or at four evenly-spaced load points in the normal operating range of the gas turbine, including the minimum point in the operating range and 90-to-100 percent of peak load. If the turbine combusts both oil and gas as primary or backup fuels, separate performance testing is required for each fuel. Notwithstanding these requirements, performance testing is not required for any emergency fuel (as defined in § 60.331).

(3) For a combined cycle turbine system with supplemental heat (duct burner), the owner or operator may elect to measure the turbine NO_X emissions after the duct burner rather than directly after the turbine. If the owner or operator elects to use this alternative sampling location, the applicable NO_X emission limit in § 60.332 for the combustion turbine must still be met.

(4) If water or steam injection is used to control NO_X with no additional post-combustion NO_X control and the owner or operator chooses to monitor the steam or water to fuel ratio in accordance with § 60.334(a), then that monitoring system must be operated concurrently with each EPA Method 20, ASTM D6522–00 (incorporated by reference, *see* § 60.17), or EPA Method 7E run and shall be used to determine the fuel consumption and the steam or water to fuel ratio necessary to comply with the applicable § 60.332 NO_X emission limit.

(5) If the owner operator elects to claim an emission allowance for fuel bound nitrogen as described in § 60.332, then concurrently with each reference method run, a representative sample of the fuel used shall be collected and analyzed, following the applicable procedures described in § 60.335 (b)(9). These data shall be used to determine the maximum fuel nitrogen content for which the established water (or steam) to fuel ratio will be valid.

(6) If the owner or operator elects to install a CEMS, the performance evaluation of the CEMS may either be conducted separately (as described in paragraph (b)(7) of this section) or as part of the initial performance test of the affected unit.

(7) If the owner or operator elects to install and certify a NO_X CEMS under § 60.334(e), then the initial performance test required under § 60.8 may be done in the following alternative manner:

(i) Perform a minimum of 9 reference method runs, with a minimum time per run of 21 minutes, at a single load level, between 90 and 100 percent of peak load.

(ii) Use the test data both to demonstrate compliance with the applicable NO_X emission limit under § 60.332 and to provide the required reference method data for the RATA of the CEMS described under § 60.334(b).

(iii) The requirement to test at three additional load levels is waived.

(8) If the owner or operator is required under § 60.334(f) to monitor combustion parameters or parameters indicative of proper operation of NO_X emission controls, the appropriate parameters shall be continuously monitored and recorded during each run of the initial performance test, to establish acceptable operating ranges, for purposes of the parameter monitoring plan for the affected unit, as specified in § 60.334(g).

(9) To determine the fuel bound nitrogen content of fuel being fired (if an emission allowance is claimed for fuel bound nitrogen), the owner or operator may use equipment and procedures meeting the requirements of:

(i) For liquid fuels, ASTM D2597–94 (Reapproved 1999), D6366–99, D4629–02, D5762–02 (all of which are incorporated by reference, see § 60.17); or

(ii) For gaseous fuels, shall use analytical methods and procedures that are accurate to within 5 percent of the instrument range and are approved by the Administrator.

(10) If the owner or operator is required under § 60.334(i)(1) or (3) to periodically determine the sulfur content of the fuel combusted in the turbine, a minimum of three fuel samples shall be collected during the performance test. Analyze the samples for the total sulfur content of the fuel using:

(i) For liquid fuels, ASTM D129–00, D2622–98, D4294–02, D1266–98, D5453–00 or D1552–01 (all of which are incorporated by reference, see § 60.17); or

(ii) For gaseous fuels, ASTM D1072–80, 90 (Reapproved 1994); D3246–81, 92, 96; D4468–85 (Reapproved 2000); or D6667–01 (all of which are incorporated by reference, see § 60.17). The applicable ranges of some ASTM methods mentioned above are not adequate to measure the levels of sulfur in some fuel gases. Dilution of samples before analysis (with verification of the dilution ratio) may be used, subject to the prior approval of the Administrator.

(11) The fuel analyses required under paragraphs (b)(9) and (b)(10) of this section may be performed by the owner or operator, a service contractor retained by the owner or operator, the fuel vendor, or any other qualified agency.

(c) * * *

(1) Instead of using the equation in paragraph (b)(1) of this section, manufacturers may develop ambient condition correction factors to adjust the nitrogen oxides emission level measured by the performance test as provided in § 60.8 to ISO standard day conditions.

(2) [Reserved]

[FR Doc. 03–8150 Filed 4–11–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[OAR–2002–0053, FRL–7476–6]

RIN 2060–AK35

Standards of Performance for Stationary Gas Turbines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendments.

SUMMARY: This action proposes amendments to several sections of the standards of performance for stationary gas turbines in 40 CFR part 60, subpart GG. The proposed amendments would codify several alternative testing and monitoring procedures that have routinely been approved by EPA. The proposed amendments would also reflect changes in nitrogen oxides (NO_X) emission control technologies and turbine design since the standards were originally promulgated.

In the rules and regulations section of this **Federal Register**, we are taking direct final action on the proposed amendments because we view this action as noncontroversial, and we anticipate no adverse comments. We have explained our reasons for the amendments in the preamble to the direct final rule.

If we receive no adverse comments, we will take no further action on the proposed amendments. If we receive adverse comments, we will withdraw only those provisions on which we received adverse comments and they will not take effect. We will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective and which provisions are being withdrawn. If part or all of the direct final rule amendments in the rules and regulations section of this **Federal Register** are withdrawn, all comments pertaining to those provisions will be addressed in a subsequent final action based on the proposed amendments. We will not institute a second comment period on the subsequent final action. Any parties interested in commenting must do so at this time.

DATES: *Comments.* Submit comments on or before May 14, 2003, or 30 days after the date of a public hearing, if one is held.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by April 24, 2003. A public hearing will be held on May 14, 2003.

Incorporation by Reference. The incorporation by reference of certain publications in the proposed rule amendments will be approved by the Director of the Office of the Federal Register as of April 14, 2003.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102T), Attention Docket ID No. OAR–2002–0053, 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 (6102T), Attention Docket ID No. OAR–2002–0053, Room B–108, U.S. EPA, 1301 Constitution Avenue, NW., Washington, DC 20460. We request a separate copy of each public comment be sent to the contact person listed below (*see* **FOR FURTHER INFORMATION CONTACT**).

Public Hearing. If a public hearing is held, it will be held at the New EPA Facility Complex in Research Triangle Park, North Carolina beginning at 10 a.m.

Docket. Docket ID No. OAR–2002–0053 contains supporting information used in developing the proposed amendments. The docket is located at the U.S. EPA, 1301 Constitution Avenue, NW., Washington, DC 20460, Room B–108, and may be inspected from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Jaime Pagán, Combustion Group, Emission Standards Division (C439–01), U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5340; facsimile number (919) 541–5450; electronic mail address *pagan.jaime@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Entities potentially regulated by this action are those that own and operate stationary gas turbines, and are the same as the existing rule in 40 CFR part 60, subpart GG. Regulated categories and entities include:

Category	NAICS	SIC	Examples of regulated entities
Any industry using a stationary combustion turbine as defined in the direct final rule.	2211	4911	Electric services.
	486210	4922	Natural gas transmission.
	211111	1311	Crude petroleum and natural gas.
	211112	1321	Natural gas liquids.
	221	4931	Electric and other services, combined.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 60.330 of the final rule. If you have questions regarding the applicability of this action to a particular entity, consult the contact person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Docket. The EPA has established an official public docket for this action under Docket ID No. OAR–2002–0053. The official public docket is the collection of materials that is available for public viewing at the U.S. EPA, 1301 Constitution Avenue, NW., Room B–108, Washington, DC 20460. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744. The telephone number for the Air Docket is (202) 566–1742.

Electronic Access. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or review public comments, access the index of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA dockets. Information claimed as confidential business information (CBI) and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. The EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed paper form in

the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in this document.

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

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments submitted after the close of the comment period will be marked ''late.'' The EPA is not required to consider these late comments.

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

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket* and follow the online instructions for submitting comments. Once in the system, select ''search'' and then key in Docket ID No. OAR–2002–0053. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Comments may be sent by electronic mail (e-mail) to *air-and-r-docket@epa.gov*, Attention Docket ID No. OAR–2002–0053. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket.

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

By Mail. Send your comments (in duplicate, if possible) to: EPA Docket Center (6102T), Attention Docket ID No. OAR–2002–0053, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

By Hand Delivery or Courier. Deliver your comments (in duplicate, if possible) to: Air and Radiation Docket, Attention Docket ID No. OAR–2002–0053, U.S. EPA, 1301 Constitution Avenue, NW., Room B–108, Washington, DC 20460. Such deliveries are only accepted during the Docket Center's normal hours of operation as identified in this document. We request that a separate copy also be sent to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

By Facsimile. Fax your comments to: (202) 566–1741, Attention Docket ID No. OAR–2002–0053.

CBI. Do not submit information that you consider to be CBI through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: OAQPS Document Control Officer (C404–02), Attention: Mr. Jaime Pagan, U.S. EPA, 109 TW Alexander Drive, Research Triangle Park, NC 27711, Attention Docket ID No. OAR–2002–0053. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Kelly Hayes, Combustion Group, Emission Standards Division (C439–01), Research Triangle Park, NC 27711, telephone number (919) 541–5578, at least two days in advance of the potential date of the public hearing. Persons interested in attending the public hearing must also call Ms. Hayes 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 these proposed emission standards.

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

Direct Final Rule. A direct final rule to this proposal is published in the rules and regulations section of this **Federal Register**. If we receive any adverse comment pertaining to one or more distinct amendments in the proposal, we will publish a timely notice in the **Federal Register** informing the public which amendments will become effective and which amendments are being withdrawn due to adverse comment. We will address all public comments concerning any withdrawn

amendments in a subsequent final rule. If no adverse comments are received, no further action will be taken on the proposal and the direct final rule will become effective as provided in that action.

The regulatory text for the proposal is identical to that for the direct final rule published in the rules and regulations section of this **Federal Register**. For further supplemental information, the detailed rationale for the proposal, and the regulatory revisions, see the information provided in the direct final rule published in a separate part of this **Federal Register**.

I. Background

Under section 111 of the Clean Air Act (CAA), the EPA promulgated standards of performance for stationary gas turbines (40 CFR part 60, subpart GG). These standards were originally promulgated on September 10, 1979 (44 FR 52798). Since that time, many changes in the design of, the NO_X emission controls used for, and the composition of the fuels fired in gas turbines have occurred. Additional test methods have also been developed to measure emissions from gas turbines and for sampling the sulfur content of gaseous fuels. As a result of these changes, we have had many requests for case-by-case approvals of alternative testing and monitoring procedures for subpart GG. We are proposing these amendments to subpart GG to codify the alternatives that have been routinely approved. Additionally, we are attempting to harmonize the provisions of subpart GG with the monitoring provisions of 40 CFR part 75, since many new gas turbines are subject to both regulations.

II. Statutory and Executive Order Reviews

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of the proposed rule amendments on small entities, small entity is defined as: (1) A small business whose parent company has fewer than 100 or 1,000 employees, or fewer than 4 billion kW-hr per year of electricity usage, depending on the size definition for the affected North American Industry Classification System (NAICS) code; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. It should be noted that small entities in 6 NAICS codes may be affected by the proposed rule amendments, and the small business definition applied to each industry by NAICS code is that listed in the Small Business Administration (SBA) size standards (13 CFR part 121).

After considering the economic impacts of today's proposed rule amendments on small entities, we certify that this action will not have a significant economic impact on a substantial number of small entities. This certification is based primarily upon the estimated cost savings to turbine owners and operators as a result of the proposed revisions to 40 CFR part 60, subpart GG that are presented in the direct final rule amendments published in a separate part of this **Federal Register**. These cost savings will be experienced by turbines owned and operated by small entities as well as large ones. Using the existing combustion turbines inventory as a measure of which industries may install new turbines in the future, presuming the existing mix of combustion turbines currently is a good approximation of the mix of turbines that will be installed and affected by the proposed amendments up to 2007, 2.5 percent of new turbines overall will likely be owned and operated by small entities. Of these entities, a majority of these are owned and operated by small communities.

For more information on the results of the analysis of small entity impacts, please refer to the economic impact analysis in the docket. We continue to be interested in the potential impacts of the proposed rule amendments on small entities and welcome comments on issues related to such impacts.

For information regarding other administrative requirements for this action, please see the direct final rule action that is located in the rules and regulations section of this **Federal Register** publication.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: March 27, 2003.

Christine Todd Whitman,

Administrator.

[FR Doc. 03–8151 Filed 4–11–03; 8:45 am]

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Federal Register

Monday,
April 14, 2003

Part III

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[Docket ID No. OAR–2002–0085; FRL–7462–3]

RIN 2060–AH55

National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for coke ovens. The final standards establish emission limitations and work practice requirements for control of hazardous air pollutants (HAP) from pushing, quenching, and battery stacks at new and existing coke oven batteries. The HAP emitted from pushing, quenching, and battery stacks include coke oven emissions, as well as polycyclic organic matter (POM) and volatile organic compounds (VOC) such as benzene and toluene. Exposure to these substances has been demonstrated to cause chronic and acute health effects. These final standards will implement section 112(d) of the Clean Air Act (CAA) by requiring all major sources to meet HAP emission standards reflecting application of the maximum achievable control technology (MACT). The EPA previously promulgated emission standards addressing emissions from coke oven charging, topside leaks, and door leaks.

EFFECTIVE DATE: April 14, 2003.

ADDRESSES: *Docket.* The official public docket is the collection of materials used in developing the final rule and is available for public viewing at the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lula Melton, Metals Group (C439–02), Emission Standards Division, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–2910, electronic mail (e-mail) address, *melton.lula@epa.gov.*

SUPPLEMENTARY INFORMATION:

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

Category	NAICS *	Example of regulated entities
Industry	331111, 324199	Coke plants and integrated iron and steel mills.
Federal government		Not affected.
State/local/tribal government		Not affected.

* North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.7281 of the final rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Docket. The EPA has established an official public docket for this action under Docket ID No. OAR–2002–0085. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

Electronic Docket Access. You may access the final rule electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

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

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

Judicial Review. This action constitutes final administrative action on the proposed NESHAP for coke oven pushing, quenching, and battery stacks (66 FR 35326, July 3, 2001). Under CAA section 307(b)(1), judicial review of the final rule is achievable only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by June 13, 2003. Under CAA section 307(b)(2), the requirements that are the subject of this document may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

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

I. Background

A. What Is the Source of Authority for NESHAP?

Section 112 of the CAA requires the EPA to establish technology-based regulations for all categories and subcategories of major and area sources emitting one or more of the HAP listed in section 112(b). Major sources are those that emit or have the potential to emit at least 10 tons per year (tpy) of any single HAP or 25 tpy of any combination of HAP. We previously listed the category of major sources covered by today's final rule, ''Coke Ovens: Pushing, Quenching, and Battery Stacks,'' on July 16, 1992 (57 FR 31576). This action is a rulemaking under section 307(d) of the CAA.

B. 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 major 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 level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standard is set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources (for which we have emissions information) in the category or subcategory or by the best-performing 5 sources (for which we have or could reasonably obtain emissions information) 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, non-air quality health and environmental impacts, and energy impacts.

C. How Did We Develop the Final Rule?

We proposed the NESHAP for the Coke Ovens: Pushing, Quenching, and Battery Stacks source category on July 3, 2001 (66 FR 35326). We provided a 90-day comment period for the proposed rule. We received a total of 18 comment letters. A copy of each of these comment letters is available in the docket for this rulemaking (Docket No. OAR–2002–0085).

The final rule reflects full consideration of all the comments we received. Major public comments on the proposed rule along with our responses to these comments are summarized in this document. A detailed response to all comments is included in the Background Information Document (BID) for the promulgated standards (Docket No. OAR–2002–0085).

Since publication of the proposal, six coke plants with 12 batteries have permanently closed. The plants have closed primarily because of the distressed economic condition of the iron and steel industry, and none of the closures are due to the cost of installing emission control systems. The requirements in the final rule take into account the levels of control that have been demonstrated as achievable, including in some cases levels achieved by batteries that are no longer operating. We believe it is appropriate to consider all of the data collected and relied upon for the proposed rule. These data reflect the level of performance of batteries operating concurrently with this rulemaking effort, and provide useful and relevant information about the emission limits that such sources can achieve.

II. Summary of the Final Rule

A. What Are the Affected Sources and Emission Points?

The affected source is each new or existing coke oven battery at a plant that is a major source of HAP emissions. A new affected source is one constructed or reconstructed after July 3, 2001. An existing affected source is one constructed or reconstructed on or before July 3, 2001. The final rule covers fugitive pushing emissions, emissions from control devices applied to pushing emissions, and emissions from quenching, soaking, and battery stacks.

B. What Are the Requirements for Pushing?

1. By-Product Coke Oven Batteries With Vertical Flues

We proposed two options for controlling fugitive pushing emissions—numerical opacity limits (Option 1) and a work practice standard (Option 2). Based on comments received on the proposed rule and further consideration of the proposed options, we are promulgating a work practice standard.

Under the work practice standard, owners or operators must observe and record the opacity from four consecutive pushes each operating day. If the average opacity of the six highest 15-second consecutive readings for any individual push is more than 30 percent for a short battery or 35 percent for a tall battery, the owner or operator must take corrective action and/or increase coking time to fix the problem within a specified time frame. To demonstrate the corrective action and/or increased coking time was successful, the owner or operator must observe two additional daytime pushes for the oven after completing the corrective action. If the corrective action is not successful, the owner or operator must take additional corrective action. If the second attempt to fix the problem is not successful, the failure must be reported as a deviation, and the owner or operator must again take corrective action or increase the coking time. Each subsequent failure to

fix the problem on the same oven must also be reported as a deviation. We have included provisions to qualify an oven for decreased coking time after it is placed on increased coking time, which requires a demonstration that the opacity is 30 percent or less for a short battery or 35 percent or less for a tall battery when the oven is operated on the decreased coking time. If an oven fails to qualify for decreased coking time, it must be returned to the previously established increased coking time, or the owner or operator may implement some other corrective action or increased coking time. If the facility implements some other corrective action or increased coking time, it must confirm that the selected action was successful. If an individual oven fails to qualify for a decreased coking time in two or more consecutive attempts, the failure on the second and any subsequent attempts must be reported as a deviation.

The final rule requires that observers taking opacity readings to comply with the work practice standard for pushing must be certified according to Method 9 in 40 CFR part 60, appendix A. Opacity observations begin with the first detectable movement of the coke mass. The plant owner or operator must identify each oven that cannot be read using Method 9 due to obstructions, interferences, or sun angle and must propose alternative procedures to observe these ovens.

To demonstrate initial compliance, the plant owner or operator must certify, as part of the notification of compliance status, that the plant will meet each of the requirements in the work practice standard. Records of all observations and calculations are needed to document continuous compliance. Additional records are required in each instance where pushing emissions from an oven exceed 30 percent opacity for a short battery or 35 percent opacity for a tall battery.

2. By-Product Coke Oven Batteries With Horizontal Flues

Plant owners or operators must prepare and implement a written plan to prevent incomplete coking. The plan must establish minimum flue temperatures at different coking times and a lowest acceptable minimum flue temperature. The minimum temperatures must be established based on a study conducted by the plant that establishes minimum flue temperatures at different minimum coking times and an absolute minimum flue temperature. The plan must be submitted to the Administrator for approval. The authority to approve the work practice plan is retained by the Administrator and is not delegated to the State, local, or tribal agency.

In implementing the plan, owners or operators must measure and record the temperature of all flues on two ovens per day within the 2 hours before the scheduled push time. If the measured temperature is below the minimum established for an oven's coking time, the coking time must be increased by the amount specified in the plant's written plan. If the flue temperature measurement is below the lowest acceptable minimum temperature, the oven must be removed from service for repairs. If a flue temperature is below the lowest acceptable minimum after return to service, the owner or operator must report the event as a deviation.

No performance test is required to demonstrate initial compliance with the work practice standards. The plant owner or operator must certify, as part of the notification of compliance status, that the plant has submitted the written plan to prevent incomplete coking and the supporting study to the Administrator for review and approval, and that the plant will meet each of the requirements in the work practice standard beginning no later than the first day that compliance is required according to § 63.7283 of the final rule. If the plan is disapproved, the owner or operator must revise the plan as directed by the Administrator and re-submit it for approval. If an original or re-submitted plan has not been approved by the applicable compliance date, the owner or operator must operate in accordance with the last plan submitted to the Administrator.

Plant owners or operators must demonstrate continuous compliance by: (1) Measuring and recording flue temperatures for two ovens a day and for all ovens in each battery at least once a month, and (2) recording the time each oven is charged and pushed and the net coking time. Plant owners or operators must keep additional records to show that the correct procedures were followed if any measured flue temperature is below the minimum flue temperature or the lowest acceptable minimum temperature.

3. Non-Recovery Coke Oven Batteries

The final work practice standards require plant owners or operators to visually inspect each oven prior to pushing by opening the door damper and observing the bed of coke. The oven cannot be pushed unless the visual inspection confirms that there is no smoke in the open space above the coke bed, and that there is an unobstructed view of the door on the opposite side of the oven. Plant owners or operators must demonstrate initial compliance by certifying in their initial notification of compliance status that they will follow the work practice standards. Plant owners or operators must demonstrate continuous compliance by maintaining records of each visual inspection.

4. Emission Control Devices

We are establishing emission limits for particulate matter (PM) as a measure of control device performance. Plant owners or operators that currently use capture and control equipment must continue to use such equipment and must meet the applicable PM emission limits. The limits differ in form and numerical value depending on the type of capture system used (cokeside shed or moveable hood) and whether the control device is stationary (land-based) or mobile. Where a cokeside shed is used as the capture system, the PM limit is 0.01 grain per dry standard cubic foot (gr/dscf). If a moveable hood vented to a stationary control device is used to capture emissions, the PM emission limit is 0.02 pound per ton (lb/ton) of coke pushed. For mobile scrubber cars that do not capture emissions during travel, the emission limits are 0.03 lb/ton of coke for short batteries and 0.01 lb/ton of coke for tall batteries. For mobile scrubber cars that capture emissions during travel, the limit is 0.04 lb/ton of coke.

We have also established operating limits for control devices and capture systems applied to pushing emissions. If a venturi scrubber is used, the daily average pressure drop and scrubber water flow rate must remain at or above the minimum level established during the initial performance test. The final rule provides two options for a capture system applied to pushing emissions: (1) Maintain the daily average fan motor amperes at or above the minimum level established during the initial performance test, or (2) maintain the daily average volumetric flow rate at the inlet of the control device at or above the minimum level established during the initial performance test.

The final rule requires a performance test for each control device to demonstrate it meets the emission limit. The concentration of PM is to be measured using EPA Method 5 or 5D in 40 CFR part 60, appendix A. The testing requirements also include procedures for establishing operating limits for venturi scrubbers and capture systems and for revising the limits, if needed, after the performance test. To demonstrate continuous compliance with the applicable emission limit, plant owners or operators must conduct

performance tests for each control device at least twice during each term of their title V operating permit (at midterm and renewal).

If a baghouse is applied to pushing emissions, plant owners or operators must monitor the relative change in PM loading using a bag leak detection system and make inspections at specified intervals. The basic inspection requirements include daily, weekly, monthly, or quarterly inspections of specified parameters or mechanisms with monitoring of bag cleaning cycles. Each bag leak detection system must be capable of detecting PM at concentrations of 10 milligrams per actual cubic meter or less and provide an output of relative PM loading, and be installed and operated according to EPA guidance.[1] If the system does not work based on the triboelectric effect, it must be installed and operated consistent with the manufacturer's written specifications and recommendations. In addition, the bag leak detection system must be equipped with an alarm system that will alert operators if PM is detected above a preset level. The proposed requirement that a bag leak detection system must not sound for more than 5 percent of the time in a semiannual period has been deleted from the final rule.

To demonstrate continuous compliance, the final rule requires plant owners or operators to maintain records of corrective actions taken in response to bag leak detection system alarms. They must also keep records documenting conformance with the inspection and maintenance requirements.

If a venturi scrubber is applied to pushing emissions, plant owners or operators must monitor the daily average pressure drop and scrubber water flow rate using continuous parameter monitoring systems (CPMS). The CPMS must measure and record the pressure drop and scrubber water flow rate at least once per push and determine and record the daily average of the readings. To demonstrate continuous compliance with the operating limits, plant owners or operators must maintain the daily average pressure drop and scrubber water flow rate at levels no lower than those established during the performance test. Valid monitoring data must be available for all pushes.

Section 63.7331 of the rule establishes requirements for the installation, operation, and maintenance of continuous monitoring systems. The final rule requires owners or operators to prepare a site-specific monitoring plan for CPMS that addresses installation, performance, operation and maintenance, quality assurance, and recordkeeping and reporting procedures. These requirements replace the more detailed performance specifications contained in the proposed rule.

For a capture system applied to pushing emissions, plant owners or operators are required to check the fan motor amperes or the volumetric flow rate at least once each 8-hour period to verify the daily average is at or above the level established during the initial performance test and to record the results of each check.

C. What Are the Requirements for Soaking?

The final rule contains a work practice standard to address emissions that occur during soaking, which is the period prior to pushing when an oven is dampered off the collecting main and vented to the atmosphere through an open standpipe to relieve oven pressure. Plant owners or operators must prepare and implement a plan to mitigate potential soaking emissions. Each plan must include measures and procedures to train topside workers to identify the cause of soaking emissions and to take corrective measures to reduce or eliminate such emissions.

If soaking emissions are caused by leaks from the collecting main, actions must be taken to eliminate the emissions, such as reseating the damper, cleaning the flushing liquor piping, applying aspiration, putting the oven back on the collecting main, or igniting the emissions. If soaking emissions are not caused by leaks from the collecting main, a designated responsible party must be notified, who must then determine whether the cause of emissions is incomplete coking. If so, the oven must either be put back on the collecting main until coking is complete, or the emissions must be ignited.

To demonstrate initial compliance, the plant owner or operator must certify, as part of the notification of compliance status, that the plant has submitted the written plan for soaking to their permitting authority for review and approval, and that each of the requirements in the work practice standard will be met beginning no later than the first day that compliance is required according to § 63.7283 of the final rule. To demonstrate continuous compliance, plant owners or operators must keep records documenting conformance with these requirements.

D. What Are the Requirements for Quenching?

The equipment and work practice standards for quenching apply to all coke oven batteries. Each quench tower must be equipped with baffles such that no more than 5 percent of the cross sectional area of the tower may be uncovered or open to the sky. Baffles must be cleaned each day that the quench tower is used except when the highest measured ambient temperature during the day is below 30 degrees Fahrenheit. Each quench tower must be inspected at least monthly for damaged or missing baffles and blockage. If the monthly inspection reveals any damaged or missing baffles, plant owners or operators must initiate repairs within 30 days and complete repairs as soon as practicable.

The final rule also limits the total dissolved solids (TDS) content of water used for quenching to 1,100 milligrams per liter (mg/L). The final rule includes an alternative to the TDS limit that achieves an equivalent level of HAP control. The plant owner or operator may establish a site-specific constituent limit for the HAP that are characteristic of coke oven emissions (benzene, benzo(a)pyrene, and naphthalene). The constituent limit is based on analyses of at least nine samples of the quench water for TDS, benzene, benzo(a)pyrene, and naphthalene. The HAP limit is the highest sum of the concentrations of the HAP in any single sample that meets the TDS limit of 1,100 mg/L. We also replaced the definition of ''clean water'' with a definition of ''acceptable makeup water,'' which includes surface water from a river, lake, or stream; water meeting drinking water standards; storm water runoff and production area clean up water except for water from the by-product recovery plant area; process wastewater treated to meet effluent limitations guidelines; any of these types of water that have been used only for non-contact cooling or in water seals; or water from scrubbers used to control pushing emissions.

To demonstrate initial compliance, the plant owner or operator must certify, as part of the notification of compliance status, that the equipment standard has been met, and that the work practice requirements regarding baffle repair and cleaning will be met beginning no later than the first day that compliance is required according to § 63.7283 of the final rule. The owner or operator must also conduct an initial performance test to demonstrate that the TDS content of quench water does not exceed 1,100 mg/

[1] ''Fabric Filter Bag Leak Detection Guidance,'' EPA 454/R–98–015, September 1997, available on the TTN at *http://www.epa.gov/ttnemc01/cem/tribo.pdf*

L or that the concentration of benzene, benzo(a)pyrene, and naphthalene does not exceed the site-specific constituent limit. To demonstrate continuous compliance, plant owners or operators are required to maintain baffles in each quench tower to meet the rule requirements, test quench water for TDS at least weekly or at least monthly for benzene, benzo(a)pyrene, and naphthalene, and keep records documenting conformance with the work practice requirements regarding baffle repair and cleaning.

Backup quench stations at existing coke oven batteries that are used for less than 5 percent of the quenches in a 12-month calendar period are not subject to the baffle requirements for quench towers. However, backup quench stations at new batteries are subject to the requirements for baffles.

E. What Are the Requirements for Battery Stacks?

The final rule requires plant owners or operators to monitor the opacity of emissions from each battery stack using a continuous opacity monitoring system (COMS) and to meet specified opacity limits at all times. The opacity limits are a daily average of 15 percent for a by-product coke oven battery on a normal coking cycle and a daily average of 20 percent for a by-product coke oven battery on a batterywide extended coking cycle. A battery is on batterywide extended coking if the average coking time for all ovens in a battery is increased by 25 percent or more over the manufacturer's specified design rate.

Initial compliance must be demonstrated through a performance test using a COMS. The opacity of emissions from each battery stack must be monitored for 24 hours and the daily average determined. A performance evaluation is also required to show that the COMS meets Performance Specification (PS) 1 in appendix B to 40 CFR part 60. To demonstrate continuous compliance, plant owners or operators must monitor opacity using the COMS and determine and record the 24-hour average opacity.

F. What Are the Operation and Maintenance (O&M) Requirements?

All plant owners or operators are required to prepare and implement a written startup, shutdown, and malfunction plan according to the O&M requirements in 40 CFR 63.6(e). Operation and maintenance plans are also required for each by-product coke oven battery and for capture systems and control devices applied to pushing emissions.

The plan for general O&M of each by-product coke oven battery must address procedures (and frequency of measurements, where appropriate) for underfiring gas parameters, flue and cross-wall temperatures, preventing ovens from being pushed before they are fully coked, preventing overcharging and undercharging of ovens, and inspecting flues, burners, and nozzles.

The O&M plan for capture systems and control devices applied to pushing emissions must describe procedures for monthly inspections of capture systems, preventative maintenance requirements for control devices, and corrective action requirements for baghouses. In the event of a bag leak detection system alarm, the plan must include specific requirements for initiating corrective action to determine the cause of the problem within 1 hour, initiating corrective action to fix the problem within 1 working day, and completing all corrective actions needed to fix the problem as soon as practicable.

To demonstrate initial compliance, plant owners or operators must certify in their notification of compliance status that they have prepared the plan according to the rule requirements and that the plant will operate according to the plan beginning no later than the first day that compliance is required under § 63.7283 of the final rule. To demonstrate continuous compliance, plant owners or operators must adhere to the requirements in the plan and keep records documenting conformance with these requirements.

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

The notification, recordkeeping, and reporting requirements rely on the NESHAP General Provisions in 40 CFR part 63, subpart A. Table 1 of the final rule (subpart CCCCC) shows each of the requirements in the General Provisions (§§ 63.2 through 63.15) and whether they apply.

The final rule requires the owner or operator to submit each initial notification in the NESHAP General Provisions that applies to them. An initial notification of applicability with general information about the plant must be submitted within 120 days of April 14, 2003 (or for a new affected source, 120 days after becoming subject to the rule). A notification of performance tests must be provided at least 60 calendar days before each test. A notification of compliance status must be submitted within 60 calendar days of the compliance demonstration if a performance test is required or within 30 calendar days if no performance test is required. For the work practice standard for pushing for a by-product coke oven battery with horizontal flues, plant owners or operators must provide prior written notification of the date the study of flue temperatures will be initiated. Other notification requirements that may apply are shown in Table 1 of the final rule (subpart CCCCC).

The final rule requires plant owners or operators to maintain the records required by the NESHAP General Provisions that are needed to document compliance, such as performance test results; copies of startup, shutdown, and malfunction plans and associated corrective action records; monitoring data; and inspection records. All records must be kept for a total of 5 years, with the records from the most recent 2 years kept onsite. The final rule also requires that the current O&M plans be kept onsite and available for inspection upon request for the life of the affected source or until the affected source is no longer subject to the rule requirements.

We revised the reporting requirement for battery stacks from monthly to quarterly in response to comments. For other affected sources, semiannual reports are required for any deviation from an emission limitation (including an operating limit), work practice standard, or O&M requirement. Each report is due no later than 30 days after the end of the reporting period. If no deviation occurred and no continuous monitoring systems were out of control, only a summary report is required. If a deviation did occur, more detailed information is required.

An immediate report is required if there were actions taken during a startup, shutdown, or malfunction that were not consistent with the startup, shutdown, and malfunction plan. Deviations that occur during a period of startup, shutdown, or malfunction are not violations if the owner or operator demonstrates to the permitting authority that the source was operating in accordance with the startup, shutdown, and malfunction plan.

H. What Are the Compliance Deadlines?

We revised the compliance date for an existing affected source from 2 years to 3 years after April 14, 2003. New or reconstructed sources that startup on or before April 14, 2003. New or reconstructed sources that startup after April 14, 2003 must comply upon initial startup.

III. Summary of Responses to Major Comments

A. Why Did We Select a Work Practice Standard for Fugitive Pushing Emissions?

We proposed an opacity standard for fugitive pushing emissions as one potential option for controlling sources in the category. Because we were uncertain about the feasibility of an opacity standard for this emission point, we also proposed a work practice standard. We refer to the opacity standard as Option 1 and the work practice standard as Option 2. Both options would require observing four consecutive pushes per day and determining the average opacity of each push. The opacity limits proposed were 20 percent for short batteries and 25 percent for tall batteries based on the average of four pushes. We proposed a work practice standard that would be triggered if the average opacity of any single push exceeded 30 percent for short batteries and 35 percent for tall batteries.

Comment: Four commenters stated a preference for a work practice standard. Two commenters said that EPA has not and cannot adequately subcategorize batteries to account for the range in performance achievable by batteries implementing a state-of-the-art O&M program for the minimization of green pushes. The commenters stated there are not enough data to set standards for each subcategory reflecting the performance of the top sources over time and under the worst foreseeable conditions. Therefore, the opacity standard (Option 1) must be rejected.

One commenter prefers an opacity standard over a work practice standard because he believes a work practice standard could cause several problems: (1) It would not allow them to effectively manage their long-term wall and end flue replacement program; (2) the constant change from taking ovens out of service and putting them back into service would result in damage to the battery; and (3) many of the actions required by the work practice standard would disrupt the heating system, damage refractory, and increase emissions in other areas of the battery.

Three commenters urged EPA to combine the opacity standard with the work practice standard. One commenter noted that the opacity standard does not require that an oven be repaired, and the work practice standard may not be sufficient to keep a problem oven from continuing to operate. Two commenters prefer a combination because it would more closely approach their existing State standards. Another commenter prefers the opacity standard but would support combining it with the work practice standard if it improved compliance.

Response: The insight provided by several commenters and further consideration of the two options we proposed lead us to conclude that a work practice standard that requires owners or operators to take appropriate corrective action and to confirm that they have successfully addressed problem ovens is the most effective approach to control fugitive pushing emissions. A work practice standard is appropriate because pushing emissions are fugitive in nature and are not emitted through a conveyance designed to capture and control HAP. Moreover, there is no practicable measurement methodology to determine the mass emission rate of HAP in these fugitive emissions. Section 112(h) of the CAA explicitly permits a work practice standard in lieu of an emission standard when emissions cannot be emitted through a conveyance.

We concluded an opacity limit as proposed would not be appropriate because coke oven batteries cannot entirely avoid green pushes. While facilities can significantly reduce the frequency of green pushes by carefully monitoring emissions and responding quickly to diagnose and repair problem ovens, they cannot eliminate them altogether. (For example, a flue may become plugged unexpectedly during coking.) Any steps that we might take to allow for the periodic exceedance of an emission limit (such as averaging across several pushes) would undermine the purpose of the standard by allowing malfunctioning ovens to continue operating without diagnosis or repair. Therefore, the most meaningful approach is to establish a work practice standard that requires coke oven facilities to identify and successfully remedy problems that result in increased emissions. Accordingly, considering the nature of the pushing operation, it is appropriate for EPA to establish a work practice standard that uses opacity observations to identify problem ovens (those which produce green pushes) and requires corrective action to diagnose and correct the problem.

There was a fundamental flaw in the opacity standard as proposed in that it would not ensure that an oven producing green pushes is repaired. If the four-push average exceeds the opacity standard, one or more of the ovens may have serious problems that require immediate attention to prevent subsequent green pushes. However, these problem ovens would not have to be observed again for 90 days, and during that 90-day period, many green pushes could occur.

Additionally, an opacity standard based on the average of four pushes does not reliably indicate when a green push has or has not occurred. We analyzed data from two batteries that had frequent green pushes to compare the effectiveness of the opacity standard and work practice standard in identifying green pushes. We found cases where the four-push average had one oven with a green push (an opacity of more than 30 percent), but the proposed opacity standard was not exceeded because the other pushes had low opacity. We also found cases where the 20 percent opacity standard was marginally exceeded, but none of the pushes were green (*i.e.*, all four pushes were less than 30 percent).

In contrast, the work practice standard is triggered by opacity observations of individual ovens. When a green push occurs, the problem oven is identified. This oven is then placed on a remedial track that requires appropriate repairs in a reasonable period of time. Consequently, the work practice standard will not allow green pushes to occur unabated.

Several commenters urged us to combine the performance standard (an opacity limit) with the work practice standard. While we are not adopting a specific performance standard in the form of a hard and fast opacity limit, and we do not believe that such a standard would provide a feasible mechanism for identifying and remediating individual problem ovens, we do recognize the benefits of having a mechanism to prevent ongoing failure to repair problem ovens.

Therefore, we have revised the work practice standard to ensure that ovens are properly repaired. As proposed, the work practice standard could have allowed individual problem ovens to continue to operate, while cycling through corrective actions without ever being properly repaired. Consequently, we revised the work practice standard to require an owner or operator to report a deviation after two consecutive unsuccessful attempts at corrective action and/or increased coking time and after two consecutive unsuccessful attempts to decrease coking time on the same oven. In addition, subsequent consecutive failures to repair or remediate the same oven must be reported as deviations. There is adequate time provided to correct any problems during the two attempts—20 days or more. An owner or operator may also remove an oven from service for as long as necessary to conduct repairs.

This approach accurately reflects the performance of the best-controlled facilities in the category that already implement oven diagnosis and repair programs to successfully identify and remedy problems that lead to increased emissions. Most of the best-controlled batteries will seldom have an oven that enters the oven-directed program, and our data show that none have had the types of continuing problems that would result in a deviation under the final rule.

We believe that the work practice standard can be coordinated with a long-term repair program. The batteries upon which the MACT floor is based have a long-term repair program to address major repairs. This long-term program includes procedures for minimizing impacts on adjacent ovens and preventing excess emissions when ovens must be removed from service. In addition, these batteries have effective procedures for identifying problem ovens and making short-term repairs. There is no legitimate reason why this type of approach cannot be implemented at other coke oven batteries.

B. What Changes Did We Make to the Work Practice Standard for Fugitive Pushing Emissions?

Comment: Four commenters requested revisions to the work practice standard. They requested that the final rule require that all pushes be read exactly according to EPA Method 9 (40 CFR part 60, appendix A). They suggested that Method 9 observations begin with the first detectable movement of the coke mass because this would ensure that observations are made through the entire pushing sequence and would be consistent with how the data were generated for the proposed rule. They also requested that we not require ''independent certified observers'' because all Method 9 certified observers are qualified and should be treated the same.

The commenters asked that we allow the observation of more than four pushes per day so that every oven can be observed at least once every 3 months. In addition, the commenters asked that we clarify that the pushing schedule can be changed for operational reasons, but not ''solely'' for the purpose of changing the sequence of observations. They suggested we add a definition for ''increased coking time'' to prevent confusion with ''batterywide extended coking time,'' which is a term used only in the provisions for battery stacks.

Response: We agree with some of these suggested revisions and do not agree with others. We do not agree that all ovens must be read exactly as required by Method 9 (40 CFR part 60, appendix A) because we are aware that the view of opacity from some ovens may be obstructed within the sector required by the method. In this situation, the observer may need to find an alternative position to make opacity observations. We added a provision to the final rule requiring plant owners or operators to identify ovens that cannot be observed according to Method 9 and develop alternative procedures to determine if green pushes are occurring on those ovens. The alternative procedures must be submitted to the permitting authority for review and approval. Facilities must operate according to these procedures beginning no later than the applicable compliance date. Based on the information we received, there are only a few ovens that fall into this category.

We have written the final rule to state that Method 9 observations should begin with the first detectable movement of the coke mass. In addition, we agree that any Method 9 certified observer is qualified to make Method 9 opacity observations and have changed the provision to reflect this. We also agree that more than four ovens may be observed each day because doing so provides more scrutiny of performance and greater assurance that every oven can be observed at least once every 90 days.

With respect to the comment on changing pushing schedules, we do not believe that the precise language that the commenter suggests is appropriate (specifically the word ''solely'' would create an extraordinarily difficult burden of proof for purposes of enforcement). However, we do agree with the general idea underlying the commenter's recommendation, and we have written the final rule to acknowledge that there may be legitimate operational reasons for changing the pushing schedule. If an oven's pushing schedule is changed and that oven was previously scheduled to be one of the four consecutive ovens to be observed, the operator must keep records to document the legitimate operational reason for changing the schedule. We have added a definition for ''increased coking time'' to prevent confusion with ''batterywide extended coking time,'' which is a term used only in the provisions for battery stacks.

Comment: Several commenters said that the rule should not mandate that an oven be taken out of service if corrective actions are unsuccessful. In addition, commenters requested that after taking corrective actions or extending the coking time, we allow two coking cycles before requiring the facility to demonstrate that the action was successful. They believe it is necessary to observe only one push rather than two to show the action was successful. Finally, the commenters asked that we drop the requirement to obtain the permitting authority's permission to return an oven to service and instead change this to a notification requirement.

Response: We added a provision that requires plant owners or operators to report a deviation after two unsuccessful attempts at repair, and with this requirement, we believe that it is not necessary to require that an oven be removed from service. Our goal at proposal was to require that an oven be removed from service for repair to avoid endless cycling of unsuccessful repairs. This is accomplished in the final rule by requiring that the owner or operator repair the problem oven, and by requiring the owner or operator to bring any two or more consecutive failures to repair the same oven to the attention of the permitting authority by reporting the failure(s) as a deviation.

Based on the comments requesting more time to fix problem ovens before they are removed from service, we investigated the time that might reasonably be required to take corrective action and to demonstrate that it was successful. We discovered that there can be some situations in which it would be difficult to obtain valid opacity observations within the time period in the proposed rule. For example, the opportunity to make opacity observations according to the prescribed procedures depends on coking time, number of daylight hours, sun angle, and other factors. In some cases, it may take several days to meet the criteria in the opacity procedures for a specific oven, especially during the winter months for ovens with 22 to 26 hour coking times. Consequently, we have written the final rule to require that the opacity observations to demonstrate that corrective action and/or increased coking time was successful be made on the first two pushes that can be observed according to the procedures for opacity observations after the allowed number of days. We decreased the time period to complete corrective action or increase coking time because the time period no longer includes the demonstrative observations. We have written the final rule to allow either 10 days or the number of days determined using an equation, whichever is greater. Depending on coking time, the time period allows batteries 10 to about 20 days to diagnose the problem,

implement corrective action or increased coking time, and stabilize oven temperatures. After that period, the next two pushes that can be observed according to the procedures must be observed to evaluate the success of corrective action. Days during which the oven is removed from service do not count in the allowed number of days. We also revised the standard to allow two attempts at repair in case the problem is not initially diagnosed properly or in case a second independent problem develops.

We do not agree that two coking cycles are always necessary to stabilize an oven after corrective actions are taken. We believe there is one case in which two coking cycles are needed to allow the oven temperature to stabilize—when an oven that was placed on increased coking time has been repaired and the owner or operator attempts to qualify for decreased coking time. We have written the final rule to reflect this. There is adequate time within the allowed number of days following corrective action or increased coking time to allow the oven temperatures to stabilize. Adequate time is also provided for ovens removed from service because the time during which the oven is not operating is not counted in the allowed number of days. Relative to the comment that only one observation is needed to demonstrate the problem has been corrected, we continue to believe that two pushes should be observed rather than one to provide assurance that the repair was successful.

We agree that it is not necessary for a permitting authority to approve returning an oven to service, and the permitting authority may not be able to act within a time frame that is consistent with the legitimate needs of the operator. In addition, this requirement places a burden on the permitting authority that they may not want and may not have the resources or expertise to implement.

Comment: Three commenters stated that batteries with horizontal flues would be subject to significantly less stringent standards than batteries with vertical flues. They requested that these batteries be subject to the same pushing requirements as by-product batteries with vertical flues.

Response: As stated in the proposal preamble, unlike vertical flue batteries which include 25 to 37 individual flues along each oven wall, the horizontal flue system of the Semet Solvay design includes only five horizontal flues which convey the combustion gases from top to bottom in serpentine fashion. Because the hot combustion products flow from one flue to the next, the heat control of each upper flue materially affects the heating conditions in the next flue down. Each flue in the horizontal design affects a larger percentage of the total coke mass than for the vertical flue design. Consequently, the occurrence of a heating or combustion problem in any of the single horizontal flues could have a significant adverse effect on the degree and uniformity of coking across the entire length of the coke bed. Therefore, since these differences in design and operation affect pushing emissions, we developed a separate subcategory for batteries with horizontal flues. There are two batteries with this design, and the work practice standard is based on the procedures used by these batteries to prevent green pushes. We have received no technical information that indicates this subcategorization was inappropriate.

However, after we reviewed the proposed work practice standard, we concluded a revision was needed to ensure that a source would not be permitted to operate its ovens below the lowest acceptable minimum flue temperature. The source is required to evaluate coking time, coking temperature, and factors associated with incomplete coking to develop minimum flue temperatures and coking times. The source must then submit to the Administrator (or delegated authority) for review and approval a written plan that establishes minimum flue temperatures for different coking times, and that establishes the lowest acceptable minimum flue temperature for oven operation. The plan must also include appropriate operation and maintenance procedures to ensure compliance upon plan implementation.

C. What Changes Did We Make to the Requirements for Pushing Emission Control Devices (PECD)?

Comment: Two commenters stated that there is no legal basis for setting MACT standards for PECD given EPA's conclusion at proposal that PECD are not part of the MACT floor for pushing. One commenter also stated that EPA has no legal authority to set operating limits for PECD because they are simply a surrogate for the underlying emission limits. In addition, PECD should not be regulated because the emissions do not contain HAP. The commenter said the limits and monitoring are not necessary and are duplicative of other existing requirements, including State implementation plans, title V permits, and the compliance assurance monitoring program.

Response: We believe emission limits for PECD are appropriate and warranted. As we explained in the preamble to the proposed rule, there are several reasons we do not believe it is appropriate to include PECD as a component of the MACT floor for pushing. However, we also indicated at proposal that operation of these controls does have some HAP reduction benefits (although we are unable to specifically quantify these benefits in terms of either HAP or PM), and there is little doubt that these devices help to reduce HAP emissions, including POM and trace metals. Thus, while minimizing the frequency of green pushes is the basis for the MACT floor, and achieving this objective will significantly decrease the emission benefits of the add-on control devices, these devices will continue to reduce HAP emissions to some degree on a continuing basis. The EPA has reasonably concluded that it is important to ensure that the benefits related to the operation of these controls are maintained, and the appropriate way to accomplish this is to require that coke plants operate existing PECD at all times in a manner consistent with good air pollution control practices. Accordingly, today's requirements establish emission limitations for existing control devices that reflect the performance of well-operated PECD. The costs associated with the PECD requirements include those for periodic Method 5 testing, parametric monitoring (such as bag leak detection systems), and monthly inspections of capture and control systems. These costs are only $4,600 per year for a typical coke plant, which is a minimal cost relative to the overall costs of the final rule (less than 0.5 percent). While we are not able to quantify the HAP emission reductions associated with operation of PECD or with the PECD requirements in the final rule, we believe the requirements preserving these existing benefits of PECD's and ensuring proper operation of control devices is warranted. For example, bag leak detection systems and monthly inspections will ensure that corrective actions are taken promptly when the systems are not operating properly, and these actions will reduce excess emissions that might have occurred in the absence of the continuous monitoring.

We do not believe that the limits will duplicate existing State requirements because the limits are generally equivalent to or more stringent than those currently required by State agencies or contained in existing operating permits. By establishing these limits in national standards, we will

ensure that emissions from PECD do not increase in the future if existing State limits are relaxed or if operating permits are modified.

Comment: One commenter stated that the proposed emission limits are based on very limited data and that the limits are not achievable. In support of this claim, the commenter submitted statistical analyses that indicate that their ''statistically-derived values'' are much higher than the proposed limits and should be used in lieu of the proposed values. Several commenters submitted additional test data for EPA to consider and asked for higher limits.

Response: We reviewed the additional test data submitted by the commenters. These new data include additional tests on mobile scrubber cars used on short batteries and baghouses applied to cokeside sheds. We also reexamined our approach for selecting appropriate emission limits. We believe that it is not necessary to use statistical analyses to account for variability because these control devices operate uniformly over time, and the data indicate there is little variability when the device is operating properly. In addition, we have data for most of the affected control devices, including multiple tests for some units. We believe the large database inherently accounts for variability and choosing the highest three-run average means that 100 percent of the test results are below the limit. However, to account for inherent variability in the performance of the control devices (to more accurately reflect the actual performance of existing controls over time), we established the limits in the final rule by rounding the highest test results to two decimal places.

The two additional tests for mobile scrubber cars used on short batteries include one result slightly below the proposed limit and another slightly higher than the proposed limit. The tests were conducted using approved methods and appear to be representative of normal operation. In addition, the results expanded the database for this subcategory from three tests to five tests. The averages for the five tests ranged from 0.012 to 0.025 lb/ton of coke. We rounded 0.025 lb/ton to 0.03 lb/ton and established this value as the limit for mobile scrubber cars for short batteries.

We also reviewed additional test data for three batteries equipped with a cokeside shed and baghouse, including three tests conducted on a 6-meter battery at one plant and four tests conducted on two 4-meter batteries designated Batteries 1 and 4 at a second plant. The proposed limit for existing cokeside sheds and baghouses was 0.004 gr/dscf. With the additional data, we now have results for ten tests at five batteries with cokeside sheds and baghouses. All three tests on the 6-meter battery are below the proposed limit of 0.004 gr/dscf with values of 0.0009, 0.0024, and 0.0013 gr/dscf.

The additional data for the two 4-meter batteries plus one test result which we previously had gives us a total of five tests for that plant, four tests for Battery 1 and one test for Battery 4. The company acknowledged that a 1984 test which averaged 0.02 gr/dscf was performed under unrepresentative conditions because of operational problems with the baghouse during the test. We examined the other test reports for Battery 1 and found that a test conducted in 1984 averaged 0.004 gr/dscf, a 1988 test averaged 0.0036 gr/dscf, and a 1998 test averaged 0.01 gr/dscf. The test reports indicate that sampling was performed under representative conditions. Consequently, we revised the emission limit for batteries with cokeside sheds to 0.01 gr/dscf to reflect the level that has been demonstrated as achievable.

No additional data were submitted for two types of capture and control systems: mobile scrubber cars on tall batteries and mobile scrubber cars that capture during travel. We chose as limits the highest three-run average for each of these systems—0.01 lb/ton for mobile scrubber cars on tall batteries and 0.04 lb/ton for mobile scrubber cars that capture during travel. We believe the data show that these limits are achievable because they have been achieved at several different batteries over time.

Comment: One commenter requested that the 5 percent operating limit for bag leak detection system alarms be deleted. The commenter argued that the 5 percent of the operating time limit on alarms is arbitrary. In addition, the commenter stated that EPA had not demonstrated that a bag leak detection system is workable for pushing emissions given the intermittent operation of PECD (*e.g.*, 1 to 2 minutes during a push, which occurs every 15 to 20 minutes).

Response: We reexamined the proposed operating limit of 5 percent for bag leak detection systems and concluded it was not applicable for PECD. The proposed limit was adopted from other rules and was not based on data associated with baghouses applied to pushing emissions. We do not believe we can establish an appropriate limit in this application because of the intermittent operation of baghouses. For most systems, the device operates only during the push, which is 1 to 2 minutes every 10 to 15 minutes. In addition, we have no information on the effect of the initial surge when full evacuation is applied at the beginning of the push. Thus, given that emissions from PECD are not the major focus of today's final rule and are not included as part of the MACT floor calculation, we believe it is appropriate to delete the 5 percent operating limit for bag leak detection systems. However, we are requiring that corrective actions be initiated within 1 hour of an alarm.

D. What Changes Did We Make to the Requirements for Quenching?

Comment: One commenter stated that the definition of ''clean water'' needs to be clarified because it would be difficult or impossible for plant owners or operators to prove that some sources of water meet the definition. As proposed, ''clean water'' is defined to mean surface water from a river, lake, or stream; water meeting drinking water standards; water that has been used for non-contact cooling; or process wastewater that has been treated to remove organic compounds and/or dissolved solids. The commenter recommended that the definition be revised to state that any water can be used except untreated process wastewater from the by-product plant. Another commenter agreed and further stated that plant owners or operators should be allowed to use any source of makeup water that has been used historically and previously deemed acceptable by EPA. One commenter requested that the definition include water that is used in seals on standpipes; otherwise, the plant owner or operator would have to draw an additional 200,000 gallons per day from Lake Michigan and treat the same amount of water before discharge. Another commenter requested that storm water and wash down water associated with non-recovery plants be added. The commenter stated that this water does not pick up toxic chemicals at non-recovery plants, and using this water for quenching eliminates discharge to the watershed and reduces the amount of water drawn from the water supply.

Other commenters requested that the proposed definition of ''clean water'' be tightened by developing minimum quality standards for quench water. Two commenters suggested that ''clean water'' be defined as meeting Federal safe drinking water standards. Two other commenters asked that EPA establish a limit for TDS because the solids contain metals. Commenters also noted that the definition includes process water that has been treated to remove organic compounds and/or

dissolved solids. They stated that removal of both solids and organics should be required, and EPA must establish appropriate levels of treatment. If an appropriate level of treatment cannot be defined, then all process wastewater should be prohibited for quenching coke. One commenter suggested that return water from the quench tower and all process wastewater be prohibited, whether treated or not. This commenter further stated that if EPA chooses to allow treated process water, then daily sampling and analysis must be required to ensure the treatment process is removing the contaminants.

Response: We agree that altering the definition of ''clean water'' is necessary to clarify what types of water can be used as makeup water. We also agree that it is appropriate to establish TDS limits to control quench water quality. Our intent at proposal was that untreated process wastewater, whether contaminated with solids, organic compounds, or both, should not be used for quenching. These contaminants have been shown to increase HAP emissions from quenching, and most plants have abandoned the practice of disposing of untreated wastewater in the quenching process.

Process wastewater must be treated to remove solids and organics, as necessary, before it can be used for quenching. This can be ensured by requiring that process wastewater be treated to meet effluent limitation guidelines. It was not our intent to prohibit the use of non-contact process water, cooling water, or other miscellaneous sources of water that would not contribute to additional emissions from pushing. For example, the water used to seal standpipe caps and storm water are not process wastewater. To address the above concerns, we have replaced the term ''clean water'' in the proposed rule with the term ''acceptable makeup water,'' which is defined in the final rule to mean surface water from a river, lake, or stream; water meeting drinking water standards; storm water runoff and production area cleanup water except for water from the by-product recovery plant area; process wastewater treated to meet effluent limitations guidelines; any of these types of water that has been used only for non-contact cooling or in water seals; or water from scrubbers used to control pushing emissions. We believe this change accommodates most if not all of the concerns stated in the comments.

Water used for quenching is usually taken from a sump near the base of the quench tower and consists of recycled water and makeup water. Recycled water is the runoff from quenching that is returned from the quench tower to the sump. Makeup water is from some other source, such as a river or lake, and is added to replenish the water lost by evaporation during quenching. Dissolved solids in the quench water contribute to HAP and PM emissions during quenching. We reviewed data from tests at quench towers and found that HAP emissions increase as the TDS level in the quench water increases. Several States have established TDS limits for the quench water to ensure that high levels of solids are not present to contribute to emissions from the quench tower. We agree with commenters who requested that TDS limits be established in the final rule and that the quench water be sampled periodically. We reviewed the available data on TDS levels in quench water. However, we have only limited data, much of the data included the use of by-product plant wastewater which is no longer used for quenching, and we could not validate the procedures that were used for sampling and analysis by the various plants. In addition, we have only one data point for reporting plants, which does not reflect the variability in TDS levels over time.

We also reviewed existing State and local TDS requirements and found that most of the existing limits are in the range of 800 to 1,500 mg/L. We evaluated the five most stringent State limits (12 percent of 36 quench towers) applied to quench towers at coke plants that were operating during the development of the proposed rule. Two quench towers (one in Michigan and one in Ohio) are subject to a limit of 800 mg/L, two others in Illinois are subject to a limit of 1,200 mg/L, and one in Illinois is subject to a limit of 1,500 mg/L. We chose the mean value of 1,100 mg/L as the MACT floor. We chose the mean value rather than the median value (1,200 mg/L) because we usually use the median value when that value is associated with a specific source and the operation of a particular emission control technology. In this case, the mean value is more appropriate because the State limits are not directly related to the level of control achieved by a particular control technology.

We also evaluated the test method used by the plants that comprise the MACT floor and determined that all of these plants measure TDS by drying the filterable residue at 103 to 105° C. (There is an alternative TDS method that specifies drying at 180° C.) Our data indicate that the lower drying temperature is more appropriate for coke plant quench water because the higher temperature evaporates some organic PM and results in an inaccurate measure of TDS. This organic PM contributes to the total TDS and emissions at the normal temperatures of the quench water before it is used for quenching. Consequently, we specify that TDS must be determined by drying the filterable residue at 103 to 105° C.

We believe the existing limits are a reasonable proxy for TDS levels that can be achieved, and they account for the normal variability in TDS levels. For example, the available data indicate that TDS concentrations in clean makeup water are usually less than 600 mg/L. We reviewed data for several plants and concluded that TDS in quench water is about twice that in makeup water. Therefore, we believe a level of 1,100 mg/L TDS or less is indicative of acceptable quench water. Consequently, we are establishing this level in the final rule as the maximum TDS allowed in quench water. We are also requiring weekly sampling of the quench water to ensure that water quality is maintained.

Although a TDS limit is a proven historical method for limiting emissions from quenching, we believe that plant owners or operators can achieve equivalent levels of HAP control by limiting the HAP in quench water. To provide additional flexibility, we included in the final rule an alternative to develop a site-specific limit for the quench water for the HAP that are indicators of coke oven emissions—benzene, benzo(a)pyrene, and naphthalene. To qualify for the alternative, a plant owner or operator must sample and analyze at least nine quench water samples for TDS, benzene, benzo(a)pyrene, and naphthalene. The alternative HAP limit is the highest sum of the concentrations of the HAP in any single sample that meets the TDS limit of 1,100 mg/L.

Comment: Two commenters noted that baffles control PM and that EPA had not explained why PM is a suitable surrogate for HAP emissions from quenching. One commenter said that the requirement for 95 percent coverage of quench towers by baffles is unclear and that coverage cannot be measured. Another commenter stated that the 95 percent coverage requirement is too lenient and will allow the release of significant emissions. The commenter noted that two layer baffles which cause two changes in flow direction have been installed and successfully used at coke plants in Allegheny County, Pennsylvania.

Several commenters stated that it is difficult or impossible to wash and repair baffles in cold and inclement weather because water lines freeze and

severe weather makes the process dangerous. One commenter said the company does not allow work on the quench tower during freezing weather due to safety concerns. One commenter recommended that baffles be cleaned daily or as often as weather conditions allow and that repair of damaged or missing baffles be initiated within 30 days and completed as soon as practicable. Materials needed for repair are not always available in a short time frame. Three commenters said that their experience indicates that monthly cleaning of baffles is adequate and added that additional cleaning should be performed if the upward flow of the steam plume is obstructed. These commenters also noted that it may not be possible to complete repairs to damaged baffles prior to the next scheduled monthly inspection and suggested that a requirement to initiate repairs prior to the next inspection is more appropriate.

Two commenters noted that some plants have backup quench stations that are used when the primary quench tower is unavailable because of maintenance or malfunction. These backup stations are used only a small amount of the time, and they are not designed to capture quenching emissions (*i.e.*, they have no stacks or baffles). Both commenters requested that EPA clarify that backup quench stations are not subject to the requirements for baffles.

Response: We agree with the comment that baffles reduce PM emissions. In addition, we believe that baffles also reduce the emission of HAP metal compounds contained in the particles of grit released, as well as semivolatile and VOC such as polycyclic aromatic hydrocarbons (PAH) and benzene, when green coke is quenched. Semivolatile organic compounds evolve from green coke and condense to form fine PM or condense on other particles during the quenching process. Consequently, baffles reduce emissions of both metal and organic HAP.

To clarify the provision for 95 percent coverage, we revised the coverage requirement to read that no more than 5 percent of the cross sectional area of the quench tower can be exposed to the sky when viewed from below. We understand there are several different designs and configurations used for baffles. However, there are many different factors that affect emissions from quench towers. For example, it is likely that the design of the quench tower affects the level of emission control and may also affect the choice of baffle type and configuration. Consequently, we do not believe it is appropriate to prescribe in the final rule the use of a particular baffle type or design and have provided the flexibility for the owner or operator to make this determination. However, all types of baffles must have adequate coverage to provide effective emission control for quench towers.

We believe requirements for daily cleaning, monthly inspection, and prompt repair of damaged baffles are reasonable and necessary to ensure that they are well maintained. These practices are common at many coke plants, and the frequencies are based on industry responses to a nationwide survey. However, we agree that repairing baffles during inclement weather conditions is a personnel safety issue. We also agree that there may be operational problems when baffles are washed during freezing weather. Consequently, we revised the requirement to wash baffles daily to allow daily washing to be suspended when the highest measured ambient temperature throughout the day is less than 30 degrees Fahrenheit. We understand that the time needed for repair can vary depending on the extent of repair needed and the availability of materials. Therefore, we have written the final rule to require that the repair of damaged or missing baffles be initiated within 30 days and that the repairs be completed as soon as practicable.

We gathered information on the use of backup quench stations by surveying coke plants. A total of nine coke plants among the 12 responding to the survey have 13 backup quench stations. Only one of these 13 backup quench stations is equipped with baffles, and the stations are typically used less than 5 percent of the time. Based on the information we received, we conclude that MACT for backup quench stations at existing coke oven batteries does not include the installation of baffles. We have specified in the final rule our subcategorization of backup quench stations, and we have defined this subcategory as those quench stations that are used for less than 5 percent of quenches for any coke oven battery in any 12-month period. However, the best-controlled similar source has baffles in the backup quench station. Consequently, the requirements for installing, inspecting, cleaning, and repairing baffles applies to backup quench stations at new batteries.

In addition, the TDS limit applies to backup quench stations because the existing State limits we used to determine the MACT floor apply to quench water, whether it is used in regular quench towers or backup quench stations. There is no reason to permit the use of higher TDS levels for quenching merely because a backup quench station is used.

E. What Were the Major Comments on the Proposed Standard for Battery Stacks?

Comment: One commenter stated that EPA has not adequately subcategorized batteries in developing the MACT for battery stacks, and that the EPA should have distinguished among short and tall batteries, pulse-fired batteries, batteries using preheated coal, batteries of older design, and foundry coke batteries that are consistently operated at longer coking times. The commenter also stated that each battery is unique with respect to the factors that affect battery stack emissions. Consequently, the O&M program required to control these emissions differs from battery to battery. The factors affecting emissions include the age and condition of the battery's refractory, the condition of the stack canal, the battery design, sealing carbon, coal properties and coke specifications, and the design and efficiency of the by-product recovery plant.

Response: We disagree with the commenter that we have not subcategorized batteries adequately in establishing performance standards for battery stacks. Our current database shows that the proposed opacity limits have been achieved on a continuing basis by numerous batteries with a variety of physical and operational differences. We do not believe that more subcategories are needed beyond those in the proposed rule.

At proposal, we had months of COMS data demonstrating that the limits for by-product batteries had been achieved by ten of the 46 by-product batteries. After proposal, we obtained data for six additional batteries that also achieve the proposed limits. In total, we have 13 months of data for each of five batteries, 18 months of data for each of eight batteries, and 12, 50, and 65 months of data for each of three batteries. Our database now covers 35 percent of all by-product batteries, spanning all types and ages and covering all seasons of the year. Among the 16 batteries demonstrated to have achieved the proposed MACT opacity limits are short and tall batteries, furnace and foundry coke batteries, and batteries with gun flue and under jet underfiring systems. Also included are batteries that use pulse firing, preheated coal, and underfiring gas with and without desulfurization. They range in age from 8 to 46 years.

We examined the data to determine if subcategories are needed for different battery designs as mentioned by the commenter. We could find no difference in performance levels achieved by short vs. tall batteries, under jet vs. gun flue, furnace vs. foundry coke, or the other factors mentioned by the commenter. We found a difference in performance when batteries are placed on extended coking, which reduces sealing carbon on the oven walls. Consequently, we developed a separate emission limit for batteries on extended coking. We also acknowledge that batteries operating routinely on coking cycles that are longer than that for which they are designed could qualify as extended coking. To accommodate this, we have revised the definition for ''batterywide extended coking'' to mean increasing the average coking time for all ovens in a battery by 25 percent or more over the manufacturer's design rate.

Comment: One commenter stated that EPA must develop a work practice standard for battery stacks because it is not feasible to set performance standards. The commenter noted that EPA uses three approaches to determine MACT floors (emissions data, existing emission limits from State regulations or operating permits, or technology). We used the technology approach for battery stacks. The commenter believes that the use of a technology approach for battery stacks is inappropriate because the technology is not an air pollution control device but is good O&M. The commenter further states that good O&M results in widely varying degrees of emission control. Good O&M is not a ''technology'' for the purposes of applying the technology approach because, unlike an add-on control device, good O&M cannot be associated with specific emission control levels at different batteries. The only way to establish a floor for battery stacks is to use actual emissions data. However, EPA does not have enough emissions data to subcategorize batteries adequately or to characterize performance over time and under the worst foreseeable operating conditions.

The commenter provided details for a suggested work practice program for battery stacks. The program would be implemented when a daily average opacity trigger is exceeded. The commenter suggests that the values EPA proposed for the emission limits (15 percent for normal coking time and 20 percent for extended coking time) be used as the triggers. The work practice program would include requirements for worker training as well as procedures for controlling oven to flue leakage, including diagnostic procedures for identifying problem ovens and a list of corrective actions.

Response: The EPA established the MACT floor for battery stacks by identifying the level of performance consistently achieved by the best-performing units. Because units in this category currently do not use add-on control devices to reduce stack emissions, we looked at other measures employed by existing facilities in order to identify the best-performing units. Specifically, we looked at equipment, work practices, and operational factors that reduce emissions at existing facilities. We identified good systematic operation and maintenance, along with operation of COMS to monitor stack opacity, as the most important factors affecting the level of emissions from coke oven battery stacks. In fact, we determined that all of the best-performing batteries employ measures that have the same basic features, including COMS monitoring to identify problems, ongoing systematic maintenance of oven walls, and procedures for prompt and efficient repair of damaged ovens. We also identified, based on the large amount of available COMS data, the level of performance that units employing such measures are consistently achieving. Therefore, this approach identifies what is being done at existing facilities to reduce coke oven emissions from battery stacks and correlates those control activities to a specific level of performance. Because a sufficient number of units in the category are employing these control strategies and achieving the identified emissions limitation, this limit is MACT for existing sources.[2] Contrary to the commenter's assertion, there is no basis to conclude that any existing battery, with appropriate repairs, monitoring and maintenance, would be unable to achieve a similar level of control. Therefore, it was reasonable here for EPA to use this approach to identify the best units and to establish emission limits based on the performance of those units.

Because the opacity data used to establish the emissions limits are, in fact, representative of what a well operated coke oven battery can achieve (with comprehensive O&M, continuous monitoring, and an efficient repair program), it is not only reasonable but required that EPA establish such a limit. Because these emissions are emitted through a stack, can be measured, and could be captured and controlled with the application of available emission control technologies, it would not be appropriate for EPA to establish a work practice standard in lieu of an emissions standard. Thus, the CAA requires us to develop an emission standard in this case because a work practice standard is allowed in lieu of an emission standard only if it is not feasible to prescribe or enforce an emission standard.

The primary factor affecting battery stack emissions is the condition of oven walls. Batteries that are well maintained can achieve the MACT limits. When the walls are allowed to deteriorate and cracks occur, coke oven emissions escape through the cracks into the underfiring system and lead to high stack opacity. Another important factor in meeting the proposed limit is using COMS for diagnostic purposes. When an opacity spike occurs, the last oven charged can be identified and corrective actions can be made to repair the oven. High stack opacity may on occasion be caused by combustion problems, which also result in HAP emissions. However, these are easily remedied by proper adjustment and operation of the underfiring system.

We identified batteries with good O&M practices, and we collected opacity data from their COMS to characterize the level of control they have achieved. As discussed earlier, these batteries are representative of the types currently operating, and aside from the effect of extended coking, we found no basis to develop additional subcategories. The opacity limits identified as MACT have been achieved by these different types of batteries by using good O&M procedures. The performance level associated with the floor has been demonstrated as achievable and is representative of the performance of the top performing sources.

We agree that a good work practice program is essential to maintain control of battery stack emissions and that we derived the emission limits based on the best-controlled batteries which have such programs. However, a work practice standard alone would not ensure that battery stacks are well maintained on a continuing basis. In contrast, a performance standard will ensure that battery stack emissions are well controlled and allows plant owners or operators the flexibility to implement a site-specific program appropriate for their operation. In addition, we are obligated under the CAA to set

[2] While, in the proposal, we described this as a ''technology approach'' and referred to good O&M as the ''MACT technology,'' these were merely short hand references for EPA's detailed analysis of the measures employed by best facilities to achieve the greatest degree of emissions reductions. In fact, the emission limit for battery stacks is based on the level of performance that the best existing sources consistently achieve, as demonstrated by actual emission test data (in the form of COMS readings).

numerical emission limitations unless it is infeasible, and we must prescribe requirements for continuous monitoring whenever possible. Moreover, we have battery stack emissions data for 16 batteries that cover many months of operation.

Comment: Two commenters claimed that EPA arbitrarily and improperly excluded critical COMS data. Specifically, 3 years of data were excluded for Battery 1 at Bethlehem Steel, Burns Harbor, and all of the data for U.S. Steel Gary Works were excluded. The commenter said that EPA excluded the Burns Harbor data because end flue repairs were suspended in 1994, but noted that twice as many end flue repairs were made in 1993 and after 1994 than in previous years. The commenter said that EPA excluded the Gary Works data because they do not represent periods of good systematic O&M. The commenter further stated that the data for two tall batteries at Gary Works should be included because they represent the battery's performance prior to a $150 million program of end flue and through wall repair. There is no basis for excluding these data, and EPA must account for all operating periods (other than startups, shutdowns, and malfunctions) to accurately reflect a source's performance under the most adverse operating conditions over time. The commenter provided details on periods of startup, shut down, and malfunction events that occurred during 31 days of the 2 years of data for Gary Works. The commenter concluded that EPA must include all of the data for Battery 1 at Burns Harbor and the data for Gary Works (except for the 31 days they identified) in the MACT floor analysis. Another commenter asked that all of the data supplied for Battery 1 at Burns Harbor be included in the analysis because it represents consistent operating practices over the period.

Response: We strongly disagree that our exclusion of certain COMS data was inappropriate. The data that we did not use were not generated at a facility while it was implementing an effective O&M program. We explained that the data for Battery 1 at Burns Harbor collected in the early 1990's do not represent proper MACT level O&M because repairs were decreased to maintain production while adjacent Battery 2 was being rebuilt. The data clearly show that abandoning repairs increased opacity, which averaged 8.1 percent prior to 1996 and 4.8 percent afterwards. It is also apparent that the earlier data show high opacity spikes (daily averages of 35 to 40 percent) that are indicative of damaged oven walls and clearly show that good O&M practices were not in place. By definition, good O&M means that the opacity spikes identified by the COMS would have been investigated, problems diagnosed, and repairs made. When repairs were resumed and better O&M procedures were followed, the daily average opacity was consistently maintained below 15 percent for subsequent months. We have 50 consecutive months of data for Battery 1 showing that it achieves the MACT emission limit on a continuing basis. In addition, these are the most recent data which indicate that the battery has improved with age rather than deteriorated with age. It is obvious that the measures taken in the early 1990s to maintain oven walls were not the same as those taken in subsequent years, and this has been confirmed by company data that show no end flue repairs in 1994.

A similar situation exists at U.S. Steel Gary Works. We obtained documentation from the company that shows that batteries were not employing good O&M during high opacity events. Equipment malfunction or untimely repair was the cause of most exceedances during that time period. However, subsequent events confirm that oven repairs and good systematic O&M resulted in batteries achieving the emission limit. After a $150 million program of end flue and through wall repairs, the four batteries at Gary Works have improved performance significantly and can meet the battery stack limit. We have COMS data for 13 recent months that show the four batteries have achieved the MACT level of control. Moreover, these batteries also show improved performance rather than deterioration as they age.

Comment: One commenter stated that EPA's emission estimates for battery stacks are based on a flawed correlation between opacity and HAP. The commenter said that no correlation exists because high opacity can be caused by situations that do not indicate the presence of HAP, such as poor or incomplete combustion and the presence of sulfates. The commenter noted that the data from two EPA tests (ABC Coke and Bethlehem Steel, Burns Harbor) show no correlation between opacity and PAH, extractable organics, or metal HAP. The commenter concluded that EPA has not met its burden of demonstrating that opacity is a reasonable surrogate for HAP emissions.

Response: It is well established that opacity is directly correlated with the concentration of particles in emissions. Our tests have shown that the particles emitted during coke oven pushing contain HAP compounds, including POM and metals. Higher opacities mean a higher concentration of particles and therefore higher concentrations of HAP. The correlation of opacity and HAP is also supported by the common industry practice of using COMS to detect leaks in oven walls. Coke oven gas escapes from ovens with cracked or damaged walls and results in increased battery stack opacity. These coke oven emissions that are detected with the COMS are a listed HAP.

The two batteries that we tested had very low opacities (2 to 5 percent), and it is not possible to develop a clear correlation over such a narrow range. The emissions from these well-controlled batteries are not representative of batteries that have high opacity emissions from their battery stacks.

Infrequently, higher opacity occurs because of combustion problems which result in the formation of products of incomplete combustion that also contain HAP. For example, such emissions contain a variety of PAH such as benzo(a)pyrene. All the available data related to poor performing batteries, including the available emissions data and the historical use of COMS to detect coke oven emissions, indicate that coke oven emissions can be appropriately identified by looking at opacity. Therefore, limiting opacity is an appropriate mechanism for limiting such emissions from coke oven battery stacks.

Comment: Two commenters stated that COMS should be used for diagnostic purposes only and not as an enforcement tool. One commenter cited an industry survey that identified 26 COMS used on 27 batteries and stated that they are used as a diagnostic tool. Most of these COMS are no longer commercially available and cannot meet EPA's PS 1 requirements. Consequently, it is inappropriate to use data generated by these COMS to set standards or to demonstrate compliance with an opacity limit. Another commenter also stated that the COMS do not meet PS 1 requirements and added that EPA should not base emission limits on data that were collected by methods less stringent than those that will be used to determine compliance. One commenter noted that there are demonstrated inaccuracies that make COMS unreliable at opacity levels below 10 percent. This is important because battery stack opacity is below 5 percent most of the time at virtually all batteries, so a large number of unreliable data points would be averaged with fewer reliable data points to calculate the daily average opacity. Another

commenter stated that COMS readings are inaccurate and that only opacity data generated by Method 9 observations should be used to determine compliance.

Response: We proposed a performance standard for battery stacks in the form of an opacity limit. The COMS have been well established as the preferred method to show continuous compliance with an opacity limit. The data we collected from the U.S. Steel batteries at Clairton and the more recent data from the new COMS installed at U.S. Steel Gary Works were from devices that meet PS 1 requirements.

Moreover, while we agree that COMS are subject to greater imprecision at low opacity, this imprecision is inherent in the data we used to develop the opacity limits; therefore, these limits already account for this imprecision. Additionally, the limits have been shown to be achievable by numerous batteries over time. Consequently, we believe that COMS are an appropriate tool for enforcement of the standard that was based on data collected by COMS.

We do agree with the commenter that COMS should also be used for diagnostic purposes. A COMS is an important part of good systematic O&M that we identified as the MACT floor technology. The COMS will provide information on problem ovens in need of repair, and diagnostic procedures coupled with corrective action will provide good control of HAP emissions from battery stacks.

We do not believe observations by Method 9 should be used to determine compliance. A COMS provides data in a more timely manner, monitors emissions continuously, and is the only reasonable way to collect enough data to determine a daily average opacity.

F. What Changes Did We Make to the Requirements for Soaking?

Comment: Several commenters requested that we remove the soaking work practice and recordkeeping requirements from the final rule. They claim that soaking emissions cannot be considered as part of the rule because they were addressed in the 1993 negotiated coke ovens: Charging, topside, and door leaks NESHAP (40 CFR part 63, subpart L), which addressed charging emissions and emissions from leaking topside port lids, offtake systems, and doors. The commenters state that the 1993 coke ovens: charging, topside, and door leaks NESHAP allow up to three ovens to be dampered off the main and not counted when determining daily compliance with the offtake system(s) standard, and as a result, are specifically addressed in the previous negotiated coke ovens: charging, topside, and door leaks NESHAP. Two commenters expressed support for the proposed soaking standards.

Response: Soaking emissions were not specifically addressed in the regulatory negotiations for the coke ovens: charging, topside, and door leaks NESHAP. The emissions points that were negotiated include charging, topside port lid leaks, offtake system(s) leaks, door leaks, and bypass or bleeder stacks. For offtake systems, the coke ovens: charging, topside, and door leaks NESHAP limit the percent allowed to leak during the coking cycle. The only discussion regarding soaking is a clarification in the test method about whether open standpipes on ovens dampered off the main would be counted as offtake leaks. There was no discussion of the voluminous emissions that can occur when the standpipes are opened on an oven containing green coke and the emissions do not ignite. We believe soaking emissions are part of the pushing operation because they occur when the oven is taken off the collecting main in preparation for pushing. These emissions should be addressed by the MACT standards because they have not been addressed previously by EPA, they are a source of coke oven emissions (a listed HAP), and reasonable control measures are available to reduce emissions.

Comment: Two commenters requested an alternative work practice requirement for soaking emissions instead of the proposed requirement that the emissions be ignited. Because soaking emissions are often not readily ignitable, several commenters noted the potential danger involved in the proposed requirement to ignite open standpipes since the flame is often invisible and igniting the emissions could cause serious injury if the person igniting the flame doesn't see it or is standing downwind from the standpipe.

Several commenters stated that the proposed requirement carries an enormous administrative burden associated with the tracking, recording, and documenting the lighting off of standpipes. One commenter said that any benefits associated with the proposed soaking requirements are far outweighed by the administrative costs.

Response: After the close of the comment period, we visited several coke plants specifically to observe and discuss soaking emissions. We determined visible emissions from soaking stem from two causes: leaks from the collecting main (*i.e.*, the standpipe is not completely sealed from the main) and incomplete coking (''green'' coke). The cause of emissions can be determined by introducing a small amount of aspirating steam/liquor into the standpipe. If this stops the emissions, the cause of emissions is a leak from the collecting main. Corrective actions from collecting main leaks include reseating the damper dish, cleaning the flushing liquor distribution piping, or leaving the aspirating steam or liquor cracked on. If introducing aspirating steam/liquor does not stop the emissions, the cause is incomplete coking. Further investigation (for example, by opening charging lids and observing the coke mass) will determine if the entire charge or only a small portion is undercoked. Emissions from incomplete coking (*e.g.*, from a cold spot) can be ignited by partially or fully removing the oven lid nearest the standpipe, cracking open and then closing an adjacent standpipe cap, partially opening the opposite aspirating steam valve for a short time on a dual main battery, or manually igniting emissions.

In light of our increased understanding of soaking emissions and their causes and remedies, we have replaced the proposed requirements for soaking with a more comprehensive work practice requirement. If there are visible emissions from a standpipe during soaking, plant personnel must immediately investigate the cause and take corrective action. Work practices are triggered by visible emissions from standpipes that do not ignite automatically. These work practices include eliminating soaking emissions that result from leaks from the collecting main and either igniting the emissions or continuing coking if they are caused by incomplete coking.

We understand that there are times when igniting standpipes can be dangerous. If flames are invisible (*i.e.*, there are no visible emissions from the standpipe), there is no need to attempt ignition. If there are visible emissions that do not automatically ignite, several things can be done to encourage self-ignition, such as partially or fully removing the oven lid nearest the standpipe, cracking open and then closing an adjacent standpipe cap, or partially opening the opposite aspirating steam valve for a short time on a dual main battery. We know of at least one plant with three batteries that require their workers to manually ignite emissions when they do not ignite automatically. Devices are available to ignite these emissions safely and at a reasonable distance from the open standpipe. The work practice standard requires owners or operators to train workers in the procedures to reduce

soaking emissions, and each plant should address all aspects of safety. We do not believe that the revised standard jeopardizes the safety of plant workers.

We agree with the commenters that the proposed standard would have imposed unnecessary administrative burdens related to soaking emissions. Accordingly, we have eliminated the requirement to document the ignition of soaking emissions every time an oven is dampered off the main. Instead, plant owners or operators must prepare and operate at all times according to a written work practice plan for soaking.

G. What Changes Did We Make to the O&M Requirements?

Comment: Several commenters suggested changes to the general batterywide O&M plan. One comment was to delete the requirement to measure or compute the air:fuel ratio. They noted that the air:fuel ratio is not normally measured, and it would be impractical to do so given that it would require flow measurements of every oven's air box and gas orifice to calculate the air:fuel ratio. Another commenter asked that the requirement for procedures to prevent pushing an oven out of sequence be deleted. The commenter argued that any oven placed on extended coking would of necessity be pushed out of sequence. Another comment was to delete the requirement for procedures to prevent undercharging an oven because it has no effect on emissions. In addition, procedures for measuring the volume of coal are not appropriate because many plants calculate coal volume rather than measure it.

Response: We agree that it may be impractical to measure air:fuel ratio since it is a calculated value at most plants. Different parameters may be monitored at different plants to ensure the underfiring system is operating properly. Consequently, we have written the final rule to require that the O&M plan include the frequency and method of recording underfiring gas parameters. We are also clarifying the pushing an oven out of sequence requirement. Our intent is to prevent an oven from being pushed ahead of schedule before it is fully coked. We have added language to the final rule that clarifies this intent. Relative to undercharging an oven, we disagree with the commenter that undercharging does not produce emissions. Our research and discussions with coke plant operators indicate that undercharging an oven can produce excess carbon on oven walls, which can result in pushing difficulties and excess pushing emissions. Consequently, we are retaining the requirements for procedures to prevent both undercharging and overcharging ovens in the work plan. We understand that not all plant owners or operators measure the volume of coal; some calculate the volume from weight and bulk density. We have written the language in the final rule to require procedures for determining coal volume rather than the measurement of coal volume.

H. Why Did We Change the Compliance Dates for Existing Sources?

Comment: Several commenters said 3 years should be allowed to achieve compliance. They note that we provided no rationale for providing for only 2 years to comply and should give the full 3 years allowed under the CAA. Two years may not provide enough time because of the substantial work that must be done at many plants, and it may be difficult to raise the necessary capital to make the batteries compliant.

Response: The CAA requires that compliance occur as expeditiously as practicable, but no later than 3 years after the effective date of the standard. (*See* CAA section 112(i)(3).) We agree with the commenters that many batteries will require extensive repairs in order to comply with the final rule. As a result, we have written the final rule to provide the 3 years allowed under the CAA. We estimate that 23 batteries will need major repairs (oven patching, endflues, and through walls) with capital costs of $2.4 million to $9.3 million per battery. In light of the cost and time required to complete necessary repairs at many facilities, we believe that a period of 3 years is necessary in order to allow sufficient time for all existing facilities to meet the requirements of today's final rule.

IV. Summary of Environmental, Energy, and Economic Impacts

A. What Are the Air Emission Reduction Impacts?

Accurate emission estimates are difficult to make, especially for fugitive pushing emissions. When green pushes occur, most of the organic HAP escape the capture system and are unmeasurable. Our estimate for pushing emissions is based on our best estimates of the capture efficiency and frequency of green pushes. For battery stacks, we have opacity and emissions data for the best-controlled batteries. We had to extrapolate the test data to account for higher emissions from batteries with higher battery stack opacities.

At the proposal stage, we estimated that coke oven emissions, measured as methylene chloride extractable organic compounds from pushing, quenching, and battery stacks, would be reduced to approximately 500 tpy from a baseline level of about 1,000 tpy. However, six coke plants have permanently closed since proposal. Our current best estimate is that baseline emissions of 680 tpy will be reduced to 390 tpy. The final rule will also significantly reduce emissions of other HAP, such as metals, benzene, toluene, and other volatile compounds that are not included with the extractable organics. However, we do not have a reliable means of estimating the overall reductions of these other HAP emissions. Today's final rule will also reduce emissions of PM.

B. What Are the Cost Impacts?

As with the emission estimates, there is some uncertainty in the cost estimates. However, we obtained data from the best-controlled plants for their emission controls, oven repairs, and work practices. After proposal, we collected additional information on the extent of repairs needed and their costs. We then applied these costs to those batteries that we project would be impacted by the rule and developed revised cost estimates. We estimate that 23 batteries may require major repairs and could incur aggregate capital costs of $2.4 to $9.3 million to rebuild ovens to meet the final standards for pushing and battery stacks. Relative to add-on air pollution controls, we believe that three batteries will have to install baffles in their quench towers to control quenching emissions. We do not believe that any plant will need to upgrade or install new control devices to meet the final PECD standard.

Monitoring is also an important component of MACT and the cost estimate. Approximately 20 batteries will need to install COMS on their battery stacks. In addition, 44 batteries are expected to incur the cost of visible emissions observers for daily observation of pushing emissions, and 18 bag leak detection systems must be installed. The cost of control and monitoring associated with the above measures is expected to result in nationwide capital costs of about $90 million and total annualized cost of $20 million per year.

C. What Are the Economic Impacts?

We conducted a detailed assessment of the economic impacts associated with the final rule. We expect the compliance costs associated with the final rule to increase the price of coke, steel mill products, and iron castings and to reduce their domestic production and

consumption. We project the market price of furnace coke to increase by almost 3 percent, while the market price for foundry coke should remain unchanged. We expect domestic production of furnace coke to decline by 348,000 tons, or 3.9 percent. For foundry coke, we expect domestic production to remain unchanged.

In terms of industry impacts, we project the integrated steel producers to experience a slight decrease in operating profits, which reflects increased costs of furnace coke inputs and associated reductions in revenues from producing their final products. Our analysis indicates that one of the captive batteries may stop supplying furnace coke to the open market but will continue to satisfy internal coke requirements for integrated steel production. Through the market impacts described above, the final rule will produce impacts within the merchant segment. We project merchant plants producing furnace coke as a whole to experience profit increases in response to the final rule. We also project other merchant plants producing foundry coke and some integrated steel plants to lose profits. Furthermore, the economic impact analysis indicates that two of the 13 merchant batteries producing furnace coke are at risk of closure, while none of the foundry coke producing batteries are at risk of closure. For more information, consult the economic impact analysis supporting the final rule.

D. What Are the Non-Air Environmental and Energy Impacts?

The technology associated with MACT relies primarily on pollution prevention techniques in the form of work practices and diagnostic procedures to prevent green pushes and leakage through oven walls. Consequently, there are no significant non-air environmental and energy impacts.

V. Statutory and Executive Order Reviews

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 a ''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;

(C) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(M) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(R) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this final rule is a ''significant regulatory action'' because it may raise novel legal or policy issues. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

The information collection requirements in the final rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An information collection request (ICR) document has been prepared by EPA (ICR No. 1995.02), and a copy may be obtained from Susan Auby by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822T), 1200 Pennsylvania Avenue, 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 enforceable 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 NESHAP. These recordkeeping and reporting requirements are specifically authorized by section 112 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 Agency policies in 40 CFR part 2, subpart B.

The final rule requires maintenance inspections of control devices, two types of written plans (in addition to the startup, shutdown, and malfunction plan required by the NESHAP General Provisions), and a special study of flue temperatures for by-product coke oven batteries with horizontal flues (with notification of the date the study is to be initiated). Quarterly reports of any deviations from the applicable limits for battery stacks are required, with semiannual reports for other affected sources. The recordkeeping requirements require only the specific information needed to determine compliance.

The annual public reporting and recordkeeping burden for this collection of information (averaged over the first 3 years after April 14, 2003, is estimated to total 2,200 labor hours per year at a total annual cost of $131,000. This estimate includes one-time performance tests and reports, preparation and submission of O&M plans, and a special study of flue temperatures; one-time purchase and installation of continuous monitoring systems; one-time preparation of a standard operating procedures manual for baghouses; one-time preparation of a startup, shutdown, and malfunction plan, notifications, and recordkeeping. Total capital/startup costs associated with the monitoring requirements over the 3-year period of the ICR is estimated at $32,000 per year, with operation and maintenance costs of $51,000 per year.

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 purpose of collecting, validating, and verifying information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing 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 number for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the final rule. The EPA has also determined that the final rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impact of today's final rule on small entities,

small entity is defined as: (1) A small business according to the U.S. Small Business Administration size standards for NAICS codes 331111 and 324199 ranging from 500 to 1,000 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. We have determined that three of the 14 companies within this source category are small businesses. Small businesses represent 21 percent of the companies within the source category and are expected to incur 19 percent of the total industry compliance costs of $20.2 million. The average total annual compliance cost is projected to be $1.3 million per small company, while the average for large companies is projected to be $1.5 million per company. Under the final rule, the mean annual compliance cost, as a share of sales, for small businesses is 2 percent, and the median is 1.8 percent, with a range of 0.3 to 5 percent. We estimate that two of the three small businesses may experience an impact greater than 1 percent of sales, and one small businesses will experience an impact greater than 3 percent of sales.

We performed an economic impact analysis to estimate the changes in product price and production quantities for the firms affected by the final rule. Although this industry is characterized by average profit margins of close to 4 percent, our analysis indicates that none of the coke manufacturing plants owned by small businesses are at risk of closure because of today's final rule. In fact, the one plant manufacturing furnace coke is projected to experience an increase in profits because of market feedbacks related to higher costs incurred by competitors, while the plants manufacturing foundry coke are projected to experience a decline in profits of slightly less than 5 percent.

In summary, the economic impact analysis supports our conclusion that a regulatory flexibility analysis is not necessary because, while a few small firms may experience initial impacts greater than 1 percent of sales, no significant impacts on their viability to continue operations and remain profitable are indicated. See Docket OAR–2002–0085 for more information on the economic analysis.

Although the final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of the final rule on small entities. We have made site visits to these plants and discussed potential impacts and opportunities for emissions reductions with company representatives. Company representatives have also attended meetings held with industry trade associations to discuss the rule development, and we have included provisions in the final rule that address their concerns.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, 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 the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires 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 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.

Today's final rule contains no Federal mandate (under the regulatory provisions of the UMRA) for State, local, or tribal governments. The EPA has determined that the final rule does not contain a Federal mandate that may result in estimated costs of $100 million or more for State, local, and tribal governments, in the aggregate, or to the private sector in any 1 year. Thus, the final rule is not subject to the requirements of sections 202 and 205 of the UMRA. The EPA has also determined that the final rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's final rule is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

The final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected facilities are owned or operated by State governments. Thus, Executive Order 13132 does not apply to the final rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 9, 2000) requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.''

The final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal

government and Indian tribes. No tribal governments own or operate coke oven batteries. Thus, Executive Order 13175 does not apply to the final rule.

G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant,'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The final rule is not subject to Executive Order 13045 because it is based on control technology and not health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This final rule is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that the final rule is not likely to have any adverse energy effects.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law 104–113; 15 U.S.C 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (such as material specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The final rule involves technical standards. The final rule requires plants to use EPA Methods 1, 2, 2F, 2G, 3, 3A, 3B, 4, 5, 5D, and 9 in 40 CFR part 60, appendix A, and PS 1 in 40 CFR part 60, appendix B. Consistent with the NTTAA, we conducted searches to identify voluntary consensus standards in addition to these EPA methods.

One voluntary consensus standard was identified as applicable to PS 1. The standard, ASTM D6216 (1998), Standard Practice for Opacity Monitor Manufacturers to Certify Conformance with Design and Performance Specifications, has been incorporated by reference into PS 1 (65 FR 48920, August 10, 2000).

Our search for emissions monitoring procedures identified 16 other voluntary consensus standards. We determined that 13 of these standards identified for measuring emissions of HAP or surrogates would not be practical due to lack of equivalency, detail, or quality assurance/quality control requirements. The three remaining consensus standards identified in the search are under development or under EPA review. Therefore, the final rule does not require these voluntary consensus standards. *See* Docket OAR–2002–0085 for more detailed information on the search and review results.

Section 63.7322 of the final rule lists the EPA test methods that coke plants are required to use when conducting a performance test. Most of these methods have been used by States and the industry for more than 10 years. Nevertheless, 40 CFR 63.7(e) and (f) allow any State or source to apply to EPA for permission to use an alternative method in place of any of the EPA test methods or performance specifications required by a rule.

J. Congressional Review Act

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

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: February 28, 2003.

Christine Todd Whitman,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 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 CCCCC to read as follows:

Sec.

Subpart CCCCC—National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks

What This Subpart Covers

Emission Limitations and Work Practice Standards

Operation and Maintenance Requirements

General Compliance Requirements

Initial Compliance Requirements

What This Subpart Covers

§ 63.7280 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for pushing, soaking, quenching, and battery stacks at coke oven batteries. This subpart also establishes requirements to demonstrate initial and continuous compliance with all applicable emission limitations, work practice standards, and operation and maintenance requirements in this subpart.

§ 63.7281 Am I subject to this subpart?

You are subject to this subpart if you own or operate a coke oven battery at a coke plant that is (or is part of) a major source of hazardous air pollutant (HAP) emissions. A major source of HAP is a plant site 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.

§ 63.7282 What parts of my plant does this subpart cover?

(a) This subpart applies to each new or existing affected source at your coke plant. The affected source is each coke oven battery.

(b) This subpart covers emissions from pushing, soaking, quenching, and battery stacks from each affected source.

(c) An affected source at your coke plant is existing if you commenced construction or reconstruction of the affected source before July 3, 2001.

(d) An affected source at your coke plant is new if you commenced construction or reconstruction of the affected source on or after July 3, 2001. An affected source is reconstructed if it meets the definition of ''reconstruction'' in § 63.2.

§ 63.7283 When do I have to comply with this subpart?

(a) If you have an existing affected source, you must comply with each emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you no later than April 14, 2006.

(b) If you have a new affected source and its initial startup date is on or before April 14, 2003, you must comply with each emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you by April 14, 2006.

(c) If you have a new affected source and its initial startup date is after April 14, 2003, you must comply with each emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you upon initial startup.

(d) You must meet the notification and schedule requirements in § 63.7340. Several of these notifications must be submitted before the compliance date for your affected source.

Emission Limitations and Work Practice Standards

§ 63.7290 What emission limitations must I meet for capture systems and control devices applied to pushing emissions?

(a) You must not discharge to the atmosphere emissions of particulate matter from a control device applied to pushing emissions from a new or existing coke oven battery that exceed the applicable limit in paragraphs (a)(1) through (4) of this section:

(1) 0.01 grain per dry standard cubic foot (gr/dscf) if a cokeside shed is used to capture emissions;

(2) 0.02 pound per ton (lb/ton) of coke if a moveable hood vented to a stationary control device is used to capture emissions;

(3) If a mobile scrubber car that does not capture emissions during travel is used:

(i) 0.03 lb/ton of coke for a control device applied to pushing emissions from a short battery, or

(ii) 0.01 lb/ton of coke for a control device applied to pushing emissions from a tall battery; and

(4) 0.04 lb/ton of coke if a mobile scrubber car that captures emissions during travel is used.

(b) You must meet each operating limit in paragraphs (b)(1) through (3) of this section that applies to you for a new or existing coke oven battery.

(1) For each venturi scrubber applied to pushing emissions, you must maintain the daily average pressure drop and scrubber water flow rate at or above the minimum levels established during the initial performance test.

(2) For each hot water scrubber applied to pushing emissions, you must maintain the daily average water pressure and water temperature at or above the minimum levels established during the initial performance test.

(3) For each capture system applied to pushing emissions, you must:

(i) Maintain the daily average fan motor amperes at or above the minimum level established during the initial performance test; or

(ii) Maintain the daily average volumetric flow rate at the inlet of the control device at or above the minimum level established during the initial performance test.

§ 63.7291 What work practice standards must I meet for fugitive pushing emissions if I have a by-product coke oven battery with vertical flues?

(a) You must meet each requirement in paragraphs (a)(1) through (7) of this

section for each new or existing by-product coke oven battery with vertical flues.

(1) Observe and record the opacity of fugitive pushing emissions from each oven at least once every 90 days. If an oven cannot be observed during a 90-day period due to circumstances that were not reasonably avoidable, you must observe the opacity of the first push of that oven following the close of the 90-day period that is capable of being observed in accordance with the procedures in § 63.7334(a), and you must document why the oven was not observed within a 90-day period. All opacity observations of fugitive pushing emissions for batteries with vertical flues must be made using the procedures in § 63.7334(a).

(2) If two or more batteries are served by the same pushing equipment and total no more than 90 ovens, the batteries as a unit can be considered a single battery.

(3) Observe and record the opacity of fugitive pushing emissions for at least four consecutive pushes per battery each day. Exclude any push during which the observer's view is obstructed or obscured by interferences and observe the next available push to complete the set of four pushes. If necessary due to circumstances that were not reasonably avoidable, you may observe fewer than four consecutive pushes in a day; however, you must observe and record as many consecutive pushes as possible and document why four consecutive pushes could not be observed. You may observe and record one or more non-consecutive pushes in addition to any consecutive pushes observed in a day.

(4) Do not alter the pushing schedule to change the sequence of consecutive pushes to be observed on any day. Keep records indicating the legitimate operational reason for any change in your pushing schedule which results in a change in the sequence of consecutive pushes observed on any day.

(5) If the average opacity for any individual push exceeds 30 percent opacity for any short battery or 35 percent opacity for any tall battery, you must take corrective action and/or increase coking time for that oven. You must complete corrective action or increase coking time within either 10 calendar days or the number of days determined using Equation 1 of this section, whichever is greater:

$$X = 0.55 * Y \quad \text{(Eq. 1)}$$

Where:

X = Number of calendar days allowed to complete corrective action or increase coking time; and

Y = Current coking time for the oven, hours.

For the purpose of determining the number of calendar days allowed under Equation 1 of this section, day one is the first day following the day you observed an opacity in excess of 30 percent for any short battery or 35 percent for any tall battery. Any fraction produced by Equation 1 of this section must be counted as a whole day. Days during which the oven is removed from service are not included in the number of days allowed to complete corrective action.

(6)(i) You must demonstrate that the corrective action and/or increased coking time was successful. After a period of time no longer than the number of days allowed in paragraph (a)(5) of this section, observe and record the opacity of the first two pushes for the oven capable of being observed using the procedures in § 63.7334(a). The corrective action and/or increased coking time was successful if the average opacity for each of the two pushes is 30 percent or less for a short battery or 35 percent or less for a tall battery. If the corrective action and/or increased coking time was successful, you may return the oven to the 90-day reading rotation described in paragraph (a)(1) of this section. If the average opacity of either push exceeds 30 percent for a short battery or 35 percent for a tall battery, the corrective action and/or increased coking time was unsuccessful, and you must complete additional corrective action and/or increase coking time for that oven within the number of days allowed in paragraph (a)(5) of this section.

(ii) After implementing any additional corrective action and/or increased coking time required under paragraph (a)(6)(i) or (a)(7)(ii) of this section, you must demonstrate that corrective action and/or increased coking time was successful. After a period of time no longer than the number of days allowed in paragraph (a)(5) of this section, you must observe and record the opacity of the first two pushes for the oven capable of being observed using the procedures in § 63.7334(a). The corrective action and/or increased coking time was successful if the average opacity for each of the two pushes is 30 percent or less for a short battery or 35 percent or less for a tall battery. If the corrective action and/or increased coking time was successful, you may return the oven to the 90-day reading rotation described in paragraph (a)(1) of this section. If the average opacity of either push exceeds 30 percent for a short battery or 35 percent for a tall battery, the corrective action and/or increased coking time was unsuccessful, and you must follow the procedures in paragraph (a)(6)(iii) of this section.

(iii) If the corrective action and/or increased coking time was unsuccessful as described in paragraph (a)(6)(ii) of this section, you must repeat the procedures in paragraph (a)(6)(ii) of this section until the corrective action and/or increased coking time is successful. You must report to the permitting authority as a deviation each unsuccessful attempt at corrective action and/or increased coking time under paragraph (a)(6)(ii) of this section.

(7)(i) If at any time you place an oven on increased coking time as a result of fugitive pushing emissions that exceed 30 percent for a short battery or 35 percent for a tall battery, you must keep the oven on the increased coking time until the oven qualifies for decreased coking time using the procedures in paragraph (a)(7)(ii) or (a)(7)(iii) of this section.

(ii) To qualify for a decreased coking time for an oven placed on increased coking time in accordance with paragraph (a)(5) or (6) of this section, you must operate the oven on the decreased coking time. After no more than two coking cycles on the decreased coking time, you must observe and record the opacity of the first two pushes that are capable of being observed using the procedures in § 63.7334(a). If the average opacity for each of the two pushes is 30 percent or less for a short battery or 35 percent or less for a tall battery, you may keep the oven on the decreased coking time and return the oven to the 90-day reading rotation described in paragraph (a)(1) of this section. If the average opacity of either push exceeds 30 percent for a short battery or 35 percent for a tall battery, the attempt to qualify for a decreased coking time was unsuccessful. You must then return the oven to the previously established increased coking time, or implement other corrective action(s) and/or increased coking time. If you implement other corrective action and/or a coking time that is shorter than the previously established increased coking time, you must follow the procedures in paragraph (a)(6)(ii) of this section to confirm that the corrective action(s) and/or increased coking time was successful.

(iii) If the attempt to qualify for decreased coking time was unsuccessful as described in paragraph (a)(7)(ii) of this section, you may again attempt to qualify for decreased coking time for the oven. To do this, you must operate the oven on the decreased coking time. After no more than two coking cycles on

the decreased coking time, you must observe and record the opacity of the first two pushes that are capable of being observed using the procedures in § 63.7334(a). If the average opacity for each of the two pushes is 30 percent or less for a short battery or 35 percent or less for a tall battery, you may keep the oven on the decreased coking time and return the oven to the 90-day reading rotation described in paragraph (a)(1) of this section. If the average opacity of either push exceeds 30 percent for a short battery or 35 percent for a tall battery, the attempt to qualify for a decreased coking time was unsuccessful. You must then return the oven to the previously established increased coking time, or implement other corrective action(s) and/or increased coking time. If you implement other corrective action and/or a coking time that is shorter than the previously established increased coking time, you must follow the procedures in paragraph (a)(6)(ii) of this section to confirm that the corrective action(s) and/or increased coking time was successful.

(iv) You must report to the permitting authority as a deviation the second and any subsequent consecutive unsuccessful attempts on the same oven to qualify for decreased coking time as described in paragraph (a)(7)(iii) of this section.

(b) As provided in § 63.6(g), you may request to use an alternative to the work practice standards in paragraph (a) of this section.

§ 63.7292 What work practice standards must I meet for fugitive pushing emissions if I have a by-product coke oven battery with horizontal flues?

(a) You must comply with each of the requirements in paragraphs (a)(1) through (4) of this section.

(1) Prepare and operate by a written plan that will eliminate or minimize incomplete coking for each by-product coke oven battery with horizontal flues. You must submit the plan and supporting documentation to the Administrator (or delegated authority) for approval no later than 90 days after completing all observations and measurements required for the study in paragraph (a)(3) of this section or April 14, 2004, whichever is earlier. You must begin operating by the plan requirements by the compliance date that is specified in § 63.7283. The written plan must identify minimum flue temperatures for different coking times and a battery-wide minimum acceptable flue temperature for any oven at any coking time.

(2) Submit the written plan and supporting documentation to the Administrator (or delegated authority) for review and approval. Include all data collected during the study described in paragraph (a)(3) of this section. If the Administrator (or delegated authority) disapproves the plan, you must revise the plan as directed by the Administrator (or delegated authority) and submit the amended plan for approval. The Administrator (or delegated authority) may require you to collect and submit additional data. You must operate according to your submitted plan (or submitted amended plan, if any) until the Administrator (or delegated authority) approves your plan.

(3) You must base your written plan on a study that you conduct that meets each of the requirements listed in paragraphs (a)(3)(i) through (x) of this section.

(i) Initiate the study by July 14, 2003. Notify the Administrator (or delegated authority) at least 7 days prior to initiating the study according to the requirements in § 63.7340(f).

(ii) Conduct the study under representative operating conditions, including but not limited to the range of moisture content and volatile matter in the coal that is charged.

(iii) Include every oven in the study and observe at least two pushes from each oven.

(iv) For each push observed, measure and record the temperature of every flue within 2 hours before the scheduled pushing time. Document the oven number, date, and time the oven was charged and pushed, and calculate the net coking time.

(v) For each push observed, document the factors to be used to identify pushes that are incompletely coked. These factors must include (but are not limited to): average opacity during the push, average opacity during travel to the quench tower, average of six highest consecutive observations during both push and travel, highest single opacity reading, color of the emissions (especially noting any yellow or brown emissions), presence of excessive smoke during travel to the quench tower, percent volatile matter in the coke, percent volatile matter and percent moisture in the coal that is charged, and the date the oven was last rebuilt or completely relined. Additional documentation may be provided in the form of pictures or videotape of emissions during the push and travel. All opacity observations must be conducted in accordance with the procedures in § 63.7334(a)(3) through (7).

(vi) Inspect the inside walls of the oven after each observed push for cool spots as indicated by a flue that is darker than others (the oven walls should be red hot) and record the results.

(vii) For each push observed, note where incomplete coking occurs if possible (*e.g.*, coke side end, pusher side end, top, or center of the coke mass). For any push with incomplete coking, investigate and document the probable cause.

(viii) Use the documented factors in paragraph (a)(3)(v) of this section to identify pushes that were completely coked and those that were not completely coked. Provide a rationale for the determination based on the documentation of factors observed during the study.

(ix) Use only the flue temperature and coking time data for pushes that were completely coked to identify minimum flue temperatures for various coking times. Submit the criteria used to determine complete coking, as well as a table of coking times and corresponding temperatures for complete coking as part of your plan.

(x) Determine the battery-wide minimum acceptable flue temperature for any oven. This temperature will be equal to the lowest temperature that provided complete coking as determined in paragraph (a)(3)(ix) of this section.

(4) You must operate according to the coking times and temperatures in your approved plan and the requirements in paragraphs (a)(4)(i) through (viii) of this section.

(i) Measure and record the percent volatile matter in the coal that is charged.

(ii) Measure and record the temperature of all flues on two ovens per day within 2 hours before the scheduled pushing time for each oven. Measure and record the temperature of all flues on each oven at least once each month.

(iii) For each oven observed in accordance with paragraph (a)(4)(ii) of this section, record the time each oven is charged and pushed and calculate and record the net coking time. If any measured flue temperature for an oven is below the minimum flue temperature for an oven's scheduled coking time as established in the written plan, increase the coking time for the oven to the coking time in the written plan for the observed flue temperature before pushing the oven.

(iv) If you increased the coking time for any oven in accordance with paragraph (a)(4)(iii) of this section, you must investigate the cause of the low

flue temperature and take corrective action to fix the problem. You must continue to measure and record the temperature of all flues for the oven within 2 hours before each scheduled pushing time until the measurements meet the minimum temperature requirements for the increased coking time for two consecutive pushes. If any measured flue temperature for an oven on increased coking time falls below the minimum flue temperature for the increased coking time, as established in the written plan, you must increase the coking time for the oven to the coking time specified in the written plan for the observed flue temperature before pushing the oven. The oven must continue to operate at this coking time (or at a longer coking time if the temperature falls below the minimum allowed for the increased coking time) until the problem has been corrected, and you have confirmed that the corrective action was successful as required by paragraph (a)(4)(v) of this section.

(v) Once the heating problem has been corrected, the oven may be returned to the battery's normal coking schedule. You must then measure and record the flue temperatures for the oven within 2 hours before the scheduled pushing time for the next two consecutive pushes. If any flue temperature measurement is below the minimum flue temperature for that coking time established in the written plan, repeat the procedures in paragraphs (a)(4)(iii) and (iv) of this section.

(vi) If any flue temperature measurement is below the battery-wide minimum acceptable temperature for complete coking established in the written plan for any oven at any coking time, you must remove the oven from service for repairs.

(vii) For an oven that has been repaired and returned to service after being removed from service in accordance with paragraph (a)(4)(vi) of this section, you must measure and record the temperatures of all flues for the oven within 2 hours before the first scheduled pushing time. If any flue temperature measurement is below the minimum flue temperature for the scheduled coking time, as established in the written plan, you must repeat the procedures described in paragraphs (a)(4)(iii) and (iv) of this section.

(viii) For an oven that has been repaired and returned to service after removal from service in accordance with paragraph (a)(4)(vi) of this section, you must report as a deviation to the permitting authority any flue temperature measurement made during the initial coking cycle after return to service that is below the lowest acceptable minimum flue temperature.

(b) As provided in § 63.6(g), you may request to use an alternative to the work practice standards in paragraph (a) of this section.

§ 63.7293 What work practice standards must I meet for fugitive pushing emissions if I have a non-recovery coke oven battery?

(a) You must meet the requirements in paragraphs (a)(1) and (2) of this section for each new and existing non-recovery coke oven battery.

(1) You must visually inspect each oven prior to pushing by opening the door damper and observing the bed of coke.

(2) Do not push the oven unless the visual inspection indicates that there is no smoke in the open space above the coke bed and that there is an unobstructed view of the door on the opposite side of the oven.

(b) As provided in § 63.6(g), you may request to use an alternative to the work practice standard in paragraph (a) of this section.

§ 63.7294 What work practice standard must I meet for soaking?

(a) For each new and existing by-product coke oven battery, you must prepare and operate at all times according to a written work practice plan for soaking. Each plan must include measures and procedures to:

(1) Train topside workers to identify soaking emissions that require corrective actions.

(2) Damper the oven off the collecting main prior to opening the standpipe cap.

(3) Determine the cause of soaking emissions that do not ignite automatically, including emissions that result from raw coke oven gas leaking from the collecting main through the damper, and emissions that result from incomplete coking.

(4) If soaking emissions are caused by leaks from the collecting main, take corrective actions to eliminate the soaking emissions. Corrective actions may include, but are not limited to, reseating the damper, cleaning the flushing liquor piping, using aspiration, putting the oven back on the collecting main, or igniting the emissions.

(5) If soaking emissions are not caused by leaks from the collecting main, notify a designated responsible party. The responsible party must determine whether the soaking emissions are due to incomplete coking. If incomplete coking is the cause of the soaking emissions, you must put the oven back on the collecting main until it is completely coked or you must ignite the emissions.

(b) As provided in § 63.6(g), you may request to use an alternative to the work practice standard in paragraph (a) of this section.

§ 63.7295 What requirements must I meet for quenching?

(a) You must meet the requirements in paragraphs (a)(1) and (2) of this section for each quench tower and backup quench station at a new or existing coke oven battery.

(1) For the quenching of hot coke, you must meet the requirements in paragraph (a)(1)(i) or (ii) of this section.

(i) The concentration of total dissolved solids (TDS) in the water used for quenching must not exceed 1,100 milligrams per liter (mg/L); or

(ii) The sum of the concentrations of benzene, benzo(a)pyrene, and naphthalene in the water used for quenching must not exceed the applicable site-specific limit approved by the permitting authority.

(2) You must use acceptable makeup water, as defined in § 63.7352, as makeup water for quenching.

(b) For each quench tower at a new or existing coke oven battery and each backup quench station at a new coke oven battery, you must meet each of the requirements in paragraphs (b)(1) through (4) of this section.

(1) You must equip each quench tower with baffles such that no more than 5 percent of the cross sectional area of the tower may be uncovered or open to the sky.

(2) You must wash the baffles in each quench tower once each day that the tower is used to quench coke, except as specified in paragraphs (b)(2)(i) and (ii) of this section.

(i) You are not required to wash the baffles in a quench tower if the highest measured ambient temperature remains less than 30 degrees Fahrenheit throughout that day (24-hour period). If the measured ambient temperature rises to 30 degrees Fahrenheit or more during the day, you must resume daily washing according to the schedule in your operation and maintenance plan.

(ii) You must continuously record the ambient temperature on days that the baffles were not washed.

(3) You must inspect each quench tower monthly for damaged or missing baffles and blockage.

(4) You must initiate repair or replacement of damaged or missing baffles within 30 days and complete as soon as practicable.

(c) As provided in § 63.6(g), you may request to use an alternative to the work practice standards in paragraph (b) of this section.

§ 63.7296 What emission limitations must I meet for battery stacks?

You must not discharge to the atmosphere any emissions from any battery stack at a new or existing by-product coke oven battery that exhibit an opacity greater than the applicable limit in paragraphs (a) and (b) of this section.

(a) Daily average of 15 percent opacity for a battery on a normal coking cycle.

(b) Daily average of 20 percent opacity for a battery on batterywide extended coking.

Operation and Maintenance Requirements

§ 63.7300 What are my operation and maintenance requirements?

(a) As required by § 63.6(e)(1)(i), you must always operate and maintain your affected source, including air pollution control and monitoring equipment, in a manner consistent with good air pollution control practices for minimizing emissions at least to the levels required by this subpart.

(b) You must prepare and operate at all times according to a written operation and maintenance plan for the general operation and maintenance of new or existing by-product coke oven batteries. Each plan must address, at a minimum, the elements listed in paragraphs (b)(1) through (6) of this section.

(1) Frequency and method of recording underfiring gas parameters.

(2) Frequency and method of recording battery operating temperature, including measurement of individual flue and cross-wall temperatures.

(3) Procedures to prevent pushing an oven before it is fully coked.

(4) Procedures to prevent overcharging and undercharging of ovens, including measurement of coal moisture, coal bulk density, and procedures for determining volume of coal charged.

(5) Frequency and procedures for inspecting flues, burners, and nozzles.

(6) Schedule and procedures for the daily washing of baffles.

(c) You must prepare and operate at all times according to a written operation and maintenance plan for each capture system and control device applied to pushing emissions from a new or existing coke oven battery. Each plan must address at a minimum the elements in paragraphs (c)(1) through (3) of this section.

(1) Monthly inspections of the equipment that are important to the performance of the total capture system (*e.g.*, pressure sensors, dampers, and damper switches). This inspection must include observations of the physical appearance of the equipment (*e.g.*, presence of holes in ductwork or hoods, flow constrictions caused by dents or accumulated dust in ductwork, and fan erosion). The operation and maintenance plan must also include requirements to repair any defect or deficiency in the capture system before the next scheduled inspection.

(2) Preventative maintenance for each control device, including a preventative maintenance schedule that is consistent with the manufacturer's instructions for routine and long-term maintenance.

(3) Corrective action for all baghouses applied to pushing emissions. In the event a bag leak detection system alarm is triggered, you must initiate corrective action to determine the cause of the alarm within 1 hour of the alarm, initiate corrective action to correct the cause of the problem within 24 hours of the alarm, and complete the corrective action as soon as practicable. Actions may include, but are not limited to:

(i) Inspecting the baghouse for air leaks, torn or broken bags or filter media, or any other condition that may cause an increase in emissions.

(ii) Sealing off defective bags or filter media.

(iii) Replacing defective bags or filter media or otherwise repairing the control device.

(iv) Sealing off a defective baghouse compartment.

(v) Cleaning the bag leak detection system probe, or otherwise repairing the bag leak detection system.

(vi) Shutting down the process producing the particulate emissions.

General Compliance Requirements

§ 63.7310 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations, work practice standards, and operation and maintenance requirements in this subpart at all times, except during periods of startup, shutdown, and malfunction as defined in § 63.2.

(b) During the period between the compliance date specified for your affected source in § 63.7283 and the date upon which continuous monitoring systems have been installed and certified and any applicable operating limits have been set, you must maintain a log detailing the operation and maintenance of the process and emissions control equipment.

(c) You must develop and implement a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3).

Initial Compliance Requirements

§ 63.7320 By what date must I conduct performance tests or other initial compliance demonstrations?

(a) As required in § 63.7(a)(2), you must conduct a performance test to demonstrate compliance with each limit in § 63.7290(a) for emissions of particulate matter from a control device applied to pushing emissions that applies to you within 180 calendar days after the compliance date that is specified in § 63.7283.

(b) You must conduct performance tests to demonstrate compliance with the TDS limit or constituent limit for quench water in § 63.7295(a)(1) and each opacity limit in § 63.7297(a) for a by-product coke oven battery stack by the compliance date that is specified in § 63.7283.

(c) For each work practice standard and operation and maintenance requirement that applies to you, you must demonstrate initial compliance within 30 calendar days after the compliance date that is specified in § 63.7283.

(d) If you commenced construction or reconstruction between July 3, 2001 and April 14, 2003, you must demonstrate initial compliance with either the proposed emission limit or the promulgated emission limit no later than October 14, 2003, or no later than 180 calendar days after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

(e) If you commenced construction or reconstruction between July 3, 2001 and April 14, 2003, and you chose to comply with the proposed emission limit when demonstrating initial compliance, you must conduct a second performance test to demonstrate compliance with the promulgated emission limit by October 11, 2006, or after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

§ 63.7321 When must I conduct subsequent performance tests?

For each control device subject to an emission limit for particulate matter in § 63.7290(a), you must conduct subsequent performance tests no less frequently than twice (at mid-term and renewal) during each term of your title V operating permit.

§ 63.7322 What test methods and other procedures must I use to demonstrate initial compliance with the emission limits for particulate matter?

(a) You must conduct each performance test that applies to your affected source according to the requirements in paragraph (b) of this section.

(b) To determine compliance with the emission limit for particulate matter from a control device applied to pushing emissions where a cokeside shed is the capture system, follow the test methods and procedures in paragraphs (b)(1) and (2) of this section. To determine compliance with a process-weighted mass rate of particulate matter (lb/ton of coke) from a control device applied to pushing emissions where a cokeside shed is not used, follow the test methods and procedures in paragraphs (b)(1) through (4) of this section.

(1) Determine the concentration of particulate matter according to the following test methods in appendix A to 40 CFR part 60.

(i) Method 1 to select sampling port locations and the number of traverse points. Sampling sites must be located at the outlet of the control device and prior to any releases to the atmosphere.

(ii) Method 2, 2F, or 2G to determine the volumetric flow rate of the stack gas.

(iii) Method 3, 3A, or 3B to determine the dry molecular weight of the stack gas.

(iv) Method 4 to determine the moisture content of the stack gas.

(v) Method 5 or 5D, as applicable, to determine the concentration of front half particulate matter in the stack gas.

(2) During each particulate matter test run, sample only during periods of actual pushing when the capture system fan and control device are engaged. Collect a minimum sample volume of 30 cubic feet of gas during each test run. Three valid test runs are needed to comprise a performance test. Each run must start at the beginning of a push and finish at the end of a push (*i.e.*, sample for an integral number of pushes).

(3) Determine the total combined weight in tons of coke pushed during the duration of each test run according to the procedures in your source test plan for calculating coke yield from the quantity of coal charged to an individual oven.

(4) Compute the process-weighted mass emissions (E_p) for each test run using Equation 1 of this section as follows:

$$E_p = \frac{C \times Q \times T}{P \times K} \qquad \text{(Eq. 1)}$$

Where:

E_p = Process weighted mass emissions of particulate matter, lb/ton;

C = Concentration of particulate matter, gr/dscf;

Q = Volumetric flow rate of stack gas, dscf/hr;

T = Total time during a run that a sample is withdrawn from the stack during pushing, hr;

P = Total amount of coke pushed during the test run, tons; and

K = Conversion factor, 7,000 gr/lb.

§ 63.7323 What procedures must I use to establish operating limits?

(a) For a venturi scrubber applied to pushing emissions from a coke oven battery, you must establish site-specific operating limits for pressure drop and scrubber water flow rate according to the procedures in paragraphs (a)(1) and (2) of this section.

(1) Using the continuous parameter monitoring systems (CPMS) required in § 63.7330(b), measure and record the pressure drop and scrubber water flow rate for each particulate matter test run during periods of pushing. A minimum of one pressure drop measurement and one scrubber water flow rate measurement must be obtained for each push.

(2) Compute and record the average pressure drop and scrubber water flow rate for each test run. Your operating limits are the lowest average pressure drop and scrubber water flow rate values recorded during any of the three runs that meet the applicable emission limit.

(b) For a hot water scrubber applied to pushing emissions from a coke oven battery, you must establish site-specific operating limits for water pressure and water temperature according to the procedures in paragraphs (b)(1) and (2) of this section.

(1) Using the CPMS required in § 63.7330(c), measure and record the hot water pressure and temperature for each particulate matter test run during periods of pushing. A minimum of one pressure measurement and one temperature measurement must be made just prior to each push by monitoring the hot water holding tank on the mobile scrubber car.

(2) Compute and record the average water pressure and temperature for each test run. Your operating limits are the lowest pressure and temperature values recorded during any of the three runs that meet the applicable emission limit.

(c) For a capture system applied to pushing emissions from a coke oven battery, you must establish a site-specific operating limit for the fan motor amperes or volumetric flow rate according to the procedures in paragraph (c)(1) or (2) of this section.

(1) If you elect the operating limit in § 63.7290(b)(3)(i) for fan motor amperes, measure and record the fan motor amperes during each push sampled for each particulate matter test run. Your operating limit is the lowest fan motor amperes recorded during any of the three runs that meet the emission limit.

(2) If you elect the operating limit in § 63.7290(b)(3)(ii) for volumetric flow rate, measure and record the total volumetric flow rate at the inlet of the control device during each push sampled for each particulate matter test run. Your operating limit is the lowest volumetric flow rate recorded during any of the three runs that meet the emission limit.

(d) You may change the operating limit for a scrubber or capture system if you meet the requirements in paragraphs (d)(1) through (3) of this section.

(1) Submit a written notification to the Administrator of your request to conduct a new performance test to revise the operating limit.

(2) Conduct a performance test to demonstrate that emissions of particulate matter from the control device do not exceed the applicable limit in § 63.7290(a).

(3) Establish revised operating limits according to the applicable procedures in paragraph (a) through (c) of this section.

§ 63.7324 What procedures must I use to demonstrate initial compliance with the opacity limits?

(a) You must conduct each performance test that applies to your affected source according to the requirements in paragraph (b) of this section.

(b) To determine compliance with the daily average opacity limit for stacks of 15 percent for a by-product coke oven battery on a normal coking cycle or 20 percent for a by-product coke oven battery on batterywide extended coking, follow the test methods and procedures in paragraphs (b)(1) through (3) of this section.

(1) Using the continuous opacity monitoring system (COMS) required in § 63.7330(e), measure and record the opacity of emissions from each battery stack for a 24-hour period.

(2) Reduce the monitoring data to hourly averages as specified in § 63.8(g)(2).

(3) Compute and record the 24-hour (daily) average of the COMS data.

§ 63.7325 What test methods and other procedures must I use to demonstrate initial compliance with the TDS or constituent limits for quench water?

(a) If you elect the TDS limit for quench water in § 63.7295(a)(1)(i), you must conduct each performance test that applies to your affected source according to the conditions in paragraphs (a)(1) and (2) of this section.

(1) Take the quench water sample from a location that provides a representative sample of the quench water as applied to the coke (*e.g.*, from the header that feeds water to the quench tower reservoirs). Conduct sampling under normal and representative operating conditions.

(2) Determine the TDS concentration of the sample using Method 160.1 in 40 CFR part 136.3 (see ''residue—filterable''), except that you must dry the total filterable residue at 103 to 105 °C (degrees Centigrade) instead of 180 °C.

(b) If at any time you elect to meet the alternative requirements for quench water in § 63.7295(a)(1)(ii), you must establish a site-specific constituent limit according to the procedures in paragraphs (b)(1) through (4) of this section.

(1) Take a minimum of nine quench water samples from a location that provides a representative sample of the quench water as applied to the coke (*e.g.*, from the header that feeds water to the quench tower reservoirs). Conduct sampling under normal and representative operating conditions.

(2) For each sample, determine the TDS concentration according to the requirements in paragraph (a)(2) of this section and the concentration of benzene, benzo(a)pyrene, and naphthalene using the applicable methods in 40 CFR part 136 or an approved alternative method.

(3) Determine and record the highest sum of the concentrations of benzene, benzo(a)pyrene, and naphthalene in any sample that has a TDS concentration less than or equal to the TDS limit of 1,100 mg/L. This concentration is the site-specific constituent limit.

(4) Submit the site-specific limit, sampling results, and all supporting data and calculations to your permitting authority for review and approval.

(c) If you elect the constituent limit for quench water in § 63.7295(a)(1)(ii), you must conduct each performance test that applies to your affected source according to the conditions in paragraphs (c)(1) and (2) of this section.

(1) Take a quench water sample from a location that provides a representative sample of the quench water as applied to the coke (*e.g.*, from the header that feeds water to the quench tower reservoirs). Conduct sampling under normal and representative operating conditions.

(2) Determine the sum of the concentration of benzene, benzo(a)pyrene, and naphthalene in the sample using the applicable methods in 40 CFR part 136 or an approved alternative method.

§ 63.7326 How do I demonstrate initial compliance with the emission limitations that apply to me?

(a) For each coke oven battery subject to the emission limit for particulate matter from a control device applied to pushing emissions, you have demonstrated initial compliance if you meet the requirements in paragraphs (a)(1) through (4) of this section that apply to you.

(1) The concentration of particulate matter, measured in accordance with the performance test procedures in § 63.7322(b)(1) and (2), did not exceed 0.01 gr/dscf for a control device where a cokeside shed is used to capture pushing emissions or the process-weighted mass rate of particulate matter (lb/ton of coke), measured in accordance with the performance test procedures in § 63.7322(b)(1) through (4), did not exceed:

(i) 0.02 lb/ton of coke if a moveable hood vented to a stationary control device is used to capture emissions;

(ii) If a mobile scrubber car that does not capture emissions during travel is used, 0.03 lb/ton of coke from a control device applied to pushing emissions from a short coke oven battery or 0.01 lb/ton of coke from a control device applied to pushing emissions from a tall coke oven battery; and

(iii) 0.04 lb/ton of coke if a mobile scrubber car that captures emissions during travel is used.

(2) For each venturi scrubber applied to pushing emissions, you have established appropriate site-specific operating limits and have a record of the pressure drop and scrubber water flow rate measured during the performance test in accordance with § 63.7323(a).

(3) For each hot water scrubber applied to pushing emissions, you have established appropriate site-specific operating limits and have a record of the water pressure and temperature measured during the performance test in accordance with § 63.7323(b).

(4) For each capture system applied to pushing emissions, you have established an appropriate site-specific operating limit, and:

(i) If you elect the operating limit in § 63.7290(b)(3)(i) for fan motor amperes, you have a record of the fan motor amperes during the performance test in accordance with § 63.7323(c)(1); or

(ii) If you elect the operating limit in § 63.7290(b)(3)(ii) for volumetric flow rate, you have a record of the total volumetric flow rate at the inlet of the control device measured during the performance test in accordance with § 63.7323(c)(2).

(b) For each new or existing by-product coke oven battery subject to the opacity limit for stacks in § 63.7296(a), you have demonstrated initial compliance if the daily average opacity, as measured according to the performance test procedures in § 63.7324(b), is no more than 15 percent for a battery on a normal coking cycle or 20 percent for a battery on batterywide extended coking.

(c) For each new or existing by-product coke oven battery subject to the TDS limit or constituent limits for quench water in § 63.7295(a)(1),

(1) You have demonstrated initial compliance with the TDS limit in § 63.7295(a)(1)(i) if the TDS concentration, as measured according to the performance test procedures in § 63.7325(a), does not exceed 1,100 mg/L.

(2) You have demonstrated initial compliance with the constituent limit in § 63.7295(a)(1)(ii) if:

(i) You have established a site-specific constituent limit according to the procedures in § 63.7325(b); and

(ii) The sum of the constituent concentrations, as measured according to the performance test procedures in § 63.7325(c), is less than or equal to the site-specific limit.

(d) For each by-product coke oven battery stack subject to an opacity limit in § 63.7296(a) and each by-product coke oven battery subject to the requirements for quench water in § 63.7295(a)(1), you must submit a notification of compliance status containing the results of the COMS performance test for battery stacks and the quench water performance test (TDS or constituent limit) according to § 63.7340(e)(1). For each particulate matter emission limitation that applies to you, you must submit a notification of compliance status containing the results of the performance test according to § 63.7340(e)(2).

§ 63.7327 How do I demonstrate initial compliance with the work practice standards that apply to me?

(a) For each by-product coke oven battery with vertical flues subject to the work practice standards for fugitive pushing emissions in § 63.7291(a), you have demonstrated initial compliance if you certify in your notification of compliance status that you will meet each of the work practice requirements beginning no later than the compliance date that is specified in § 63.7283.

(b) For each by-product coke oven battery with horizontal flues subject to the work practice standards for fugitive pushing emissions in § 63.7292(a), you have demonstrated initial compliance if you have met the requirements of paragraphs (b)(1) and (2) of this section:

(1) You have prepared and submitted a written plan and supporting documentation establishing appropriate minimum flue temperatures for different coking times and the lowest acceptable temperature to the Administrator (or delegated authority) for review and approval; and

(2) You certify in your notification of compliance status that you will meet each of the work practice requirements beginning no later than the compliance date that is specified in § 63.7283.

(c) For each non-recovery coke oven battery subject to the work practice standards for fugitive pushing emissions in § 63.7293(a), you have demonstrated initial compliance if you certify in your notification of compliance status that you will meet each of the work practice requirements beginning no later than the compliance date that is specified in § 63.7283.

(d) For each by-product coke oven battery subject to the work practice standards for soaking in § 63.7294, you have demonstrated initial compliance if you have met the requirements of paragraphs (d)(1) and (2) of this section:

(1) You have prepared and submitted a written work practice plan in accordance with § 63.7294(a); and

(2) You certify in your notification of compliance status that you will meet each of the work practice requirements beginning no later than the compliance date that is specified in § 63.7283.

(e) For each coke oven battery, you have demonstrated initial compliance with the work practice standards for quenching in § 63.7295(b) if you certify in your notification of compliance status that you have met the requirements of paragraphs (e)(1) and (2) of this section:

(1) You have installed the required equipment in each quench tower; and

(2) You will meet each of the work practice requirements beginning no later than the compliance date that is specified in § 63.7283.

(f) For each work practice standard that applies to you, you must submit a notification of compliance status according to the requirements in § 63.7340(e)(1).

§ 63.7328 How do I demonstrate initial compliance with the operation and maintenance requirements that apply to me?

You have demonstrated initial compliance if you certify in your notification of compliance status that you have met the requirements of paragraphs (a) through (d) of this section:

(a) You have prepared the operation and maintenance plans according to the requirements in § 63.7300(b) and (c);

(b) You will operate each by-product coke oven battery and each capture system and control device applied to pushing emissions from a coke oven battery according to the procedures in the plans beginning no later than the compliance date that is specified in § 63.7283;

(c) You have prepared a site-specific monitoring plan according to the requirements in § 63.7331(b); and

(d) You submit a notification of compliance status according to the requirements in § 63.7340(e).

Continuous Compliance Requirements

§ 63.7330 What are my monitoring requirements?

(a) For each baghouse applied to pushing emissions from a coke oven battery, you must at all times monitor the relative change in particulate matter loadings using a bag leak detection system according to the requirements in § 63.7331(a) and conduct inspections at their specified frequency according to the requirements in paragraphs (a)(1) through (8) of this section.

(1) Monitor the pressure drop across each baghouse cell each day to ensure pressure drop is within the normal operating range identified in the manual;

(2) Confirm that dust is being removed from hoppers through weekly visual inspections or equivalent means of ensuring the proper functioning of removal mechanisms;

(3) Check the compressed air supply for pulse-jet baghouses each day;

(4) Monitor cleaning cycles to ensure proper operation using an appropriate methodology;

(5) Check bag cleaning mechanisms for proper functioning through monthly visual inspection or equivalent means;

(6) Make monthly visual checks of bag tension on reverse air and shaker-type baghouses to ensure that bags are not kinked (kneed or bent) or laying on their sides. You do not have to make this check for shaker-type baghouses using self-tensioning (spring-loaded) devices;

(7) Confirm the physical integrity of the baghouse through quarterly visual inspections of the baghouse interior for air leaks; and

(8) Inspect fans for wear, material buildup, and corrosion through quarterly visual inspections, vibration detectors, or equivalent means.

(b) For each venturi scrubber applied to pushing emissions, you must at all times monitor the pressure drop and water flow rate using a CPMS according to the requirements in § 63.7331(e).

(c) For each hot water scrubber applied to pushing emissions, you must at all times monitor the water pressure and temperature using a CPMS according to the requirements in § 63.7331(f).

(d) For each capture system applied to pushing emissions, you must at all times monitor the fan motor amperes according to the requirements in § 63.7331(g) or the volumetric flow rate according to the requirements in § 63.7331(h).

(e) For each by-product coke oven battery, you must monitor at all times the opacity of emissions exiting each stack using a COMS according to the requirements in § 63.7331(i).

§ 63.7331 What are the installation, operation, and maintenance requirements for my monitors?

(a) For each baghouse applied to pushing emissions, you must install, operate, and maintain each bag leak detection system according to the requirements in paragraphs (a)(1) through (7) of this section.

(1) The system must be certified by the manufacturer to be capable of detecting emissions of particulate matter at concentrations of 10 milligrams per actual cubic meter (0.0044 grains per actual cubic foot) or less;

(2) The system must provide output of relative changes in particulate matter loadings;

(3) The system must be equipped with an alarm that will sound when an increase in relative particulate loadings is detected over a preset level. The alarm must be located such that it can be heard by the appropriate plant personnel;

(4) Each system that works based on the triboelectric effect must be installed, operated, and maintained in a manner consistent with the guidance document, ''Fabric Filter Bag Leak Detection Guidance'' (EPA–454/R–98–015, September 1997). You may install, operate, and maintain other types of bag leak detection systems in a manner consistent with the manufacturer's written specifications and recommendations;

(5) To make the initial adjustment of the system, establish the baseline output by adjusting the sensitivity (range) and the averaging period of the device. Then, establish the alarm set points and the alarm delay time;

(6) Following the initial adjustment, do not adjust the sensitivity or range, averaging period, alarm set points, or alarm delay time, except as detailed in your operation and maintenance plan. Do not increase the sensitivity by more than 100 percent or decrease the sensitivity by more than 50 percent over a 365-day period unless a responsible

official certifies, in writing, that the baghouse has been inspected and found to be in good operating condition; and

(7) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(b) For each CPMS required in § 63.7330, you must develop and make available for inspection upon request by the permitting authority a site-specific monitoring plan that addresses the requirements in paragraphs (b)(1) through (6) of this section.

(1) Installation of the CPMS 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 parametric signal analyzer, and the data collection and reduction system;

(3) Performance evaluation procedures and acceptance criteria (*e.g.*, calibrations);

(4) Ongoing operation and maintenance procedures in accordance with the general requirements of §§ 63.8(c)(1), (3), (4)(ii), (7), and (8);

(5) Ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d); and

(6) Ongoing recordkeeping and reporting procedures in accordance the general requirements of §§ 63.10(c), (e)(1), and (e)(2)(i).

(c) You must conduct a performance evaluation of each CPMS in accordance with your site-specific monitoring plan.

(d) You must operate and maintain the CPMS in continuous operation according to the site-specific monitoring plan.

(e) For each venturi scrubber applied to pushing emissions, you must install, operate, and maintain CPMS to measure and record the pressure drop across the scrubber and scrubber water flow rate during each push according to the requirements in paragraphs (b) through (d) of this section except as specified in paragraphs (e)(1) through (3) of this section.

(1) Each CPMS must complete a measurement at least once per push;

(2) Each CPMS must produce valid data for all pushes; and

(3) Each CPMS must determine and record the daily (24-hour) average of all recorded readings.

(f) For each hot water scrubber applied to pushing emissions, you must install, operate, and maintain CPMS to measure and record the water pressure and temperature during each push according to the requirements in paragraphs (b) through (d) of this section, except as specified in paragraphs (e)(1) through (3) of this section.

(g) If you elect the operating limit in § 63.7290(b)(3)(i) for a capture system applied to pushing emissions, you must install, operate, and maintain a device to measure the fan motor amperes.

(h) If you elect the operating limit in § 63.7290(b)(3)(ii) for a capture system applied to pushing emissions, you must install, operate, and maintain a device to measure the total volumetric flow rate at the inlet of the control device.

(i) For each by-product coke oven battery, you must install, operate, and maintain a COMS to measure and record the opacity of emissions exiting each stack according to the requirements in paragraphs (i)(1) through (5) of this section.

(1) You must install, operate, and maintain each COMS according to the requirements in § 63.8(e) and Performance Specification 1 in 40 CFR part 60, appendix B. Identify periods the COMS is out-of-control, including any periods that the COMS fails to pass a daily calibration drift assessment, quarterly performance audit, or annual zero alignment audit.

(2) You must conduct a performance evaluation of each COMS according to the requirements in § 63.8 and Performance Specification 1 in appendix B to 40 CFR part 60;

(3) You must develop and implement a quality control program for operating and maintaining each COMS according to the requirements in § 63.8(d). At minimum, the quality control program must include a daily calibration drift assessment, quarterly performance audit, and an annual zero alignment audit of each COMS;

(4) Each COMS must complete a minimum of one cycle of sampling and analyzing for each successive 10-second period and one cycle of data recording for each successive 6-minute period. You must reduce the COMS data as specified in § 63.8(g)(2).

(5) You must determine and record the hourly and daily (24-hour) average opacity according to the procedures in § 63.7324(b) using all the 6-minute averages collected for periods during which the COMS is not out-of-control.

§ 63.7332 How do I monitor and collect data to demonstrate continuous compliance?

(a) 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 the affected source is operating.

(b) You may not use data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities in data averages and calculations used to report emission or operating levels, or in fulfilling a minimum data availability requirement, if applicable. You must use all the data collected during all other periods in assessing compliance. A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitor to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions.

§ 63.7333 How do I demonstrate continuous compliance with the emission limitations that apply to me?

(a) For each control device applied to pushing emissions and subject to the emission limit in § 63.7290(a), you must demonstrate continuous compliance by meeting the requirements in paragraphs (a)(1) and (2) of this section:

(1) Maintaining emissions of particulate matter at or below the applicable limits in paragraphs § 63.7290(a)(1) through (4); and

(2) Conducting subsequent performance tests to demonstrate continuous compliance no less frequently than twice during each term of your title V operating permit (at mid-term and renewal).

(b) For each venturi scrubber applied to pushing emissions and subject to the operating limits in § 63.7290(b)(1), you must demonstrate continuous compliance by meeting the requirements in paragraphs (b)(1) through (3) of this section.

(1) Maintaining the daily average pressure drop and scrubber water flow rate at levels no lower than those established during the initial or subsequent performance test.

(2) Operating and maintaining each CPMS according to § 63.7331(b) and recording all information needed to document conformance with these requirements.

(3) Collecting and reducing monitoring data for pressure drop and scrubber water flow rate according to § 63.7331(e)(1) through (3).

(c) For each hot water scrubber applied to pushing emissions and subject to the operating limits in § 63.7290(b)(2), you must demonstrate continuous compliance by meeting the requirements in paragraphs (c)(1) through (3) of this section.

(1) Maintaining the daily average water pressure and temperature at levels no lower than those established during the initial or subsequent performance test.

(2) Operating and maintaining each CPMS according to § 63.7331(b) and recording all information needed to document conformance with these requirements.

(3) Collecting and reducing monitoring data for water pressure and temperature according to § 63.7331(f).

(d) For each capture system applied to pushing emissions and subject to the operating limit in § 63.7290(b)(3), you must demonstrate continuous compliance by meeting the requirements in paragraph (d)(1) or (2) of this section:

(1) If you elect the operating limit for fan motor amperes in § 63.7290(b)(3)(i):

(i) Maintaining the daily average fan motor amperes at or above the minimum level established during the initial or subsequent performance test; and

(ii) Checking the fan motor amperes at least every 8 hours to verify the daily average is at or above the minimum level established during the initial or subsequent performance test and recording the results of each check.

(2) If you elect the operating limit for volumetric flow rate in § 63.7290(b)(3)(ii):

(i) Maintaining the daily average volumetric flow rate at the inlet of the control device at or above the minimum level established during the initial or subsequent performance test; and

(ii) Checking the volumetric flow rate at least every 8 hours to verify the daily average is at or above the minimum level established during the initial or subsequent performance test and recording the results of each check.

(e) Beginning on the first day compliance is required under § 63.7283, you must demonstrate continuous compliance for each by-product coke oven battery subject to the opacity limit for stacks in § 63.7296(a) by meeting the requirements in paragraphs (e)(1) and (2) of this section:

(1) Maintaining the daily average opacity at or below 15 percent for a battery on a normal coking cycle or 20 percent for a battery on batterywide extended coking; and

(2) Operating and maintaining a COMS and collecting and reducing the COMS data according to § 63.7331(i).

(f) Beginning on the first day compliance is required under § 63.7283, you must demonstrate continuous compliance with the TDS limit for quenching in § 63.7295(a)(1)(i) by meeting the requirements in paragraphs (f)(1) and (2) of this section:

(1) Maintaining the TDS content of the water used to quench hot coke at 1,100 mg/L or less; and

(2) Determining the TDS content of the quench water at least weekly according to the requirements in § 63.7325(a) and recording the sample results.

(g) Beginning on the first day compliance is required under § 63.7283, you must demonstrate continuous compliance with the constituent limit for quenching in § 63.7295(a)(1)(ii) by meeting the requirements in paragraphs (g)(1) and (2) of this section:

(1) Maintaining the sum of the concentrations of benzene, benzo(a)pyrene, and naphthalene in the water used to quench hot coke at levels less than or equal to the site-specific limit approved by the permitting authority; and

(2) Determining the sum of the constituent concentrations at least monthly according to the requirements in § 63.7325(c) and recording the sample results.

§ 63.7334 How do I demonstrate continuous compliance with the work practice standards that apply to me?

(a) For each by-product coke oven battery with vertical flues subject to the work practice standards for fugitive pushing emissions in § 63.7291(a), you must demonstrate continuous compliance according to the requirements of paragraphs (a)(1) through (8) of this section:

(1) Observe and record the opacity of fugitive emissions for four consecutive pushes per operating day, except you may make fewer or non-consecutive observations as permitted by § 63.7291(a)(3). Maintain records of the pushing schedule for each oven and records indicating the legitimate operational reason for any change in the pushing schedule according to § 63.7291(a)(4).

(2) Observe and record the opacity of fugitive emissions from each oven in a battery at least once every 90 days. If an oven cannot be observed during a 90-day period, observe and record the opacity of the first push of that oven following the close of the 90-day period that can be read in accordance with the procedures in paragraphs (a)(1) through (8) of this section.

(3) Make all observations and calculations for opacity observations of fugitive pushing emissions in accordance with Method 9 in appendix A to 40 CFR part 60 using a Method 9 certified observer unless you have an approved alternative procedure under paragraph (a)(7) of this section.

(4) Record pushing opacity observations at 15-second intervals as required in section 2.4 of Method 9 (appendix A to 40 CFR part 60). The requirement in section 2.4 of Method 9 for a minimum of 24 observations does not apply, and the data reduction requirements in section 2.5 of Method 9 do not apply. The requirement in § 63.6(h)(5)(ii)(B) for obtaining at least 3 hours of observations (thirty 6-minute averages) to demonstrate initial compliance does not apply.

(5) If fewer than six but at least four 15-second observations can be made, use the average of the total number of observations to calculate average opacity for the push. Missing one or more observations during the push (*e.g.*, as the quench car passes behind a building) does not invalidate the observations before or after the interference for that push. However, a minimum of four 15-second readings must be made for a valid observation.

(6) Begin observations for a push at the first detectable movement of the coke mass. End observations of a push when the quench car enters the quench tower.

(i) For a battery without a cokeside shed, observe fugitive pushing emissions from a position at least 10 meters from the quench car that provides an unobstructed view and avoids interferences from the topside of the battery. This may require the observer to be positioned at an angle to the quench car rather than perpendicular to it. Typical interferences to avoid include emissions from open standpipes and charging. Observe the opacity of emissions above the battery top with the sky as the background where possible. Record the oven number of any push not observed because of obstructions or interferences.

(ii) For a battery with a cokeside shed, the observer must be in a position that provides an unobstructed view and avoids interferences from the topside of the battery. Typical interferences to avoid include emissions from open standpipes and charging. Observations must include any fugitive emissions that escape from the top of the shed, from the ends of the shed, or from the area where the shed is joined to the battery. If the observer does not have a clear view to identify when a push starts or ends, a second person can be positioned to signal the start or end of the push and notify the observer when to start or end the observations. Radio communications with other plant personnel (*e.g.*, pushing ram operator or quench car operator) may also serve to notify the observer of the start or end of a push. Record the oven number of any push

not observed because of obstructions or interferences.

(iii) You may reposition after the push to observe emissions during travel if necessary.

(7) If it is infeasible to implement the procedures in paragraphs (a)(1) through (6) of this section for an oven due to physical obstructions, nighttime pushes, or other reasons, you may apply to your permitting authority for permission to use an alternative procedure. The application must provide a detailed explanation of why it is infeasible to use the procedures in paragraphs (a)(1) through (6) of this section, identify the oven and battery numbers, and describe the alternative procedure. An alternative procedure must identify whether the coke in that oven is not completely coked, either before, during, or after an oven is pushed.

(8) For each oven observed that exceeds an opacity of 30 percent for any short battery or 35 percent for any tall battery, you must take corrective action and/or increase the coking time in accordance with § 63.7291(a). Maintain records documenting conformance with the requirements in § 63.7291(a).

(b) For each by-product coke oven battery with horizontal flues subject to the work practice standards for fugitive pushing emissions in § 63.7292(a), you must demonstrate continuous compliance by having met the requirements of paragraphs (b)(1) through (3) of this section:

(1) Measuring and recording the temperature of all flues on two ovens per day within 2 hours before the oven's scheduled pushing time and ensuring that the temperature of each oven is measured and recorded at least once every month;

(2) Recording the time each oven is charged and pushed and calculating and recording the net coking time for each oven; and

(3) Increasing the coking time for each oven that falls below the minimum flue temperature trigger established for that oven's coking time in the written plan required in § 63.7292(a)(1), assigning the oven to the oven-directed program, and recording all relevant information according to the requirements in § 63.7292(a)(4) including, but not limited to, daily pushing schedules, diagnostic procedures, corrective actions, and oven repairs.

(c) For each non-recovery coke oven battery subject to the work practice standards in § 63.7293(a), you must demonstrate continuous compliance by maintaining records that document each visual inspection of an oven prior to pushing and that the oven was not pushed unless there was no smoke in the open space above the coke bed and there was an unobstructed view of the door on the opposite side of the oven.

(d) For each by-product coke oven battery subject to the work practice standard for soaking in § 63.7294(a), you must demonstrate continuous compliance by maintaining records that document conformance with requirements in § 63.7294(a)(1) through (5).

(e) For each coke oven battery subject to the work practice standard for quenching in § 63.7295(b), you must demonstrate continuous compliance according to the requirements of paragraphs (e)(1) through (3) of this section:

(1) Maintaining baffles in each quench tower such that no more than 5 percent of the cross-sectional area of the tower is uncovered or open to the sky as required in § 63.7295(b)(1);

(2) Maintaining records that document conformance with the washing, inspection, and repair requirements in § 63.7295(b)(2), including records of the ambient temperature on any day that the baffles were not washed; and

(3) Maintaining records of the source of makeup water to document conformance with the requirement for acceptable makeup water in § 63.7295(a)(2).

§ 63.7335 How do I demonstrate continuous compliance with the operation and maintenance requirements that apply to me?

(a) For each by-product coke oven battery, you must demonstrate continuous compliance with the operation and maintenance requirements in § 63.7300(b) by adhering at all times to the plan requirements and recording all information needed to document conformance.

(b) For each coke oven battery with a capture system or control device applied to pushing emissions, you must demonstrate continuous compliance with the operation and maintenance requirements in § 63.7300(c) by meeting the requirements of paragraphs (b)(1) through (3) of this section:

(1) Making monthly inspections of capture systems according to § 63.7300(c)(1) and recording all information needed to document conformance with these requirements;

(2) Performing preventative maintenance for each control device according to § 63.7300(c)(2) and recording all information needed to document conformance with these requirements; and

(3) Initiating and completing corrective action for a bag leak detection system alarm according to § 63.7300(c)(3) and recording all information needed to document conformance with these requirements. This includes records of the times the bag leak detection system alarm sounds, and for each valid alarm, the time you initiated corrective action, the corrective action(s) taken, and the date on which corrective action is completed.

(c) To demonstrate continuous compliance with the operation and maintenance requirements for a baghouse applied to pushing emissions from a coke oven battery in § 63.7331(a), you must inspect and maintain each baghouse according to the requirements in § 63.7331(a)(1) through (8) and record all information needed to document conformance with these requirements. If you increase or decrease the sensitivity of the bag leak detection system beyond the limits specified in § 63.7331(a)(6), you must include a copy of the required written certification by a responsible official in the next semiannual compliance report.

(d) You must maintain a current copy of the operation and maintenance plans required in § 63.7300(b) and (c) onsite and available for inspection upon request. You must keep the plans for the life of the affected source or until the affected source is no longer subject to the requirements of this subpart.

§ 63.7336 What other requirements must I meet to demonstrate continuous compliance?

(a) *Deviations.* You must report each instance in which you did not meet each emission limitation in this subpart that applies to you. This includes periods of startup, shutdown, and malfunction. You must also report each instance in which you did not meet each work practice standard or operation and maintenance requirement in this subpart that applies to you. These instances are deviations from the emission limitations (including operating limits), work practice standards, and operation and maintenance requirements in this subpart. These deviations must be reported according to the requirements in § 63.7341.

(b) *Startup, shutdowns, and malfunctions.* During periods of startup, shutdown, and malfunction, you must operate in accordance with your startup, shutdown, and malfunction plan.

(1) 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.

(2) The Administrator 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

§ 63.7340 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.6(h)(4) and (5), 63.7(b) and (c), 63.8(e) and (f)(4), and 63.9(b) through (h) that apply to you by the specified dates.

(b) As specified in § 63.9(b)(2), if you startup your affected source before April 14, 2003, you must submit your initial notification no later than August 12, 2003.

(c) As specified in § 63.9(b)(3), if you startup your new affected source on or after April 14, 2003, you must submit your initial notification no later than 120 calendar days after you become subject to this subpart.

(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, opacity observation, or other initial compliance demonstration, you must submit a notification of compliance status according to § 63.9(h)(2)(ii).

(1) For each initial compliance demonstration 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 that does include a performance test, you must submit the notification of compliance status, including the performance test results, before the close of business on the 60th calendar day following completion of the performance test according to § 63.10(d)(2).

(f) For each by-product coke oven battery with horizontal flues, you must notify the Administrator (or delegated authority) of the date on which the study of flue temperatures required by § 63.7292(a)(3) will be initiated. You must submit this notification no later than 7 days prior to the date you initiate the study.

§ 63.7341 What reports must I submit and when?

(a) *Compliance report due dates.* Unless the Administrator has approved a different schedule, you must submit quarterly compliance reports for battery stacks and semiannual compliance reports for all other affected sources to your permitting authority according to the requirements in paragraphs (a)(1) through (4) of this section.

(1) The first quarterly compliance report for battery stacks must cover the period beginning on the compliance date that is specified for your affected source in § 63.7283 and ending on the last date of the third calendar month. Each subsequent compliance report must cover the next calendar quarter.

(2) The first semiannual compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.7283 and ending on June 30 or December 31, whichever date comes first after the compliance date that is specified for your affected source. 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.

(3) All quarterly compliance reports for battery stacks must be postmarked or delivered no later than one calendar month following the end of the quarterly reporting period. All semiannual compliance reports 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.

(4) 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 (a)(1) through (3) of this section.

(b) *Quarterly compliance report contents.* Each quarterly report must provide information on compliance with the emission limitations for battery stacks in § 63.7296. The reports must include the information in paragraphs (c)(1) through (3), and as applicable, paragraphs (c)(4) through (8) of this section.

(c) *Semiannual compliance report contents.* Each compliance report must provide information on compliance with the emission limitations, work practice standards, and operation and maintenance requirements for all affected sources except battery stacks. The reports must include the information in paragraphs (c)(1) through (3) of this section, and as applicable, paragraphs (c)(4) through (8) of this section.

(1) Company name and address.

(2) Statement by a responsible official, with the 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) 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).

(5) If there were no deviations from the continuous compliance requirements in § 63.7333(e) for battery stacks, a statement that there were no deviations from the emission limitations during the reporting period. If there were no deviations from the continuous compliance requirements in §§ 63.7333 through 63.7335 that apply to you (for all affected sources other than battery stacks), a statement that there were no deviations from the emission limitations, work practice standards, or operation and maintenance requirements during the reporting period.

(6) If there were no periods during which a continuous monitoring system (including COMS, continuous emission monitoring system (CEMS), or CPMS) was out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during which a continuous monitoring system was out-of-control during the reporting period.

(7) For each deviation from an emission limitation in this subpart (including quench water limits) and for each deviation from the requirements for work practice standards in this subpart that occurs at an affected source where you are not using a continuous monitoring system (including a COMS, CEMS, or CPMS) to comply with the emission limitations in this subpart, the compliance report must contain the information in paragraphs (c)(4) and (7)(i) and (ii) of this section. This includes periods of startup, shutdown, and malfunction.

(i) The total operating time of each affected source during the reporting period.

(ii) Information on the number, duration, and cause of deviations (including unknown cause, if

applicable) as applicable and the corrective action taken.

(8) For each deviation from an emission limitation occurring at an affected source where you are using a continuous monitoring system (including COMS, CEMS, or CPMS) to comply with the emission limitation in this subpart, you must include the information in paragraphs (c)(4) and (8)(i) through (xii) of this section. This includes periods of startup, shutdown, and malfunction.

(i) The date and time that each malfunction started and stopped.

(ii) The date and time that each continuous monitoring system (including COMS, CEMS, or CPMS) was inoperative, except for zero (low-level) and high-level checks.

(iii) The date, time, and duration that each continuous monitoring system (including COMS, CEMS, or CPMS) was out-of-control, including the information in § 63.8(c)(8).

(iv) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(v) 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.

(vi) A breakdown of the total duration of the deviations during the reporting period into those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(vii) A summary of the total duration of continuous monitoring system downtime during the reporting period and the total duration of continuous monitoring system downtime as a percent of the total source operating time during the reporting period.

(viii) An identification of each HAP that was monitored at the affected source.

(ix) A brief description of the process units.

(x) A brief description of the continuous monitoring system.

(xi) The date of the latest continuous monitoring system certification or audit.

(xii) A description of any changes in continuous monitoring systems, processes, or controls since the last reporting period.

(d) *Immediate startup, shutdown, and malfunction report.* If you had a startup, shutdown, or malfunction during the semiannual reporting period that was not consistent with your startup, shutdown, and malfunction plan, you must submit an immediate startup, shutdown, and malfunction report according to the requirements in § 63.10(d)(5)(ii).

(e) *Part 70 monitoring report.* If you have obtained a title V operating permit for an affected source pursuant to 40 CFR part 70 or 40 CFR part 71, you must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If you submit a compliance report for an affected source 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 the required information concerning deviations from any emission limitation or work practice standard in this subpart, submission of the compliance report satisfies any obligation to report the same deviations in the semiannual monitoring report. However, submission of a compliance report does not otherwise affect any obligation you may have to report deviations from permit requirements to your permitting authority.

§ 63.7342 What records must I keep?

(a) You must keep the records specified in paragraphs (a)(1) through (3) 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)(2)(xiv).

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) Records of performance tests, performance evaluations, and opacity observations as required in § 63.10(b)(2)(viii).

(b) For each COMS or CEMS, you must keep the records specified in paragraphs (b)(1) through (4) of this section.

(1) Records described in § 63.10(b)(2)(vi) through (xi).

(2) Monitoring data for COMS during a performance evaluation as required in § 63.6(h)(7)(i) and (ii).

(3) Previous (that is, superceded) versions of the performance evaluation plan as required in § 63.8(d)(3).

(4) Records of the date and time that each deviation started and stopped, and whether the deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(c) You must keep the records in § 63.6(h)(6) for visual observations.

(d) You must keep the records required in §§ 63.7333 through 63.7335 to show continuous compliance with each emission limitation, work practice standard, and operation and maintenance requirement that applies to you.

§ 63.7343 In what form and how long must I keep my records?

(a) You must keep your records 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 each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You can keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.7350 What parts of the General Provisions apply to me?

Table 1 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

§ 63.7351 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the United States Environmental Protection Agency (U.S. EPA), or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office 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 subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities in paragraphs (c)(1) through (6) of this section will not be delegated to State, local, or tribal agencies.

(1) Approval of alternatives to work practice standards for fugitive pushing emissions in § 63.7291(a) for a by-product coke oven battery with vertical flues, fugitive pushing emissions in § 63.7292(a) for a by-product coke oven battery with horizontal flues, fugitive pushing emissions in § 63.7293 for a non-recovery coke oven battery, soaking

for a by-product coke oven battery in § 63.7294(a), and quenching for a coke oven battery in § 63.7295(b) under § 63.6(g).

(2) Approval of alternative opacity emission limitations for a by-product coke oven battery under § 63.6(h)(9).

(3) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90, except for alternative procedures in § 63.7334(a)(7).

(4) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(5) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

(6) Approval of the work practice plan for by-product coke oven batteries with horizontal flues submitted under § 63.7292(a)(1).

§ 63.7352 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act (CAA), in § 63.2, and in this section as follows:

Acceptable makeup water means surface water from a river, lake, or stream; water meeting drinking water standards; storm water runoff and production area clean up water except for water from the by-product recovery plant area; process wastewater treated to meet effluent limitations guidelines in 40 CFR part 420; water from any of these sources that has been used only for non-contact cooling or in water seals; or water from scrubbers used to control pushing emissions.

Backup quench station means a quenching device that is used for less than 5 percent of the quenches from any single coke oven battery in the 12-month period from July 1 to June 30.

Baffles means an apparatus comprised of obstructions for checking or deflecting the flow of gases. Baffles are installed in a quench tower to remove droplets of water and particles from the rising vapors by providing a point of impact. Baffles may be installed either inside or on top of quench towers and are typically constructed of treated wood, steel, or plastic.

Battery stack means the stack that is the point of discharge to the atmosphere of the combustion gases from a battery's underfiring system.

Batterywide extended coking means increasing the average coking time for all ovens in the coke oven battery by 25 percent or more over the manufacturer's specified design rate.

By-product coke oven battery means a group of ovens connected by common walls, where coal undergoes destructive distillation under positive pressure to produce coke and coke oven gas from which by-products are recovered.

By-product recovery plant area means that area of the coke plant where process units subject to subpart L in part 61 are located.

Coke oven battery means a group of ovens connected by common walls, where coal undergoes destructive distillation to produce coke. A coke oven battery includes by-product and non-recovery processes.

Coke plant means a facility that produces coke from coal in either a by-product coke oven battery or a non-recovery coke oven battery.

Cokeside shed means a structure used to capture pushing emissions that encloses the cokeside of the battery and ventilates the emissions to a control device.

Coking time means the time interval that starts when an oven is charged with coal and ends when the oven is pushed.

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 emission limitation (including operating limits) or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Emission limitation means any emission limit, opacity limit, or operating limit.

Four consecutive pushes means four pushes observed successively.

Fugitive pushing emissions means emissions from pushing that are not collected by a capture system.

Horizontal flue means a type of coke oven heating system used on Semet-Solvay batteries where the heating flues run horizontally from one end of the oven to the other end, and the flues are not shared with adjacent ovens.

Hot water scrubber means a mobile scrubber used to control pushing emissions through the creation of an induced draft formed by the expansion of pressurized hot water through a nozzle.

Increased coking time means increasing the charge-to-push time for an individual oven.

Non-recovery coke oven battery means a group of ovens connected by common walls and operated as a unit, where coal undergoes destructive distillation under negative pressure to produce coke, and which is designed for the combustion of the coke oven gas from which by-products are not recovered.

Oven means a chamber in the coke oven battery in which coal undergoes destructive distillation to produce coke.

Pushing means the process of removing the coke from the oven. Pushing begins with the first detectable movement of the coke mass and ends when the quench car enters the quench tower.

Quenching means the wet process of cooling (wet quenching) the hot incandescent coke by direct contact with water that begins when the quench car enters the quench tower and ends when the quench car exits the quench tower.

Quench tower means the structure in which hot incandescent coke in the quench car is deluged or quenched with water.

Remove from service means that an oven is not charged with coal and is not used for coking. When removed from service, the oven may remain at the operating temperature or it may be cooled down for repairs.

Responsible official means responsible official as defined in § 63.2.

Short battery means a by-product coke oven battery with ovens less than five meters in height.

Soaking means that period in the coking cycle that starts when an oven is dampered off the collecting main and vented to the atmosphere through an open standpipe prior to pushing and ends when the coke begins to be pushed from the oven.

Soaking emissions means the discharge from an open standpipe during soaking of visible emissions due to either incomplete coking or leakage into the standpipe from the collecting main.

Standpipe means an apparatus on the oven that provides a passage for gases from an oven to the atmosphere when the oven is dampered off the collecting main and the standpipe cap is opened. This includes mini-standpipes that are not connected to the collecting main.

Tall battery means a by-product coke oven battery with ovens five meters or more in height.

Vertical flue means a type of coke oven heating system in which the heating flues run vertically from the bottom to the top of the oven, and flues are shared between adjacent ovens.

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 required in § 63.7350, you must comply with each applicable requirement of the NESHAP General Provisions (40 CFR part 63, subpart A) as shown in the following table:

TABLES TO SUBPART CCCCC OF PART 63

[Table 1 to Subpart CCCCC of Part 63. Applicability of General Provisions to Subpart CCCCC]

Citation	Subject	Applies to Subpart CCCCC?	Explanation
§ 63.1	Applicability	Yes.	
§ 63.2	Definitions	Yes.	
§ 63.3	Units and Abbreviations	Yes.	
§ 63.4	Prohibited Activities	Yes.	
§ 63.5	Construction/Reconstruction	Yes.	
§ 63.6(a), (b), (c), (d), (e), (f), (g), (h)(2)–(8).	Compliance with Standards and Maintenance Requirements.	Yes.	
§ 63.6(h)(9)	Adjustment to an Opacity Emission Standard	Yes.	
§ 63.7(a)(3), (b), (c)–(h).	Performance Testing Requirements	Yes.	
§ 63.7(a)(1)–(2)	Applicability and Performance Test Dates	No	Subpart CCCCC specifies applicability and dates.
§ 63.8(a)(1)–(3), (b), (c)(1)–(3), (c)(4)(i)–(ii), (c)(5)–(8), (d), (e), (f)(1)–(5), (g)(1)–(4).	Monitoring Requirements	Yes	CMS requirements in § 63.8(c)(4) (i)–(ii), (c)(5), and (c)(6) apply only to COMS for battery stacks.
§ 63.8(a)(4)	Additional Monitoring Requirements for Control Devices in § 63.11.	No	Flares are not a control device for Subpart CCCCC affected sources.
§ 63.8(c)(4)	Continuous Monitoring System (CMS) Requirements.	No	Subpart CCCCC specifies requirements for operation of CMS.
§ 63.8(e)(4)–(5)	Performance Evaluations	Yes	Except COMS performance evaluation must be conducted before the compliance date.
§ 63.8(f)(6)	RATA Alternative	No	Subpart CCCCC does not require CEMS.
§ 63.8(g)(5)	Data Reduction	No	Subpart CCCCC specifies data that can't be used in computing averages for COMS.
§ 63.9	Notification Requirements	Yes	Additional notifications for CMS in § 63.9(g) apply only to COMS for battery stacks.
§ 63.10(a), (b)(1)–(b)(2)(xii), (b)(2)(xiv), (b)(3), (c)(1)–(6), (c)(9)–(15), (d), (e)(1)–(2), (e)(4), (f).	Recordkeeping and Reporting Requirements	Yes.	Additional records for CMS in § 63.10(c)(1)–(6), (9)–(15), and reports in § 63.10(d)(1)–(2) apply only to COMS for battery stacks.
§ 63.10(b)(2) (xi)–(xii).	CMS Records for RATA Alternative	No	Subpart CCCCC doesn't require CEMS.
§ 63.10(c)(7)–(8)	Records of Excess Emissions and Parameter Monitoring Exceedances for CMS.	No	Subpart CCCCC specifies record requirements.
§ 63.10(e)(3)	Excess Emission Reports	No	Subpart CCCCC specifies reporting requirements.
§ 63.11	Control Device Requirements	No	Subpart CCCCC does not require flares.
§ 63.12	State Authority and Delegations.	Yes.	
§§ 63.13–63.15	Addresses, Incorporation by Reference, Availability of Information.	Yes.	

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Part IV

Department of Health and Human Services

Announcement of Availability of Funds for Family Planning Male Reproductive Health Research Grants; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Availability of Funds for Family Planning Male Reproductive Health Research Grants

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office of Population Affairs.

ACTION: Notice.

Authority: Section 1004 of the Public Health Service (PHS) Act.

SUMMARY: The Office of Population Affairs (OPA) requests applications for grants for research in certain behavioral and program implementation fields related to family planning. These grants are for community-based research projects to investigate best—practice approaches to providing family planning and related health information, education and clinical services targeting males.

DATES: To receive consideration, applications must be received by the Office of Public Health and Science (OPHS) Grants Management Office no later than June 13, 2003.

ADDRESSES: Application kits may be requested from, and applications submitted to: OPHS Grants Management Office, 1101 Wooton Parkway, 5th Floor, Rockville, MD 20852. Application kits are also available online at the Office of Population Affairs Web site at http://opa.osophs.dhhs.gov or may be requested by fax at (301) 594–0019 or (301) 594–5980.

SUPPLEMENTARY INFORMATION: Title X of the Public Health Service Act, 42 U.S.C. 300, *et seq.*, authorizes programs related to family planning. Section 1004 of the Act, as amended, authorizes the Secretary of Health and Human Services to award grants to entities to conduct research in the behavioral and program implementation fields related to family planning. Implementing regulations can be found at 42 CFR part 52. Section 1008 of the Act, as amended, stipulates that none of the funds appropriated under this title shall be used in programs where abortion is a method of family planning.

CFDA: A description of the Title X Family Planning Research Program can be found at OMB Catalog of Federal Domestic Assistance 93.974. A description of Title X Family Planning Services Program can be found at OMB Catalog of Federal Domestic Assistance 93.217.

I. Funding Opportunity Description

This announcement seeks proposals from public and private non-profit entities to undertake research in the fields of family planning and reproductive health services and education for males. Funds available under this announcement are for community-based research projects to investigate best-practice approaches to providing family planning and related health information, education, and clinical services targeting males.

These projects are intended to evaluate different programmatic approaches and venues to reach males in need of such information and services, based on the use of recognized theory and logic-based models for program planning, implementation and evaluation.

Background

The family planning program authorized by Section 1001 of Title X is required by law to provide family planning services, including information, education and counseling, to all persons desiring such services. One subgroup of the population that continues to be under-represented is males. Over the past 30 years, males annually have comprised only two to four percent of clients served by the Title X family planning clinical service delivery system. This emphasizes the fact that simply offering clinical services will not result in males using those services.

Adult men of all ages do have reproductive health concerns; however, these concerns may not readily translate into contact with the health care system. During adolescence and young adulthood, sexual and reproductive health issues and behaviors have a great influence on males' lives. Accurate information, skills and support should be available to encourage delay of sexual debut until after adolescence and preferably until marriage. For sexually active young males, this time of life may bring with it such health concerns as STDs, HIV/AIDS, unintended pregnancy and the emotional stress of interpersonal and intimate relationships.

Among middle-aged and older males, health concerns around sexual and reproductive behavior continue, though the nature of these concerns may differ from that of younger males. Even when men visit a health care provider, they are more reluctant than women to bring problems of a reproductive or sexual nature to their clinician's attention. Given the different attitudes and expectations that men and women have toward health care, it would seem that involving men in their own care requires a different approach from that which has been successful with women.

Studies have shown that men are most receptive to health messages in locations and environments with which they are familiar, and as part of programs that they voluntarily pursue. Programs that deliver family planning and related health messages as part of other community-based services or activities have the potential to be successful and need greater emphasis and exploration. Experience with male projects has shown that health promotion and prevention services provided through community settings, complement available clinical health services.

The recent interest in encouraging male involvement in family planning and reproductive health is driven by the current epidemic of STDs, including HIV/AIDS, and high rates of unintended pregnancies, as well as by shifts in public health policies. Fighting the fatherless epidemic, promoting responsible fatherhood, and supporting healthy marriages are major concerns for the nations' lawmakers. Similarly, the recognition of health, educational, and psychosocial consequences of early sexual activity has led to an increased focus on extra-marital abstinence. Involving males in family planning and reproductive health issues is one way to encourage and support ''future orientation'' in terms of establishing core values, long term goals, and relationships, including marriage and family.

In the mid-1990s, the Office of Family Planning (OFP), Office of Population Affairs (OPA) funded community-based organizations to investigate and develop effective approaches to providing family planning/reproductive health information and services to males. In addition, these projects explored strategies to involve males in building community support for pregnancy prevention and contraception. These research projects showed that males do want and need reproductive health information and services, and will seek services from community-based entities that they know and trust. In addition, these projects showed that community-based organizations (CBOs), and faith-based organizations (FBOs), as a subset of community-based organizations, can effectively augment the clinical service delivery system. Project experience indicated that CBOs and the clinical delivery system function best as partners in the delivery of reproductive health services to males by focusing on health promotion and disease

prevention services, and by contributing their outreach capabilities to raise awareness and encourage males to address their own health care needs. Key factors in the success of this complementary arrangement between CBOs and the clinical service delivery system are that CBOs integrate health-related services as part of their mission and activities, and that clinical providers reinforce the validity of CBOs as partners in the delivery of health promotion and disease prevention services.

Preliminary evaluation results from the research grants awarded in the mid-1990s suggests that participants in the OFP-funded male programs exhibited increased knowledge about family planning, reproductive health, and male responsibility related to their own health and the health of their partners and families compared with their knowledge prior to participation. Some areas where these programs were implemented have shown a marked reduction in teen pregnancy among the target population. In addition, preliminary assessment suggests that CBOs have the capability and commitment to improve program effectiveness and cost efficiency.

For over five years, national policy leaders and constituents have encouraged OFP to explore ways to involve CBOs in the provision of family planning and reproductive health services for males. The community-based family planning/reproductive health research programs for males have received strong community support. They have filled a gap in the service delivery system. Continued research efforts to refine models of service delivery, to test replicability of such models, and to address cost efficiency issues related to delivering male family planning and related health services will contribute to successful programs in CBOs, including FBOs.

Purposes of the Grant

The purpose of this grant is to expand the research base on program utility, replicability and cost-effectiveness of family planning and related health programs serving males. Continued scientific evaluation of the extent to which these programs and approaches produce their intended effect is crucial. Grants to be made under this announcement will build upon what was learned as a result of the last cycle of OFP-funded male research projects, and will focus on utility, replicability, and cost-effectiveness. In addition to conducting an evaluation of their individual projects, successful applicants must be prepared to participate in a cross-site evaluation, to be conducted by an independent entity, to assess program efficiency and effectiveness across all projects funded under this announcement.

In order to expand the research base on program utility, replicability and cost-effectiveness of family planning and related health programs serving males, OPA is soliciting applications for projects that focus on one or more of the following areas as they relate to males:

1. Testing of existing curricula or models for providing information and education to males regarding male development and reproductive health, relationships, responsibility, extra-marital abstinence, marriage and family formation, fatherhood, contraceptive services and STD prevention;

2. Modifying and testing existing curricula or models for providing male family planning/reproductive health information, education and/or clinical services to different, identified categories (*e.g.,* different age groups, geography, race/ethnicity, *etc.*);

3. Testing of innovative approaches for providing family planning/reproductive health counseling and services to males.

Please note that *no* grant funds may be used for curriculum development. Existing curricula, or adaptations of existing curricula, which have been evaluated and found to be successful, should be used.

Applicants should familiarize themselves with *Healthy People 2010*—Chapter 11, ''Health Communication'' and the document ''Community-Based Sexual and Reproductive Health Promotion and Education Programs for Males: Components that Work.'' Copies of both of these documents are included in the application kit.

Cost per Participant

In investigating best practice approaches to providing family planning and reproductive health information, education and clinical services to males, the cost per participant depends upon the type of service provided. For example, the cost per participant for information and education programs is almost always less than the participant cost for clinical services. However, the lower cost per participant of providing information and education programs may be offset by a larger number of persons reached. In general, the cost of providing information and education programs is related to whether or not there is direct contact with participants, the number of participants in a session, the time spent during the session, the number of sessions, and the qualifications of the person(s) providing services. General guidelines for what education components should cost can be derived from the intensity level of provider-client interactions. Intensity level is a function of both the quality and quantity of contact time with individual clients, ranging from dissemination of information and educational materials with little or no contact with individuals; to less intense group meetings, used mainly for information exchange; to more intense interactions, such as those used to bring about behavior change.

Depending upon the services proposed, cost per participant served should range from approximately $50 to $300. Programs emphasizing materials (*e.g.,* brochure distribution, intermittent presentations, local media campaigns, *etc.*) will be funded at the lower range, and will be based largely on the cost of materials dissemination or media campaign development and implementation. Costs should emphasize staffing and materials as they relate to the purpose of this announcement and proposed program.

Services involving direct person to person contact, such as delivery of health information and education in a structured series of small group sessions will generally be funded at the middle of the funding range. Cost emphasis should be on staffing, facility, materials, etc. as they relate to the purpose of this announcement and the proposed program.

Applicants proposing to provide individual treatment and/or functional support may incur higher costs. Budget requests should emphasize staff, facilities, materials, equipment, etc. to provide individual counseling or treatment, in addition to family planning/reproductive health information and education. These projects will be funded in the upper range. A minimal number of these higher cost projects will be funded.

The overall cost of the project will be determined by the type(s) of services provided. It is expected that the majority of projects will be of moderate intensity and funded in the mid-range.

II. Award Information

OPA intends to make available approximately $2.5 million to support an estimated 10–15 community-based research grants. Awards will range from $100,000 to $250,000 per year. Grants will be funded in annual increments (budget periods) and may be approved for a project period of up to five years. A match of non-Federal funds will not be required. Funding for all budget periods beyond the first year of the grant

is contingent upon the availability of funds, satisfactory progress on the project, and adequate stewardship of federal funds.

III. Eligibility Information

Any public or private nonprofit entity located in a State (which includes one of the 50 United States, the District of Columbia, Commonwealth of Puerto Rico, U.S. Virgin Islands, Commonwealth of the Northern Mariana Islands, American Samoa, Guam, Republic of Palau, Federated States of Micronesia, and the Republic of the Marshall Islands) is eligible to apply for a grant under this announcement. Faith-based organizations are eligible to apply for these family planning male reproductive health research grants.

Organizations that are experienced in providing a variety of services to males, such as social, educational, faith-based, vocational, and legal services (*e.g.,* tutoring, mentoring, job skills training), and have the capability of expanding program activities to include development, provision and evaluation of family planning/reproductive health related information, education and clinical services, are encouraged to apply for a grant under this announcement.

IV. Application and Submission Information

Applications must be submitted on the Form OPHS–1 (Revised 6/01) and in the manner prescribed in the application kit. Application kits are available from the OPHS Grants Management Office at the address previously listed, on the OPA Web site at *http://opa.osophs.dhhs.gov,* or may be requested by fax at 301–594–0019 or 301–594–5980. Applicants are required to submit an original application signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award. Applicants are required to submit an original application and two copies. Applications should be limited to 50 double-spaced pages, not including appendices. Appendices may include curriculum vitae and other evidence of organizational capabilities.

Applications must include a one-page abstract of the proposed project. The abstract will be used to provide reviewers with an overview of the application, and will form the basis for the application summary in grants management documents. It is the practice of the Office of Population Affairs to maintain a summary of funded grants, and to post this information on the OPA Web site. The abstract will be used as the basis for this posting and for other requests for summary information regarding funded grants.

To receive consideration, applications must be received by the OPHS Grants Management Office by the deadline listed in the ''Dates'' section of this announcement. Applications will be considered as meeting the deadline if they are postmarked on or before the deadline date and are received in time for orderly processing. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Hand-delivered applications must be received in the OPHS Grants Management Office not later than 4:30 p.m. on the application due date. Applications that do not meet the deadline will not be accepted for review, and will be returned. Applications sent via facsimile or by electronic mail will not be accepted for review.

A copy of the legislation governing this program and additional information which may be helpful will be included as part of the application kit. Applicants should use the legislation and other information included in this announcement to guide them in developing their applications.

Review Under Executive Order 12372

Applicants under this announcement are not subject to the requirements of Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Program Requirements/Application Content

This notice seeks applications for the implementation and evaluation of community-based projects to investigate best-practice approaches to providing family planning and related health information, education and clinical services targeting males. Successful applications will focus on program utility, replicability and cost-effectiveness, and will include the following:

(1) An epidemiologic description of the target community.

(2) Evidence that the applicant organization has experience and success in providing a variety of services to males in the target community.

(3) A clear description of the target audience. Description should include whether the target audience includes individuals, groups, or the community as a whole.

(4) Evidence that the applicant organization has the capacity to deliver male reproductive health information, education (including abstinence education), and/or clinical services, that are appropriate to culture, age, and language of the target audience.

(5) Evidence that the proposed plan was developed using an integrated system, such as a logic model, for planning, monitoring and evaluation of program activities.

(6) Evidence that the proposed program activities are consistent with the requirements of Title X. Use of Title X funds is prohibited in programs where abortion is a method of family planning.

(7) A description of the type, length, and location of all program activities and specific program services.

(8) A theoretical rationale for the chosen program approach, as well as evidence of its effectiveness.

(9) Submission of goal statement(s) and related outcome objectives that are specific, measurable, achievable, realistic and time-framed (S.M.A.R.T.).

(10) A plan to evaluate individual program activities, the program as a whole, and its impact on the target audience.

(11) An assurance of willingness and ability to participate in a cross-site evaluation, to be conducted by an independent entity.

(12) A detailed budget and budget justification for year one of the project which is reasonable, adequate, and cost efficient, and which includes staffing requirements that are derived from proposed activities. Budget projections for each of the continuing years should be included.

(13) Evidence of formal agreements for referral services (*e.g.,* age appropriate clinical services, if not provided by the applicant), and collaborative agreements with other service providers in the community, where appropriate.

Program Evaluation

All projects are required to have an evaluation plan, consistent with the scope of the proposed project and funding level, that conforms to the program's stated goals and objectives. The plan should include both a process evaluation to track the implementation of program activities and an outcome evaluation to measure changes in knowledge, skills, and behavior that can be attributed to the program. (Applicants are encouraged to utilize an integrated planning, monitoring and evaluation system, such as a logic model, for program development and implementation. Additional information on logic models is included in the application kit.) There should be

substantial evidence that the project will add to the body of knowledge with regard to provision of quality male family planning and reproductive health information, education and services for males. Program funds may be used to support evaluation activities.

In addition to conducting an evaluation of their individual projects, successful applicants must be prepared to participate in a cross-site evaluation, to be supported by the OPA and conducted by an independent entity, to assess program efficiency and effectiveness across all projects funded under this announcement.

V. Application Review Information

Eligible grant applications will be reviewed by a multi-disciplinary panel of independent reviewers and assessed according to the following criteria:

(1) The applicant's presentation of a detailed evaluation plan, indicating an understanding of program evaluation methods and reflecting a practical and technically sound approach to assessing the project's achievement of program objectives, as well as the intent and ability to participate in a cross-cutting evaluation of all projects funded under this announcement (25 points);

(2) The capability of the applicant to provide family planning and reproductive health information, education and/or clinical services to males, as evidenced by the applicant's past and present history of providing a variety of services to males, such as social, health, recreational, educational, and/or vocational services (20 points);

(3) The applicant's presentation of the proposed project, including a clear description of need for the project; a theoretical rationale for the approach to be used, as well as its demonstrated effectiveness; measurable goals and objectives; methods for achieving objectives; and statement of expected results (20 points);

(4) The feasibility of the proposed project and likelihood that the results will contribute to the body of knowledge regarding the delivery of acceptable, culturally competent, cost effective family planning and reproductive health information, education, and clinical services to males (15 points);

(5) The administrative and management capability of the applicant, including competency of the proposed staff in relation to the type of research proposed, the project period, and the adequacy of the applicant's resources for the project (10 points); and

(6) The capacity of the applicant to make rapid and effective use of grant assistance, including evidence of ability to modify program activities if indicated (10 points).

Final grant award decisions will be made by the Deputy Assistant Secretary for Population Affairs. In making these decisions, the Deputy Assistant Secretary for Population Affairs will take into account the extent to which grants approved for funding will provide an appropriate geographic distribution of resources, and will take into consideration:

(1) The scientific merit and significance of the proposed project, including the model to be used;

(2) The population(s) to be served;

(3) The usefulness for policymakers and service providers of the proposed project and the likelihood of its producing meaningful results and information that will contribute to the body of knowledge regarding male family planning and reproductive health information, education and services for males; and

(4) The reasonableness of the estimated cost to the government considering the anticipated results.

Awards will be made only to those organizations or agencies which have demonstrated the capability of providing the proposed services, and which have met all applicable requirements. However, efforts will be made to distribute awards across the ten PHS Regions.

VI. Award Administration Information

OPA does not release information about individual applications during the review process until final funding decisions have been made. When these decisions have been made, applicants will be notified by letter regarding the outcome of their applications. The official document notifying an applicant that an application has been approved and granted funding is the Notice of Grant Award, which specifies to the grantee the amount of money awarded, the purpose of the grant, the terms and conditions of the grant award, and the amount of funding, if any, to be contributed by the grantee to project costs.

VII. Agency Contacts

For assistance on administrative and budgetary requirements, Karen Campbell, OPHS Grants Management Office, (301) 594–0758;

For assistance with questions regarding program requirements, Susan B. Moskosky, Office of Family Planning/Office of Population Affairs, (301) 594–4008.

Dated: April 7, 2003.

Alma L. Golden,

Deputy Assistant Secretary for Population Affairs.

[FR Doc. 03–9050 Filed 4–11–03; 8:45 am]

BILLING CODE 4150–34–P

Federal Register

Monday,
April 14, 2003

Part V

Department of Labor

Employee Benefits Security Administration

29 CFR Part 2590
Mental Health Parity; Interim Final Rule

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2590

RIN 1210–AA62

Mental Health Parity

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Interim final amendment to regulation.

SUMMARY: This document contains an interim final amendment to modify the sunset date of interim final regulations under the Mental Health Parity Act (MHPA) to be consistent with legislation passed during the 107th Congress.

DATES: Effective date. The interim final amendment is effective December 2, 2002. Applicability dates. The requirements of the interim final amendment apply to group health plans and health insurance issuers offering health insurance coverage in connection with a group health plan beginning December 2, 2002. The MHPA interim final amendment extends the sunset date from December 31, 2002 to December 31, 2003. Pursuant to the extended sunset date, MHPA requirements apply to benefits for services furnished before December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Connor, Employee Benefits Security Administration, Department of Labor, at (202) 693–8335. Customer Service Information: Individuals interested in obtaining additional information on the Mental Health Parity Act and other health care laws may request copies of Department of Labor publications concerning changes in health care law by calling the EBSA Toll-Free Hotline at 1–866–444–3272. Information on the Mental Health Parity Act and other health care laws is also available on the Department of Labor's Web site (*http://www.dol.gov/ebsa*).

SUPPLEMENTARY INFORMATION:

A. Background

The Mental Health Parity Act of 1996 (MHPA) was enacted on September 26, 1996 (Pub. L. 104–204, 110 Stat. 2944). MHPA amended the Employee Retirement Income Security Act of 1974 (ERISA) and the Public Health Service Act (PHS Act) to provide for parity in the application of annual and lifetime dollar limits on mental health benefits with dollar limits on medical/surgical benefits. Provisions implementing MHPA were later added to the Internal Revenue Code of 1986 (Code) under the Taxpayer Relief Act of 1997 (Pub. L. 105–34, 111 Stat. 1080).

The provisions of MHPA are set forth in Part 7 of Subtitle B of Title I of ERISA, Chapter 100 of Subtitle K of the Code, and Title XXVII of the PHS Act.[1] The Secretaries of Labor, the Treasury, and Health and Human Services share jurisdiction over the MHPA provisions. These provisions are substantially similar, except as follows:

- The MHPA provisions in ERISA generally apply to all group health plans other than governmental plans, church plans, and certain other plans. These provisions also apply to health insurance issuers that offer health insurance coverage in connection with such group health plans. Generally, the Secretary of Labor enforces the MHPA provisions in ERISA, except that no enforcement action may be taken by the Secretary against issuers. However, individuals may generally pursue actions against issuers under ERISA and, in some circumstances, under State law.
- The MHPA provisions in the Code generally apply to all group health plans other than governmental plans, but they do not apply to health insurance issuers. A taxpayer that fails to comply with these provisions may be subject to an excise tax under section 4980D of the Code.
- The MHPA provisions in the PHS Act generally apply to health insurance issuers that offer health insurance coverage in connection with group health plans and to certain State and local governmental plans. States, in the first instance, enforce the PHS Act with respect to issuers. Only if a State does not substantially enforce any provisions under its insurance laws will the Department of Health and Human Services enforce the provisions, through the imposition of civil money penalties. Moreover, no enforcement action may be taken by the Secretary of Health and Human Services against any group health plan except certain State and local governmental plans.

B. Overview of MHPA

The MHPA provisions are set forth in section 712 of ERISA, section 9812 of the Code, and section 2705 of the PHS Act. MHPA applies to a group health plan (or health insurance coverage offered by issuers in connection with a group health plan) that provides both medical/surgical benefits and mental health benefits. MHPA's original text included a sunset provision specifying that MHPA's provisions applied to benefits for services furnished before September 30, 2001. On December 22, 1997 the Departments of Labor, the Treasury, and Health and Human Services issued interim final regulations under MHPA in the **Federal Register** (62 FR 66931). The interim final regulations included this statutory sunset date.

On January 10, 2002, President Bush signed H.R. 3061 (Pub. L. 107–116, 115 Stat. 2177), the 2002 Appropriations Act for the Departments of Labor, Health and Human Services, and Education.[2] This legislation extended MHPA's original sunset date under ERISA, the Code, and the PHS Act, so that MHPA's provisions would apply to benefits for services furnished before December 31, 2002.

On March 9, 2002, President Bush signed H.R. 3090, the Job Creation and Worker Assistance Act of 2002 (Pub. L. 107–147, 116 Stat. 21), that included an amendment to section 9812 of the Code (the mental health parity provisions). This legislation further extends MHPA's original sunset date under the Code to December 31, 2003. The Joint Committee on Taxation's technical explanation of H.R. 3090 (JCT Report) states that the January 10th amendment to MHPA restored the excise tax retroactively to September 30, 2001. Under H.R. 3090, the excise tax provision of MHPA is amended to apply to benefits for such services furnished on or after January 10, 2002 and before January 1, 2004. As indicated by the JCT Report, H.R. 3061 restored the MHPA provisions retroactively to September 30, 2001.

On September 27, 2002, the Department of Labor issued an interim final amendment for mental health parity in the **Federal Register** (67 FR 60859). The interim final amendment included the new statutory sunset date under H.R. 3061, so that MHPA's provisions would apply to benefits for services furnished before December 31, 2002. The Department made the effective date of this interim final amendment to the regulations September 30, 2001.

[1] Part 7 of Subtitle B of Title I of ERISA, Chapter 100 of Subtitle K of the Code, and Title XXVII of the PHS Act were added by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. 104–191.

[2] During the 107th Congress, legislation was passed by the Senate to substantively amend and expand the provisions of MHPA already in place. This legislation was offered as an amendment to the provisions of H.R. 3061. The Conference Report accompanying the underlying provisions of H.R. 3061 states that instead of the amendment proposed by the Senate, the amendment to MHPA contained in H.R. 3061 extends the original sunset date of MHPA, so that MHPA's provisions apply to benefits for services furnished before December 31, 2002. H.R. Rep. 107–342, at 170 (2001).

On December 2, 2002, President Bush signed H.R. 5716, the Mental Health Parity Reauthorization Act of 2002 (Pub. L. 107–313, 116 Stat. 2457), an amendment to section 712 of ERISA and section 2705 of the PHS Act (the mental health parity provisions). This legislation further extends MHPA's original sunset date under ERISA and the PHS Act to December 31, 2003. Like MHPA, this amendment to MHPA applies to a group health plan (or health insurance coverage offered by issuers in connection with a group health plan) that provides both medical/surgical benefits and mental health benefits.[3] As a result of this statutory amendment, and to assist employers, plan sponsors, health insurance issuers, and workers, the Department of Labor has developed this amendment of the interim final regulations, in consultation with the Departments of the Treasury and Health and Human Services, conforming the regulatory sunset date to the new statutory sunset date. The Department is also making conforming changes extending the duration of the increased cost exemption to be consistent with the new sunset date. Since the extension of this sunset date is not discretionary, this amendment to the MHPA regulations is promulgated on an interim final basis pursuant to section 734 of ERISA. This interim final amendment is also promulgated pursuant to section 553(d)(3) of the Administrative Procedure Act, allowing for regulations to become effective immediately for good cause.

C. Executive Order 12866

Under Executive Order 12866, the Department must determine whether a regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, it has been determined that this action is not a ''significant regulatory action'' within the meaning of the Executive Order. This action is an amendment to the interim final regulations and merely extends the regulatory sunset date to conform to the new statutory sunset date added by H.R. 5716.

D. Paperwork Reduction Act

The information collection provisions of MHPA incorporated in the Department's interim final rules are currently approved under OMB control numbers 1210–0105 (Notice to Participants and Beneficiaries and Federal Government of Electing One Percent Increased Cost Exemption), and 1210–0106 (Calculation and Disclosure of Documentation of Eligibility for Exemption). These information collection requests are approved through November 30, 2004 and October 31, 2004, respectively. Because no substantive or material change is made to the approved information collection provisions in connection with this interim final amendment, no submission for continuing OMB approval is required or made at this time.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*). Because this amendment to the interim final regulations is being published on an interim final basis, without prior notice and a period for comment, the Regulatory Flexibility Act does not apply.

F. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (UMRA), as well as Executive Order 12875, this interim final amendment does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, and does not include mandates that may impose an annual expenditure of $100 million or more on the private sector.

G. Congressional Review Act

This interim final amendment is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) (SBREFA), and has been transmitted to Congress and the Comptroller General for review. This amendment to the interim final regulations is not a major rule, as that term is defined by 5 U.S.C. 804.

H. Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the States, the relationship between the States, the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This interim final amendment does not have federalism implications as it only conforms the regulatory sunset date to the new statutory sunset date added by H.R. 5716.

List of Subjects in 29 CFR Part 2590

Employee benefit plans, Employee Retirement Income Security Act, Health care, Health insurance, Medical child support, Reporting and recordkeeping requirements.

Employee Benefits Security Administration

■ 29 CFR part 2590 is amended as follows:

PART 2590—RULES AND REGULATIONS FOR HEALTH INSURANCE PORTABILITY AND RENEWABILITY FOR GROUP HEALTH PLANS

■ 1. The authority citation for part 2590 is revised to read as follows:

Authority: 29 U.S.C. 1027, 1059, 1135, 1169, 1181–1183, 1185, 1185a, 1185b, 1191, 1191a, 1191b, and 1191c, sec. 101 (g) Pub. L. 104–191, 101 Stat. 1936; sec. 401(b) Pub. L. 105–200, 112 Stat. 645; Secretary of Labor's Order No. 1–2003, 68 FR 5373, (Feb. 3, 2003).

2590.712 [Amended]

■ 2. Amend § 2590.712 (f)(1), (g)(2), and (i) by removing the date ''December 31, 2002'' and adding in its place the date ''December 31, 2003.''

[3] The parity requirements under MHPA, the interim regulations, and the amendment to the interim regulations do not apply to any group health plan (or health insurance coverage offered in connection with a group health plan) for any plan year of a small employer. The term ''small employer'' is defined as an employer who employed an average of at least 2 but not more than 50 employees on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year.

Signed at Washington, DC this 9th day of April, 2003.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 03–9024 Filed 4–11–03; 8:45 am]

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Federal Register

Monday,
April 14, 2003

Part VI

Environmental Protection Agency

40 CFR Part 261

Project XL Site-Specific Rulemaking for the IBM Semiconductor Manufacturing Facility in Hopewell Junction, New York; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–7480–7]

RIN 2090–AA29

Project XL Site-Specific Rulemaking for the IBM Semiconductor Manufacturing Facility in Hopewell Junction, NY

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental proposal; request for comment.

SUMMARY: The Environmental Protection Agency is publishing this site-specific proposal, which supplements the previously published proposed rule for this pilot project under the Project eXcellence and Leadership Program (Project XL). This supplemental proposal is being issued in light of new data received by EPA concerning the cadmium levels in the wastewater treatment sludge that is the focus of this site-specific rulemaking. In particular, this rulemaking effort will allow for the implementation of a pilot project under Project XL that will provide site-specific regulatory flexibility under the Resource Conservation and Recovery Act (RCRA), as amended, for the International Business Machines Corporation (IBM) East Fishkill semiconductor manufacturing facility in Hopewell Junction, New York. The principal objective of this pilot project is to determine whether the wastewater treatment sludge resulting from the treatment of wastewaters from electroplating operations (and therefore meeting the listing description for F006 Hazardous Waste) at IBM's East Fishkill facility may be used as an ingredient in the manufacture of cement in an environmentally sound manner without RCRA regulatory controls.

DATES: Public Comments: Comments on this supplemental proposal must be received on or before May 14, 2003. All comments should be submitted in writing or electronically according to the directions below in the **SUPPLEMENTARY INFORMATION** section.

Public Hearing: Commenters may request a public hearing on or before April 28, 2003, and should specify the basis for the request. If EPA determines there is sufficient reason to hold a public hearing, it will do so by May 5, 2003, during the last week of the public comment period. Requests for a public hearing should be submitted according to the information below in the **ADDRESSES** section. If a public hearing is scheduled, the date, time, and location will be available through a **Federal Register** document or by contacting Mr. Sam Kerns at the U.S. EPA Region 2 office (*see* **FOR FURTHER INFORMATION CONTACT** section, below).

ADDRESSES: Comments may be submitted electronically, by mail, by facsimile, or through hand delivery/courier. Follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section.

Request for a Hearing: Requests for a hearing should be mailed to the Environmental Protection Agency, EPA Docket Center (EPA/DC), RCRA Docket (5305T), 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please send an original and two copies of all comments, and refer to Docket Number F–2002–IB3P–FFFFF. A copy should also be sent to Mr. Sam Kerns at the U.S. EPA Region 2 office. Mr. Kerns may be contacted at the following address: U.S. Environmental Protection Agency, Region 2, 290 Broadway, New York, NY 10007–1866, (212) 637–4139.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Kerns, U.S. Environmental Protection Agency, Region 2, 290 Broadway, New York, NY 10007–1866. Mr. Kerns can be reached at (212) 637–4139 (or *kerns.sam@epa.gov*). Further information on today's action may also be obtained on the world wide web at *http://www.epa.gov/projectxl/*.

SUPPLEMENTARY INFORMATION:

Outline of Today's Supplemental Proposal

The information presented in this preamble is organized as follows:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

I. Docket. EPA has established an official public docket for this action under Docket ID No. F–2002–IB3P–FFFFF. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the RCRA Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1742, and the telephone number for the RCRA Docket is (202) 566–0270. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost 15 cents per page.

II. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not

included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket. Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA Dockets online or *see* 67 FR 38102, May 31, 2002.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in I.B.2 and I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

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

I. EPA Dockets. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. F–2002–IB3P–FFFFF. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

II. E-mail. Comments may be sent by electronic mail (e-mail) to *rcra-docket@epa.gov*, Attention Docket ID No. F–2002–IB3P–FFFFF. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

III. Disk or CD ROM. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in I.B. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

II. By Mail. Send 2 copies of your comments to the RCRA Docket, Environmental Protection Agency, Mailcode: 5305T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. F–2001–IB3P–FFFFF.

III. By Hand Delivery or Courier. Deliver your comments to: Environmental Protection Agency, EPA Docket Center, 1301 Constitution Avenue, NW., Washington, DC 20004, Attention Docket ID No. F–2002–IB3P–FFFFF. Such deliveries are only accepted during the Docket's normal hours of operation as identified in A.1.

IV. By Facsimile. Fax your comments to: 202–566–0272, Attention Docket ID. No. F–2001–IB3P–FFFFF.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: Environmental Protection Agency, EPA Docket Center (EPA/DC), RCRA Docket, 1301 Constitution Avenue, NW., Washington, DC 20004, Attention Docket ID No. F–2001–IB3P–FFFFF. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be

included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

D. What Should I Consider as I Prepare My Comments for EPA?

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

I. Explain your views as clearly as possible.
II. Describe any assumptions that you used.
III. Provide any technical information and/or data you used that support your views.
IV. If you estimate potential burden or costs, explain how you arrived at your estimate.
V. Provide specific examples to illustrate your concerns.
VI. Offer alternatives.
VII. Make sure to submit your comments by the comment period deadline identified.
VIII. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Authority

EPA is publishing this proposed regulation under the authority of sections 2002, 3001, 3002, 3003, 3006, 3010, and 7004 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6912, 6921, 6922, 6923, 6926, 6930, 6937, 6938, and 6974).

III. Background

A. How Does This Supplemental Proposal Relate to the Original Proposal Published on June 6, 2001 (66 FR 30349)?

This pilot project assesses the appropriateness of excluding from the RCRA regulatory definition of solid waste the wastewater treatment sludge (designated as F006 Hazardous Waste) generated by one of the two fluoride/heavy metal wastewater treatment plants (the plant designated as B/690 West Complex by IBM) on the IBM East Fishkill facility when the sludge is being used as an ingredient in the manufacture of cement. Information will be obtained and used to evaluate this recycling process and determine whether similar sludges should also be excluded from RCRA regulatory controls when recycled in the same manner. However, additional data will likely be necessary before EPA would be in a position to evaluate this practice at the national level.

Today's supplemental proposal amends the original proposal published on June 6, 2001 (66 FR 30349). As with the original proposed rule, this supplemental proposal is not intended to apply to any other hazardous wastes generated and/or managed at the IBM facility, unless the wastewater treatment sludge (also designated as F006 Hazardous Waste) generated by the other wastewater treatment plant (the B/386 East Complex) at the facility becomes eligible once a Final Project Agreement (or addendum to the current Final Project Agreement) is signed allowing for the additional sludge to be included in this project. The proposed rule does not apply to any wastewater treatment sludges generated at other facilities.

The duration of this pilot project is five years—that is, the site-specific conditional exclusion includes a ''sunset provision'' which will automatically terminate the exclusion five years from the effective date of the final rulemaking. Towards the end of the term of this XL project, EPA, the New York State Department of Environmental Conservation (NYSDEC), and IBM will evaluate the success of the pilot project. If the project is determined to be successful, EPA may consider expanding the scope of the exclusion to the national level (by rulemaking). However, EPA does not expect that this XL project alone can generate all the data that would be necessary on the wide variety of other F006 wastestreams that could potentially be used to make cement to proceed with a national rulemaking.

Today's supplemental proposal, and the original proposed rulemaking will not in any way affect the provisions or applicability of any other existing or future regulations.

EPA is soliciting comments on today's supplemental proposal. EPA will publish responses to comments, and comments to the original proposal in a subsequent **Federal Register** document. Subject to comments received on the proposal, EPA will either promulgate the proposed rule (as supplemented with today's proposal) as a final rule, modify the proposal as necessary to address comments and promulgate the modified proposal as a final rule, or decide to not go final with the rule. If significant changes to the rule are necessary based on comments received, EPA will re-propose the rule to allow for further public notice and comment. The XL project will enter the implementation phase only after a final rule is promulgated by EPA, and NYSDEC has undertaken appropriate action to allow the project to be implemented.

The terms of the overall XL project are contained in a Final Project Agreement (FPA) which was the subject of a Notice of Availability published in the **Federal Register** on September 1, 2000 (65 FR 53298) and which was signed by EPA, NYSDEC and IBM on September 29, 2000. The Final Project Agreement (FPA) is available to the public at the EPA Docket in Washington, DC, in the U.S. EPA Region 2 library, at the IBM East Fishkill facility, and on the world wide web at *http://www.epa.gov/projectxl/.*

For a more complete and detailed discussion of Project XL, the development of the Final Project Agreement (FPA), and the pilot project for which this supplemental proposal is intended, the reader is referred to the original proposal (June 6, 2001, 66 FR 30349). The summary of the proposed rule provided below is not intended to be comprehensive, but only includes those aspects of the proposed rule most relevant to this supplemental proposal.

B. Brief Summary of the June 6, 2001 Proposed Rule

On June 6, 2001, EPA published a proposed rule (66 FR 30349) to amend the RCRA regulatory definition of solid waste to provide a site-specific conditional exclusion for the F006 electroplating sludge generated by the IBM East Fishkill facility located in Hopewell Junction, New York. This rulemaking effort was undertaken to allow for the implementation of a pilot project under Project XL to determine whether the electroplating sludge could be recycled in an environmentally sound manner as an ingredient in the production of cement without RCRA regulatory oversight. (Note that the legitimate recycling of this sludge as an ingredient in cement is currently regulated under Subtitle C of RCRA because the cement is likely to be used on the land—that is, ''used in a manner constituting disposal,'' a form of recycling that is analogous to land disposal. Because the current regulatory framework would subject this sludge to RCRA regulatory requirements, this recycling scenario would likely not be undertaken and implemented without the site-specific exclusion.)

EPA's (and NYSDEC's) decision to proceed with this pilot project was based in large part on the determination

that the use of the sludge as an ingredient in cement is legitimate recycling. In other words, the electroplating sludge in question was determined, based on a comparative analysis of the constituents in both the sludge and the raw materials that the sludge would be replacing, to be a legitimate substitute for the analogous raw materials that would otherwise be used in the production of cement. *See* the June 6, 2001 proposal (66 FR at 30352–30354) for a more detailed discussion of the Agency's basis for defining this activity as legitimate recycling. Having determined the legitimacy of this activity, the proposed site-specific exclusion was conditioned on the sludge remaining consistent with the analogous raw materials, which was accomplished by setting a set of threshold levels for the hazardous constituents contained in the sludge. (Note that the site-specific conditional exclusion also imposes certain other conditions on IBM to be eligible for the exclusion.)

IV. Discussion of Certain Comments Received on the June 6, 2001 Proposed Rule

On June 6, 2001, EPA requested comments on the proposed rule for the IBM East Fishkill Project XL (*see* 66 FR 30349). While the Agency will appropriately address the comments received in the final rule (assuming the rule is finalized), EPA is taking this opportunity to address certain fundamental misconceptions concerning this XL pilot project that are common to many of the comments received on the original proposal. In addition, the Agency would like to address certain comments that question the overall ''legitimacy'' of using this F006 sludge as an ingredient in cement.

A. Shenandoah Road Superfund Site Stakeholders

Comments were submitted by concerned citizens living in a community near the IBM East Fishkill facility who are also involved as stakeholders in the cleanup of the Shenandoah Road Groundwater Contamination Superfund Site, a remediation activity for which the IBM East Fishkill facility was identified as a Potentially Responsible Party (PRP). The Agency is taking this opportunity to address some of the concerns expressed by these citizens. The sludge involved in this XL project was not disposed of at the Superfund site, and the production lines and wastewater treatment systems involved in generating the sludge are not associated with operations which resulted in the groundwater contamination that is the focus of the Superfund remedial activities. Further, the sludge does not contain tetrachloroethene (PCE) or other volatile organic constituents (VOCs), but rather is primarily composed of calcium and fluoride, and includes certain inorganic constituents of concern (*i.e.*, heavy metals) at low levels.

Also, it is worth noting that while the facility may have been involved in past operations that resulted in environmental damages, this in and of itself does not preclude the facility (or any facility) from developing and proposing a pilot project that meets the Project XL criteria.

In addition, several of the commenters requested a public meeting on this XL project and the proposed rule and an extension to the comment period. This request was declined by EPA because the substantive concerns expressed in the comments were primarily based upon a perceived connection between this XL pilot project and the contamination/remediation activities at the Shenandoah Road Superfund Site. Since public meetings concerning the Superfund site were being held, EPA concluded that they provided a more appropriate forum to raise such concerns.

To address any concerns that may have been somewhat related to IBM's XL project, EPA held an Availability Session (an informal forum in which the pilot project could be discussed with interested individuals) in conjunction with one of the Superfund public meetings as an effective first step in addressing those concerns. A fact sheet for the project was updated to respond to comments received before the Superfund public meeting that was scheduled for June 13, 2001, a week following publication of the proposed rule. (Most of the comments received from the residents of the Shenandoah Road area had been received before this meeting.) EPA's project manager for this XL project attended the June 13, 2001 Superfund public meeting, hosted the Availability Session, discussed this XL project with interested persons, and distributed copies of the fact sheet. Comments that were received during and immediately after the Availability Session were subsequently addressed by letter or e-mail. Therefore, although neither a public meeting nor an extension of the comment period was granted specific to this XL project or proposed rule, the Agency took steps to address the concerns raised.

B. Environmental Technology Council

The Environmental Technology Council (ETC) is a national trade association representing the commercial hazardous waste management industry and has historically been an active stakeholder in rulemakings involving RCRA jurisdiction. While ETC commented on several aspects of the proposal which will be addressed in the final rule (assuming the rule is finalized), several comments related to ''legitimate recycling'' and ''dilution'' exhibited a significant misunderstanding that the Agency wishes to address in today's notice.

To begin, ETC asserts that the recycling of IBM's sludge as an ingredient in cement is a sham, rather than legitimate recycling. In other words, ETC claims that the use of the calcium-rich sludge as an ingredient in cement is nothing more than treatment and/or disposal of the sludge in the guise of recycling. While ETC provides support for this assertion by addressing the various ''legitimacy criteria'' as the Agency did in the proposal (*see* 66 FR at 30353), one aspect of ETC's discussion requires clarification from EPA in this supplemental proposal. ETC contends that the sludge contains significantly higher levels of hazardous constituents than the analogous raw materials the sludge would replace. The Agency disagrees with ETC and notes that ETC cites historical analytical data on the sludge rather than the more recent analyses of the sludge to support this claim. Further, ETC fails to acknowledge the threshold levels proposed as a mechanism to ensure that the sludge excluded from RCRA regulation would remain comparable to the analogous raw materials. ETC's claim to the contrary notwithstanding, the sludge that will be recycled pursuant to the proposed conditional exclusion will, in effect, legitimately substitute for the analogous raw materials that would otherwise be used. This is one of the indicators the Agency considered in determining that the use of the sludge as an ingredient in the production of cement is legitimate recycling.

As for ETC's position that this recycling scenario is simply dilution, the Agency acknowledges that the 1:200 ratio of sludge to normal raw materials might, in and of itself, lead one to assume that impermissible dilution is occurring. Indeed, the Agency stated as much in the preamble to the proposed rule (*see* 66 FR at 30354); however, as EPA also discussed, upon further evaluation, one can see that the ratio is merely a function of the relatively small volume of electroplating sludge generated by the IBM facility and the relatively large volume of raw materials typically processed by a cement

manufacturer. It is not, as ETC asserts, an attempt to simply dispose of the sludge by diluting it into a much larger volume of raw materials. In making this claim, ETC ignores the fact that the sludge does indeed contribute a very integral part of the ingredient mixture necessary to produce cement (*i.e.*, calcium). Furthermore, as stated earlier, the concentrations of hazardous constituents in the sludge and in the analogous raw materials are comparable. Therefore, to the extent that there is any ''dilution'' of the hazardous constituents in the sludge, the Agency believes it would be nominal, incidental, and consistent with the processing that the normal raw materials undergo in the production of cement (*i.e.*, similar to the ''dilution'' that occurs when only normal raw materials are used). Finally, the Agency notes that ETC acknowledges in their comments that the Toxicity Characteristic Leaching Procedure (TCLP) data provided in support of this rulemaking indicate that the sludge would meet the applicable Land Disposal Restrictions treatment standards as generated, without requiring further treatment. Given that the sludge already meets the treatment standards that would apply if it was disposed of in a Subtitle C permitted hazardous waste landfill, ''dilution'' as an impermissible substitute for the appropriate treatment of the hazardous constituents is a moot point (*see* 40 CFR 268.3).

V. Discussion of the Change From the June 6, 2001 Proposed Rule

Since the June 6, 2001 proposal, IBM continued to sample and analyze the sludge that is the focus of this pilot project. In the course of this sampling and analysis effort, IBM discovered that the concentration of cadmium in the sludge had increased to 1.5182 ppm. IBM then conducted a thorough inventory of the materials and equipment used in the production processes and determined that cadmium is not used[1]. In the June 6, 2001 proposal, the Agency discussed IBM's assumption that the cadmium detected in the wastewater treatment sludge is present as a contaminant in the lime used in the wastewater treatment process (*see* Footnote 4, 66 FR 30354). This appears to be the case.

Upon learning that in some instances the sludge would not meet the threshold level that the Agency had originally proposed for cadmium (*i.e.*, 0.88 mg/kg) for the sludge to be conditionally excluded from the definition of solid waste, IBM informed EPA; EPA then requested that IBM provide a detailed analysis of the lime used in the wastewater treatment process (which IBM received from the distributor of the lime). This analysis showed that the lime being used by IBM at the time contained 2.0 ppm cadmium. The Agency believes that, because the lime makes up such a high proportion of the sludge (typically more than 90%, according to IBM), the cadmium levels in the sludge are consistent with what would be expected given the cadmium levels in the lime.

In considering how to proceed, one option was to keep the proposed threshold level of cadmium in the wastewater treatment sludge and disallow any sludge not meeting this level from being conditionally excluded from the definition of solid waste under the pilot project. Under this approach, if the Agency finalizes the site-specific exclusion, and did so as originally proposed, IBM could begin to use the sludge as an ingredient in cement once the sludge met the proposed conditions of the exclusion. However, this approach seems inappropriate, especially considering that the lime containing 2.0 ppm cadmium could itself be used as an ingredient in cement outside of RCRA jurisdiction (the lime is a commercial product, not a solid waste). Put another way, the Agency believes it would be inappropriate to disallow the sludge (which is primarily lime) from being used as an ingredient because of a contaminant in the lime. Therefore this was not considered a viable option.

An alternative option is to re-propose a more realistic threshold level for cadmium, based on the potential presence of cadmium in the lime used in wastewater treatment. The Agency notes that the slightly higher concentration of cadmium in the sludge (as well as the proposed change to the cadmium threshold level to reflect that concentration) has no effect on the Agency's determination that the sludge is analogous to the raw materials that would otherwise be used as ingredients in the production of cement. And, as discussed briefly in the proposal (*see* 66 FR 30354, June 6, 2001), a certain amount of variability in the constituent concentrations in the normal raw materials used to produce cement is typical, if not expected. In proposing the original cadmium threshold of 0.88 mg/kg, the Agency assumed that this would account for such variability. Obviously, this was not the case. Therefore, the Agency has determined that it is more appropriate to re-propose a cadmium threshold level that more accurately reflects the potential variability of cadmium concentrations in lime, and its attendant impact on the cadmium concentrations in the sludge generated using the lime.

In defining a cadmium threshold that would be more appropriate and reflect the natural variability in raw materials normally used as ingredients in cement, the Agency learned that the lime IBM uses for treating the electroplating wastewaters is held to a maximum concentration of 2.0 ppm, which is the standard for cadmium concentrations in lime used for conditioning (or treating) drinking water.[2] Assuming that the lime used to generate the sludge will not exceed 2.0 ppm cadmium, the sludge should also not exceed this level. Therefore, the Agency is today proposing that the threshold level for cadmium be set at 2.0 mg/kg (rather than the previously proposed level of 0.88 mg/kg). The Agency believes that this threshold level more accurately reflects the upper limit of the concentration of cadmium naturally occurring in the specific lime used to generate the electroplating sludge.

Finally, the Agency notes that while it is publishing the entire text of the regulatory language that was proposed in the June 6, 2001 **Federal Register** document to provide context for the proposed change in this supplemental proposal, the Agency is only soliciting comment on the revised cadmium threshold level.

[1] Note that, as mentioned in the original proposed rule (*see* Footnote 4, 66 FR at 30354, June 6, 2001), during the development of this XL project, IBM had previously conducted a review of the materials used in the facility's production processes and determined that cadmium is not used at the facility.

[2] In considering a more appropriate cadmium threshold level, the Agency contacted the National Lime Association (NLA) for generic information regarding the variability of metal concentrations naturally occurring in lime on a national basis. Such comprehensive information was not readily available. However, in considering whether the Agency should characterize the constituent concentrations of cadmium in lime on a national basis (a somewhat daunting task), EPA learned that such a characterization may not be necessary to develop a threshold level that appropriately reflects the cadmium concentrations in the lime the IBM East Fishkill facility uses. Rather, as the Agency learned from the NLA, the lime products provided by IBM's distributor are ANSI–60 (UL) certified as water treatment chemicals. This means that these products (including the lime used in IBM's wastewater treatment system) meet the applicable concentration criteria for heavy metals, including cadmium (which is 2 ppm), as long as the products are used per specifications. In other words, the specific lime used by this specific IBM facility is certified to have no more than 2 ppm cadmium. Given that this is a site-specific rulemaking, EPA considers this 2 ppm cadmium concentration to be a more appropriate threshold level for this specific site than a threshold level reflecting the cadmium concentrations developed on a national basis.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735), the Agency must determine whether this regulatory action is ''significant'' and therefore subject to formal review by the Office of Management and Budget (OMB) and to the requirements of the Executive Order, which include assessing the costs and benefits anticipated as a result of this regulatory action. The Order defines ''significant regulatory'' action as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because this rule affects only one facility, it is not a rule of general applicability and therefore not subject to OMB review and Executive Order 12866. In addition, OMB has agreed that review of site-specific rules under Project XL is not necessary.

B. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et. seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities because it only affects the IBM facility in Hopewell Junction, NY and which does not fit the definition of small entity.

C. Paperwork Reduction Act

This action applies only to one facility, and therefore requires no information collection activities subject to the Paperwork Reduction Act, and therefore no information collection request (ICR) will be submitted to OMB for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq*.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enable 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.

As noted above, this rule is applicable only to one facility in New York. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. EPA has also determined that this 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 one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Today's proposal, which supplements the earlier proposal, does not have federalism implications. It will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's supplemental proposal will only affect one facility, providing regulatory flexibility applicable to this specific site. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.'' ''Policies that have Tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal

government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' Today's proposal, which supplements the earlier proposal, does not have Tribal implications. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. EPA is currently unaware of any Indian tribes located in the vicinity of the facility. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045

Executive Order 13045, entitled ''Protection of Children From Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potential effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children because this action raises the threshold level of cadmium to the concentration that naturally occurs in lime used to generate electroplating sludge. The public is invited to submit or identify peer-reviewed studies and data, of which the Agency may not be aware, that assessed results of early life exposure to cadmium that occurs naturally in raw materials that are used in cement production.

H. Executive Order 13211

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It will not result in increased energy prices, increased cost of energy distribution, or an increased dependence on foreign supplies of energy.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA,'' Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. Today's proposal, which supplements the earlier proposal, does not establish technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (February 11, 1994), is designed to address the environmental and human health conditions of minority and low-income populations. EPA is committed to addressing environmental justice concerns and has assumed a leadership role in environmental justice initiatives to enhance environmental quality for all citizens of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, income, or net worth bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities. In response to Executive Order 12898, EPA's Office of Solid Waste and Emergency Response (OSWER) formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17). To address this goal, EPA conducted a qualitative analysis of the environmental justice issues under the national proposed rule. Potential environmental justice impacts are identified consistent with the EPA's Environmental Justice Strategy and the OSWER Environmental Justice Action Agenda.

Today's proposal, which supplements an earlier proposal, applies to one facility in New York. Overall, no disproportional impacts to minority or low income communities are expected.

VII. RCRA & Hazardous and Solid Waste Amendments of 1984

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program for hazardous waste within the State. (*See* 40 CFR part 271 for the standards and requirements for authorization.) States with final authorization administer their own hazardous waste programs in lieu of the Federal program. Following authorization, EPA retains enforcement authority under sections 3008, 7003 and 3013 of RCRA.

After authorization, Federal rules written under RCRA (non-HSWA), no longer apply in the authorized State except for those issued pursuant to the Hazardous and Solid Waste Act Amendments of 1984 (HSWA). New Federal requirements imposed by those rules do not take effect in an authorized State until the State adopts the requirements as State law.

In contrast, under section 3006(g) of RCRA, new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time they take effect in nonauthorized States. EPA is directed to carry out HSWA requirements and prohibitions in authorized States until the State is granted authorization to do so.

B. Effect on New York Authorization

The proposed rule, which today's notice supplements, if finalized, will be promulgated pursuant to non-HSWA authority, rather than HSWA. New York has received authority to administer most of the RCRA program; thus, authorized provisions of the State's hazardous waste program are administered in lieu of the Federal program. New York has received authority to administer the regulations that define solid wastes. As a result, if the proposed rule to modify the existing regulations to provide a site-specific exclusion for IBM's wastewater treatment sludge is finalized, it would not be effective in New York until the State adopts the modification. It is EPA's understanding that subsequent to the promulgation of the final rule, New York intends to propose rules or other legal mechanisms to provide the

exclusion. EPA may not enforce these requirements until it approves the State requirements as a revision to the authorized State program.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous materials, Waste treatment and disposal, Recycling.

Dated: April 4, 2003.

Christine Todd Whitman,

Administrator.

For the reasons set forth in the preamble, part 261 of chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

2. Section 261.4 is amended by adding paragraph (a)(22) to read as follows:

§ 261.4 Exclusions.

* * * * *

(a) * * *

(22) Dewatered wastewater treatment sludges generated by the International Business Machines Corporation (IBM) East Fishkill facility in Hopewell Junction, New York, provided that:

(i) The sludge is recycled as an ingredient in the manufacture of cement meeting appropriate product specifications by a cement manufacturing facility.

(ii) The sludge is not stored on the land, and protective measures are taken to ensure against wind dispersal and precipitation run-off.

(iii) The sludge is not accumulated speculatively, as defined in § 261.1(c)(8).

(iv) A representative sample of the sludge undergoes constituent analysis by IBM (using the methods specified in 40 CFR part 264, appendix

IX) demonstrating that the sludge contains constituents at no greater concentrations than the thresholds presented below. Sludges generated by different wastewater treatment systems must be analyzed separately (commingling of the sludges is permissible after sampling). This sampling and analysis must be conducted every three months for an initial 12-month period, which can include the immediate period prior to the effective date of this exclusion. After the initial 12-month reporting period (*i.e.*, four sampling/analysis events), sampling and analysis must be conducted every six months for the duration of the project. Additionally, after any change in either the manufacturing process or the wastewater treatment process that could affect the chemical composition of the wastewater treatment sludge, sampling and analysis must be conducted. In addition to the constituents for which threshold levels are established, IBM must analyze and report the concentration levels of mercury and beryllium. The threshold concentrations are as follows:

Arsenic 3.0 mg/kg
Cadmium 2.0 mg/kg
Chromium (total) 22.9 mg/kg
Cyanide (amenable) 0.815 mg/kg
Cyanide (total) 0.815 mg/kg
Lead 18.8 mg/kg
Nickel 10.4 mg/kg
Silver 2.1 mg/kg

(v) An accounting is made of the volumes of sludge that are recycled, with an assessment of how much less analogous raw materials are used to produce the same volume of cement product, or how much more cement is produced attributable to the volume of sludge that is processed. IBM must acquire this information from the cement manufacturing facility.

(vi) IBM documents each shipment of the sludge, including where the sludge was sent, the date of the shipment, the date that the shipment was received and the volume of each shipment.

(vii) IBM provides EPA and NYSDEC with semi-annual reports detailing all of the information in paragraphs (a)(22)(i)–(vi) of this section for the duration of the project.

(viii) Should any of the conditions of paragraphs (a)(22)(i)–(vii) of this section not be met, the exclusion provided in this provision will not be applicable and the wastewater treatment sludge will be subject to the applicable RCRA Subtitle C regulations until the conditions are once again met.

(ix) The provisions of this section shall expire on [DATE FIVE YEARS FROM EFFECTIVE DATE OF FINAL RULE].

* * * * *

[FR Doc. 03–9047 Filed 4–11–03; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Monday,
April 14, 2003

Part VII

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Flexible Polyurethane Foam Fabrication Operations; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0080; FRL–7461–1]

RIN 2060–AH42

National Emission Standards for Hazardous Air Pollutants: Flexible Polyurethane Foam Fabrication Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for new and existing sources at flexible polyurethane foam fabrication facilities. The EPA has identified flexible polyurethane foam fabrication facilities as major sources of hazardous air pollutants (HAP) emissions. These standards will implement section 112(d) of the Clean Air Act (CAA) by requiring all such major sources to meet HAP emission standards that reflect the application of maximum achievable control technology (MACT). The primary HAP that will be controlled with this action include hydrochloric acid (HCl), 2,4-toluene diisocyanate (TDI), and hydrogen cyanide (HCN). This action will also preclude the use of methylene chloride. Exposure to these substances has been demonstrated to cause adverse health effects such as irritation of the lung, eye, and mucous membranes, effects on the central nervous system, and cancer. We do not have the type of current detailed data on each of the facilities and the people living around the facilities covered by today's final rule for this source category that would be necessary to conduct an analysis to determine the actual population exposures to the HAP emitted from these facilities and the potential for resultant health effects. Therefore, we do not know the extent to which the adverse health effects described above occur in the populations surrounding these facilities. However, to the extent the adverse effects do occur, and today's final rule reduces emissions, subsequent exposures will be reduced. This final rule will reduce HAP emissions by 6.5 tons per year (tpy) from each new or reconstructed affected source performing flame lamination.

EFFECTIVE DATE: April 14, 2003.

ADDRESSES: *Docket.* We have established an official public docket for this action under Docket ID No. OAR–2002–0080 or A–2000–43; available for public viewing at the Office of Air and Radiation Docket and Information Center (Air Docket) in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: For information concerning applicability and rule determinations, contact your State or local regulatory agency representative or the appropriate EPA Regional Office representative. For information concerning analyses performed in developing this rule, contact Ms. Maria Noell, Organic Chemicals Group, Emission Standards Division (C504–04), U.S. EPA, Research Triangle Park, North Carolina, 27711; telephone number (919) 541–5607; fax number (919) 541–0942; electronic mail address: *noell.maria@epa.gov.*

SUPPLEMENTARY INFORMATION:

Docket. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

Electronic Docket Access. You may access the final rule electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

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

Judicial Review. Under CAA section 307(b), judicial review of the final NESHAP is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit on or before June 13, 2003. Only those objections to the NESHAP which were raised with reasonable specificity during the period for public comment may be raised during judicial review. Under section 307(b)(2)of the CAA, the requirements established by today's final action may not be challenged separately in any civil or criminal proceeding we bring to enforce these requirements.

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

Category	SIC [a]	NAICS [b]	Regulated entities
Industry	3086	32615	Fabricators of flexible polyurethane foam.

[a] Standard Industrial Classification.
[b] North American Information Classification System

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.8782 of the rule. If you have questions regarding the applicability of this action to a particular entity, consult your State or local agency (or EPA Regional Office) described in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this final rule will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules *http://www.epa.gov/ttn/oarpg.*

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

I. Introduction and Background

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

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. The category of major sources covered by today's final rule was listed on July 16, 1992 (57 FR 31576). Major source under section 112 means 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, considering controls, 10 tpy or more of any one HAP or 25 tpy or more of any combination of HAP.

B. 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 major 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 the MACT.

The minimum control level allowed for NESHAP, which we refer to as the ''MACT floor,'' is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that standards are set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on consideration of the cost of achieving the emission reductions, any non-air quality health and environmental impacts, and energy requirements.

C. How Did the Public Participate in Developing the Rule?

Prior to proposal, we met with industry representatives and State regulatory authorities several times to discuss the data and information used to develop the proposed standards. In addition, these and other potential stakeholders, including equipment vendors and environmental groups, had opportunity to comment on the proposed standards.

The proposed rule was published in the **Federal Register** on August 8, 2001 (66 FR 41718). The preamble to the proposed rule discussed the availability of technical support documents, which described in detail the information gathered during the standards development process. Public comments were solicited at proposal, including a specific request for comments with regard to the potential existence of non-slitter adhesive use by major sources.

We received eight public comment letters on the proposed rule. The commenters represent the following affiliations: foam fabricators (2 companies), industrial trade associations (5), and one private research group. In the post-proposal period, we talked with commenters and other stakeholders to clarify comments and to assist in our analysis of the comments. Records of these contacts are found in Docket OAR–2000–0080 or Docket A–2000–43. All of the comments have been carefully considered, and, where appropriate, changes have been made for the final rule.

D. Description of Source Category

Today's NESHAP apply to the Flexible Polyurethane Foam Fabrication Operations source category. This source category includes operations engaged in cutting, gluing, and/or laminating pieces of flexible polyurethane foam. This includes fabrication operations that are located at foam production plants, as well as those that are located off-site from foam production plants.

We have identified two subcategories under the Flexible Polyurethane Foam Fabrication Operations source category. These subcategories are loop slitter HAP-based adhesive use and flame lamination.

Loop Slitter Adhesive Use: A loop slitter is a large machine used to create thin sheets of foam from the large blocks of foam or ''buns'' created at a foam production plant. In order to comply with Occupational Health and Safety Administration (OSHA) regulations, loop slitters have converted from a reliance on methylene chloride-based adhesives to other non-HAP alternatives since the mid-1990's. As a result of the OSHA regulations, we believe that the foam fabrication industry has effectively discontinued the use of methylene chloride-based adhesives on loop slitters. Consequently, our estimate of current nationwide HAP emissions from loop slitter adhesive use prior to the development of the NESHAP (referred to as ''baseline emissions'') is zero.

Flame Lamination: In the flame lamination process, foam is scorched to adhere it to various substrates. This process releases particulates and HAP. We have identified HCN, TDI, and HCl as HAP emitted as a result of flame lamination. Specific HAP released are dependent on the contents of the foam being laminated at a given time. With the exception of HCl, these HAP are generally released in very small amounts.

II. Summary of Changes Since Proposal

In response to comments received on the proposed NESHAP and further analysis, we made two significant changes for the final rule, and a small number of other changes for editorial purposes and clarification.

The proposed rule included an emission limit for loop slitters of zero HAP emissions. Information subsequently supplied by commenters and industry contacts demonstrated that the widely used n-propyl bromide adhesives originally believed to be non-HAP actually contain small amounts of HAP.

In accordance with the definition of ''HAP-based'' in the Flexible Polyurethane Foam Production NESHAP (40 CFR part 63, subpart III), we have changed the definition of ''HAP-based adhesive'' to contain 5 percent (by weight) or more of HAP. We also changed the emission limit accordingly.

At post proposal, it came to our attention that the test methods specified for measurement of HCN emissions from process, storage tank, and transfer vents (EPA Methods 18, 25, and 25A) have not been validated for measurement of HCN. Test methods that have been used for measurement of HCN include the EPA Conditional Test Method CTM–033 ''Draft Method for Sampling and Analysis of Hydrogen Cyanide Emissions for Stationary Sources'' and California Air Resources Board Method 426 (*http://www.epa.gov/ttn/emc/ctm.html*) modified to use ion chromatography for sample analysis. However, neither of these methods have been fully validated at this time. Consequently, the final rule has been written to require that the data from any test method used to measure HCN emissions from flame lamination sources must be validated using EPA Method 301.

Another change made for the final rule was the addition of a definition for ''research and development process'' to clarify the provision in § 63.8782(d)(2) that such processes are not subject to the rule, and a change to § 63.8786(e) so that collection of compliance data prior to the compliance date is no longer required.

We proposed to exclude non-slitters from the source category based on our findings that there were no non-slitters using HAP-based adhesives located on the site of a major source, and solicited comment and supporting information regarding that issue. We received no comment or supporting information contrary to our findings, therefore, we are excluding the non-slitter adhesive use from the source category definition. Additional changes were insignificant and editorial in nature.

III. Summary of Final Rule

A. What Are the Affected Sources?

The final rule defines two affected sources (units or collections of units to which a given standard or limit applies) corresponding to the two subcategories, loop slitter adhesive use and flame lamination. The loop slitter adhesive use affected source is the collection of loop slitters and associated adhesive application equipment used to apply HAP-based adhesives to bond foam to foam at a flexible polyurethane foam fabrication plant site. Loop slitter affected sources, located at plant sites that are major sources of HAP, that are using HAP-based adhesives on or after April 14, 2003, are subject to the NESHAP, including the applicable emission limit and reporting and recordkeeping requirements. However, loop slitter affected sources that have eliminated use of HAP-based adhesives by April 14, 2003, are not subject to the NESHAP. The flame lamination affected source is the collection of all flame laminators and associated rollers at a flexible polyurethane foam fabrication plant site associated with the flame lamination of foam to any substrate.

B. What Are the Emission Limitations and Compliance Dates?

If you own or operate an existing, new, or reconstructed loop slitter adhesive use affected source, the final rule prohibits you from using any HAP-based adhesives. We are defining HAP-based adhesives as adhesives containing 5 percent (by weight) or greater of HAP, where the concentration of HAP may be determined using EPA Method 311 (Analysis of Hazardous Air Pollutant Compounds in Paints and Coatings by Direct Injection Into a Gas Chromatograph) or other approved information. Existing affected sources must be in compliance by April 14, 2004. New or reconstructed sources must be in compliance by the date of startup of the affected source, or by April 14, 2003, whichever is later.

If you own or operate an existing flame lamination affected source, you are not required to meet any emission limitation; you are only subject to a requirement to submit an initial notification within 120 days after April 14, 2003. If you own or operate a new or reconstructed flame lamination affected source, the NESHAP requires that you reduce HAP emissions from the affected source by 90 percent. Your new or reconstructed flame lamination affected source must be in compliance with the emission limit upon startup or by April 14, 2003, whichever is later.

C. What Are the Testing, Initial Compliance, and Continuous Compliance Requirements?

If you own or operate a flexible polyurethane foam fabrication loop slitter adhesive use or flame lamination affected source, you must comply with the testing, initial compliance, and continuous compliance requirements in the following paragraphs.

Loop Slitter Adhesive Use

If you own or operate a loop slitter affected source, you must demonstrate initial and continuous compliance by certifying that no HAP-based adhesives are or will be used. You must submit this initial certification within 60 days of the compliance date. The certification must be accompanied by documentation stating what the facility will use for adhesives, along with supporting information to document the HAP content of adhesives used at the facility, such as Method 311 results or other approved information. Thereafter, on a yearly basis, you must recertify compliance, including HAP content information on any new adhesives used at the source.

The final rule allows you to use methods other than Method 311, including an approved alternative method or any other reasonable means to determine the HAP content of adhesives. Other reasonable means include a material safety data sheet (MSDS), a certified product data sheet (CPDS), or a manufacturer's hazardous air pollutant data sheet. However, if the results of an analysis by EPA Method 311 are different from the HAP content determined by another means, the EPA Method 311 results will govern compliance determinations. You are not required to test the materials used, but the Administrator may require a test using EPA Method 311 (or an approved alternative method) to confirm the reported HAP content.

Flame Lamination

If you own or operate a new or reconstructed flame lamination affected source, the final rule requires that you demonstrate initial compliance by conducting a performance test within 180 days after the compliance date that demonstrates that HAP emissions are being reduced by 90 percent. In order to demonstrate continuous compliance with this emissions limit, you must continuously monitor control device parameters. Specifically for venturi scrubbers, which we believe will be the control device of choice in most situations, you are required to continuously monitor the pH of the

scrubber effluent, the scrubber liquid flow rate, and the pressure drop across the venturi. You must demonstrate continuous compliance by these monitored parameters staying within the operating limits. Operating limits must be established for each parameter based on monitoring conducted during the initial performance test and reported in your facility's Notification of Compliance Status Report.

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

If you own or operate foam fabrication operations at major sources, you must submit several notifications and reports, which are listed and then briefly described in this section. First, you must submit an initial notification. In addition, if you own or operate a flexible polyurethane loop slitter adhesive use affected source or a new or reconstructed flame lamination affected source, you must also submit the following notification and reports:

- Notification of Intent to Conduct a Performance Test (new or reconstructed flame laminators only);
- Notification of Compliance Status reports;
- Periodic Compliance reports; and
- Startup, Shutdown, and Malfunction reports (new or reconstructed flame laminators only).

For the Initial Notification, you must notify us that your facility is subject to the Flexible Polyurethane Foam Fabrication Operations NESHAP, and provide specified basic information about your facility. You must submit this notification within 120 days after April 14, 2003, for existing affected sources. If you own or operate a new or reconstructed affected source, you are required to submit the application for construction or reconstruction required by § 63.9(b)(iii) of the 40 CFR part 63, subpart A, in lieu of the Initial Notification.

For the Notification of Intent report, for each new or reconstructed flame lamination affected source that you own or operate, you must notify us in writing of the intent to conduct a performance test at least 60 days before the performance test is scheduled to begin. You must submit the Notification of Compliance Status report within 60 days of completion of the performance test. As part of the Notification of Compliance Status, you must include a certified notification of compliance that states the compliance status of the facility, along with supporting information (*e.g.*, performance test results and operating parameter values and ranges).

If you own or operate a source complying with the standards for loop slitter adhesive use, you must submit the Notification of Compliance Status within 60 days of the compliance date. In the Notification of Compliance Status, you must list each adhesive used at the affected source, the manufacturer or supplier of each, and the individual HAP content (percent by mass) of each adhesive that is used.

If you own or operate a facility that is subject to control requirements under these NESHAP, you must submit a Periodic Compliance report, which reports continued compliance with the flame lamination new source emission limit semiannually, and continued compliance with the loop slitter adhesive use HAP-based usage limit annually.

Finally, for the Startup, Shutdown, and Malfunction report, if you own or operate a new or reconstructed flame lamination affected source, you must report any startup, shutdown, or malfunction during the reporting period which does not meet the emission limitations set out in 40 CFR 63.8790 and is not in the facility's startup, shutdown, and malfunction plan.

If you own or operate a flame lamination or loop slitter adhesive use source, you must maintain records of reported information and other information necessary to document compliance (*e.g.*, records related to malfunction, records that show continuous compliance with emission limits) for 5 years.

IV. Summary of Major Comments and Responses

This section includes discussion of significant comments on the proposed rule. For a complete summary of all the comments received on the proposed rule and our responses to them, refer to the ''Background Information Document for Promulgation of National Emissions Standards for Hazardous Air Pollutant (NESHAP): Flexible Polyurethane Foam Fabrication'' (hereafter called the ''response to comments document'') in Docket OAR–2002–0080 or A–2000–43. The docket also contains the actual comment letters and supporting documentation developed for the final rule.

A. What Sources Are Subject to the Rule?

Comment: We received one comment requesting that we regulate area sources in the flexible polyurethane foam fabrication industry. The commenter asserted that there are a large number of area sources in this source category and cited examples of other source categories for which both area and major sources are regulated.

Response: According to section 112(c)(3) of the CAA, the Administrator must list area source categories separately from major source categories, and only if the Administrator finds that a category of area sources ''* * * presents a threat of adverse effects to human health or the environment (by such sources individually or in the aggregate) warranting regulation under this section.'' We have listed flexible foam fabrication operations as an area source category for further scrutiny and will address the emissions from area sources in this source category in a separate action (64 FR 38721, July 19, 1999).

B. What Issues Were Raised Regarding Adhesive-Use Sources?

Comment: The proposed rule included a provision that loop slitters could use no HAP-based adhesives, with HAP-based adhesives defined as ''an adhesive containing detectable HAP, according to EPA Method 311 or another approved alternative.'' The data for existing loop slitters that were available to us during the development of the proposed rule indicated that 22 of 30 facilities use no HAP-based adhesives. Several commenters asserted that the adhesives commonly used by the industry on their loop slitters do contain small amounts of HAP. A survey conducted by one of the commenters indicated that 11 of the 20 loop slitter facilities surveyed use an n-propyl bromide adhesive which contains 0.32 to 1.0 percent 1,2-Epoxybutane by weight.

Response: The information supplied by commenters and industry contacts demonstrates that the widely-used n-propyl bromide adhesives, originally believed to be non-HAP, actually contain trace amounts of HAP, which we believe are present mostly as impurities. In accordance with the definition of ''HAP-based'' in the Flexible Polyurethane Foam Production NESHAP (40 CFR part 63, subpart III), we have written the definition of ''HAP-based adhesive'' in the final rule to contain 5 percent (by weight) or more of HAP.

Comment: Several commenters recommended that we set a numerical, technology-based emission limitation for loop slitters, rather than banning the use of HAP-based adhesives. The commenters explained that a numerical or technology-based MACT standard would allow industry to lower their emissions using control technologies that are currently available or being developed.

Response: Our determination that the MACT floor for loop slitter adhesive use is no HAP-based adhesives makes the use of a numerical or technology-based emission limitation inappropriate. Although it may be possible to greatly reduce HAP emissions through use of technology, we believe that elimination of the use of HAP-based adhesives in loop slitter operations is required by section 112(d)(3) of the CAA because of the number of facilities using no HAP-based adhesives in their loop slitter operations. Accordingly, no changes were made for the final rule with regard to this issue.

Comment: Comments were received encouraging us to regulate non-slitter adhesive use applications in order to control emissions of methylene chloride. The commenter asserted that many major source facilities are still using methylene chloride-based adhesives in non-loop slitter applications.

Response: In the preamble to the proposed rule, we specifically requested comments on this issue. We stated that if comments demonstrated that ''there are non-sliter adhesive sources using HAP-based adhesives that are located on the site of a major source, we would retain them in the source category and treat them as a third subcategory.'' Based on available information, we found no non-slitters on sites of major sources. Thus, there is no basis to retain non-slitter adhesive use sources in this category. We have listed flexible foam fabrication operations as an area source category for further scrutiny and will address the emissions from area sources under section 112(k) of the CAA.

Comment: Several comments were received expressing concerns regarding the adhesives being used as alternatives to HAP-based adhesives, for both loop slitter and non-slitter adhesive applications. Some commenters mentioned that n-propyl bromide has been the subject of a number of ''substantial risk'' notifications under the Toxic Substances Control Act and is also the subject of toxicity testing under the National Toxicology Program, and urged us to consider regulating n-propyl bromide emissions.

Response: We are aware of this situation, but have no authority under section 112 to regulate n-propyl bromide since it is not currently listed as a HAP.

Comment: Another commenter asked us to investigate and identify the secondary air impacts of HAP or volatile organic compounds (VOC) from the use of the adhesives being used as alternatives to methylene chloride. If they emit VOC, the commenter recommended that we regulate those emissions so as not to exacerbate local efforts to comply with other air pollution regulations.

Response: The NESHAP for foam fabrication operations protects air quality and promotes the public health by reducing emissions of some of the HAP listed in section 112(b)(1) of the CAA. The mandate for the NESHAP program does not extend to control of VOC (unless they are HAP). Additionally, VOC emissions are addressed elsewhere in the CAA, both in section 110 which addresses State implementation plans for States with ozone nonattainment areas under the national ambient air quality standards; and in section 111, which includes new source performance standards. Moreover, the current record does not indicate that there are any significant secondary air impacts (*i.e.*, increased emissions of other HAP or VOC) from the use of alternatives to methylene chloride. Thus, the Agency finds that the investigation requested by the commenter is unwarranted. We believe that the reporting requirements that were proposed for loop slitter facilities are adequate, and they remain unchanged for the final rule.

C. What Issues Were Raised Regarding Flame Lamination Sources?

Comment: One commenter asserted that the proposed MACT for existing flame lamination sources (no additional control) is not the maximum degree of HAP reduction that could be achieved and requested that MACT for these sources be based on ''the performance of the best two facilities,'' excluding consideration of uncontrolled sources.

Response: We are required to calculate the MACT floor for existing sources based on the central tendency of the emission limitation achieved by the best performing five major sources for a subcategory with less than 30 major sources (such as flame lamination). Evaluation of only the two best performing sources, as requested by the commenter, is not consistent with this statutory requirement.

The data for existing flame lamination sources that were available during the development of the proposed rule indicated that two of the top five major sources control HAP emissions using a scrubber and three do not control HAP emissions. We chose not to use the mean as the measure of central tendency because it would result in a MACT floor that does not represent the performance of an actual control device. In this case, using the median or the mode resulted in the same MACT floor (no additional control).

In addition to controls, we also investigated the possibility that materials substitution or work practice standards could represent the MACT floor.

The flame lamination of any foam generates HAP emissions, most notably HCN and TDI. These compounds are present in the foam as a result of the polyurethane foam manufacturing process, which is regulated under separate MACT standards. Changing the use of these compounds would change the inherent properties of the foam and, thus, we rejected this raw material substitution as a potential MACT floor control strategy.

In addition, the flame lamination of foams containing chlorinated fire retardants also results in emission of the HAP HCl. The frequency of use of chlorinated fire retardant foams varies considerably from one facility to another, and may also vary over time at any single facility. Although some facilities do not use fire retardant foams at all, most use them some of the time. The fire retardancy is a necessary characteristic of the foam where the customer requires fire retardancy as a product specification, *e.g.*, foam in automobiles and bedding.

The top two facilities on our list stated that they laminated fire retardant foam approximately 30 percent of the time for the years the data were gathered. As product mix and customer demands change, the percent of fire retardant foam flame laminated at a facility can vary considerably. Because there is no clear subdivision of the industry between facilities that use fire retardant foams and those that do not, we deemed any further subdivision of the industry because of this issue to be unreasonable.

Although there may be non-chlorinated fire retardant foams available to flame laminators, they are not currently in use by any of the lowest-emitting five flame lamination facilities. Thus, we determined that product substitution does not represent the MACT floor for the flame lamination subcategory.

We also considered the possibility that the MACT floor might be represented by work practices. The nature of the flame lamination process does not lend itself to any typical work practices used to minimize HAP emissions. There are no emissions related to transport and storage of raw materials, or to cleaning of the equipment, and there is no HAP-containing waste. In fact, the HAP emissions are created during the process by the physical act of scorching the foam. The scorching makes the foam

sticky so it will adhere to the other substrate, but also releases HAP. Because there are no emission-reducing work practice standards in use at flame lamination facilities we did not find that the MACT floor may be represented by any work practice standards.

We considered more stringent ''above-the-floor'' options for MACT, including 90 percent reduction of HCl and HCN, 95 percent reduction of HCN and TDI, and banning the flame lamination of chlorinated fire retardant foam. We rejected the first two options as unreasonably costly with respect to the incremental emission reduction that would be achieved ($9,700 per ton for the first option and $70,300 per ton for the second option). We rejected the third option as technically infeasible because no alternative fire retardant has been identified that would be adequate and appropriate for all flame lamination applications in which fire retardant foam is required. Discussions with industry suggest that alternative materials could present product quality issues and result in products that do not meet product specifications. We have received no further data or information which would lead to the selection of a different MACT for existing flame lamination sources. Therefore, we have not changed the emission limitation for existing flame lamination sources.

V. What Are the Environmental, Cost, and Economic Impacts of the Final Rule?

We estimate that current HAP emissions from loop slitter adhesive users are essentially zero because of changes in adhesive composition as a result of the OSHA permissible exposure limit (PEL) for methylene chloride. Therefore, we do not expect any decreases from this subcategory resulting from the NESHAP. Costs should be minimal as well, as most sources will already be maintaining the necessary records in order to comply with OSHA regulations regarding availability of MSDS.

We estimated baseline emissions for flame laminators from data obtained from individual facilities, as well as from State agencies to which facilities reported their annual emissions. Where reported emissions were not available, we calculated emission estimates using a HAP emission factor, the laminator's operating schedule, the number of flame lamination lines, and the percent of the operating time that fire retardant foam is laminated (used only when calculating HCl emissions).

Our estimates of nationwide baseline emissions from all existing facilities in the flame lamination subcategory are 58.8 tpy HCl, 10.3 tpy HCN, and 3.0 tpy TDI, for a total of 72.1 tpy HAP. We have not promulgated any emissions limitations for existing flame lamination sources; therefore, we do not expect any emissions reductions from the baseline. However, the NESHAP should result in a 90 percent reduction in HCl and HCN emissions from any new or reconstructed major sources. We calculate that a typical flame lamination operation emits 7.3 tpy of combined HCl and HCN, which would be reduced by 90 percent, for a total HAP emission reduction of 6.5 tpy from each new or reconstructed affected source. In addition, particulate matter emissions from flame lamination would also be reduced by any scrubber used to reduce the HAP emissions.

Based on our analysis, we calculate that 64,700 gallons per year of wastewater will be generated by a new or reconstructed flame lamination source. Our estimate of the annual cost to treat this wastewater is less than $250 per year. We do not expect that there will be any significant adverse non-air health, environmental, or energy impacts associated with the NESHAP for flexible polyurethane foam fabrication operations.

There will be no capital costs for loop slitter adhesive users and existing flame laminators because the final rule states that these sources are only subject to reporting and recordkeeping costs. We estimate that up to three new flame laminators may be built in the next 3 years, but only one of these would be a major source subject to the NESHAP. That source would face capital costs of approximately $65,000 associated with installation of a control device (*e.g.*, scrubber) and monitoring equipment. We estimate that the average annualized cost for that source would be approximately $63,000 per year, including annualized capital costs for a control device and monitoring equipment; labor costs associated with monitoring, reporting, and recordkeeping requirements; and the operation and maintenance of the required control equipment.

In summary, we do not expect any emissions reductions from existing foam fabrication sources, and we estimate HAP emission reductions of 6.5 tpy from the single new flame lamination source we assume will be constructed during the three years following the promulgation of this rule. The total annualized cost of the final rule has been estimated at $64,000, including $63,000 annually for the single new flame lamination facility subject to the provisions of the final rule, and additional one-time labor costs for existing facilities to read the rule. Given that only one source will need to install new controls as a result of the rule, and cost of control is a very small portion of industry revenues, we consider the economic impacts associated with the final rule to be minimal.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that the final rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

The information collection requirements in the final rule have been submitted for approval to OMB under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 2027.02), and a copy may be obtained from Susan Auby by mail at the Office of Environmental Information, Collection Strategies Division (2822), U.S. EPA, 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 from the internet at *http://www.epa.gov/icr.* The information requirements are not effective until OMB approves them.

The information requirements are based on notifications, records, and reports required by the General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized under 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 will be safeguarded according to Agency policies in 40 CFR part 2, subpart B, Confidentiality of Business Information.

According to the ICR, the total 3-year monitoring, reporting, and recordkeeping burden for this collection is 3,634 labor hours, and the annual average burden is 1,211 labor hours. The total annualized cost of monitoring, reporting, and recordkeeping is approximately $54,124. The labor cost over the 3-year period is $154,399 or $51,466 per year. The annualized capital cost for monitoring equipment is $997. Annual operation and maintenance costs are $4,982 over 3 years, averaging $1,661 per year. This estimate includes a one-time plan for demonstrating compliance, annual compliance certificate reports, 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 purpose of collecting, validating, and verifying information; process and maintain information and disclose and provide information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The OMB control number(s) for the information collection requirements in the final rule will be listed in an amendment to 40 CFR part 9 or 48 CFR chapter 15 in a subsequent **Federal Register** document after OMB approves the ICR.

C. Regulatory Flexibility Analysis

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) a small business according to the Small Business Administration (SBA) size standards by NAICS code (a maximum of 500 employees for the polyurethane foam fabrication industry); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. We have determined that one of approximately 48 affected sources is a small entity, and that the impact will consist primarily of recordkeeping and reporting requirements.

D. 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, we generally must prepare a written statement, including cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires us 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 us to adopt an alternative with other than the least costly, most cost-effective, or least burdensome alternative if we publish with the final rule an explanation why that alternative was not adopted.

Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we 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 our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that the final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or the private sector in any 1 year. The total annualized cost of the final rule has been estimated at $64,000. This figure includes the $63,000 annually for the single new flame lamination facility subject to the provisions of the final rule, and additional labor costs for existing facilities. Thus, today's final rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, we have determined that the final rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no regulatory requirements that apply to such governments or impose obligations upon them. Therefore, the final rule is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132—Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of Government.''

The final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of Government, as specified in

Executive Order 13132. The standards apply only to flexible polyurethane foam fabricators and do not pre-exempt States from adopting more stringent standards or otherwise regulate State or local governments. Thus, Executive Order 13132 does not apply to the final rule.

Although section 6 of Executive Order 13132 does not apply to the final rule, EPA did consult with State and local officials in developing the final rule. No concerns were raised by these officials during this consultation.

F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

The final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This is because no tribal governments own or operate a flexible polyurethane foam fabrication facility. Thus, Executive Order 13175 does not apply to the final rule.

G. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned rule is preferable to other potentially effective and reasonably feasible alternatives that we considered.

The final rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866. In addition, EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health and safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The final rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks.

H. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

The final rule is not 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.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. No. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to the Office of Management and Budget (OMB), with explanations when an agency does not use available and applicable voluntary consensus standards.

This rulemaking involves technical standards. The EPA cites in the final rule the EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 4, 26A, 311, and any method to measure hydrogen cyanide from flame lamination sources (validated with EPA Method 301). Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, 311, and a method to measure hydrogen cyanide. The search and review results have been documented and are placed in the docket (OAR–2002–0080 or A–2000–43) for the final rule.

Five voluntary consensus standards: ASTM D1979–91, ASTM D3432–89, ASTM D4747–87, ASTM D4827–93, and ASTM PS9–94 are incorporated by reference in EPA Method 311.

The search for emission measurement procedures identified seven voluntary consensus standards potentially applicable to the final rule. The EPA determined that five of these seven standards were impractical alternatives to EPA test methods for the purposes of this rulemaking. Therefore, EPA will not adopt these standards today. The reasons for this determination for the five methods are in the docket.

The following two voluntary consensus standards identified in this search were not available at the time the review was conducted for the purposes of this rulemaking because they are under development by a voluntary consensus body: ASME/BSR MFC 13M, ''Flow Measurement by Velocity Traverse,'' for EPA Method 2 (and possibly 1); and ASME/BSR MFC 12M, ''Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters,'' for EPA Method 2.

Sections 63.8800 and 63.8802 and Table 3 to subpart MMMMM list the EPA testing methods included in the final rule. Under 40 CFR 63.7(f) and 63.8(f), a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any of the EPA testing methods, performance specifications, or procedures.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). The final rule will be effective on April 14, 2003.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure,

Air pollution control, Hazardous substances, Intergovernmental relations, Recordkeeping and reporting requirements.

Dated: February 28, 2003.

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 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 MMMMM to read as follows:

Sec.

Subpart MMMMM—National Emission Standards for Hazardous Air Pollutants: Flexible Polyurethane Foam Fabrication Operations

What This Subpart Covers

Emission Limitations

General Compliance Requirements

Testing and Initial Compliance Requirements

Continuous Compliance Requirements

Notifications, Reports, and Records

Other Requirements and Information

Tables to Subpart MMMMM of Part 63

What This Subpart Covers

§ 63.8780 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) emitted from flexible polyurethane foam fabrication operations. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission standards.

§ 63.8782 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a flexible polyurethane foam fabrication plant site that operates a flame lamination affected source, as defined at § 63.8784(b)(2), and that is located at, or is part of a major emission source of hazardous air pollutants (HAP) or that operates a loop slitter affected source, as defined at § 63.8784(b)(1), that meets the criteria in paragraphs (a)(1) and (2) of this section.

(1) The loop slitter affected source uses one or more HAP-based adhesives at any time on or after April 14, 2003.

(2) The loop slitter affected source is located at or is part of a major source of HAP.

(b) A flexible polyurethane foam fabrication plant site is a plant site where pieces of flexible polyurethane foam are bonded together or to other substrates using HAP-based adhesives or flame lamination.

(c) A major source of HAP is a plant site 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.

(d) This subpart does not apply to the following processes in paragraphs (d)(1) and (2) of this section:

(1) Processes that produce flexible polyurethane or rebond foam as defined in subpart III of this part.

(2) A research and development facility, as defined in section 112(c)(7) of the Clean Air Act (CAA).

§ 63.8784 What parts of my plant does this subpart cover?

(a) This subpart applies to each existing, new, or reconstructed affected source at facilities engaged in flexible polyurethane foam fabrication.

(b) The affected sources are defined in this section in paragraphs (b)(1) and (2) of this section.

(1) The loop slitter adhesive use affected source is the collection of all loop slitters and associated adhesive application equipment used to apply HAP-based adhesives to bond foam to foam at a flexible polyurethane foam fabrication plant site.

(2) The flame lamination affected source is the collection of all flame lamination lines associated with the flame lamination of foam to any substrate at a flexible polyurethane foam fabrication plant site.

(c)(1) A new affected source is one that commences construction after August 8, 2001 and meets the applicability criteria of § 63.8782 at the time construction commences.

(2) If you add one or more flame lamination lines at a plant site where flame lamination lines already exist, the added line(s) shall be a new affected source and meet new source requirements if the added line(s) has the potential to emit 10 tons per year or more of any HAP or 25 tons or more per year of any combination of HAP.

(d) A reconstructed affected source is one that commences reconstruction after August 8, 2001 and meets the criteria for reconstruction as defined in § 63.2.

(e) An affected source is existing if it is not new or reconstructed.

§ 63.8786 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 paragraphs (a)(1) and (2) of this section.

(1) If you start up your new or reconstructed affected source before April 14, 2003, then you must comply with the emission standards for new or reconstructed sources in this subpart no later than April 14, 2003.

(2) If you start up your new or reconstructed affected source on or after April 14, 2003, then you must comply with the emission standards for new or

reconstructed sources in this subpart upon startup of your affected source.

(b) If you have an existing loop slitter affected source, you must comply with the emission standards for existing sources no later than 1 year after April 14, 2003.

(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 and an affected source subject to this subpart, the provisions in paragraphs (c)(1) and (2) of this section apply.

(1) A new affected source as specified at § 63.8784(c) or a reconstructed affected source as specified at § 63.8784(d) must be in compliance with this subpart upon startup.

(2) An existing affected source as specified at § 63.8784(e) must be in compliance with this subpart no later than 1 year after the date on which the area source became a major source.

(d) You must meet the notification requirements in § 63.8816 according to the schedule in § 63.8816 and in subpart A of this part. Some of the notifications must be submitted before you are required to comply with the emission standards in this subpart.

(e) If you have a loop slitter affected source, you must have data on hand beginning on the compliance date specified in paragraph (b) of this section as necessary to demonstrate that your adhesives are not HAP-based. The types of data necessary are described in §§ 63.8802 and 63.8810.

Emission Limitations

§ 63.8790 What emission limitations must I meet?

(a) You must meet each emission limit in Table 1 to this subpart that applies to you.

(b) You must meet each operating limit in Table 2 to this subpart that applies to you.

General Compliance Requirements

§ 63.8794 What are my general requirements for complying with this subpart?

(a) For each loop slitter adhesive use affected source, you must be in compliance with the requirements in this subpart at all times.

(b) For each new or reconstructed flame lamination affected source, you must be in compliance with the requirements in this subpart at all times, except during periods of startup, shutdown, and malfunction.

(c) 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).

(d) During the period between the compliance date specified for your new or reconstructed flame lamination affected source in § 63.8786, and the date upon which continuous compliance monitoring systems have been installed and verified and any applicable operating limits have been set, you must maintain a log detailing the operation and maintenance of the process and emissions control equipment.

(e) For each new or reconstructed flame lamination affected source, you must develop and implement a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3).

(f) For each monitoring system required in this section for new or reconstructed flame lamination sources, you must develop and submit for approval a site-specific monitoring plan that addresses the requirements in paragraphs (f)(1) through (3) of this section.

(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).

(g) In your site-specific monitoring plan, you must also address the ongoing procedures specified in paragraphs (g)(1) through (3) of this section.

(1) Ongoing operation and maintenance procedures in accordance with the general requirements of §§ 63.8(c)(1), (3), (4)(ii), (7), and (8), and 63.8804;

(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).

Testing and Initial Compliance Requirements

§ 63.8798 By what date must I conduct performance tests or other initial compliance demonstrations?

(a) For each loop slitter affected source, you must conduct the initial compliance demonstration by the compliance date that is specified for your source in § 63.8786.

(b) For each new or reconstructed flame lamination affected source, you must conduct performance tests within 180 calendar days after the compliance date that is specified for your source in § 63.8786 and according to the provisions in § 63.7(a)(2).

§ 63.8800 What performance tests and other procedures must I use to demonstrate compliance with the emission limit for flame lamination?

(a) You must conduct each performance test in Table 3 to this subpart that applies to you.

(b) Each performance test must be conducted according to the requirements in § 63.7(e)(1) and under the specific conditions in Table 3 to this subpart.

(c) You may not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 63.7(e)(1).

(d) You must conduct at least 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.

(e) You must determine the percent reduction of HAP emissions during the performance test according to paragraphs (e)(1) through (3) of this section.

(1) If you use chlorinated fire retardant foams, determine the percent reduction of HCl to represent HAP emissions from the source. If you do not use chlorinated fire retardant foams, determine the percent reduction of HCN to represent HAP emissions from the source.

(2) Calculate the concentration of HAP at the control device inlet and at the control device outlet using the procedures in the specified test method.

(3) Compare the calculated HAP concentration at the control device inlet to the calculated HAP concentration at the control device outlet to determine the percent reduction over the period of the performance test, using Equation 1 of this section:

$$R = \frac{\sum_{i=1}^{n} E_{inlet,\,i} - \sum_{i=1}^{n} E_{outlet,\,i}}{\sum_{i=1}^{n} E_{inlet,\,i}} (100) \quad \text{[Eq. 1]}$$

Where:

R=Efficiency of control device, percent.

$E_{inlet,i}$=HAP concentration of control device inlet stream for test run i, mg/dscm.

$E_{outlet,i}$=HAP concentration of control device outlet stream for test run i, mg/dscm.

n=Number of runs conducted for the performance test.

(f) You must also meet the requirements in paragraphs (f)(1) and (2) of this section.

(1) Conduct the performance tests using foams that are representative of foams typically used at your flame lamination affected source. If you use foams containing chlorinated fire retardants, you must conduct the performance tests using these foams.

(2) Establish all applicable operating limits that correspond to the control system efficiency as described in Table 3 to this subpart.

§ 63.8802 What methods must I use to demonstrate compliance with the emission limitation for loop slitter adhesive use?

(a) *Determine the HAP content for each material used.* To determine the HAP content for each material used in your foam fabrication operations, you must use one of the options in paragraphs (a)(1) through (3) of this section. If you use the option in paragraph (a)(3) of this section, you are subject to the provisions of paragraph (a)(4) of this section.

(1) *Method 311 (appendix A to 40 CFR part 63).* You may use Method 311 for determining the mass fraction of HAP. Use the procedures specified in paragraphs (a)(1)(i) and (ii) of this section when determining HAP content by Method 311.

(i) Include in the HAP total each HAP that is measured to be present at 0.1 percent by mass or more for Occupational Safety and Health Administration (OSHA)-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) and at 1.0 percent by mass or more for other compounds. For example, if toluene (not an OSHA carcinogen) is measured to be 0.5 percent of the material by mass, you do not need to include it in the HAP total. Express the mass fraction of each HAP you measure as a value truncated to four places after the decimal point (for example, 0.1234).

(ii) Calculate the total HAP content in the test material by adding up the individual HAP contents and truncating the result to three places after the decimal point (for example, 0.123).

(2) *Alternative method.* You may use an alternative test method for determining mass fraction of HAP if you obtain prior approval by the Administrator. You must follow the procedure in § 63.7(f) to submit an alternative test method for approval.

(3) *Information from the supplier or manufacturer of the material.* You may rely on information other than that generated by the test methods specified in paragraphs (a)(1) and (2) of this section to determine the mass fraction of HAP according to paragraphs (a)(3)(i) and (ii) of this section. This information may include, but is not limited to, a material safety data sheet (MSDS), a certified product data sheet (CPDS), or a manufacturer's hazardous air pollutant data sheet.

(i) Include in the HAP total each HAP that is present at 0.1 percent by mass or more for OSHA-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) and at 1.0 percent by mass or more for other compounds. For example, if toluene (not an OSHA carcinogen) is 0.5 percent of the material by mass, you do not have to include it in the HAP total.

(ii) If the HAP content is provided by the material supplier or manufacturer as a range, then you must use the upper limit of the range for determining compliance.

(4) *Verification of supplier or manufacturer information.* Although you are not required to perform testing to verify the information obtained according to paragraph (a)(3) of this section, the Administrator may require a separate measurement of the total HAP content using the methods specified in paragraph (a)(1) or (2) of this section. If this measurement exceeds the total HAP content provided by the material supplier or manufacturer, then you must use the measured HAP content to determine compliance.

(b) [Reserved]

§ 63.8806 How do I demonstrate initial compliance with the emission limitations?

(a) You must demonstrate initial compliance with each emission limit that applies to you according to Table 4 to this subpart.

(b) You must establish each site-specific operating limit in Table 2 to this subpart that applies to you according to the requirements in § 63.8800 and Table 3 to this subpart.

(c) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.8816(e) through (h).

Continuous Compliance Requirements

§ 63.8810 How do I monitor and collect data to demonstrate continuous compliance?

(a) If you own or operate a loop slitter adhesive use affected source, you must meet the requirements in paragraphs (a)(1) and (2) of this section.

(1) Maintain a list of each adhesive and the manufacturer or supplier of each.

(2) Maintain a record of EPA Method 311 (appendix A to 40 CFR part 63), approved alternative method, or other reasonable means of HAP content determinations indicating the mass percent of each HAP for each adhesive.

(b) If you own or operate a new or reconstructed flame lamination affected source, you must meet the requirements in paragraphs (b)(1) through (3) of this section if you use a scrubber, or paragraph (b)(4) of this section if you use any other control device.

(1) Keep records of the daily average scrubber inlet liquid flow rate.

(2) Keep records of the daily average scrubber effluent pH.

(3) If you use a venturi scrubber, keep records of daily average pressure drop across the venturi.

(4) Keep records of operating parameter values for each operating parameter that applies to you.

(c) If you own or operate a new or reconstructed flame lamination affected source, you must meet the requirements in paragraphs (c)(1) through (4) of this section.

(1) Except for periods of monitoring 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. This includes periods of startup, shutdown, and malfunction when the affected source is operating. A monitoring malfunction includes, but is not limited to, any sudden, infrequent, not reasonably preventable failure of the monitoring device to provide valid data. Monitoring failures that are caused by poor maintenance or careless operation are not malfunctions.

(2) In data average calculations and calculations used to report emission or operating levels, you may not use data recorded during monitoring malfunctions, associated repairs, or recorded during required quality assurance or control activities. Nor may such data be used in fulfilling any applicable minimum data availability requirement. You must use all the data collected during all other periods in assessing the operation of the control device and associated control system.

(3) You must conduct a performance evaluation of each CMS in accordance with your site-specific monitoring plan.

(4) You must operate and maintain the CMS in continuous operation according to the site-specific monitoring plan.

§ 63.8812 How do I demonstrate continuous compliance with the emission limitations?

(a) You must demonstrate continuous compliance with each emission limit and operating limit in Tables 1 and 2 to this subpart that applies to you according to the methods specified in Table 5 to this subpart.

(b) You must report each instance in which you did not meet each emission limit and each operating limit in Tables 1 and 2 to this subpart that apply to you. For new or reconstructed flame lamination affected sources, this includes periods of startup, shutdown, and malfunction. These instances are deviations from the operating limits in this subpart. These deviations must be reported according to the requirements in § 63.8818.

(c) For each new or reconstructed flame lamination affected source, you must operate in accordance with the startup, shutdown, and malfunction plan during periods of startup, shutdown, and malfunction.

(d) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur at a new or reconstructed flame lamination affected source 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. The Administrator will determine whether deviations that occur at a new or reconstructed flame lamination affected source during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

(e) You also must meet the following requirements if you are complying with the adhesive use ban for loop slitter adhesive use described in § 63.8790(a).

(1) If, after you submit the Notification of Compliance Status, you use an adhesive for which you have not previously verified percent HAP mass using the methods in § 63.8802, you must verify that each adhesive used in the affected source meets the emission limit, using any of the methods in § 63.8802.

(2) You must update the list of all the adhesives used at the affected source.

(3) With the compliance report for the reporting period during which you used the new adhesive, you must submit the updated list of all adhesives and a statement certifying that, as purchased, each adhesive used at the affected source during the reporting period met the emission limit in Table 1 to this subpart.

Notification, Reports, and Records

§ 63.8816 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.7(b) and (c), 63.8(f), and 63.9(b) through (h) that apply to you.

(b) If you own or operate an existing loop slitter or flame lamination affected source, submit an initial notification no later than 120 days after April 14, 2003.

(c) If you own or operate a new or reconstructed loop slitter or flame lamination affected source, submit the application for construction or reconstruction required by § 63.9(b)(1)(iii) in lieu of the initial notification.

(d) If you own or operate a new or reconstructed flame lamination affected source, 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 own or operate a loop slitter affected source, submit a Notification of Compliance Status according to § 63.9(h)(2)(ii) within 60 days of the compliance date specified in § 63.8786.

(f) If you own or operate a new or reconstructed flame lamination affected source, submit a Notification of Compliance Status according to § 63.9(h)(2)(ii) that includes the results of the performance test conducted according to the requirements in Table 3 to this subpart. You must submit the notification before the close of business on the 60th calendar day following the completion of the performance test according to § 63.10(d)(2).

(g) For each new or reconstructed flame lamination affected source, the Notification of Compliance Status must also include the information in paragraphs (g)(1) and (2) that applies to you.

(1) The operating parameter value averaged over the full period of the performance test (for example, average pH).

(2) The operating parameter range within which HAP emissions are reduced to the level corresponding to meeting the applicable emission limits in Table 1 to this subpart.

(h) For each loop slitter adhesive use affected source, the Notification of Compliance Status must also include the information listed in paragraphs (h)(1) and (2) of this section.

(1) A list of each adhesive used at the affected source, its HAP content (percent by mass), and the manufacturer or supplier of each.

(2) A statement certifying that each adhesive that was used at the affected source during the reporting period met the emission limit in Table 1 to this subpart.

§ 63.8818 What reports must I submit and when?

(a) You must submit each report in Table 6 to 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 compliance report for new or reconstructed flame lamination affected sources semiannually according to paragraphs (b)(1) through (4) 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 § 63.8786 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 § 63.8786.

(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 § 63.8786.

(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.

(c) For each loop slitter adhesive use affected source, you may submit annual compliance reports in place of semiannual reports.

(d) 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.

(e) The compliance report must contain the information in paragraphs (e)(1) through (5) of this section.

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy

and completeness of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If there are no deviations from any emission limitations (emission limit or operating limit) that applies to you, a statement that there were no deviations from the emission limitations during the reporting period.

(5) For each deviation from an emission limitation that occurs, the compliance report must contain the information specified in paragraphs (e)(5)(i) through (iii) of this section.

(i) The total operating time of each affected source during the reporting period.

(ii) Information on the number, duration, and cause of deviations (including unknown cause, if applicable), as applicable, and the corrective action taken.

(iii) Information on the number, duration, and cause for continuous parameter monitoring system (CPMS) downtime incidents, if applicable, other than downtime associated with zero and span and other daily calibration checks.

(f) The compliance report for a new or reconstructed flame lamination affected source must also contain the following information in paragraphs (f)(1) through (3) of this section.

(1) If you had a startup, shutdown or malfunction at your new or reconstructed flame lamination affected source 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).

(2) If there were no periods during which the CPMS was out-of-control in accordance with the monitoring plan, a statement that there were no periods during which the CPMS was out-of-control during the reporting period.

(3) If there were periods during which the CPMS was out-of-control in accordance with the monitoring plan, the date, time, and duration of each out-of-control period.

(g) The compliance report for a loop slitter adhesive use affected source must also contain the following information in paragraphs (g)(1) and (2) of this section.

(1) For each annual reporting period during which you use an adhesive that was not included in the list submitted with the Notification of Compliance Status in § 63.8816(h) (1), an updated list of all adhesives used at the affected source.

(2) A statement certifying that each adhesive that was used at the affected source during the reporting period met the emission limit in Table 1 to this subpart.

(h) 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 6 to 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 emission limitation (including any operating limit) in this subpart, submission of the compliance report shall be deemed to satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submission of a compliance report shall not otherwise affect any obligation the affected source may have to report deviations from permit requirements to the permit authority.

(i) For each startup, shutdown, or malfunction during the reporting period where the source does not meet the emission limitations set out in § 63.8790 that occurs at a new or reconstructed flame lamination affected source and that is not consistent with your startup, shutdown, and malfunction plan, you must submit an immediate startup, shutdown and malfunction report.

(1) An initial report containing a description of the actions taken for the event must be submitted by fax or telephone within 2 working days after starting actions inconsistent with the plan.

(2) A followup report containing the information listed in § 63.10(d)(5)(ii) must be submitted within 7 working days after the end of the event unless you have made alternative reporting arrangements with the permitting authority.

§ 63.8820 What records must I keep?

(a) You must keep a copy of each notification and report that you submit 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)(2)(xiv).

(b) For each new or reconstructed flame lamination affected source, you must also keep the following records specified in paragraphs (b)(1) through (4) of this section.

(1) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(2) Records of performance tests, as required in § 63.10(b)(2)(viii).

(3) Records of operating parameter values.

(4) Records of the date and time that each deviation started and stopped and whether the deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(c) For each loop slitter adhesive use affected source, you must keep the following records specified in paragraphs (c)(1) and (2) of this section.

(1) A list of each adhesive and the manufacturer or supplier of each.

(2) A record of EPA Method 311 (appendix A to 40 CFR part 63), approved alternative method, or other reasonable means of determining the mass percent of total HAP for each adhesive used at the affected source.

§ 63.8822 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 each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You can keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.8826 What parts of the General Provisions apply to me?

Table 7 to this subpart shows which sections of the General Provisions in §§ 63.1 through 63.15 apply to you.

§ 63.8828 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the U.S. Environmental Protection Agency (U.S. EPA), or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to

a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities in paragraphs (c)(1) through (4) that cannot be delegated to State, local, or tribal agencies are as follows:

(1) Approval of alternatives to requirements in §§ 63.8780, 63.8782, 63.8784, 63.8786, and 63.8790.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.8830 What definitions apply to this subpart?

Terms used in this subpart are defined in the CAA, in 40 CFR 63.2, and in this section as follows:

Adhesive means any chemical substance that is applied for the purpose of bonding foam to foam, foam to fabric, or foam to any other substrate, other than by mechanical means. Products used on humans and animals, adhesive tape, contact paper, or any other product with an adhesive incorporated onto it in an inert substrate shall not be considered adhesives under this subpart.

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 emission limitation (including any operating limit); or

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation (including any operating limit) in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Emission limitation means any emission limit or operating limit.

Flame lamination means the process of bonding flexible foam to one or more layers of material by heating the foam surface with an open flame.

Flame lamination line means the flame laminator and associated rollers.

HAP-based adhesive means an adhesive containing 5 percent (by weight) or more of HAP, according to EPA Method 311 (appendix A to 40 CFR part 63) or another approved alternative.

Loop slitter means a machine used to create thin sheets of foam from the large blocks of foam or ''buns'' created at a slabstock flexible polyurethane foam production plant.

Research and development process means a laboratory or pilot plant operation whose primary purpose is to conduct research and development into new processes and products where the operations are under the close supervision of technically trained personnel, and which is not engaged in the manufacture of products for commercial sale, except in a *de minimis* manner.

Responsible official means responsible official as defined in 40 CFR 70.2.

Tables to Subpart MMMMM of Part 63

TABLE 1 TO SUBPART MMMMM OF PART 63.—EMISSION LIMITS

[As stated in § 63.8790(a), you must comply with the emission limits in the following table:]

For . . .	You must . . .
1. Each existing, new, or reconstructed loop slitter adhesive use affected source.	Not use any HAP-based adhesives.
2. Each new or reconstructed flame lamination affected source	Reduce HAP emissions by 90 percent.
3. Each existing flame lamination affected sources	There are no emission limits for existing flame lamination sources. However, you must submit an initial notification per § 63.8816(b).

TABLE 2 TO SUBPART MMMMM OF PART 63.—OPERATING LIMITS FOR NEW OR RECONSTRUCTED FLAME LAMINATION AFFECTED SOURCES

[As stated in § 63.8790(b), you must comply with the operating limits in the following table:]

For each . . .	You must . . .
1. Scrubber	a. Maintain the daily average scrubber inlet liquid flow rate above the minimum value established during the performance test. b. Maintain the daily average scrubber effluent pH within the operating range value established during the performance test. c. If you use a venturi scrubber, maintain the daily average pressure drop across the venturi within the operating range value established during the performance test.
2. Other type of control device to which flame lamination emissions are ducted	Maintain your operating parameter(s) within the ranges established during the performance test and according to your monitoring plan.

TABLE 3 TO SUBPART MMMMM OF PART 63.—PERFORMANCE TEST REQUIREMENTS FOR NEW OR RECONSTRUCTED FLAME LAMINATION AFFECTED SOURCES

[As stated in § 63.8800, you must comply with the requirements for performance tests for new or reconstructed flame lamination affected sources in the following table using the requirements in rows 1 through 5 of the table if you are measuring HCl and using a scrubber, row 6 if you are measuring HCN and using a scrubber, and row 7 if you are using any other control device:]

For each new or reconstructed flame lamination affected source, you must . . .	Using . . .	According to the following requirements . . .
1. Select sampling port's location and the number of traverse ports.	Method 1 or 1A in appendix A to part 60 of this chapter.	Sampling sites must be located at the inlet and outlet of the scrubber and prior to any releases to the atmosphere.
2. Determine velocity	Method 2, 2A, 2C, 2D, 2F, or 2G in appendix A to part 60 of this chapter.	
3. Determine gas molecular weight	Not applicable	Assume a molecular weight of 29 (after moisture correction) for calculation purposes.
4. Measure moisture content of the stack gas.	Method 4 in appendix A to part 60 of this chapter.	
5. Measure HCl concentration if you use chlorinated fire retardants in the laminated foam.	a. Method 26A in appendix A to part 60 of this chapter.	i. Measure total HCl emissions and determine the reduction efficiency of the control device using Method 26A. ii. Collect scrubber liquid flow rate, scrubber effluent pH, and pressure drop (pressure drop data only required for venturi scrubbers) every 15 minutes during the entire duration of each 1-hour test run, and determine the average scrubber liquid flow rate, scrubber effluent pH, and pressure drop (pressure drop data only required for Venturi scrubbers) over the period of the performance test by computing the average of all of the 15-minute readings.
6. Measure HCN concentration if you do not use chlorinated fire retardants in the laminated foam.	a. A method approved by the Administrator.	i. Conduct the performance test according to the site-specific test plan submitted according to § 63.7(c)(2)(i). Measure total HCN emissions and determine the reduction efficiency of the control device. Any performance test which measures HCN concentrations must be submitted for the administrator's approval prior to testing. You must use EPA Method 301 (40 CFR part 63, Appendix A) to validate your method. ii. Collect scrubber liquid flow rate, scrubber effluent pH, and pressure drop (pressure drop data only required for venturi scrubbers) every 15 minutes during the entire duration of each 1-hour test run, and determine the average scrubber liquid flow rate, scrubber effluent pH, and pressure drop (pressure drop data only required for venturi scrubbers) over the period of the performance test by computing the average of all of the 15-minute readings.
7. Determine control device efficiency and establish operating parameter limits with which you will demonstrate continuous compliance with the emission limit that applies to the source if you use any control device other than a scrubber.	a. EPA-approved methods and data from the continuous parameter monitoring system.	i. Conduct the performance test according to the site-specific test plan submitted according to § 63.7(c)(2)(i). ii. Collect operating parameter data as specified in the site-specific test plan.

TABLE 4 TO SUBPART MMMMM OF PART 63.—INITIAL COMPLIANCE WITH EMISSION LIMITS

[As stated in § 63.8806, you must comply with the requirements to demonstrate initial compliance with the applicable emission limits in the following table:]

For . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
1. Each new, reconstructed, or existing loop slitter adhesive use affected source.	Eliminate use of HAP-based adhesives	You do not use HAP-based adhesives.
2. Each new or reconstructed flame lamination affected source using a scrubber.	Reduce HAP emissions by 90 percent	The average HAP emissions, measured over the period of the performance test(s), are reduced by 90 percent.
3. Each new or reconstructed flame lamination affected source using any other control device emissions by.	Reduce HAP emissions by 90 percent	The average HAP emissions, measured over the period of the performance test(s), are reduced by 90 percent.

TABLE 5 TO SUBPART MMMMM OF PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITS AND OPERATING LIMITS

[As stated in § 63.8812(a), you must comply with the requirements to demonstrate continuous compliance with the applicable emission limits or operating limits in the following table:]

For . . .	For the following emission limits or operating limits . . .	You must demonstrate continuous compliance by . . .
1. Each new, reconstructed, or existing loop slitter affected source.	Eliminate use of HAP-based adhesives	Not using HAP-based adhesives.
2. Each new or reconstructed flame lamination affected source using a scrubber.	a. Maintain the daily average scrubber inlet liquid flow rate above the minimum value established during the performance. b. Maintain the daily average scrubber effluent pH within the operating range established during the performance test. c. Maintain the daily average pressure drop across the venturi within the operating range established during the performance test. If you use another type of scrubber (*e.g.*, packed bed or spray tower scrubber), monitoring pressure drop is not required.	i. Collecting the scrubber inlet liquid flow rate and effluent pH monitoring data according to § 63.8804(a) through (c). ii. Reducing the data to 1-hour and daily block averages according to the requirements in § 63.8804(a). iii. Maintaining each daily average scrubber inlet liquid flow rate above the minimum value established during the performance test. iv. Maintaining the daily average scrubber effluent pH within the operating range established during the performance test. v. If you use a venturi scrubber, maintaining the daily average pressure drop across the venturi within the operating range established during the performance test.
3. Each new or reconstructed flame lamination affected source using any other control device.	a. Maintain the daily average operating parameters above the minimum value established during the performance test, or within the range established during the performance test, as applicable.	i. Collected the operating parameter data according to the site-specific test plan. ii. Reducing the data to one-hour averages according to the requirements in § 63.8804(a). iii. Maintaining the daily average during the rate above the minimum value established during the performance test, or within the range established during the performance test, as applicable.

TABLE 6 TO SUBPART MMMMM OF PART 63.—REQUIREMENTS FOR REPORTS

[As stated in § 63.8818(a), you must submit a compliance report that includes the information in § 63.8818(e) through (g) as well as the information in the following table. Rows 1 and 3 of the following table apply to loop slitter affected sources. Rows 1 through 5 apply to flame lamination affected sources. You must also submit startup, shutdown, and malfunction reports according to the requirements in the following table if you own or operate a new or reconstructed flame lamination affected source:]

If . . .	Then you must submit a report or statement that . .
1. There are no deviations from any emission limitations that apply to you.	There were no deviations from the emission limitations during the reporting period.
2. There were no periods during which the operating parameter monitoring systems were out-of-control in accordance with the monitoring plan.	There were no periods during which the CPMS were out-of-control during the reporting period.
3. There was a deviation from any emission limitation during the reporting period.	Contains the information in § 63.8818(e)(5).
4. There were periods during which the operating parameter monitoring systems were out-of-control in information in accordance with the monitoring plan.	Contains the information in § 63.8818(f)(3).
5. There was a startup, shutdown, or malfunction where the source did not meet the emission limitations set out in § 63.8790 at a new or reconstructed flame lamination affected source during the reporting period that is not consistent with your startup, shutdown, and malfunction plan..	Contains the information in § 63.8818(i).

TABLE 7 TO SUBPART MMMMM OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART MMMMM

[As stated in § 63.8826, you must comply with the applicable General Provisions requirements according to the following table:]

Citation	Requirement	Applies to subpart MMMMM	Explanation
§ 63.1	Initial applicability determination; applicability after standard established; permit requirements; extensions; notifications.	Yes.	
§ 63.2	Definitions	Yes	Additional definitions are found in § 63.8830.

TABLE 7 TO SUBPART MMMMM OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART MMMMM—Continued

[As stated in § 63.8826, you must comply with the applicable General Provisions requirements according to the following table:]

Citation	Requirement	Applies to subpart MMMMM	Explanation
§ 63.3	Units and abbreviations	Yes.	
§ 63.4	Prohibited activities; compliance date; circumvention, severability.	Yes.	
§ 63.5	Construction/reconstruction applicability; applications; approvals.	Yes.	
§ 63.6(a)	Compliance with standards and maintenance requirements-applicability.	Yes.	
§ 63.6(b)(1)–(4)	Compliance dates for new or reconstructed sources.	Yes	§ 63.8786 specifies compliance dates.
§ 63.6(b)(5)	Notification if commenced construction or reconstruction after proposal.	Yes.	
§ 63.6(b)(6)	[Reserved]	Yes.	
§ 63.6(b)(7)	Compliance dates for new or reconstructed area sources that become major.	Yes	§ 63.8786 specifies compliance dates.
§ 63.6(c)(1)–(2)	Compliance dates for existing sources	Yes	§ 63.8786 specifies compliance dates.
§ 63.6(c)(3)–(4)	[Reserved]	Yes.	
§ 63.6(c)(5)	Compliance dates for existing area sources that become major.	Yes	§ 63.8786 specifies compliance dates.
§ 63.6(d)	[Reserved]	Yes.	
§ 63.6(e)(1)	Operation and maintenance requirements.	Yes.	
§ 63.6(e)(2)	[Reserved]	Yes.	
§ 63.6(e)(3)	Startup, shutdown, and malfunction plans.	Yes	Only applies to new or reconstructed flame lamination affected sources.
§ 63.6(f)(1)	Compliance except during SSM	Yes	Only applies to new or reconstructed flame lamination affected sources.
§ 63.6(f)(2)–(3)	Methods for determining compliance	Yes.	
§ 63.6(g)	Use of an alternative nonopacity emission standard.	Yes.	
§ 63.6(h)	Compliance with opacity/visible emission standards.	No	Subpart MMMMM does not specify opacity or visible emission standards.
§ 63.6(i)	Extension of compliance with emission standards.	Yes.	
§ 63.6(j)	Presidential compliance exemption	Yes.	
§ 63.7(a)(1)–(2)	Performance test dates	Yes	Except for loop slitter affected sources as specified in in § 63.8798(a).
§ 63.7(a)(3)	Administrator's section 114 authority to require a performance test.	Yes.	
§ 63.7(b)	Notification of performance test and rescheduling.	Yes.	
§ 63.7(c)	Quality assurance program and site-specific test plans.	Yes.	
§ 63.7(d)	Performance testing facilities	Yes.	
§ 63.7(e)(1)	Conditions for conducting performance tests.	Yes.	
§ 63.7(f)	Use of an alternative test method	Yes.	
§ 63.7(g)	Performance test data analysis, recordkeeping, and reporting.	Yes.	
§ 63.7(h)	Waiver of performance tests	Yes.	
§ 63.8(a)(1)–(2)	Applicability of monitoring requirements	Yes	Unless otherwise specified, all of § 63.8 applies only to new or reconstructed flame lamination sources. Additional monitoring requirements for these sources are found in §§ 63.8794(f) and (g) and 63.8804.
§ 63.8(a)(3)	[Reserved]	Yes.	
§ 63.8(a)(4)	Monitoring with flares	No	Subpart MMMMM does not refer directly or indirectly to § 63.11.
§ 63.8(b)	Conduct of monitoring and procedures when there are multiple effluents and multiple monitoring systems.	Yes.	
§ 63.8(c)(1)–(3)	Continuous monitoring system (CMS) operation and maintenance.	Yes	Applies as modified by § 63.8794(f) and (g).
§ 63.8(c)(4)	Continuous monitoring system requirements during breakdown, out-of-control, repair, maintenance, and high-level calibration drifts.	Yes	Applies as modified by § 63.8794(g).

TABLE 7 TO SUBPART MMMMM OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART MMMMM—Continued

[As stated in § 63.8826, you must comply with the applicable General Provisions requirements according to the following table:]

Citation	Requirement	Applies to subpart MMMMM	Explanation
§ 63.8(c)(5)	Continuous opacity monitoring system (COMS) minimum procedures.	No	Subpart MMMMM does not have opacity or visible emission standards.
§ 63.8(c)(6)	Zero and high level calibration checks	Yes	Applies as modified by § 63.8794(f).
§ 63.8(c)(7)–(8)	Out-of-control periods, including reporting.	Yes.	
§ 63.8(d)–(e)	Quality control program and CMS performance evaluation.	No	Applies as modified by § 63.8794(f) and (g).
§ 63.8(f)(1)–(5)	Use of an alternative monitoring method	Yes.	
§ 63.8(f)(6)	Alternative to relative accuracy test	No	Only applies to sources that use continuous emissions monitoring systems (CEMS).
§ 63.8(g)	Data reduction	Yes	Applies as modified by § 63.8794(g).
§ 63.9(a)	Notification requirements—applicability	Yes.	
§ 63.9(b)	Initial notifications	Yes	Except § 63.8816(c) requires new or reconstructed affected sources to submit the application for construction or reconstruction required by § 63.9(b)(1)(iii) in lieu of the initial notification.
§ 63.9(c)	Request for compliance extension	Yes.	
§ 63.9(d)	Notification that a new source is subject to special compliance requirements.	Yes.	
§ 63.9(e)	Notification of performance test	Yes.	
§ 63.9(f)	Notification of visible emissions/opacity test.	No	Subpart MMMMM does not have opacity or visible emission standards.
§ 63.9(g)(1)	Additional CMS notifications—date of CMS performance evaluation.	Yes.	
§ 63.9(g)(2)	Use of COMS data	No	Subpart MMMMM does not require the use of COMS.
§ 63.9(g)(3)	Alternative to relative accuracy testing	No	Applies only to sources with CEMS.
§ 63.9(h)	Notification of compliance status	Yes.	
§ 63.9(i)	Adjustment of submittal deadlines	Yes.	
§ 63.9(j)	Change in previous information	Yes.	
§ 63.10(a)	Recordkeeping/reporting applicability	Yes.	
§ 63.10(b)(1)	General recordkeeping requirements	Yes	§§ 63.8820 and 63.8822 specify additional recordkeeping requirements.
§ 63.10(b)(2)(i)–(xi)	Records related to startup, shutdown, and malfunction periods and CMS.	Yes	Only applies to new or reconstructed flame lamination affected sources.
§ 63.10(b)(2)(xii)	Records when under waiver	Yes.	
§ 63.10(b)(2)(xiii)	Records when using alternative to relative accuracy test.	No	Applies only to sources with CEMS.
§ 63.10(b)(2)(xiv)	All documentation supporting initial notification and notification of compliance status.	Yes	
§ 63.10(b)(3)	Recordkeeping requirements for applicability determinations.	Yes.	
§ 63.10(c)	Additional recordkeeping requirements for sources with CMS.	Yes	Applies as modified by § 63.8794(g).
§ 63.10(d)(1)	General reporting requirements	Yes	§ 63.8818 specifies additional reporting requirements.
§ 63.10(d)(2)	Performance test results	Yes	
§ 63.10(d)(3)	Opacity or visible emissions observations.	No	Subpart MMMMM does not specify opacity or visible emission standards.
§ 63.10(d)(4)	Progress reports for sources with compliance extensions.	Yes.	
§ 63.10(d)(5)	Startup, shutdown, and malfunction reports.	Yes	Only applies to new or reconstructed flame lamination affected sources.
§ 63.10(e)(1)	Additional CMS reports—general	Yes	Applies as modified by § 63.8794(g).
§ 63.10(e)(2)(i)	Results of CMS performance evaluations.	Yes	Applies as modified by § 63.8794(g).
§ 63.10(e)(2)	Results of continuous opacity monitoring systems performance evaluations.	No	Subpart MMMMM does require the use of COMS.
§ 63.10(e)(3)	Excess emissions/CMS performance reports.	Yes	Only applies to new or reconstructed flame lamination affected sources.
§ 63.10(e)(4)	Continuous opacity monitoring system data reports.	No	Subpart MMMMM does not require the use of COMS.
§ 63.10(f)	Recordkeeping/reporting waiver	Yes	

TABLE 7 TO SUBPART MMMMM OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART MMMMM—Continued

[As stated in § 63.8826, you must comply with the applicable General Provisions requirements according to the following table:]

Citation	Requirement	Applies to subpart MMMMM	Explanation
§ 63.11.	Control device requirements—applicability.	No	Facilities subject to subpart MMMMM do not use flares as control devices.
§ 63.12	State authority and delegations	Yes	§ 63.8828 lists those sections of subparts MMMMM and A that are not delegated.
§ 63.13	Addresses	Yes.	
§ 63.14	Incorporation by reference	Yes	Subpart MMMMM does not incorporate any material by reference.
§ 63.15	Availability of information/confidentiality.	Yes.	

[FR Doc. 03–5520 Filed 4–11–03; 8:45 am]

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§§ 1.851–1.907	(869–048–00085–2)	57.00	Apr. 1, 2002
§§ 1.908–1.1000	(869–048–00086–1)	56.00	Apr. 1, 2002
§§ 1.1001–1.1400	(869–048–00087–9)	58.00	Apr. 1, 2002
§§ 1.1401–End	(869–048–00088–7)	61.00	Apr. 1, 2002
2–29	(869–048–00089–5)	57.00	Apr. 1, 2002
30–39	(869–048–00090–9)	39.00	Apr. 1, 2002
40–49	(869–048–00091–7)	26.00	Apr. 1, 2002
50–299	(869–048–00092–5)	38.00	Apr. 1, 2002
300–499	(869–048–00093–3)	57.00	Apr. 1, 2002
500–599	(869–048–00094–1)	12.00	[5]Apr. 1, 2002
600–End	(869–048–00095–0)	16.00	Apr. 1, 2002
27 Parts:			
1–199	(869–048–00096–8)	61.00	Apr. 1, 2002

Title	Stock Number	Price	Revision Date
200–End	(869–048–00097–6)	13.00	Apr. 1, 2002
28 Parts:			
0-42	(869–048–00098–4)	58.00	July 1, 2002
43-end	(869-048-00099-2)	55.00	July 1, 2002
29 Parts:			
0–99	(869–048–00100–0)	45.00	[8]July 1, 2002
100–499	(869–048–00101–8)	21.00	July 1, 2002
500–899	(869–048–00102–6)	58.00	July 1, 2002
900–1899	(869–048–00103–4)	35.00	July 1, 2002
1900–1910 (§§ 1900 to 1910.999)	(869–048–00104–2)	58.00	July 1, 2002
1910 (§§ 1910.1000 to end)	(869–048–00105–1)	42.00	[8]July 1, 2002
1911–1925	(869–048–00106–9)	29.00	July 1, 2002
1926	(869–048–00107–7)	47.00	July 1, 2002
1927–End	(869–048–00108–5)	59.00	July 1, 2002
30 Parts:			
1–199	(869–048–00109–3)	56.00	July 1, 2002
200–699	(869–048–00110–7)	47.00	July 1, 2002
700–End	(869–048–00111–5)	56.00	July 1, 2002
31 Parts:			
0–199	(869–048–00112–3)	35.00	July 1, 2002
200–End	(869–048–00113–1)	60.00	July 1, 2002
32 Parts:			
1–39, Vol. I		15.00	[2]July 1, 1984
1–39, Vol. II		19.00	[2]July 1, 1984
1–39, Vol. III		18.00	[2]July 1, 1984
1–190	(869–048–00114–0)	56.00	July 1, 2002
191–399	(869–048–00115–8)	60.00	July 1, 2002
400–629	(869–048–00116–6)	47.00	July 1, 2002
630–699	(869–048–00117–4)	37.00	July 1, 2002
700–799	(869–048–00118–2)	44.00	July 1, 2002
800–End	(869–048–00119–1)	46.00	July 1, 2002
33 Parts:			
1–124	(869–048–00120–4)	47.00	July 1, 2002
125–199	(869–048–00121–2)	60.00	July 1, 2002
200–End	(869–048–00122–1)	47.00	July 1, 2002
34 Parts:			
1–299	(869–048–00123–9)	45.00	July 1, 2002
300–399	(869–048–00124–7)	43.00	July 1, 2002
400–End	(869–048–00125–5)	59.00	July 1, 2002
35	(869–048–00126–3)	10.00	[7]July 1, 2002
36 Parts			
1–199	(869–048–00127–1)	36.00	July 1, 2002
200–299	(869–048–00128–0)	35.00	July 1, 2002
300–End	(869–048–00129–8)	58.00	July 1, 2002
37	(869–048–00130–1)	47.00	July 1, 2002
38 Parts:			
0–17	(869–048–00131–0)	57.00	July 1, 2002
18–End	(869–048–00132–8)	58.00	July 1, 2002
39	(869–048–00133–6)	40.00	July 1, 2002
40 Parts:			
1–49	(869–048–00134–4)	57.00	July 1, 2002
50–51	(869–048–00135–2)	40.00	July 1, 2002
52 (52.01–52.1018)	(869–048–00136–1)	55.00	July 1, 2002
52 (52.1019–End)	(869–048–00137–9)	58.00	July 1, 2002
53–59	(869–048–00138–7)	29.00	July 1, 2002
60 (60.1–End)	(869–048–00139–5)	56.00	July 1, 2002
60 (Apps)	(869–048–00140–9)	51.00	[8]July 1, 2002
61–62	(869–048–00141–7)	38.00	July 1, 2002
63 (63.1–63.599)	(869–048–00142–5)	56.00	July 1, 2002
63 (63.600–63.1199)	(869–048–00143–3)	46.00	July 1, 2002
63 (63.1200-End)	(869–048–00144–1)	61.00	July 1, 2002
64–71	(869–048–00145–0)	29.00	July 1, 2002
72–80	(869–048–00146–8)	59.00	July 1, 2002
81–85	(869–048–00147–6)	47.00	July 1, 2002
86 (86.1–86.599–99)	(869–048–00148–4)	52.00	[8]July 1, 2002
86 (86.600–1–End)	(869–048–00149–2)	47.00	July 1, 2002
87–99	(869–048–00150–6)	57.00	July 1, 2002
100–135	(869–048–00151–4)	42.00	July 1, 2002
136–149	(869–048–00152–2)	58.00	July 1, 2002
150–189	(869–048–00153–1)	47.00	July 1, 2002
190–259	(869–048–00154–9)	37.00	July 1, 2002
260–265	(869–048–00155–7)	47.00	July 1, 2002
266–299	(869–048–00156–5)	47.00	July 1, 2002
300–399	(869–048–00157–3)	43.00	July 1, 2002
400–424	(869–048–00158–1)	54.00	July 1, 2002
425–699	(869–048–00159–0)	59.00	July 1, 2002
700–789	(869–048–00160–3)	58.00	July 1, 2002
790–End	(869–048–00161–1)	45.00	July 1, 2002
41 Chapters:			
1, 1–1 to 1–10		13.00	[3]July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3]July 1, 1984
3–6		14.00	[3]July 1, 1984
7		6.00	[3]July 1, 1984
8		4.50	[3]July 1, 1984
9		13.00	[3]July 1, 1984
10–17		9.50	[3]July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3]July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3]July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3]July 1, 1984
19–100		13.00	[3]July 1, 1984
1–100	(869–048–00162–0)	23.00	July 1, 2002
101	(869–048–00163–8)	43.00	July 1, 2002
102–200	(869–048–00164–6)	41.00	July 1, 2002
201–End	(869–048–00165–4)	24.00	July 1, 2002
42 Parts:			
1–399	(869–048–00166–2)	56.00	Oct. 1, 2002
400–429	(869–048–00167–1)	59.00	Oct. 1, 2002
430–End	(869–048–00168–9)	61.00	Oct. 1, 2002
43 Parts:			
1–999	(869–048–00169–7)	47.00	Oct. 1, 2002
1000–end	(869–048–00170–1)	59.00	Oct. 1, 2002
44	(869–048–00171–9)	47.00	Oct. 1, 2002
45 Parts:			
1–199	(869–048–00172–7)	57.00	Oct. 1, 2002
200–499	(869–048–00173–5)	31.00	[9]Oct. 1, 2002
500–1199	(869–048–00174–3)	47.00	Oct. 1, 2002
1200–End	(869–048–00175–1)	57.00	Oct. 1, 2002
46 Parts:			
1–40	(869–048–00176–0)	44.00	Oct. 1, 2002
41–69	(869–048–00177–8)	37.00	Oct. 1, 2002
70–89	(869–048–00178–6)	14.00	Oct. 1, 2002
90–139	(869–048–00179–4)	42.00	Oct. 1, 2002
140–155	(869–048–00180–8)	24.00	[9]Oct. 1, 2002
156–165	(869–048–00181–6)	31.00	[9]Oct. 1, 2002
166–199	(869–048–00182–4)	44.00	Oct. 1, 2002
200–499	(869–048–00183–2)	37.00	Oct. 1, 2002
500–End	(869–048–00184–1)	24.00	Oct. 1, 2002
47 Parts:			
0–19	(869–048–00185–9)	57.00	Oct. 1, 2002
20–39	(869–048–00186–7)	45.00	Oct. 1, 2002
40–69	(869–048–00187–5)	36.00	Oct. 1, 2002
70–79	(869–048–00188–3)	58.00	Oct. 1, 2002
80–End	(869–048–00189–1)	57.00	Oct. 1, 2002
48 Chapters:			
1 (Parts 1–51)	(869–048–00190–5)	59.00	Oct. 1, 2002
1 (Parts 52–99)	(869–048–00191–3)	47.00	Oct. 1, 2002
2 (Parts 201–299)	(869–048–00192–1)	53.00	Oct. 1, 2002
3–6	(869–048–00193–0)	30.00	Oct. 1, 2002
7–14	(869–048–00194–8)	47.00	Oct. 1, 2002
15–28	(869–048–00195–6)	55.00	Oct. 1, 2002
29–End	(869–048–00196–4)	38.00	[9]Oct. 1, 2002
49 Parts:			
1–99	(869–048–00197–2)	56.00	Oct. 1, 2002
100–185	(869–048–00198–1)	60.00	Oct. 1, 2002
186–199	(869–048–00199–9)	18.00	Oct. 1, 2002
200–399	(869–048–00200–6)	61.00	Oct. 1, 2002
400–999	(869–048–00201–4)	61.00	Oct. 1, 2002
1000–1199	(869–048–00202–2)	25.00	Oct. 1, 2002

Title	Stock Number	Price	Revision Date
1200–End	(869–048–00203–1)	30.00	Oct. 1, 2002
50 Parts:			
1–17	(869–048–00204–9)	60.00	Oct. 1, 2002
18–199	(869–048–00205–7)	40.00	Oct. 1, 2002
200–599	(869–048–00206–5)	38.00	Oct. 1, 2002
600–End	(869–048–00207–3)	58.00	Oct. 1, 2002
CFR Index and Findings Aids	(869–050–00048–2)	59.00	Jan. 1, 2003
Complete 2003 CFR set		1,195.00	2003
Microfiche CFR Edition:			
Subscription (mailed as issued)		298.00	2003
Individual copies		2.00	2003
Complete set (one-time mailing)		298.00	2002
Complete set (one-time mailing)		290.00	2001

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2002, through January 1, 2003. The CFR volume issued as of January 1, 2002 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2001, through April 1, 2002. The CFR volume issued as of April 1, 2001 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2001, through July 1, 2002. The CFR volume issued as of July 1, 2001 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2001, through October 1, 2002. The CFR volume issued as of October 1, 2001 should be retained.