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Rules and Regulations

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

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 82

[Docket No. 02–117–5]

Exotic Newcastle Disease; Additions to Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the exotic Newcastle disease regulations by quarantining El Paso and Hudspeth Counties, TX, and Dona Ana, Luna, and Otero Counties, NM, and prohibiting or restricting the movement of birds, poultry, products, and materials that could spread exotic Newcastle disease from the quarantined area. This action is necessary on an emergency basis to prevent the spread of exotic Newcastle disease from the quarantined area.

DATES: This interim rule was effective April 10, 2003. We will consider all comments that we receive on or before June 16, 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. 02–117–5, 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. 02–117–5. 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. 02–117–5'' on the subject line.

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

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

FOR FURTHER INFORMATION CONTACT: Dr. Aida Boghossian, Senior Staff Veterinarian, Emergency Programs Staff, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737–1231; (301) 734–8073.

SUPPLEMENTARY INFORMATION:

Background

Exotic Newcastle disease (END) is a contagious and fatal viral disease affecting the respiratory, nervous, and digestive systems of birds and poultry. END is so virulent that many birds and poultry die without showing any clinical signs. A death rate of almost 100 percent can occur in unvaccinated poultry flocks. END can infect and cause death even in vaccinated poultry.

The regulations in ''Subpart A—Exotic Newcastle Disease (END)'' (9 CFR 82.1 through 82.15, referred to below as the regulations) were established to prevent the spread of END in the United States in the event of an outbreak. In § 82.3, paragraph (a) provides that any area where birds or poultry infected with END are located will be designated as a quarantined area, and that a quarantined area is any geographical area, which may be a premises or all or part of a State, deemed by epidemiological evaluation to be sufficient to contain all birds or poultry known to be infected with or exposed to END. Less than an entire State will be designated as a quarantined area only if the State enforces restrictions on intrastate movements from the quarantined area that are at least as stringent as the regulations. The regulations prohibit or restrict the movement of birds, poultry, products, and materials that could spread END from quarantined areas. Areas quarantined because of END are listed in § 82.3, paragraph (c).

On October 1, 2002, END was confirmed in the State of California. The disease was confirmed in backyard poultry, which are raised on private premises for hobby, exhibition, and personal consumption, and in commercial poultry.

In an interim rule effective on November 21, 2002, and published in the **Federal Register** on November 26, 2002 (67 FR 70674–70675, Docket No. 02–117–1), we amended the regulations in § 82.3(c) by quarantining Los Angeles County, CA, and portions of Riverside and San Bernardino Counties, CA, and restricting the interstate movement of birds, poultry, products, and materials that could spread END from the quarantined area.

In a second interim rule effective on January 7, 2003, and published in the **Federal Register** on January 13, 2003 (68 FR 1515–1517, Docket No. 02–117–2), we further amended § 82.3(c) by adding Imperial, Orange, San Diego, Santa Barbara, and Ventura Counties, CA, and the previously non-quarantined portions of Riverside and San Bernardino Counties, CA, to the list of quarantined areas. Because the Secretary of Agriculture signed a declaration of extraordinary emergency with respect to the END situation in California on January 6, 2003 (see 68 FR 1432, Docket No. 03–001–1, published January 10, 2003), that second interim rule also amended the regulations to provide that the prohibitions and restrictions that apply to the interstate movement of birds, poultry, products, and materials that could spread END will also apply to the intrastate movement of those articles in situations where the Secretary of Agriculture has issued a declaration of extraordinary emergency (new § 82.16).

On January 16, 2003, END was confirmed in backyard poultry on a premises in Las Vegas, NV. Therefore, in a third interim rule effective January 17, 2003, and published in the **Federal Register** on January 24, 2003 (68 FR 3375–3376, Docket No. 02–117–3), we amended § 82.3(c) by quarantining Clark County, NV, and a portion of Nye County, NV, and prohibiting or restricting the movement of birds, poultry, products, and materials that

could spread END from the quarantined area. On January 17, 2003, the Secretary of Agriculture signed a declaration of extraordinary emergency because of END in Nevada (see 68 FR 3507, Docket No. 03–001–2, published January 24, 2003).

On February 4, 2003, END was confirmed in backyard poultry on a premises in the Colorado River Indian Nation in Arizona. Therefore, in a fourth interim rule effective February 10, 2003, and published in the **Federal Register** on February 14, 2003 (68 FR 7412–7413, Docket No. 02–117–4), we amended § 82.3(c) by quarantining La Paz and Yuma Counties, AZ, and a portion of Mohave County, AZ, and prohibiting or restricting the movement of birds, poultry, products, and materials that could spread END from the quarantined area. On February 7, 2003, the Secretary of Agriculture signed a declaration of extraordinary emergency because of END in Arizona (see 68 FR 7338, Docket No. 03–001–3, published February 13, 2003).

On April 9, 2003, END was confirmed in backyard poultry on a premises in El Paso County, TX. Therefore, in this interim rule, we are amending § 82.3(c) by designating El Paso and Hudspeth Counties, TX, and Dona Ana, Luna, and Otero Counties, NM, as a quarantined area and prohibiting or restricting the movement of birds, poultry, products, and materials that could spread END from the quarantined area. As provided for by the regulations in § 82.3(a), this quarantined area encompasses the area where poultry infected with END were located and a surrounding geographical area deemed by epidemiological evaluation to be sufficient to contain all birds or poultry known to be infected with or exposed to END.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the spread of END. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments that we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This rule amends the regulations by quarantining El Paso and Hudspeth Counties, TX, and Dona Ana, Luna, and Otero Counties, NM, and prohibiting or restricting the movement of birds, poultry, products, and materials that could spread END from the quarantined area. This action is necessary on an emergency basis to prevent the spread of END from the quarantined area.

This emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

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

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 82

Animal diseases, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, 9 CFR part 82 is amended as follows:

PART 82—EXOTIC NEWCASTLE DISEASE (END) AND CHLAMYDIOSIS; POULTRY DISEASE CAUSED BY SALMONELLA ENTERITIDIS SEROTYPE ENTERITIDIS

■ 1. The authority citation for part 82 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

■ 2. In § 82.3, paragraph (c) is amended by adding, in alphabetical order, entries for New Mexico and Texas to read as follows:

§ 82.3 Quarantined areas.

* * * * *

(c) * * *

* * * * *

New Mexico

Dona Ana County. The entire county.
Luna County. The entire county.
Otero County. The entire county.

Texas

El Paso County. The entire county.
Hudspeth County. The entire county.

Done in Washington, DC, this 10th day of April 2003.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–9322 Filed 4–15–03; 8:45 am]

BILLING CODE 3410–34–P

FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052–AC05

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Capital Adequacy

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA or agency) amends its capital adequacy regulations to add a definition of total liabilities for the net collateral ratio calculation, limit the amount of term preferred stock that may count as total surplus, clarify the circumstances in which we may waive disclosure requirements for an issuance of equities by a Farm Credit System (FCS, Farm Credit or System) institution, and make several nonsubstantive technical changes. These amendments update, modify, and clarify certain capital requirements.

EFFECTIVE DATE: This regulation will become effective 30 days after publication in the **Federal Register** during which either or both houses of

Congress are in session. We will publish a notice of the effective date in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:
Alan Markowitz, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4479; TTY (703) 883–4434;
or
Rebecca S. Orlich, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–2020.

SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of our rule are to:

- Limit the effect of Statement of Financial Accounting Standards No. 133, *Accounting for Derivative Instruments and Hedging Activities* (SFAS 133), on the net collateral ratio;
- Ensure that Farm Credit institutions do not overly rely on term preferred stock to meet regulatory capital requirements;
- Explain how the FCA may include other debt or equity in the definition of permanent capital;
- Clarify the requirements for the FCA to consider waiving disclosure requirements for issuances of stock to more than a single sophisticated investor; and
- Make several nonsubstantive technical changes to our capital regulations.

II. Introduction

The FCA proposed amendments to the capital adequacy regulations on October 22, 2002. (*See* 67 FR 64833.) We now adopt the final amendments without changes from the proposed rule. The amendments will update, modify, and clarify certain capital requirements, as follows:

- Revisions to the net collateral ratio calculation will limit the effect of new accounting requirements for derivatives. This revision is in response to a petition we received in May 2001, from two System banks.
- There will be a limit on the amount of term preferred stock that can be counted in total surplus.
- Term preferred stock will be excluded from liabilities in the calculation of the net collateral ratio for System banks to the extent that the stock is counted as total surplus.
- We also clarify certain requirements and make additional technical corrections.

The amendments are more fully described in the section-by-section analysis below.

III. Comments

We received one comment letter on the proposed rule. The comment was submitted on behalf of two Farm Credit banks. The banks commended the agency for developing the proposed rule, stated their agreement with the objectives set out in the proposed rule, and expressed support for the rule ''in its entirety.''

IV. Section-by-Section Analysis

Section 615.5201(e)—Definition of Direct Lender Institution

We amend § 615.5201(e) by removing the phrase ''loan of lease'' and adding, in its place, the phrase ''loan or lease'' to correct a typographical error.

Section 615.5201(l)—Definition of Permanent Capital

We add a new paragraph (8) to the definition of permanent capital in § 615.5201(l). This amendment reflects a statutory change to section 4.3A of the Farm Credit Act of 1971, as amended, by the Farm Credit Banks and Associations Safety and Soundness Act of 1992 (1992 Act). The 1992 Act added section 4.3A(a)(1)(E), which includes in permanent capital any debt or equity instrument or other account that the FCA determines appropriate to be considered as permanent capital. The amendment states that we may include a debt or equity instrument or other account in permanent capital in whole or in part, and on a permanent or temporary basis. The language of this amendment is similar to language in existing § 615.5301(b)(1)(iv) and (i)(5), which states that we may include additional items in core or total surplus when we deem their inclusion to be appropriate. The inclusion of additional items gives institutions more flexibility in meeting their capital requirements.

Section 615.5250(c)(5)—Waiver of Disclosure Requirements

We amend § 615.5250(c)(5) to clarify the circumstances in which we may waive any or all of the disclosures we require institutions to make to potential investors in stock issuances. The existing waiver language was interpreted by some institutions to apply only when a single investor acquires all the equities of an entire class issued by an institution. Our revision clarifies that we may waive disclosure requirements when the following conditions are met: (1) Equities are sold only to sophisticated investors; (2) equities are sold in blocks of $100,000 or more; and (3) purchasers of equities agree that any subsequent sale or transfer must be in blocks of $100,000 or more. Any subsequent sale or transfer of equities that is less than $100,000 must receive our prior written approval.

We also correct the reference to paragraph (b) in existing paragraph (c)(5). The reference should have been to the disclosure requirements in paragraph (c)(1).

Section 615.5301(i)—Definition of Total Surplus

We add a new paragraph (4) to the definition of total surplus in § 615.5301(i) to limit the amount of term preferred stock that may be included in total surplus to 25 percent of permanent capital. Conforming changes are made to paragraph (3).

Our existing regulations have included term preferred stock in total surplus without limit. The final rule contains a limitation equal to 25 percent of permanent capital, to ensure that System institutions do not overly rely on this type of capital to meet regulatory capital requirements. This limitation is generally comparable to the treatment of intermediate-term preferred stock in the regulatory capital requirements for commercial banks. Commercial banks' Federal financial regulators exclude term preferred stock from Tier 1 capital and limit the amount of intermediate-term preferred stock that can count as Tier 2 capital to an amount equal to 50 percent of Tier 1 capital.[1] In addition, the amount a commercial bank may count as Tier 2 capital can be no greater than its Tier 1 capital. This means, in effect, that no more than 25 percent of a commercial bank's minimum total regulatory (Tier 1 + Tier 2) capital may consist of intermediate-term preferred stock.[2] We believe a similar limit to that imposed on commercial banks is also appropriate for System institutions and, therefore, impose a limitation on the total surplus ratio.

We note that the limitation will not prohibit System institutions from issuing preferred stock in excess of what may be counted as total surplus, but such excess amounts will not qualify as total surplus. The preferred stock will, however, be treated as permanent capital to the extent permitted in the permanent capital calculation.

[1] *See* 12 CFR Part 325, App. A (I.A.2(d)) (Federal Deposit Insurance Corporation); 12 CFR part 3, App. A (2(b)(4)) (Comptroller of the Currency); and 12 CFR part 208, App. A (II.A.2(iv)) (Board of Governors of the Federal Reserve System).

[2] This example assumes that a commercial bank has Tier 2 capital equal in amount to its Tier 1 capital.

New Section 615.5301(j)—Definition of Total Liabilities

We add a new § 615.5301(j) to define ''total liabilities'' for the purpose of calculating the net collateral ratio. This new definition limits the effect of the new accounting requirements for derivatives in SFAS 133, as promulgated by the Financial Accounting Standards Board. The net collateral ratio is a bank's net collateral, as defined in § 615.5301(c), divided by the bank's total liabilities. Section 615.5301(j)(1) specifies that total liabilities are valued in accordance with generally accepted accounting principles (GAAP), with the following exclusions for the effects of SFAS 133: (1) Adjustments to the carrying amount [3] of any liability that is designated as being hedged; and (2) any derivative recognized as a liability that is designated as a hedging instrument.

Prior to SFAS 133, GAAP allowed many derivative instruments to be treated by System banks as off-balance sheet items. However, with the adoption of SFAS 133, System banks must now recognize all derivative instruments at their fair value as either an asset or a liability on the balance sheet. If a derivative instrument qualifies as a designated hedge,[4] System banks may be required to adjust the carrying value of certain assets or liabilities.

As a result of SFAS 133, System banks that use derivatives may have to recognize an increase in the amount of total liabilities when calculating their net collateral ratios. These increases in total liabilities have resulted in lower net collateral ratios than what the banks would have had under the previous accounting requirements for derivative instruments.

Under SFAS 133, a System bank's total liabilities will often increase for a derivative instrument designated as hedged. This resulting increase in the bank's liabilities from a derivative instrument designated as a hedge has no offsetting equivalent increase in the collateral amount used in the computation of its net collateral ratio because of the way net collateral is defined in § 615.5301(c). Thus, a derivative instrument used by a bank to hedge against interest rate risk can often result in an unintended decline in the bank's net collateral ratio.

We believe a bank's net collateral ratio should not be negatively affected by derivative instruments appropriately used to hedge against interest rate risk or other types of market risks. Appropriate use of derivatives as hedges protects System banks against a true economic decline in their net collateral. Accordingly, our amendment excludes the effect of SFAS 133 on the calculation of the net collateral ratio for derivative instruments that qualify as hedges under SFAS 133.

Conversely, we believe derivative instruments that are not designated to hedge specific assets or liabilities do not provide adequate protections for interest rate or other market risks. Therefore, our definition of total liabilities *includes* derivative instruments that do not qualify as designated hedges.

Section 615.5301(j)(2) also excludes from total liabilities the amount of term preferred stock that is eligible to be counted as total surplus in the numerator of a bank's calculation of its total surplus ratio. In the absence of such exclusion, the existing rule could have required certain forms of term preferred stock to be considered liabilities. The exclusion eliminates the potential inconsistency of treating a particular balance sheet item as a liability for net collateral purposes but as capital for the total surplus ratio.

IV. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that the rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

■ For the reasons stated in the preamble, we amend part 615 of chapter VI, title 12 of the Code of Federal Regulations as follows:

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

■ 1. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.3, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6, 2279aa, 2279aa–3, 2279aa–4, 2279aa–6, 2279aa–7, 2279aa–8, 2279aa–10, 2279aa–12); sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

Subpart H—Capital Adequacy

■ 2. Amend § 615.5201 as follows:

■ a. Remove the words ''loan of lease'' in paragraph (e) and add in their place, the words ''loan or lease''; and

■ b. Add a new paragraph (l)(8).

§ 615.5201 Definitions.

(1) * * *

(8) Any other debt or equity instruments or other accounts the FCA has determined are appropriate to be considered permanent capital. The FCA may permit one or more institutions to include all or a portion of such instrument, entry, or account as permanent capital, permanently or on a temporary basis, for purposes of this part.

* * * * *

Subpart I—Issuance of Equities

■ 3. Amend § 615.5250 by revising paragraph (c)(5) to read as follows:

§ 615.5250 Disclosure requirements.

(c) * * *

(5) For a class of stock, the FCA may waive any or all of the disclosure requirements of paragraph (c)(1) of this section when each investor acquires at least $100,000 of the stock if the sophistication of the purchaser warrants, provided that subsequent transfers of the stock in amounts of less than $100,000 must receive the prior written approval of the FCA.

* * * * *

Subpart K—Surplus and Collateral Requirements

■ 4. Amend § 615.5301 as follows:

■ a. Redesignate paragraphs (i)(4) through (i)(7) as paragraphs (i)(5) through (i)(8);

■ b. Remove the reference ''§ 615.5201(j)(4)(iv)'' in paragraph (i)(2)

[3] GAAP defines the carrying amount of a liability as the face amount of a liability increased or decreased by any applicable accrued interest payable and any applicable unamortized premium, discount, finance charges, or issue costs.

[4] Under SFAS 133, derivative instruments designated as hedges routinely reduce an entity's exposure to changes in the fair value of an asset or liability (*i.e.*, fair value hedge) or changes in expected future cash flows (*i.e.*, cash flow hedge) attributable to a particular risk. For Farm Credit banks, derivative instruments are routinely used to reduce their exposure to (hedge against) changes in interest rates or other types of market risks.

and add in its place, the reference ''§ 615.5201(l)(4)(iv)'';

■ c. Revise paragraph (i)(3);

■ d. Add a new paragraph (i)(4); and

■ e. Add a new paragraph (j).

§ 615.5301 Definitions.

(i) * * *

(3) Common and perpetual preferred stock (other than allocated stock) that is not purchased or held as a condition of obtaining a loan, provided that the institution has no established plan or practice of retiring such stock;

(4) Term preferred stock that is not purchased or held as a condition of obtaining a loan, up to a maximum of 25 percent of the institution's permanent capital (as calculated after deductions required in the permanent capital ratio computation). The amount of includible term stock must be reduced by 20 percent (net of redemptions) at the beginning of each of the last 5 years of the term of the instrument;

* * * * *

(j) *Total liabilities* means liabilities valued in accordance with generally accepted accounting principles (GAAP), except that total liabilities shall exclude the following:

(1) As set forth in Statement of Financial Accounting Standards No. 133, *Accounting for Derivative Instruments and Hedging Activities*, as promulgated by the Financial Accounting Standards Board—

(i) Adjustments to the carrying amount of any liability designated as being hedged; and

(ii) Any derivative recognized as a liability that is designated as a hedging instrument.

(2) Term preferred stock to the extent such stock is included as total surplus in the computation of the bank's total surplus ratio pursuant to § 615.5301(i).

Dated: April 10, 2003.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 03–9320 Filed 4–15–03; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–54–AD; Amendment 39–13111; AD 2003–07–15]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–300 Series Airplanes Modified by Supplemental Type Certificate ST01783AT–D

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 767–300 series airplanes modified by Supplemental Type Certificate ST01783AT–D, that requires modifying the in-flight entertainment (IFE) system and revising the airplane flight manual. The actions specified by this AD are intended to ensure that the flight crew is able to remove electrical power from the IFE system when necessary and is advised of appropriate procedures for such action. Inability to remove power from the IFE system during a non-normal or emergency situation could result in inability to control smoke or fumes in the airplane flight deck or cabin. This action is intended to address the identified unsafe condition.

DATES: Effective May 21, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 21, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from TIMCO Engineered Systems, Inc., 623 Radar Road, Greensboro, North Carolina 27410. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Chupka, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6070; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 767–300 series airplanes modified by Supplemental Type Certificate ST01783AT–D was published in the **Federal Register** on January 3, 2003 (68 FR 308). That action proposed to require modifying the in-flight entertainment (IFE) system and revising the airplane flight manual.

Comments

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

Conclusion

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

Cost Impact

There are approximately 37 airplanes of the affected design in the worldwide fleet. The FAA estimates that 37 airplanes of U.S. registry will be affected by this AD.

It will take approximately 66 work hours per airplane to accomplish the modification, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the modification on U.S. operators is estimated to be $146,520, or $3,960 per airplane.

It will take approximately 1 work hour per airplane to accomplish the AFM revision, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AFM revision on U.S. operators is estimated to be $2,220, or $60 per airplane.

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

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and

responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003–07–15 Boeing: Amendment 39–13111. Docket 2002–NM–54–AD.

Applicability: Model 767–300 series airplanes modified by Supplemental Type Certificate (STC) ST01783AT–D, certificated in any category.

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 (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 ensure that the flight crew is able to remove electrical power from the in-flight entertainment (IFE) system when necessary and is advised of appropriate procedures for such action, accomplish the following:

Modification and Airplane Flight Manual Revision

(a) Within 18 months after the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) of this AD.

(1) Modify the IFE system installed on the airplane by installing two new relays and a new circuit breaker, according to TIMCO Service Bulletin TSB–767–23–009, Revision IR, dated August 22, 2001.

(2) Revise the procedures under ''Electrical Smoke or Fire'' in the ''Emergency Procedures'' section of the airplane flight manual (AFM) to include TIMCO AFM Supplement TIM–AFM–01035, dated March 13, 2002. When the information in that AFM supplement has been incorporated into the FAA-approved general revisions of the AFM, the general revisions may be incorporated into the AFM, and the AFM supplement may be removed from the AFM.

Part Installation

(b) As of the effective date of this AD, no person may install an IFE system according to STC ST01783AT–D on any airplane, unless the IFE system is modified and the AFM is revised according to this AD.

Alternative Methods of Compliance

(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, Atlanta Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 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.

Incorporation by Reference

(e) The modification shall be done in accordance with TIMCO Service Bulletin TSB–767–23–009, dated August 22, 2001; the AFM revision shall be done in accordance with TIMCO Airplane Flight Manual Supplement TIM–AFM–01035, dated March 13, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from TIMCO Engineered Systems, Inc., 623 Radar Road, Greensboro, North Carolina 27410. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on May 21, 2003.

Issued in Renton, Washington, on April 4, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–8741 Filed 4–15–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–SW–01–AD; Amendment 39–13118; AD 2003–08–07]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Model 222, 222B, 222U, and 230 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Bell Helicopter Textron Canada (BHTC) Model 222, 222B, 222U, and 230 helicopters. This action requires inspecting the main rotor pendulum weight support (pendulum weight support) for file or grinding marks, gouges, and appropriate edge breaks. It also requires, if necessary, reworking and remarking or replacing the pendulum weight support. Regardless, this AD requires a magnetic particle inspection for a crack and replacing the pendulum weight support if a crack is found. This amendment is prompted by a pendulum weight support failure and shedding of the pendulum weight set in flight and a subsequent determination of manufacturing defects on certain serial-numbered pendulum weight supports. This condition, if not corrected, could result in the pendulum weights separating from the pendulum weight support and striking the vertical fin or tail rotor, and subsequent loss of control of the helicopter.

DATES: Effective May 1, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 1, 2003.

Comments for inclusion in the Rules Docket must be received on or before June 16, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2003–SW–01–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.*

The service information referenced in this AD may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles Harrison, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5128, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: Transport Canada, which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on BHTC Model 222, 222B, 222U, and 230 helicopters. Transport Canada advises that pendulum weight supports could have manufacturing discrepancies like file or grinding marks, gouges, or too small edge radius. This part, if not reworked and inspected or replaced, could fail in flight.

BHTC has issued the following alert service bulletins, all dated March 28, 2002:

- Bell Helicopter Textron (BHT) Alert Service Bulletin (ASB) 222–02–92 for Model 222 and 222B helicopters;
- BHT ASB 222U–02–63 for Model 222U helicopters; and
- BHT ASB 230–02–25 for Model 230 helicopters.

The ASBs specify inspecting the pendulum support weights and, if necessary, reworking and remarking or replacing the pendulum weight supports no later than the next scheduled 150 hours time-in-service (TIS) inspection, and prior to installation of spare supports. Transport Canada classified these ASBs as mandatory and issued AD CF–2002–33, dated July 4, 2002, to ensure the continued airworthiness of these helicopters in Canada. Transport Canada's AD requires accomplishing the actions within 50 hours TIS, as does this AD.

These helicopter models are manufactured in Canada and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

This unsafe condition is likely to exist or develop on other helicopters of the same type designs registered in the United States. Therefore, this AD is being issued to prevent the pendulum weights from separating and striking the vertical fin or tail rotor, and subsequent loss of control of the helicopter. This AD requires, within 50 hours TIS, inspecting each pendulum weight support, part number (P/N) 222–011–114–101 or ''103, for file or grinding marks, gouges, and appropriate edge breaks. It also requires, if necessary, reworking and remarking or replacing the pendulum weight support. Regardless, this AD requires a magnetic particle inspection for a crack and replacing the pendulum weight support if a crack is found. The actions must be accomplished in accordance with the ASB's described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability or structural integrity of the helicopter. Therefore, inspecting each pendulum weight support for discrepancies, reworking and remarking or replacing each pendulum weight support, if necessary, and performing a magnetic particle inspection for a crack (and replacing the pendulum weight support if a crack is found) is required within 50 hours TIS, and this AD must be issued immediately.

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

The FAA estimates that 108 helicopters will be affected by this AD, that it will take approximately 10 work hours to accomplish the inspection, reworking and remarking or replacing the two pendulum weight supports, and that the average labor rate is $60 per work hour. Required parts will cost approximately $1,734 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $252,072, assuming that all helicopters in the fleet will require replacing two pendulum weight supports.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2003–SW–01–AD.'' The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant

regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003–08–07 Bell Helicopter Textron Canada: Amendment 39–13118. Docket No. 2003–SW–01–AD.

Applicability: Model 222 helicopters, serial numbers (S/N) 47006 through 47089; Model 222B helicopters, S/N 47131 through 47156; Model 222U helicopters, S/N 47501 through 47574; and Model 230 helicopters, S/N 23001 through 23038, with main rotor pendulum weight support (pendulum weight support), part number (P/N) 222–011–114–101 or –103, except for pendulum weight supports with a S/N having a prefix of ''FN'' and numbers 363 through 409, installed, 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 (f) 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 within 50 hours time-in-service, unless accomplished previously.

To prevent the main rotor pendulum weights (pendulum weights) from separating from the pendulum weight support and striking the vertical fin or tail rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) Inspect the edges of each pendulum weight support, P/N 222–011–114–101 or –103, for an edge break of 0.02 to 0.04 inch radius or 0.02 to 0.04 inch × 45 degrees chamfer in accordance with the Accomplishment Instructions, paragraphs 1 through 3, in Bell Helicopter Textron (BHT) Alert Service Bulletin (ASB) 222–02–92 for Model 222 and 222B helicopters; BHT ASB 222U–02–63 for Model 222U helicopters; or BHT ASB 230–02–25 for Model 230 helicopters, all dated March 28, 2002.

(b) Inspect the edges of each pendulum weight support for file marks, grinding marks, or gouges, and to ensure that edge break machining/polishing marks are in the correct direction as shown in Figure 1 of each ASB cited in paragraph (a) of this AD.

(c) If the edge breaks do not meet the requirements in paragraphs (a) and (b) of this AD:

(1) Rework the edges in accordance with Figure 1 and the Accomplishment Instructions, paragraph 6, in the applicable ASB.

(2) Perform a magnetic particle inspection of the pendulum weight supports for a crack.

(3) Re-identify reworked pendulum weight supports in accordance with the Accomplishment Instructions, paragraphs 8 through 10, in the applicable ASB.

(d) If the edge breaks meet the requirements in paragraphs (a) and (b) of this AD, perform a magnetic particle inspection of the pendulum weight supports for a crack.

(e) If a crack is found in the pendulum weight support or the pendulum weight support cannot be reworked to meet the requirements of this AD, replace the pendulum weight support with an airworthy pendulum weight support before further flight.

(f) 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 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(g) 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.

(h) The inspections and rework and replacement, if necessary, shall be done in accordance with Bell Helicopter Textron Alert Service Bulletin 222–02–92, Bell Helicopter Textron Alert Service Bulletin 222U–02–63, or Bell Helicopter Textron Alert Service Bulletin 230–02–25, all dated March 28, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on May 1, 2003.

Note 3: The subject of this AD is addressed in Transport Canada (Canada) AD CF–2002–33, dated July 4, 2002.

Issued in Fort Worth, Texas, on April 7, 2003.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–9011 Filed 4–15–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 4, 16, 141, 157

[Docket No. RM03–6–000]

Amendments To Conform Regulations With Order No. 630 (Critical Energy Infrastructure Information Final Rule)

April 9, 2003.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is proposing to revise its regulations requiring that companies make information directly

available to the public under certain circumstances. The revisions are necessary to conform these regulations to Order No. 630, which established guidelines for the handling of Critical Energy Infrastructure Information (CEII). In order to restrict availability of information that could be used in a terrorist attack against the nation's energy infrastructure, Order No. 630 explained that the Commission believed CEII would be exempt from disclosure under the Freedom of Information Act (FOIA). The order set out a definition of CEII and established procedures for persons with a legitimate need for such information to follow in seeking access to it. Order No. 630 only covered information submitted to or prepared by the Commission. The revisions proposed in this rulemaking address instances in which the Commission's rules and regulations require companies to make information available directly to the public. Revisions will be necessary to ensure that protection of CEII is consistent in both contexts.

DATES: Comments are due May 16, 2003.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426.

FOR FURTHER INFORMATION CONTACT: Wilbur T. Miller, Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–8953.

SUPPLEMENTARY INFORMATION:

I. Introduction

1. In this Notice of Proposed Rulemaking (NOPR), the Commission proposes specific changes to its regulations that require companies to make certain information available directly to the public. The changes are necessary to reconcile those regulations with Order No. 630, which established standards and procedures for the handling of Critical Energy Infrastructure Information (CEII) submitted to or created by the Commission.[1] Because Order No. 630 addressed only situations in which a person might seek access to CEII that is in the Commission's possession, further changes to ensure consistent treatment and protection of CEII are needed where companies possess CEII and are required by the Commission's regulations to make it available to the public unconditionally.

2. The Commission is proposing to revise its regulations in several areas. These include 18 CFR part 4, which requires that applicants for hydropower licenses, permits and exemptions make various types of information available to the public. Another area proposed for revision is 18 CFR part 16, which requires that applicants for projects subject to sections 14 and 15 of the Federal Power Act[2] make specified information available to the public. A third area is 18 CFR 141.300, which establishes requirements for filing FERC Form No. 715, Annual Transmission Planning and Evaluation Report. The instructions to Form No. 715 in turn require that portions of the form be made available to the public by the public utility upon request. Finally, 18 CFR part 157 governs applications for certificates of public convenience and necessity, and for orders permitting and approving abandonment under section 7 of the Natural Gas Act. Several sections in part 157 require that certain information, some of which may be CEII, be made available by applicants to landowners or other members of the public.

A. Order No. 630

3. Order No. 630 arose from the Commission's concern that CEII could be employed by terrorists to engineer attacks against the nation's energy facilities. In the wake of the September 11, 2001, tragedy, the Commission removed from easy public access various categories of documents that might contain CEII.[3] The Commission issued a notice of inquiry[4] on January 16, 2002, followed by a NOPR[5] on September 5, 2002, seeking comments on the best procedures for protecting CEII. On February 21, 2003, the Commission issued a final rule in Order No. 630.[6]

4. In issuing the final rule, the Commission found that concerns for the safety of the public and the nation's energy systems compelled it to ensure that CEII is not readily available to the public.[7] The Commission had previously taken steps to remove various categories of documents that were likely to contain CEII from public availability through the Internet, the Federal Energy Regulatory Records Information System (FERRIS), and the Commission's public reference room.[8] Apart from reaffirming that decision, Order No. 630 stated the Commission's conclusion that, in light of the heightened appreciation for security concerns in the wake of the September 11 attack, information constituting CEII would be exempt from disclosure under one or more of the exemptions to FOIA.[9] The Commission emphasized that Order No. 630 did not constitute a determination of the applicability of any FOIA exemption to any specific situation, but rather reflected the Commission's understanding of the exemptions' applicability to CEII, an understanding that informed the Commission's choices in the rulemaking. FOIA requests still must be processed on an individual basis as required by statute.[10]

5. Order No. 630 defined CEII in § 388.113(c)(1) of the Commission's regulations as ''information about proposed or existing critical infrastructure that'':

(i) Relates to the production, generation, transportation, transmission, or distribution of energy;

(ii) Could be useful to a person in planning an attack on critical infrastructure;

(iii) Is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552; and

(iv) Does not simply give the location of the critical infrastructure.[11]

The order defined ''critical infrastructure'' in § 388.113(c)(2) of the Commission's regulations as:

existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.[12]

6. Of particular concern to the Commission in defining CEII was location information. Such information is particularly relevant, for example, to participants in the National Environmental Policy Act (NEPA) process. Consequently, the Commission concluded that the following types of location information would not be considered CEII:

(1) USGS 7.5-minutes topographic maps showing the location of pipelines, dams, or other aboveground facilities; (2) alignment sheets showing the location of pipeline and aboveground facilities, right of way dimensions, and extra work areas; (3) drawings showing site or project boundaries, footprints, building locations and reservoir extent; and (4) general location maps.[13]

7. For submission of CEII to the Commission, Order No. 630 adopted a

[1] 68 FR 9857 (Mar. 3, 2003); III FERC Stats. & Regs. ¶ 31,140 (Feb. 21, 2003).

[2] 16 U.S.C. 807–808.

[3] *See* 67 FR 3129 (Jan. 23, 2002), IV FERC Stats. & Regs. ¶35,542 (Jan. 16, 2002).

[4] *Id.*

[5] *See* 67 FR 57994 (Sept. 13, 2002), IV FERC Stats. & Regs. ¶ 32,564, (Sept. 5, 2002).

[6] *See* note 1.

[7] 68 FR 9857, at pp. 9858–59.

[8] *Id.* at p. 9858.

[9] 5 U.S.C. 552; *see* 68 FR 9857 at pp. 9859–61, 9871–73 (Appendix B).

[10] 68 FR 9857, at pp. 9859–60.

[11] *Id.* at p. 9870.

[12] *Id.*

[13] *Id.* at p. 9862. The Commission stated, however, that it would not place this information on the Internet. Id.

process that largely parallels the process for submission of confidential materials. The order revised section 388.112 of the Commission's regulations to provide that an entity submitting CEII to the Commission is responsible for identifying and marking CEII with the legend ''Contains Critical Energy Infrastructure Information-Do Not Release.'' Information identified as CEII is placed in a nonpublic file, with the Commission retaining the right to make a determination whether CEII treatment has been properly claimed. The submitter is notified in the event any person or entity requests release of the CEII, and also prior to any release of the information being made.[14]

8. In reaching the conclusion that it could and should protect CEII, the Commission recognized that, in many instances, individuals and entities would have a legitimate need to obtain CEII. The Commission recognized, for instance, that interveners, landowners and other persons retained an interest in participating meaningfully in Commission proceedings. Order No. 630 also recognized other legitimate users of CEII, including state agencies and market participants seeking to develop new or expanded energy resources.[15]

9. In order to protect the legitimate interests of these and other users of CEII, Order No. 630 established the position of CEII Coordinator to consider requests for release of CEII. The order added § 375.313 to the Commission's regulations to delegate authority to that official to consider such requests, and also added § 388.113 to create procedures for requesting access to CEII.[16] A person desiring access to CEII must file a written request with the CEII Coordinator containing the following information:

> Requester's name, date and place of birth, title, address, and telephone number; the name, address, and telephone of the person or entity on whose behalf the information is requested; a detailed statement explaining the particular need for and intended use of the information; and a statement as to the requester's willingness to adhere to limitations on the use and disclosure of the information requested. Requesters are also requested to include their social security number for identification purposes.[17]

In determining whether to grant a request for CEII, the CEII Coordinator is required to balance the requester's need for the information against the information's sensitivity. In the event the request is granted, the CEII Coordinator is authorized to impose conditions upon the requester's use of the information, including the requirement that the requester sign a non-disclosure agreement. Determinations by the CEII Coordinator are subject to rehearing under section 385.713 of the Commission's regulations.[18]

B. CEII Made Available Directly to the Public

10. During the comment process, some commenters noted that the Commission requires companies to make certain information available directly to the public and that such information, if it contained CEII, would not be covered by the rulemaking that culminated in Order No. 630. The Commission agreed with the need to eliminate this inconsistent treatment and stated that it would address the matter in future modifications to its regulations.[19] The Commission has identified several such portions of its regulations.

1. Electric Transmission Provisions

11. One provision proposed for revision relates to FERC Form No. 715, the Annual Transmission Plan and Evaluation Report. The Commission's regulations, at 18 CFR 141.300, require the filing of Form No. 715. The form itself, in its instructions, states that ''[r]espondents must also make available to the public, upon request, in hard copy, the above items (Parts 1–6 of Form No. 715), and, in electronic form, items 1, 2, 4, 5, and 6.'' Some of the information that Form No. 715 calls for may include CEII.[20] For example, part 2 requires ''regional or subregional case base power flow data.'' Part 3 requires ''transmission system maps and diagrams used by the Respondent for transmission planning.'' Part 4 requires detailed transmission planning reliability critieria. Part 5 requires transmission planning assessment practices.

2. Natural Gas Provisions

12. Another instance is the Commission's regulations governing applications for certificates of public convenience and necessity and for orders permitting abandonment. Under § 157.10(b), copies of applications, supplements and amendments under part 157 of the Commission's regulations, including exhibits required by §§ 157.14, 157.16 and 157.18, must be supplied on request to interveners.[21] Complete copies of the filings must be made available in central locations in each county throughout the project area.[22] The required exhibits include material that might be CEII, such as flow diagrams and related data,[23] and total gas supply data.[24] In addition to § 157.10, §§ 157.6(d), 157.22(e)(3)–(4) and 157.203(d) may also on occasion require that CEII be made available to certain persons.

3. Hydropower Provisions

13. Part 4 of the Commission's regulations, which governs licenses, permits, exemptions and other applications under the Federal Power Act, contains a number of provisions that require applicants to make information about their projects available to the public. Under 18 CFR 4.32(a)(3), an applicant for a preliminary license, permit or exemption must provide notification to affected property owners. The notification must include Exhibit G to the application.[25] 18 CFR 4.32(b)(3) and (b)(4) require the applicant to make information, including a copy of the application and all exhibits, available to the public for inspection and reproduction at specified locations.[26] Under 18 CFR 4.34(i)(4)(i) and (i)(6)(iii), an applicant using alternative procedures must distribute an information package and maintain a public file of all relevant documents, including scientific studies. Finally, 18 CFR 4.38(g), which provides for pre-filing consultation in the case of an original license, requires the applicant to make available for public inspection various items, including detailed maps[27] and a general engineering design.[28] All of these provisions likely will require the public disclosure of CEII.

14. Part 16, which specifies procedures for the takeover and relicensing of existing projects, also

[14] *Id.* at p. 9870.

[15] *Id.* at pp. 9863, 9865.

[16] *Id.* at pp. 9869–70.

[17] *Id.* at pp. 9870–71.

[18] *Id.* at p. 9870.

[19] *Id.* at p. 9868.

[20] *See* ''New Reporting Requirements Implementing Section 213(b) of the Federal Power Act,'' 100 FERC ¶61,141 (2002). In this order, the Commission modified its practice of making Form 715 available to the public. Due to national security considerations, it determined that certain portions of Form 715 would no longer be made available on the Commission's Web site or through its public databases. This change in policy was to remain in effect until the Commission took final action in Docket No. RM02–4–000. As explained above, a final rule was issued in Order No. 630, which is now pending rehearing.

[21] 18 CFR 157.10(b). Materials that are voluminous or difficult to reproduce may be made available in an accessible central location in each county in the project area. 18 CFR 157.10(b)(1).

[22] 18 CFR 157.10(c).

[23] 18 CFR 157.14(a)(7)–(9).

[24] 18 CFR 157.14(a)(10).

[25] 18 CFR 4.32(a)(3)(ii).

[26] 18 CFR 4.32(b)(3)(i), (b)(4)(ii)–(iv).

[27] 18 CFR 4.38(b)(1)(i).

[28] 18 CFR 4.38(b)(1)(ii).

contains public notification requirements. An applicant for a new license, at the time it notices its intention to apply for relicensing, must make available for public inspection [29] a number of items, including the original application, as-built drawings, diagrams, emergency action plans, and operation and maintenance reports.[30] In addition, the provisions regarding pre-filing consultation require that items including detailed maps and a general engineering design be made available for public inspection.[31] These regulations would require the disclosure of CEII.

15. Parts 4 and 16, apart from containing provisions requiring that CEII be made available to the public, also in several instances require applicants to serve CEII on Indian tribes, resource agencies and other government offices. Such provisions are found at 18 CFR 4.32(b)(1)–(2); 4.38(b)(1), (c)(4), (d); 16.8(b)(1), (c)(4), (d). In Order No. 630, the Commission noted that the Federal Records Act [32] effectively requires a Federal agency receiving information from another Federal agency to treat it in the same manner that the originating agency would have treated it.[33] This requirement would not apply to the provisions listed above, however, because the resource agency would be receiving the CEII directly from the applicant, not from the Commission. Consequently, to ensure consistent treatment of CEII, the Commission proposes to add provisions for instances where information must be provided to other agencies and to tribes that would parallel the proposed provisions applicable to information made available to the public. The Commission notes that neither the proposals contained in this NOPR nor Order No. 630 is intended to require companies to withhold CEII. Instead, they are intended to ensure that the Commission's regulations do not require companies to reveal CEII. Consequently, the Commission anticipates that, in most instances, companies will share CEII with other Federal agencies without requiring other agencies to request access to CEII.

II. Discussion

16. The Commission in this NOPR proposes to reconcile the requirements for making information available to the public with Order No. 630 by providing that companies subject to the disclosure requirements of Form No. 715 and parts 4, 16 and 157 omit CEII from the information made available. Instead, the company would include a statement briefly describing the omitted information, without revealing CEII, and referring the reader to the procedures for challenging CEII claims and for requesting CEII. Such challenges and requests would take place under the procedures adopted in Order No. 630 and found in 18 CFR 388.112 and 388.113, employing the definition of CEII found at 18 CFR 388.113(c). Therefore, a member of the public could still obtain the information, but would have to follow procedures different from those applicable now.

17. The treatment of CEII under the proposed procedures should largely parallel the treatment of the same information filed with the Commission. Form No. 715 and parts 4, 16 and 157 require that companies make available certain portions of information that they are submitting to the Commission. Consequently, the company should simply omit, from the information made available to the public, all materials designated as CEII in its submission to the Commission. The proposed revisions require that the company adhere to any previous determinations by the Commission or the CEII Coordinator as to the status of any information claimed to constitute CEII.[34] Thus, if information designated as CEII in the submission to the Commission is later determined not to constitute CEII, the company should make that information available as specified in the pertinent regulation. This approach should be relatively simple and straightforward. The Commission invites comments, however, on any other approach that might function better.

18. Besides § 157.10, other provisions in part 157 could conceivably be interpreted as requiring the disclosure by a company of CEII. Section 157.6(d) requires notification to affected landowners, including a description of ''the proposed project [and] its location (including a general location map).''[35] Where the Commission approves a pre-filing collaborative process, the applicant must maintain a public file of all relevant documents.[36] Finally, in the case of blanket certificates, an applicant must provide notice to landowners, including a brief description of facilities to be constructed or replaced.[37] In each of these cases, the Commission believes it should ordinarily be unnecessary for the applicant to release CEII. Where maps or other descriptions are required, it should be possible for the applicant to meet the requirement without including information so detailed or sensitive that it would require the inclusion of CEII, particularly given that Order No. 630 omitted location information from the definition of CEII. Where a NEPA Pre-Filing process or collaborative process is approved, there are no specific requirements that should lead to the disclosure of CEII. The regulation simply requires that the applicant make available all ''relevant documents.'' The Commission does not interpret this provision as requiring the disclosure of CEII. Nevertheless, in the interest of caution the Commission is proposing to amend all three provisions to provide for the protection of CEII.

19. The Commission invites comment on provisions in its rules and regulations other than those specifically discussed in this NOPR that may require revisions to ensure consistency with Order No. 630.

20. The Commission notes that it does not intend to revisit issues already addressed in Order No. 630. Such issues include the need for protecting CEII, the definition of CEII, and the procedures for submitting and obtaining access to CEII.[38] The Commission also notes that FOIA has no bearing on the matters discussed in this NOPR, as it concerns only requirements that companies make information available, not requests to obtain information from the Commission.

III. Information Collection Statement

21. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule.[39] The public disclosure of information originally supplied by an agency to the recipient is, however, excluded from the

[29] *See* 18 CFR 16.7(e).

[30] 18 CFR 16.7(d)(1)–(2).

[31] 18 CFR 16.8(i); *see* 18 CFR 16.8(b)(1)(i)–(ii).

[32] 44 U.S.C. 3510(b).

[33] 68 FR 9857, at p. 9866.

[34] Sections 157.6(d)(3)(iv), 157.22(e)(4), and 157.203(d) require information to be made available that would not necessarily be identical to information submitted to the Commission. For example, 18 CFR 157.6(d)(3)(iv) requires that an applicant include in a notice to landowners a description of the proposed project. This description would not necessarily be contained in the application submitted to the Commission. As explained below, the Commission believes that, as a practical matter, these three provisions will seldom if ever require an applicant to make CEII available. Should such a situation arise, it would be the applicant's responsibility to determine what information constituted CEII and omit it from the information made available.

[35] 18 CFR 157.6(d)(3)(iv).

[36] 18 CFR 157.22(e)(4).

[37] 18 CFR 157.203(d).

[38] Those issues are still subject to rehearing as part of Docket No. RM02–4–000. That proceeding remains the appropriate forum for their resolution.

[39] 5 CFR 1320.12.

coverage of the regulations.[40] The only information collection requirement contained in this proposed rulemaking is a requirement that companies include a statement outlining the procedures for seeking access to CEII. Because that statement would be supplied by the Commission, the information collection regulations do not apply to this proposed rulemaking.

IV. Environmental Analysis

22. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[41] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[42] This proposed rule, if finalized, is procedural in nature and therefore falls under this exception; consequently, no environmental consideration would be necessary.

V. Regulatory Flexibility Act Certification

23. The Regulatory Flexibility Act of 1980 (RFA)[43] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such analyses if a rule would not have such an effect. The Commission certifies that this proposed rule, if finalized, would not have such an impact on small entities.

VI. Comment Procedure

24. The Commission invites interested persons to submit written comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due May 16, 2003. Comments must refer to Docket No. RM03–6–000, and may be filed either in electronic or paper format. Those filing electronically do not need to make a paper filing.

25. Documents filed electronically via the Internet can be prepared in a variety of formats, including WordPerfect, MS Word, Portable Document Format, Rich Text Format, or ASCII format, as listed on the Commission's Web site at *http://ferc.gov*, under the e-Filing link. The e-Filing link provides instructions for how to Login and complete an electronic filing. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt of comments. User assistance for electronic filing is available at 202–502–8258 or by E-Mail to *efiling@ferc.gov*. Comments should not be submitted to the E-Mail address.

26. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426.

27. All comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington DC 20426, during regular business hours. Additionally, all comments may be viewed, printed, or downloaded remotely via the Internet through FERC's home page using the FERRIS link.

VII. Document Availability

28. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's home page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

29. From FERC's home page on the Internet, this information is available in the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document is available on FERRIS in PDF and WordPerfect format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number excluding the last three digits of this document in the docket number field.

30. User assistance is available for FERRIS and the FERC's Web site during normal business hours by contacting, FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, for TTY (202) 502–8659.

[40] 5 CFR 1320.3(c)(2).

[41] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶30,783 (1987).

[42] 18 CFR 380.4(a)(2)(ii).

[43] 5 U.S.C. 601–612.

List of Subjects

18 CFR Part 4

Administrative practice and procedure, Electric power, Reporting and recordkeeping requirements.

18 CFR Part 16

Administrative practice and procedure, Electric power, Reporting and recordkeeping requirements.

18 CFR Part 141

Electric power, Reporting and recordkeeping requirements.

18 CFR Part 157

Administrative practice and procedure, Natural Gas, Reporting and recordkeeping requirements.

By direction of the Commission.

Magalie R. Salas,

Secretary.

■ In consideration of the foregoing, the Commission proposes to amend parts 4, 16, 141 and 157, chapter I, title 18, Code of Federal Regulations, as follows.

PART 4—LICENSES, PERMITS, EXEMPTIONS AND DETERMINATION OF PROJECT COSTS

■ 1. The authority citation for part 141 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 42 U.S.C. 7101–7352.

■ 2. Section 4.32 is amended by adding paragraph (k) as follows:

§ 4.32 Acceptance for filing or rejection; information to be made available to the public; requests for additional studies.

* * * * *

(k) *Critical Energy Infrastructure Information.*

(1) If this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined in § 388.113(c) of this chapter, to any person, the applicant shall omit the CEII from the information made available and insert the following in its place:

(i) A statement that CEII is being withheld;

(ii) A brief description of the omitted information that does not reveal any CEII; and

(iii) This statement: ''Procedures for obtaining access to Critical Energy Infrastructure Information (CEII) may be found at 18 CFR § 388.113. Requests for access to CEII should be made to the Commission's CEII Coordinator.''

(2) The applicant, in determining whether information constitutes CEII, shall treat the information in a manner consistent with any filings that applicant has made with the

Commission and shall adhere to any previous determinations by the Commission or the CEII Coordinator involving the same or like information.

(3) The procedures contained in §§ 388.112 and 388.113 of this chapter regarding designation of, and access to, CEII, shall apply in the event of a challenge to a CEII designation or a request for access to CEII. If it is determined that information is not CEII or that a requester should be granted access to CEII, the applicant will be directed to make the information available to the requester.

■ 3. Section 4.34 is amended by adding paragraph (i)(10) as follows:

§ 4.34 Hearings on applications; consultation on terms and conditions; motions to intervene; alternative procedures.

* * * * *

(i) *Alternative procedures.* * * *

(10) If this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by § 388.113(c) of this chapter, to the public, the applicant shall follow the procedures set out in § 4.32(k).

■ 4. Section 4.38 is amended by adding paragraph (i) as follows:

§ 4.38 Consultation requirements.

* * * * *

(i) *Critical Energy Infrastructure Information.* If this section requireS an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by § 388.113(c) of this chapter, to any person, the applicant shall follow the procedures set out in § 4.32(k) of this subpart.

PART 16—PROCEDURES RELATING TO TAKEOVER AND RELICENSING OF LICENSED PROJECTS

■ 5. The authority citation for part 16 continues to read as follows:

Authority: 16 U.S.C. 791a–825r; 42 U.S.C. 7101–7352.

■ 6. Section 16.7 is amended by adding paragraph (d)(7) as follows:

§ 16.7 Information to be made available to the public at the time of notification of intent under section 15(b) of the Federal Power Act.

* * * * *

(d) *Information to be made available.* * * *

(7) If paragraph (d) of this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined in § 388.113(c) of this chapter, to the public, the applicant shall omit the CEII from the information made available and insert the following in its place:

(i) A statement that CEII is being withheld;

(ii) A brief description of the omitted information that does not reveal any CEII; and

(iii) This statement: ''Procedures for obtaining access to Critical Energy Infrastructure Information (CEII) may be found at 18 CFR § 388.113. Requests for access to CEII should be made to the Commission's CEII Coordinator.''

(A) The applicant, in determining whether information constitutes CEII, shall treat the information in a manner consistent with any filings that applicant has made with the Commission and shall adhere to any previous determinations by the Commission or the CEII Coordinator involving the same or like information.

(B) The procedures contained in §§ 388.112 and 388.113 of this chapter regarding designation of, and access to, CEII, shall apply in the event of a challenge to a CEII designation or a request for access to CEII. If it is determined that information is not CEII or that a requester should be granted access to CEII, the applicant will be directed to make the information available to the requester.

* * * * *

■ 7–8. Section 16.8 is amended by adding paragraph (k) as follows:

§ 16.8 Consultation requirements.

* * * * *

(k) *Critical Energy Infrastructure Information.* If this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by § 388.113(c) of this chapter, to any person, the applicant shall follow the procedures set out in § 16.7(d)(7) of this subpart.

PART 141—STATEMENTS AND REPORTS (SCHEDULES)

■ 9. The authority citation for part 141 continues to read as follows:

Authority: 15 U.S.C. 79; 16 U.S.C. 791a–828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 10. Section 141.300 is amended by adding paragraph (d) as follows:

§ 141.300 FERC Form No. 715, Annual Transmission Planning and Evaluation Report.

* * * * *

(d) *Critical Energy Infrastructure Information.*

(1) If the instructions in Form No. 715 require a utility to reveal Critical Energy Infrastructure Information (CEII), as defined in § 388.113(c) of this chapter, to the public, the utility shall omit the CEII from the information made available and insert the following in its place:

(i) A statement that CEII is being withheld;

(ii) A brief description of the omitted information that does not reveal any CEII; and

(iii) This statement: ''Procedures for obtaining access to Critical Energy Infrastructure Information (CEII) may be found at 18 CFR § 388.113. Requests for access to CEII should be made to the Commission's CEII Coordinator.''

(2) The utility completing Form No. 715, in determining whether information constitutes CEII, shall treat the information in a manner consistent with any filings that utility has made with the Commission and shall adhere to any previous determinations by the Commission or the CEII Coordinator involving the same or like information.

(3) The procedures contained in §§ 388.112 and 388.113 of this chapter regarding designation of, and access to, CEII, shall apply in the event of a challenge to a CEII designation or a request for access to CEII. If it is determined that information is not CEII or that a requester should be granted access to CEII, the utility will be directed to make the information available to the requester.

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

■ 11. The authority citation for part 157 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

■ 12. Section 157.6 is amended by adding paragraph (d)(6) as follows:

§ 157.6 Applications; general requirements.

* * * * *

(d) *Landowner notification.* * * *

(6) If paragraph (d)(3) of this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by § 388.113(c) of this chapter, to a landowner, the applicant shall follow the procedures set out in § 157.10(d).

■ 13. Section 157.10 is amended by adding paragraph (d) as follows:

§ 157.10 Interventions and protests.

* * * * *

(d) *Critical Energy Infrastructure Information.*

(1) If this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as

defined in § 388.113(c) of this chapter, to the public, the applicant shall omit the CEII from the information made available and insert the following in its place:

(i) A statement that CEII is being withheld;

(ii) A brief description of the omitted information that does not reveal any CEII; and

(iii) This statement: ''Procedures for obtaining access to Critical Energy Infrastructure Information (CEII) may be found at 18 CFR § 388.113. Requests for access to CEII should be made to the Commission's CEII Coordinator.''

(2) The applicant, in determining whether information constitutes CEII, shall treat the information in a manner consistent with any filings that applicant has made with the Commission and shall adhere to any previous determinations by the Commission or the CEII Coordinator involving the same or like information.

(3) The procedures contained in §§ 388.112 and 388.113 of this chapter regarding designation of, and access to, CEII, shall apply in the event of a challenge to a CEII designation or a request for access to CEII. If it is determined that information is not CEII or that a requester should be granted access to CEII, the applicant will be directed to make the information available to the requester.

■ 14. Section 157.14 is amended by revising paragraph (a) to read as follows:

§ 157.14 Exhibits.

(a) *To be attached to each application.* All exhibits specified must accompany each application when tendered for filing. Together with each exhibit applicant must provide a full and complete explanation of the data submitted, the manner in which it was obtained, and the reasons for the conclusions derived from the exhibits. If the Commission determines that a formal hearing upon the application is required or that testimony and hearing exhibits should be filed, the Secretary will promptly notify the applicant that submittal of all exhibits and testimony of all witnesses to be sponsored by the applicant in support of his case-in-chief is required. Submittal of these exhibits and testimony must be within 20 days from the date of the Secretary's notice, or any other time as the Secretary will specify. Exhibits, except exhibits F, F–1, G, G–I, G–II, and H(iv), must be submitted to the Commission on electronic media as prescribed in § 385.2011 of this chapter. Interveners and persons becoming interveners after the date of the Secretary's notice must be advised by the applicant of the afore-specified exhibits and testimony, and must be furnished with copies upon request. If this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by § 388.113(c) of this chapter, to an intervener, the applicant shall follow the procedures set out in § 157.10(d).

* * * * *

■ 15. Section 157.16 is amended by revising the introductory text to read as follows:

§ 157.16 Exhibits relating to acquisitions.

In addition to the exhibits required by § 157.14, every application involving acquisition of facilities must be accompanied by the exhibits listed below. Together with each exhibit applicant must provide a full and complete explanation of the data submitted, the manner in which it was obtained, and the reasons for the conclusions derived from the exhibits, unless the applicant includes a statement identifying the schedule and rate containing the required information and data filed as prescribed in § 385.2011 of this chapter. If the Commission determines that a formal hearing upon the application is required or that testimony and hearing exhibits should be filed, the Secretary will promptly notify the applicant that submittal of all the exhibits and testimony of all witnesses to be sponsored by the applicant in support of his case-in-chief is required. Submittal of these exhibits and testimony must be within 20 days from the date of the Secretary's notice, or any other time specified by the Secretary in the notice. Sections 157.6(a) and 385.2011 of this chapter will govern the submissions required to be furnished to the Commission. Interveners and persons becoming interveners after the date of the Secretary's notice must be advised by the applicant of the afore-specified exhibits and testimony, and must be furnished with copies upon request. If this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by § 388.113(c) of this chapter, to an intervener, the applicant shall follow the procedures set out in § 157.10(d).

* * * * *

■ 16. Section 157.22 is amended by adding paragraph (e)(9) as follows:

§ 157.22 Collaborative procedures for applications for certificates of public convenience and necessity and for orders permitting and approving abandonment.

* * * * *

(e) * * *

(9) If paragraph (e)(3) or (e)(4) requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by § 388.113(c) of this chapter, to the public, the applicant shall follow the procedures set out in § 157.10(d) of this subpart.

* * * * *

15. Section 157.203 is amended by adding paragraph (d)(4) as follows:

§ 157.203 Blanket certification.

* * * * *

(d) *Landowner notification.* * * *

(4) If paragraph (d)(1) or (d)(2) of this section require an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by § 388.113(c) of this chapter, to landowners, the applicant shall follow the procedures set out in § 157.10(d).

[FR Doc. 03–9267 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 501

[BOP–1117–I]

RIN 1120–AB17

Bureau of Prisons Emergencies

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim final rule.

SUMMARY: The Bureau of Prisons (Bureau) makes this interim final rule to clarify that, when there is an institutional or system-wide Bureau emergency which the Director or designee, such as a Warden, considers a threat to human life or safety, the Director or designee may suspend the operation of the rules in this chapter as necessary to handle the emergency. This rule clarifies that the Director may suspend Bureau rules as needed in light of any emergency affecting the Bureau, and the Warden may do so to deal with emergencies at the institution level. This rule change clarifying the Director's authority to modify Bureau rules to handle emergencies is especially necessary in light of the recent terrorist attacks, threats to national security, threats of anthrax surrounding mail processing, and other events occurring on and after September 11, 2001.

DATES: This rule is effective April 16, 2003. Comments are due by June 16, 2003.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, 320

First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION: The Bureau makes this interim final rule to clarify that, when there is an institutional or system-wide Bureau emergency which the Director or designee, such as a Warden, considers a threat to human life or safety, the Director or designee may suspend the operation of the rules in this chapter as necessary to handle the emergency. This rule clarifies that the Director may suspend Bureau rules as needed in light of any emergency affecting the Bureau, and the Warden may do so to deal with emergencies at the institution level. This rule change clarifying the Director's authority to modify Bureau rules to handle emergencies is especially necessary in light of the recent terrorist attacks, threats to national security, threats of anthrax surrounding mail processing, and other events occurring on and after September 11, 2001.

Previously, 28 CFR 501.1 stated that, when there is an institutional emergency which the Warden considers a threat to human life or safety, the Warden may suspend the operation of the rules contained in this chapter to the extent he deems necessary to handle the emergency. The rule also required the Warden to notify the Director within eight hours of any suspension of rules under this section. This rule change simply clarifies that the authority to suspend operation of Bureau rules to handle an institutional or system-wide Bureau emergency originates with the Director.

To provide additional safeguards against indefinite suspension of Bureau rules, this rule also requires that, if the Warden suspends operation of the rules, the Warden must, within eight hours of the suspension, notify the Director by providing written documentation which (1) Describes the institutional emergency that threatens human life or safety; and (2) explains why suspension of the rules is necessary to handle the institutional emergency.

Also, if the Warden does not provide the Director with written justification for suspension every 30 days, or if the Director so chooses for any other reason, suspension of the rules to handle the institutional emergency ceases.

Administrative Procedure Act

This rule relates to a matter of agency management or personnel, and is therefore exempt from the usual requirements of prior notice and comment. See 5 U.S.C. 553(a)(2).

Where To Send Comments

You can send written comments on this rule to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

We will consider comments received during the comment period before taking final action. We will try to consider comments received after the end of the comment period. In light of comments received, we may change the rule.

We do not plan to have oral hearings on this rule. All the comments received remain on file for public inspection at the above address.

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, we determine that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation and by approving it certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

We want to make Bureau documents easier to read and understand. If you can suggest how to improve the clarity of these regulations, call or write Sarah Qureshi at the telephone number or address listed above.

List of Subjects in 28 CFR Part 501

Prisoners.

Harley G. Lappin,

Director, Bureau of Prisons.

■ Under the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we amend 28 CFR part 501 as follows.

SUBCHAPTER A—GENERAL MANAGEMENT AND ADMINISTRATION

PART 501—SCOPE OF RULES

■ 1. Revise the authority citation for 28 CFR part 501 to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

■ 2. Revise § 501.1 to read as follows:

§ 501.1 Bureau of Prisons emergencies.

(a) *Suspension of rules during an emergency.* The Director of the Bureau of Prisons (Bureau) may suspend operation of the rules in this chapter as necessary to handle an institutional emergency or an emergency affecting the Bureau. When there is an institutional emergency which the Director or Warden considers a threat to human life or safety, the Director or Warden may suspend the operation of the rules in this chapter as necessary to handle the emergency.

(b) *Responsibilities of the Warden.*—

(1) *Notifying the Director.* If the Warden suspends operation of the rules, the Warden must, within eight hours of the suspension, notify the Director by providing written documentation which:

(i) Describes the institutional emergency that threatens human life or safety; and

(ii) Sets forth reasons why suspension of the rules is necessary to handle the institutional emergency.

(2) *Submitting certification to Director of continuing emergency.* 30 days after the Warden suspends operation of the rules, and every 30 days thereafter, the Warden must submit to the Director written certification that an institutional emergency threatening human life or safety and warranting suspension of the rules continues to exist. If the Warden does not submit this certification to the Director, or if the Director so orders at any time, the suspension of the rules will cease.

[FR Doc. 03–9310 Filed 4–15–03; 8:45 am]

BILLING CODE 4410–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 241–0392; FRL–7471–4]

Revisions to the Arizona State Implementation Plan and California State Implementation Plan, Maricopa County Environmental Services Department and Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a limited approval and limited disapproval of revisions to the Maricopa County Environmental Services Department portion of the Arizona State Implementation Plan (SIP) and the Bay Area Air Quality Management District portion of the California SIP. This action was proposed in the **Federal Register** on June 5, 2002, and concerns volatile organic compound (VOC) emissions from solvent cleaning operations. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action simultaneously approves a local rule that regulates these emission sources and directs Arizona and California to correct rule deficiencies.

EFFECTIVE DATE: This rule is effective on May 16, 2003.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

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

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

Maricopa County environmental Services Department, Air Quality Division, 1001 North Central Avenue, Suite 201, Phoenix, AZ 85004.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

FOR FURTHER INFORMATION CONTACT: Al Petersen, U.S. Environmental Protection Agency, Region IX, (415) 947–4118.

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

I. Proposed Action

On June 5, 2002 (67 FR 38630), EPA proposed a limited approval and limited disapproval of the following rules that were submitted for incorporation into the Arizona and California SIPs.

TABLE 1.—SUBMITTED RULES

Local agency	Rule #	Rule title	Revised	Submitted
MCESD	331	Solvent Cleaning	04/07/99	08/04/99
BAAQMD	8–16	Solvent Cleaning Operations	09/15/98	03/28/00

We proposed a limited approval because we determined that these rules improve the SIP and are largely consistent with the relevant CAA requirements. We simultaneously proposed a limited disapproval because some rule provisions conflict with section 110 and part D of the Act. The provisions in MCESD rule 331 include the following:

- The provisions of this rule exempt sources that are not necessarily covered by another federally approved rule.
- Subsections of this rule provide methods of determining capture efficiency, but do not refer to EPA's January 9, 1995, guidance document, *Guidelines for Determining Capture Efficiency,* describing calculation procedures.
- Sections II and III of the appendix to this rule do not clarify which and how standards are adjusted for boiling point.
- Section I–6 of the appendix to this rule raise the threshold limit from 10.75 sq ft to 13 sq ft for additional control without adequately justifying this relaxation.

The provisions in BAAQMD rule 8–16 include the following:

- Section 8–16–501.2 allows facility-wide make-up solvent recording on an annual basis, which is not sufficient to ensure that the rule is enforceable pursuant to CAA section 110(a)(2)(A).
- Rule 8–16 contains a number of incorrect section references that may result in enforcement ambiguity.

Our proposed action contains more information on the basis for this rulemaking and on our evaluation of the submittal.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we did not receive any comments.

III. EPA Action

No comments were submitted that change our assessment of the rules as described in our proposed action. Therefore, as authorized in sections 110(k)(3) and 301(a) of the CAA, EPA is finalizing a limited approval of the submitted rules. This action incorporates the submitted rules into the Arizona and California SIPs, respectively, including those provisions identified as deficient. As authorized under section 110(k)(3), EPA is simultaneously finalizing a limited disapproval of the rules. As a result,

sanctions will be imposed unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months of the effective date of this action. These sanctions will be imposed under section 179 of the CAA according to 40 CFR 52.31. In addition, EPA must promulgate a federal implementation plan (FIP) under section 110(c) unless we approve subsequent SIP revisions that correct the rule deficiencies within 24 months. Note that the submitted rules have been adopted by the MCESD and BAAQMD, and EPA's final limited disapproval does not prevent the local agencies from enforcing them.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

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

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements 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 not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it 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. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This 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. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

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 potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This 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

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2). This rule will be effective May 16, 2003.

K. Petitions for Judicial Review

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 16, 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 52

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

Dated: March 5, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart D—Arizona

■ 2. Section 52.120 is amended by adding paragraph (c)(94)(i)(G) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(94) * * *

(i) * * *

(G) Rule 331, revised on April 7, 1999.

* * * * *

Subpart F—California

■ 3. Section 52.220 is amended by adding paragraph (c)(277)(i)(C)(*3*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(277) * * *

(i) * * *

(C) * * *

(*3*) Rule 8–16, adopted on March 7, 1979 and amended on September 15, 1998.

* * * * *

[FR Doc. 03–9041 Filed 4–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[DC–T5–2003–01a; FRL–7483–6]

Clean Air Act Approval of Operating Permits Program Revision; District of Columbia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the District of Columbia's Clean Air Act title V operating permit program, pertaining to requirements for public notification of permit actions. In a notice of deficiency (NOD) published in the **Federal Register** on December 21, 2001, EPA notified the District of Columbia of EPA's finding that the District's provisions for providing public notification of permitting actions did not fully comply with the requirements of the Clean Air Act (CAA) and its implementing regulations. Direct final approval of this program revision resolves the deficiency identified in the NOD and the District of Columbia maintains final full approval of the Clean Air Act title V operating permits program.

EFFECTIVE DATE: This rule is effective on June 2, 2003 without further notice, unless EPA receives adverse written comment by May 16, 2003. If EPA receives such comments, it 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: Written comments may be mailed to Kristeen Gaffney, Acting Chief, Permits and Technical Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and District of Columbia Department of Health, Air Quality Division, 51 N Street, NE., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Paresh R. Pandya, U.S. Environmental Protection Agency, Region III (3AP11), 1650 Arch Street, Philadelphia, PA 19103 at (215) 814–2167, or by e-mail at *pandya.perry@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The EPA granted final interim approval of the District of Columbia's operating permit program on August 7, 1995 (60 FR 40101). The District amended its operating permit program to address deficiencies identified in the interim approval action. The EPA proposed full approval of the District of Columbia's operating permit program in the **Federal Register** on October 16,

2001 (66 FR 52538). Adverse comments were received and EPA withdrew that approval. A final rulemaking action was published in the **Federal Register** on December 4, 2001 (66 FR 62954) which summarized the adverse comments, provided EPA's responses, and promulgated final full approval of the District of Columbia's operating permit program. Subsequently, in reevaluating the commenter's concerns, EPA agreed that the commenter had identified a deficiency in the District of Columbia's title V operating permit program relating to the District of Columbia's public notification requirements. The EPA published a notice of deficiency (NOD) in the **Federal Register** (pursuant to 40 CFR 70.4(i) and 70.10(b)) on December 21, 2001 (66 FR 65947) to notify the District of Columbia and the public that EPA found a deficiency in the District of Columbia's title V operating permit program. The deficiency relates to the District of Columbia's regulatory authority to provide public notification of permit actions.

II. Description of Action

The EPA's regulations at 40 CFR 70.7(h) and 70.7(d)(3)(i) provide that public notice shall be provided for all permit proceedings, except those qualifying as administrative permit amendments or minor permit modifications. Such public notification shall be provided by a number of means, including ''by publication in a newspaper of general circulation in the area where the source is located or in a State publication designed to give general public notice; to persons on a mailing list developed by the permitting authority, including those who request in writing to be on the list; and by other means if necessary to assure adequate notice to the affected public.'' *See,* 40 CFR 70.7(h)(1). EPA's regulations at 40 CFR 70.4(b)(16) require that State part 70 program submittals contain provisions requiring the permitting authority to implement the requirements of 40 CFR 70.7. The District of Columbia's operating permit program regulations at 20 DCMR 303.10 required that public notice of draft initial permits, significant modifications and permit renewals be published in the District of Columbia Register and that copies of such notice be sent to persons on a permit mailing list. However, the regulations did not expressly require that ''other means'' be employed if necessary to assure adequate public notice. Because the District of Columbia's operating permit program regulations did not require the District to provide public notice by other means if necessary to assure adequate notice to the affected public, the District of Columbia's operating permit program did not fully comply with the requirements of the Clean Air Act and 40 CFR part 70.

Title V provides for the approval of State programs for the issuance of operating permits that incorporate the applicable requirements of the Clean Air Act. To receive title V program approval, a State permitting authority must submit a program to EPA that meets certain minimum criteria, and EPA must disapprove a program that fails, or withdraw an approved program that subsequently fails, to meet these criteria. These criteria include requirements for proper public participation procedures (40 CFR 70.7(h)).

The EPA's title V implementing regulations at 40 CFR 70.4 and 70.10(b) and (c) provide that EPA may withdraw a part 70 program approval, in whole or in part, whenever the approved program no longer complies with the requirements of part 70 and the permitting authority fails to take corrective action. A list of potential bases for program withdrawal is provided at 40 CFR 70.10(c)(1)(i), and includes the case where the permitting authority's legal authority does not meet the requirements of 40 CFR part 70.

III. Final Action

On April 4, 2003, the District of Columbia submitted revisions to 20 DCMR 303.10(a)(1)(B) which require that a notice be published in the District of Columbia Register and using any ''other means'' necessary to assure adequate notice to the affected public of the application, the preliminary determination, the location of the public file and the procedures for submitting written comments and requesting a hearing. With this amendment to 20 DCMR 303.10(a)(1)(B), the District of Columbia has adequately resolved the deficiency EPA identified in its December 21, 2001 notice of deficiency and maintains final full approval of the Clean Air Act title V operating permits program.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the operating permit program revisions if adverse comments are filed relevant to the issues discussed in this action. This rule will be effective on June 2, 2003 without further notice unless EPA receives adverse comments by May 16, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. 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 state operating permit program 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 an operating permits program submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program submission, to use VCS in place of an operating permit program 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.*).

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

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 16, 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 approving revisions to the District of Columbia operating permit program may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 9, 2003.

James W. Newsom,

Acting Regional Administrator, Region III.

■ Appendix A of part 70 of title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

■ 1. The authority citation for part 70 continues to read as follows:

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

■ 2. Appendix A to part 70 is amended by adding paragraph (c) in the entry for the District of Columbia to read as follows:

Appendix A to part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

District of Columbia

* * * * *

(c) The District of Columbia Department of Health submitted program amendments on April 4, 2003. The rule amendments contained in the April 4, 2003 submittal adequately addressed the deficiency identified in the Notice of Deficiency effective on December 13, 2001. The District of Columbia hereby maintains final full approval effective on June 2, 2003.

* * * * *

[FR Doc. 03–9343 Filed 4–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0126; FRL–7302–6]

Pesticides; Minimal Risk Tolerance Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule reorganizes certain existing tolerance exemptions. All of these chemical substances were reviewed as part of the tolerance reassessment process required under the Food Quality Protection Act of 1996 (FQPA). As a result of that review, certain chemical substances are now classified as ''minimal risk,'' and are therefore being shifted to the section of 40 CFR part 180 that holds minimal risk chemicals. The Agency is merely moving certain tolerance exemptions from one section of the Code of Federal Regulations to another. No existing tolerance exemptions are lost or expanded and no new tolerance exemptions are added as a result of this action.

DATES: This final rule is effective on April 16, 2003.

FOR FURTHER INFORMATION CONTACT: Kathryn Boyle, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703–305–6304; fax number: 703–305–0599; e-mail address: *boyle.kathryn@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be potentially affected by this action if you formulate or market pesticide products. Potentially affected categories and entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)
- Antimicrobial pesticides (NAICS 32561

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies Of This Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0126. 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 Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00. html*, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. What Action is the Agency Taking?

In a **Federal Register** Notice published on May 24, 2002, (67 FR 36534) (FRL–6834–8) EPA established a new § 180.950 to list the pesticide chemicals that are exempted from the requirement of a tolerance based on the Agency's determination that these chemicals are of ''minimal risk.'' As the first step in populating this section, the Agency shifted the existing tolerance exemptions for commonly consumed food commodities, animal feed items, and edible fats and oils to this section.

In a proposed rule published in the **Federal Register** on November 20, 2002, (67 FR 70036)(FRL–7278–3) the Agency proposed to shift almost 90 tolerance exemptions for certain inert ingredients that have been classified by the Agency as List 4A, ''minimal risk'' to 40 CFR 180.950. This action merely moves certain tolerance exemptions from one section of the CFR to another section: no existing tolerance exemptions are lost or expanded, and no new tolerance exemptions are added, as a result of this action.

Four comments were received in response to the publication of the proposed rule. All four sets of comments concerned only the group of chemical substances referred to as ''weathered materials.'' ''Weathered materials'' can be described as the materials in and of the earth, that is, rocks and minerals. This would include substances such as various clays, limestone, marble, graphite, gypsum, various silicates and various oxides. These ''weathered materials'' comprise over 40 tolerance exemptions. The Agency will address these comments at a later date through the publication of another proposed rule. No action on the Agency's prior proposal regarding weathered materials is being taken in this final rule.

However, no comments were received on shifting any of the other 44 tolerance exemptions such as the various citrate compounds or the various cellulose compounds. The decision documents supporting the minimal risk, List 4A classification were placed in the e-dockets for the proposed rule. Based on the information contained in those documents and in the proposed rule, and for the reasons explained above, 44 tolerance exemptions are being shifted to 40 CFR 180.950.

As explained in the proposed rule, for some of the chemical substances, EPA is making minor changes to the chemical names that were previously used, *i.e.,* EPA is using different naming conventions for the chemicals to be listed in 40 CFR 180.950. Additionally, the Agency has attempted to identify each of the listed substances using the Chemical Abstracts Service Registry Number (CAS Reg. No.). The CAS Reg. No. provides one of the most distinct and universally accepted means of identifying chemical substances. The lack of a CAS Reg. No. will not preclude the Agency from including substances in 40 CFR 180.950. Generally, there will be only one CAS Reg. No. per listed substance; however, it is possible that more than one CAS Reg. No. may be appropriate for some substances, such as when there is both a hydrated and anhydrous form. EPA has both broadened and consolidated names to account for differing terminologies and current usage status.

The tolerance exemptions shifted from 40 CFR 180.2 to 40 CFR 180.950 are: Citric acid, fumaric acid, and sodium chloride.

The following tolerance exemptions are shifted from 40 CFR 180.1001(c): Animal glue; calcium citrate; α-cellulose; citric acid; coffee grounds; corn dextrin; dextrin; guar gum; hydroxyethyl cellulose; hydroxypropyl methylcellulose; lecithin; licorice root; methylcellulose; potassium chloride; potassium citrate; silica, hydrated; silicon dioxide, fumed, amorphous; sodium acetate; sodium alginate; sodium carboxymethylcellulose; sodium chloride; and xanthan gum.

The following tolerance exemptions are shifted from 40 CFR 180.1001(d): Cellulose acetate; hydroxypropyl cellulose; locust bean gum; paper fiber, deinked or recycled; paper fiber, produced by the kraft (sulfate) or sulfite pulping processes; silicon dioxide, fumed, amorphous; soapbark (quillaja); sodium citrate, and wool fat (anhydrous lanolin).

The following tolerance exemptions are shifted from 40 CFR 180.1001(e): Castor oil, u.s.p.; α-cellulose; citric acid; dextrin; methyl cellulose; potassium citrate; silica, amorphous, fumed (crystalline free)...; sodium carboxymethylcellulose, and xanthan gum.

The tolerance exemptions in § 180.1036 (hydrogenated castor oil) are also being shifted to § 180.950.

Because today's action merely moves certain tolerance exemptions from one section of the CFR to another section, it will have no substantive or procedural effect on the moved tolerance exemptions. No tolerance exemptions are lost as a result of this action.

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

This proposed rule is issued under section 408 of FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170). Section 408(e) of FFDCA authorizes EPA to establish, modify, or revoke tolerances, or exemptions from the requirement of a tolerance for residues of pesticide chemicals in or on raw agricultural commodities and processed foods.

III. Statutory and Executive Order Reviews

This final rule merely shifts existing exemptions in 40 CFR part 180. This has no substantive effect and hence causes no impact. The Agency is acting on its own initiative under FFDCA section 408(e) in shifting these existing tolerance exemptions to a new section. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this 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). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to 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). Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et. seq.*), the Agency hereby certifies that these proposed actions will not have significant negative economic impact on a substantial number of small entities. As noted above, this action will have no substantive or procedural effect on the tolerance exemptions affected. However, by grouping tolerance exemptions that have qualified as minimal risk inerts in one location in the CFR, this action will make it easier for small entities to efficiently use EPA's tolerance regulations. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule 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. Thus, Executive Order 13175 does not apply to this rule.

IV. 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 the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule''as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, administrative practices and procedures, pesticides and pests, reporting and recordkeeping requirements.

Dated: April 8, 2003.

Peter Caulkins,

Acting Director, Registration Division.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.2 [Amended]

■ 2. In § 180.2, paragraph (a), is amended by removing the terms ''citric acid,'' ''fumaric acid,'' and ''sodium chloride.''

■ 3. In § 180.950 the table to paragraph (e) is amended by adding alphabetically the following entries.

§ 180.950 Tolerance exemptions for minimal risk active and inert ingredients.

* * * * *

(e) * * *

Chemical	CAS No.
Acetic acid, sodium salt	127–09–3
Animal glue	None
Carob gum (locust bean gum)	9000–40–2
Castor oil	8001–79–4
Castor oil, hydrogenated	8001–78–3
Cellulose	9004–34–6
Cellulose acetate	9004–35–7
Cellulose, carboxy methyl ether, sodium salt	9004–32–4
Cellulose, 2-hydroxyethyl ether	9004–62–0
Cellulose, 2-hydroxypropyl ether	9004–64–2
Cellulose, 2-hydroxypropyl methyl ether	9004–65–3
Cellulose, methyl ether	9004–67–5
Cellulose, mixture with cellulose carboxymethyl ether, sodium salt	51395–75–6
Cellulose, pulp	65996–61–4
Cellulose, regenerated	68442–85–3
Citric acid	77–92–9
Citric acid, calcium salt	7693–13–2
Citric acid, calcium salt (2:3)	813–94–5
Citric acid, dipotassium salt	3609–96–9
Citric acid, disodium salt	144–33–2
Citric acid, monohydrate	5949–29–1
Citric acid, monopotassium salt	866–83–1
Citric acid, monosodium salt	18996–35–5
Citric acid, potassium salt	7778–49–6
Citric acid, tripotassium salt	866–84–2
Citric acid, tripotassium salt, monohydrate	6100–05–6
Citric acid, sodium salt	994–36–5
Citric acid, trisodium salt	68–04–2
Citric acid, trisodium salt, dihydrate	6132–04–3

Chemical	CAS No.
Citric acid, trisodium salt, pentahydrate	6858–44–2
Coffee grounds	68916–18–7
Dextrins	9004–53–9
Fumaric acid	110–17–8
Guar gum	9000–30–0
Lanolin	8006–54–0
Lecithins	8002–43–5
Lecithins, soya	8030–76–0
Licorice Extract	68916–91–6
Maltodextrin	9050–36–6
Paper	None
Potassium chloride	7447–40–7
Silica, amorphous, fumed (crystalline free)	112945–52–5
Silica, amorphous, precipitated and gel	7699–41–4
Silica gel	63231–67–4
Silica gel, precipitated, crystalline-free	112926–00–8
Silica, hydrate	10279–57–9
Silica, vitreous	60676–86–0
Soapbark (Quillaja saponin)	1393–03–9
Sodium alginate	9005–38–3
Sodium chloride	7647–14–5
Xanthan gum	11138–66–2

§ 180.1001 [Amended]

■ Section 180.1001 is amended as follows:

■ 4. The table in paragraph (c) is amended by removing the following entries: Animal glue; Calcium citrate; α-Cellulose; Citric acid; Coffee grounds; Corn dextrin; Dextrin; Guar gum; Hydroxyethyl cellulose; Hydroxypropyl methylcellulose; Lecithin; Licorice root; Methyl cellulose; Potassium chloride; Potassium citrate (CAS Reg. No. 866–84–2); Silica, hydrated; Silicon dioxide, fumed, amorphous; Sodium acetate; Sodium alginate; Sodium carboxymethylcellulose; Sodium chloride; Xanthan Gum.

■ 5. The table in paragraph (d) is amended by removing the following entries: Cellulose acetate (CAS Reg. No. 9004–35–7), minimum number average molecular weight, 28,000; Hydroxypropyl cellulose; Locust bean gum; Paper fiber, deinked or recycled, conforming to 21 CFR 109.30(a)(9) and 21 CFR 176.260; Paper fiber, produced by the kraft (sulfate) or sulfite pulping processes; Silicon dioxide, fumed, amorphous; Soapbark (quillaja); Sodium citrate, Wool fat (anhydrous lanolin).

■ 6. The table in paragraph (e) is amended by removing the following entries: Castor oil, U.S.P.; α-Cellulose; Citric acid; Dextrin (CAS Reg. No. 9004–53–9); Methylcellulose; Potassium citrate (CAS Reg. No. 866–84–2); Silica, amorphous, fumed (crystalline free) (CAS Reg. No. 112945–52–5); Sodium alginate; Sodium carboxymethylcellulose, Xanthan gum.

§ 180.1036 [Removed]

■ 7. Section 180.1036 is removed in its entirety

[FR Doc. 03–9210 Filed 4–15–03; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1820

[WO–850–1820–XZ–24–1A]

RIN 1004–AD34

Application Procedures

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM) amends its regulations pertaining to the list of State Offices addresses and Areas of Jurisdiction included in the Code of Federal Regulations. The public will continue to direct personal, messenger, express mail, direct filing, and other delivery by United States mail to the same street or post office box address as before. This rule will have no impact or cost to the public.

EFFECTIVE DATE: April 16, 2003.

FOR FURTHER INFORMATION CONTACT: Diane O. Williams, Regulatory Affairs, (202) 452–5030. Persons who use a telecommunications device for the deaf may contact Ms. Williams through the Federal Information Relay Service at 1–800–877–8339, 24 hours a day, 7 days a week.

ADDRESSES: You may send inquiries or suggestions to Director (172), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153; Attention: RIN 1004–AD34.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose of Rule
II. Procedural Matters

I. Background and Purpose of Rule

The BLM is issuing this final rule for the convenience of the public to provide a current list of BLM State Offices locations. This is necessary due to several recent office moves. This list has no substantive impact on the public, nor imposes any costs, and merely updates a list of addresses and areas of jurisdiction included in the Code of Federal Regulations. Therefore, the Department of the Interior, for good cause, finds under 5 U.S.C. 553(b)(B) and 553(d)(3) that notice and public procedures are unnecessary and that this rule may take effect upon publication.

II. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

This final regulation is not a significant regulatory action and is not subject to review by the Office of Management and Budget under Executive Order 12866. This final regulation will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This final regulation will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The final regulation does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients, nor does it raise novel legal or policy issues.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA) 5 U.S.C. 601 *et seq.*, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The BLM has determined under the RFA that this final rule would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

This final rule is not a major rule as defined at 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It should not have an annual effect on the economy of $100 million or more. The rule will not cause a major increase in costs of prices for consumers, individual industries, Federal, State, or local government agencies, or geographics regions. It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

The BLM has determined that the final rule is not significant under the Unfunded Mandates Reform Act of 1995 because it will not result in the expenditure by State, local, and tribal governments, in the aggregates, or by the private sector, of $100 million or more in any one year.

Further, the final rule will not significantly or uniquely affect small governments. It does not require action

by any non-federal government entity. Therefore, the information required by the Unfunded Mandates Reform Act, 2 U.S.C. 1531 *et seq.*, is not required.

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

As required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property. No private property rights are affected by this rule which only updates the list of addresses for BLM State Offices printed in the Code of Federal Regulations. The Department therefore certifies that this rule does not represent a governmental action capable of interference with constitutionally protected property rights or require further discussion of the Takings implications under this Executive Order.

Executive Order 13132, Federalism

In accordance with Executive Order 13132, BLM finds that the rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This final rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. This final rule does not preempt State law.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, BLM finds that the rule does not include policies that have tribal implications. This final rule is purely an administrative action having no effects upon the public or the environment, imposing no costs, and merely updating a list of BLM State Offices addresses included in the Code of Federal Regulations.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, Civil Justice Reform, the Office of the Solicitor has determined that this rule would not unduly burden the judicial system and that it meets the requirements of the sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This final rule does not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction of 1995, 44 U.S.C. 3501 *et seq.* This final rule merely updates a list of BLM State Offices addresses included in the Code of Federal Regulations. This final rule does not require the public to provide information.

National Environment Policy Act

This final rule is purely administrative action and has no effect upon the public or the environment, it imposes no costs, and merely updates a list of BLM State Offices addresses included in the Code of Federal Regulations for the convenience of the public. Therefore, it is categorically excluded from the environmental review under section 102(2)(C) of the National Environment Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C), pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1. In addition, the Department has determined that none of the exceptions to categorical exclusions, listed in 516 DM 2, Appendix 2, applies to this rule. The Council on Environment Quality regulations at 40 CFR 1508.4, define ''categorical exclusions'' as a category of actions that the Department has determined ordinarily do not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor environmental impact statement under the NEPA is required.

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

In accordance with Executive Order 13211, BLM has determined that the final rule will not have substantial direct effects on the energy supply, distribution or use, including a shortfall in supply or price increase. This final rule merely updates a list of BLM State Offices addresses included in the Code of Federal Regulations.

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. The BLM invites your comments on how to make these regulations easier to understand, including answers to questions such as the following:

1. Are the requirements in the final regulations clearly stated?

2. Do the final regulations contain technical language or jargon that interferes with their clarity?

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

4. Would the final regulations be easier to understand if they were divided into more (but shorter) sections?

5. Is the description of the final regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in making the final regulations easier to understand?

Please send any comments you have on the clarity of the regulations to the address specified in the **ADDRESSES** section.

List of Subjects in 43 CFR Part 1820

Administrative practice and procedure, Archives and records, Public lands.

Dated: April 8, 2003.

Rebecca W. Watson,

Assistant Secretary, Land and Minerals Management.

■ For the reasons discussed in the preamble, the Bureau of Land Management, amends 43 CFR part 1820 as follows:

PART 1820—APPLICATION PROCEDURES

■ 1. The authority citation for part 1820 continues to read as follows:

Authority: 5 U.S.C. 552, 43 U.S.C. 2, 1201, 1733, and 1740.

Subpart 1821—General Information

■ 2. In § 1821.10 amend paragraph (a) by revising the list of State Offices and Areas of Jurisdiction to read as follows:

§ 1821.10 Where are the BLM offices located?

(a) * * *

State Offices and Areas of Jurisdiction

Alaska State Office, 222 West 7th Avenue, #13, Anchorage, Alaska 99513–7599—Alaska.

Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203—Arizona.

California State Office, 2800 Cottage Way, Room W–1834, Sacramento, California 95825–1886—California.

Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7093–Colorado.

Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153—Arkansas, Iowa, Louisiana, Minnesota, Missouri, and States east of the Mississippi River.

Idaho State Office, 1387 South Vinnell Way, Boise, Idaho 83709–1657—Idaho.

Montana State Office, 5001 Southgate Drive, Billings, Montana 59101, P.O. Box 36800, Billings, Montana 59107–6800—Montana, North Dakota, and South Dakota.

Nevada State Office, 1340 Financial Boulevard, Reno, Nevada 89502–7147, P.O. Box 1200, Reno, Nevada 89520–0006—Nevada.

New Mexico State Office, 1474 Rodeo Road, Santa Fe, New Mexico 87505, P.O. Box 27115, Santa Fe, New Mexico 87502–0115—Kansas, New Mexico, Oklahoma, and Texas.

Oregon State Office, 333 Southwest 1st Avenue, Portland, Oregon 97204, P.O. Box 2965, Portland, Oregon 92708–3420—Oregon and Washington.

Utah State Office, 324 South State Street, Salt Lake City, Utah 84111–2303, P.O. Box 45155, Salt Lake City, Utah 84145–0155—Utah.

Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009, P.O. Box 1828, Cheyenne, Wyoming 82003—Wyoming and Nebraska.

* * * * *

[FR Doc. 03–9350 Filed 4–15–03; 8:45 am]

BILLING CODE 4310–84–P

Proposed Rules

Federal Register
Vol. 68, No. 73
Wednesday, April 16, 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

Agricultural Marketing Service

7 CFR Part 205

[Docket Number TM–02–03]

RIN # 0581–AA40

National Organic Program; Proposed Amendments to the National List of Allowed and Prohibited Substances

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the U.S. Department of Agriculture's (USDA) National List of Allowed and Prohibited Substances (National List) to reflect recommendations submitted to the Secretary by the National Organic Standards Board (NOSB) from June 6, 2000 through October 20, 2002. Technical corrections have also been included in this proposed rule to clarify specific sections of the National List and adequately reflect previous NOSB recommendations. Consistent with recommendations from the NOSB, this proposed rule would: add ten substances, along with any restrictive annotations, to the National List, revise the annotations of two substances, and make eight technical revisions. In addition to amending the National List, this proposed rule would offer the opportunity for public comment on the use of ethylene in organic crop production.

DATES: Comments must be received by April 28, 2003.

ADDRESSES: Interested persons may comment on this proposed rule using the following procedures:

- *Mail:* Comments may be submitted by mail to: Richard H. Mathews, Program Manager, National Organic Program, USDA–AMS–TMP–NOP, 1400 Independence Ave., SW., Room 4008-So., Ag Stop 0268, Washington, DC 20250.
- *E-mail:* Comments may be submitted via the internet to: *National.List@usda.gov.*
- *Fax:* Comments may be submitted by fax to: (202) 205–7808.
- Written comments on this proposed rule should be identified with the docket number TMD–02–03. Commenters should identify the topic and section number of this proposed rule to which the comment refers.
- Clearly indicate if you are for or against the proposed rule or some portion of it and your reason for it. Include recommended language changes as appropriate.
- Include a copy of articles or other references that support your comments. Only relevant material should be submitted.

It is our intention to have all comments to this proposed rule, whether submitted by mail, E-mail, or fax, available for viewing on the NOP homepage. Comments submitted in response to this proposed rule will be available for viewing in person at USDA–AMS, Transportation and Marketing, Room 4008-South Building, 1400 Independence Ave., SW., Washington, DC, from 9 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday (except official Federal holidays). Persons wanting to visit the USDA South Building to view comments received in response to this proposed rule are requested to make an appointment in advance by calling (202) 720–3252.

FOR FURTHER INFORMATION CONTACT: Toni A. Strother, Agricultural Marketing Specialist, Telephone: (202) 720–3252; Fax: (202) 205–7808.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 2000 the Secretary established, within the National Organic Standards (NOS) [7 CFR part 205], the National List (§§ 205.600 through 205.607). The National List is the Federal list that identifies synthetic substances and ingredients that are allowed and nonsynthetic (natural) substances and ingredients that are prohibited for use in organic production and handling. Since established, the National List has not been amended. However, under the authority of the Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. 6501 *et seq.*), the National List can be amended by the Secretary based on proposed amendments developed by the NOSB.

This proposed rule would amend the National List to reflect recommendations submitted to the Secretary by the NOSB from June 6, 2000 through October 20, 2002. Between the specified time period, the NOSB has recommended that the Secretary add ten substances to §§ 205.601 through 205.603 of the National List based on petitions received from industry participants. These substances were evaluated by the NOSB using the criteria specified in OFPA (7 U.S.C. 6517 and 6518) and the NOS. The NOSB also recommended that the Secretary revise the annotations of two substances included within sections 205.602 and 205.605.

The NOSB has recommended that the Secretary add additional substances to sections 205.603 and 205.605 which have not been included in this proposed rule but are under review and, as appropriate, will be included in future rulemaking.

In addition to the amendments made based on June 6, 2000 through October 20, 2002 NOSB recommendations, this proposed rule would also make technical revisions to specific sections of the National List that provide clarity and adequately reflect the intent of the paragraphs identified within those sections.

II. Overview of Proposed Amendments

The following provides an overview of the proposed amendments made to designated sections of the National List:

Section 205.601 Synthetic Substances Allowed for Use in Organic Crop Production

This proposed rule would amend the introductory paragraph of § 205.601 by adding language which clarifies that synthetic substances used in crop production must be used in a manner which does not contribute to contamination of crops, soil, or water. The proposed amendment further clarifies that synthetic substances, except those in paragraphs (c), (j), (k), and (l), may only be used when the provisions of § 205.206(a) through (d) prove insufficient to prevent or control the target pest.

This proposed rule would amend paragraph (a) of § 205.601 (as algicide, disinfectants and sanitizers, including

irrigation cleaning systems) by adding the following materials:

Copper Sulfate, for use as an algicide, is limited to one application per field during any 24-month period. Application rates are limited to those which do not increase baseline soil test values for copper over a timeframe agreed upon by the producer and accredited certifying agent.

Ozone Gas, for use as an irrigation system cleaner only; and

Peracetic acid, for use in disinfecting equipment, seed, and asexually propagated planting material.

Paragraph (a) is proposed to be further amended by correcting the spelling of the word ''demisters'' contained in subparagraph (a)(4) to ''demossers.''

This proposed rule would amend paragraph (e) of § 205.601 by adding the following material:

Copper Sulfate, for use as tadpole shrimp control in rice production, is limited to one application per field during any 24-month period. Application rates are limited to levels which do not increase baseline soil test values for copper over a timeframe agreed upon by the producer and accredited certifying agent.

This proposed rule would amend paragraph (i) of § 205.601 (as plant disease control) by adding the following substance:

Peracetic acid, for use to control fire blight bacteria when approved by the Environmental Protection Agency (EPA) under a Special Local Need (24c) registration.

This proposed rule would revise paragraph (k) of § 205.601 (as plant growth regulators) by inserting the word ''gas'' behind ''ethylene'' to be consistent with the June 2000 NOSB recommendation for the substance. Section 205.601(k) will now read ''As plant growth regulators—Ethylene gas, for regulation of pineapple flowering.''

This proposed rule revises paragraph (m) of § 205.601 by inserting a new subpart (2) as follows:

(2) EPA List 3—Inerts of unknown toxicity—for use only in passive pheromone dispensers.

Section 205.602 Nonsynthetic Substances Prohibited for Use in Organic Crop Production

This proposed rule would amend § 205.602 by adding the following substance:

Calcium chloride, except as a brine-sourced foliar spray to treat physiological disorders associated with calcium uptake.

This proposed rule revises current paragraph (h) of § 205.602 by amending its annotation to read as follows:

Sodium nitrate—unless use is restricted to no more than 20% of the crop's total nitrogen requirement; use in spirulina production is unrestricted until October 21, 2005.

Section 205.603 Synthetic Substances Allowed for Use in Organic Livestock Production

This proposed rule would revise current subparagraph (4) of § 205.603 (a) by correcting the spelling of the word ''chlorohexidine'' to ''chlorhexidine.''

This proposed rule would amend paragraph (d) of § 205.603 (as feed additives) by adding the following substances:

DL—Methionine, DL—Methionine—Hydroxy Analog, and DL—Methionine—Hydroxy Analog Calcium—for use only in organic poultry production until October 21, 2005.

This proposed rule would revise current subparagraph (1) of § 205.603 (d) by removing examples (i) and (ii), copper sulfate and magnesium sulfate, as they are both approved for use by FDA and do not need to be listed individually as examples. As currently published, subparagraphs § 205.603 (d) (1) (i) and (ii) may mislead readers to believe that the use of trace minerals are limited only to copper sulfate and magnesium sulfate. Therefore, the revision made in this proposed rule for current subparagraph (1) of § 205.603 (d) would read ''Trace minerals, used for enrichment or fortification when FDA approved.''

This proposed rule would amend current paragraph (e) of § 205.603 (As synthetic inert ingredients as classified by the Environmental Protection Agency (EPA), for use with nonsynthetic substances or synthetic substances listed in this section and used as active pesticide ingredients in accordance with any limitations on the use of such substances.) by redesignating current paragraph (f) of § 205.603 as new subparagraph (1) under § 205.603 (e). While drafting § 205.603 for final publication in the **Federal Register**, current paragraph (f) was intended to be designated as § 205.603 (e) (1), however, its designation was not properly assigned. Therefore, this proposed rule redesignates current paragraph (f) of § 205.603 as subparagraph (e) (1) of the same section.

Section 205.605 Nonagricultural (nonorganic) Substances Allowed as Ingredients In or On Processed Products Labeled as ''Organic'' or ''Made with Organic (specified ingredients or food group(s))'

This proposed rule would amend current paragraph (a) of § 205.605 by adding agar-agar, carageenan and tartaric acid as technical corrections. These substances were included on the National List proposed in the **Federal Register** on December 16, 1997, but were inadvertently removed from the National List published in the **Federal Register** on March 13, 2000, proposed rule and on December 21, 2000, Final Rule (7 CFR Part 205).

This proposed rule would revise current paragraph (b) (10) of § 205.605 by amending its annotation to read as follows:

Ethylene, allowed for postharvest ripening of tropical fruit and degreening of citrus.

III. Request for Public Comment on the Use of Ethylene

Ethylene, for organic crop production, was a substance that was petitioned and reviewed for inclusion onto the National List after promulgation of the proposed rule published in the **Federal Register** on March 13, 2000. The NOSB approved and recommended that ethylene gas be included on the National List with the annotation ''for regulation of pineapple flowering.'' After receiving the NOSB recommendation for the material, the NOP, while finalizing the NOS, included the material on the National List without receiving public comment on the material through the Federal rulemaking process. As a result, this proposed rule requests public comment on the use of ethylene gas for regulation of pineapple flowering.

IV. Related Documents

Eight notices were published regarding the meetings of the NOSB and its deliberations on recommendations and substances petitioned for amending the National List. Substances and recommendations included in this proposed rule were announced for NOSB deliberation in the following **Federal Register** Notices: (1) 64 FR 54858, October 8, 1999 (Ethylene); (2) 65 FR 33802, May 25, 2000, (Ethylene gas); (3) 65 FR 64657, October 30, 2000, (Calcium borogluconate and Peracetic acid); (4) 66 FR 10873, February 20, 2001, (Poloxalene); (5) 66 FR 48654, September 21, 2001, (Calcium chloride, Copper sulfate, Methionine); (6) 67 FR 19375, April 19, 2002, (Potassium sorbate and Sodium propionate); (7) 67 FR 54784, August 26, 2002, (Ozone gas, Pheromones, Sodium (Chilean) nitrate, Propylene glycol, Magnesium hydroxide/Magnesium oxide, Kaolin pectin, Bismuth subsalicylate, Flunixin, Xylazine, Tolazoline, Butorphanol, Mineral oil, Activated charcoal, Epinephrine); and (8) 67 FR 62950,

October 9, 2002, (Potassium sulfate and Calcium propionate).

V. Statutory and Regulatory Authority

The Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. 6501 *et seq.*), authorizes the Secretary, at section 6517(d)(1), to make amendments to the National List based on proposed amendments developed by the NOSB. Sections 6518(k)(2) and 6518(n) of OFPA authorize the NOSB to develop proposed amendments to the National List for submission to the Secretary and establish a petition process by which persons may petition the NOSB for the purpose of having substances evaluated for inclusion onto or deletion from the National List. The National List petition process is implemented under § 205.607 of the NOS. The current petition process (65 FR 43259) can be accessed through the NOP Web site at *http://www.ams.usda.gov/nop.*

A. Executive Order 12866

This action has been determined to be non-significant for purposes of Executive Order 12866, and therefore, does not have to be reviewed by the Office of Management and Budget.

B. Executive Order 12988

Executive Order 12988 instructs each executive agency to adhere to certain requirements in the development of new and revised regulations in order to avoid unduly burdening the court system. The final rule was reviewed under this Executive Order and no additional related information has been obtained since then. This proposed rule is not intended to have a retroactive effect.

States and local jurisdictions are preempted under section 2115 of the Organic Foods Production Act (OFPA) (7 U.S.C. 6514) from creating programs of accreditation for private persons or State officials who want to become certifying agents of organic farms or handling operations. A governing State official would have to apply to USDA to be accredited as a certifying agent, as described in section 2115(b) of the OFPA (7 U.S.C. 6514(b)). States are also preempted under sections 2104 through 2108 of the OFPA (7 U.S.C. 6503 through 6507) from creating certification programs to certify organic farms or handling operations unless the State programs have been submitted to, and approved by, the Secretary as meeting the requirements of the OFPA.

Pursuant to section 2108(b)(2) of the OFPA (7 U.S.C. 6507(b)(2)), a State organic certification program may contain additional requirements for the production and handling of organically produced agricultural products that are produced in the State and for the certification of organic farm and handling operations located within the State under certain circumstances. Such additional requirements must: (a) Further the purposes of the OFPA, (b) not be inconsistent with the OFPA, (c) not be discriminatory toward agricultural commodities organically produced in other States, and (d) not be effective until approved by the Secretary.

Pursuant to section 2120(f) of the OFPA (7 U.S.C. 6519(f)), this regulation would not alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspections Act (21 U.S.C. 451 *et seq.*), or the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*), concerning meat, poultry, and egg products, nor any of the authorities of the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 *et seq.*), nor the authority of the Administrator of the Environmental Protection Agency (EPA) under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 *et seq.*).

Section 2121 of the OFPA (7 U.S.C. 6520) provides for the Secretary to establish an expedited administrative appeals procedure under which persons may appeal an action of the Secretary, the applicable governing State official, or a certifying agent under this title that adversely affects such person or is inconsistent with the organic certification program established under this title. The OFPA also provides that the U.S. District Court for the district in which a person is located has jurisdiction to review the Secretary's decision.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market. The purpose is to fit regulatory actions to the scale of businesses subject to the action.

Pursuant to the requirements set forth in the RFA, the Agricultural Marketing Service (AMS) performed an economic impact analysis on small entities in the final rule published in the **Federal Register** on December 21, 2000. AMS has also considered the economic impact of this action on small entities. Due to the changes reflected in this proposed rule that allow the use of additional substances in agricultural production and handling, the Administrator of AMS certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. This action relaxes the regulations published in the final rule and provides small entities with more tools to use in day-to-day operations. Small agricultural service firms, which include producers, handlers, and accredited certifying agents, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000 and small agricultural producers are defined as those having annual receipts of less than $5,000,000.

The U.S. organic industry at the end of 2001 included nearly 6,600 certified crop and livestock operations, including organic production and handling operations, producers, and handlers. These operations reported certified acreage totaling more than 2.34 million acres, 72,209 certified livestock, and 5.01 million certified poultry. Data on the numbers of certified handling operations are not yet available, but likely number in the thousands, as they would include any operation that transforms raw product into processed products using organic ingredients. Growth in the U.S. organic industry has been significant at all levels. From 1997 to 2001, the total organic acreage grew by 74 percent; livestock numbers certified organic grew by almost 300 percent over the same period, and poultry certified organic increased by 2,118 percent over this time. Sales growth of organic products has been equally significant, growing on average around 20 percent per year. Sales of organic products were approximately $1 billion in 1993, but are estimated to reach $13 billion this year, according to the Organic Trade Association (the association that represents the U.S. organic industry). In addition, USDA has accredited 81 certifying agents who have applied to USDA to be accredited in order to provide certification services to producers and handlers. A complete list of names and addresses of accredited certifying agents may be found on the AMS NOP Web site, at *http://www.ams.usda.gov/nop.* AMS believe that most of these entities would be considered small entities under the criteria established by the SBA.

Additional regulatory flexibility analysis beyond the regulatory flexibility analysis published in the NOP final rule on December 21, 2000, is not required for the purposes of this proposed rule. Comments from small entities affected by parts of this

proposed rule will be considered in relation to the requirements of the RFA. These comments must be submitted separately and cite 5 U.S.C. 609 in the correspondence.

D. Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act of 1995, the existing information collection requirements for the NOP are approved under OMB number 0581–0181. No additional collection or recordkeeping requirements are imposed on the public by this proposed rule. Accordingly, OMB clearance is not required by section 350(h) of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, or OMB's implementing regulation at 5 CFR part 1320.

E. General Notice of Public Rulemaking

This proposed rule reflects recommendations submitted to the Secretary by the NOSB. The ten substances proposed to be added to the National List were based on petitions from the industry and evaluated by the NOSB using criteria in the Act and the regulations. Because these substances are critical to organic production and handling operations, producers and handlers should be able to use them in their operations as soon as possible. Accordingly, AMS believes that a 10-day period for interested persons to comment on this rule is appropriate.

List of Subjects in 7 CFR Part 205

Administrative practice and procedure, Agriculture, Animals, Archives and records, Imports, Labeling, Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation.

For the reasons set forth in the preamble, 7 CFR Part 205, Subpart G is proposed to be amended as follows:

PART 205—NATIONAL ORGANIC PROGRAM

1. The authority citation for 7 CFR Part 205 continues to read as follows:

Authority: 7 U.S.C. 6501–6522.

2. Section 205.601 is amended by:

a. Revising the introductory text.

b. Redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(4) and (a)(7), respectively.

c. Adding new paragraphs (a)(3), (a)(5), and (a)(6).

d. Revising the word ''demisters'' in newly redesignated paragraph (a)(7) to read ''demossers''.

e. Redesignating paragraphs (e)(3) through (e)(7) as paragraphs (e)(4) through (e)(8).

f. Adding a new paragraph (e)(3).

g. Redesignating paragraphs (i)(7) through (i)(10) as paragraphs (i)(8) through (i)(11), respectively.

h. Adding a new paragraph (i)(7).

i. Revising paragraph (k).

j. Adding new paragraph (m)(2).

The revisions read as follows:

§ 205.601 Synthetic substances allowed for use in organic crop production.

In accordance with restrictions specified in this section, the following synthetic substances may be used in organic crop production: Provided, That, use of such substances do not contribute to contamination of crops, soil, or water. Substances allowed by this section, except those in paragraphs (c), (j), (k), and (l) of this section, may only be used when the provisions set forth in § 205.206(a) through (d) prove insufficient to prevent or control the target pest.

(a) * * *

(3) Copper sulfate—for use as an algicide, is limited to one application per field during any 24-month period. Application rates are limited to those which do not increase baseline soil test values for copper over a timeframe agreed upon by the producer and accredited certifying agent.

* * * * *

(5) Ozone gas—for use as an irrigation system cleaner only.

(6) Peracetic acid—for use in disinfecting equipment, seed, and asexually propagated planting material.

* * * * *

(e) * * *

(3) Copper Sulfate—for use as tadpole shrimp control in rice production, is limited to one application per field during any 24-month period. Application rates are limited to levels which do not increase baseline soil test values for copper over a timeframe agreed upon by the producer and accredited certifying agent.

* * * * *

(i) * * *

(7) Peracetic acid—for use to control fire blight bacteria when approved by the Environmental Protection Agency (EPA) under a Special Local Need (24c) registration.

* * * * *

(k) As plant growth regulators. Ethylene gas—for regulation of pineapple flowering.

* * * * *

(m) * * *

(2) EPA List 3—Inerts of unknown toxicity—for use only in passive pheromone dispensers.

* * * * *

3. Section 205.602 is revised to read as follows:

§ 205.602 Nonsynthetic substances prohibited for use in organic crop production.

The following nonsynthetic substances may not be used in organic crop production:

(a) Ash from manure burning.

(b) Arsenic.

(c) Calcium chloride, brine process is natural and prohibited for use except as a foliar spray to treat a physiological disorder associated with calcium uptake.

(d) Lead salts.

(e) Potassium chloride—unless derived from a mined source and applied in a manner that minimizes chloride accumulation in the soil.

(f) Sodium fluoaluminate (mined).

(g) Sodium nitrate—unless use is restricted to no more than 20% of the crop's total nitrogen requirement, or until October 21, 2005; for unrestricted use in spirulina production.

(h) Strychnine.

(i) Tobacco dust (nicotine sulfate).

(j)–(z) [Reserved]

4. Section 205.603 is amended by:

a. Revising paragraph (a).

b. Revising the word ''chlorohexidine'' in paragragh (a)(4) to read ''chlorhexidine''.

c. Redesignating paragraphs (b)(1) through (b)(5) and (b)(6) as (b)(2) through (b)(6) and (b)(1), respectively.

(d) Redesignating paragraphs (d)(1) and (d)(2) as paragraphs (d)(2) and (d)(3), resepectively.

e. Adding a new paragraph (d)(1).

f. Revising newly redesignated paragraph (d)(2).

g. Redesignating paragraph (f) as paragraph (e)(1) and reserving paragraph (e)(2);

h. Reserving paragraphs (f)–(z).

The revisions and addition read as follows:

§ 205.603 Synthetic substances allowed for use in organic livestock production.

* * * * *

(a) As disinfectants, sanitizer, and medical treatments as applicable.

(1) Alcohols.

(i) Ethanol-disinfectant and sanitizer only, prohibited as a feed additive.

(ii) Isopropanol-disinfectant only.

(2) Aspirin-approved for health care use to reduce inflammation.

(3) Biologics-Vaccines.

(4) Chlorhexidine—Allowed for surgical procedures conducted by a veterinarian. Allowed for use as a teat dip when alternative germicidal agents and/or physical barriers have lost their effectiveness.

(5) Chlorine materials—disinfecting and sanitizing facilities and equipment. Residual chlorine levels in the water

shall not exceed the maximum residual disinfectant limit under the Safe Drinking Water Act.

(i) Calcium hypochlorite.

(ii) Chlorine dioxide.

(iii) Sodium hypochlorite.

(6) Electrolytes-without antibiotics.

(7) Glucose.

(8) Glycerine-Allowed as a livestock teat dip, must be produced through the hydrolysis of fats or oils.

(9) Hydrogen peroxide.

(10) Iodine.

(11) Magnesium sulfate.

(12) Oxytocin-use in postparturition therapeutic applications.

(13) Parasiticides. Ivermectin—prohibited in slaughter stock, allowed in emergency treatment for dairy and breeder stock when organic system plan-approved preventive management does not prevent infestation. Milk or milk products from a treated animal cannot be labeled as provided for in subpart D of this part for 90 days following treatment. In breeder stock, treatment cannot occur during the last third of gestation if the progeny will be sold as organic and must not be used during the lactation period of breeding stock.

(14) Phosphoric acid-allowed as an equipment cleaner, *Provided,* That, no direct contact with organically managed livestock or land occurs.

* * * * *

(d) * * *

(1) DL—Methionine, DL—Methionine—hydroxy analog, and DL—Methionine—hydroxy analog calcium—for use only in organic poultry production until October 21, 2005.

(2) Trace minerals, used for enrichment or fortification when FDA approved.

* * * * *

5. Section 205.605 is revised to read as follows:

§ 205.605 Nonagricultural (nonorganic) substances allowed as ingredients in or on processed products labeled as ''organic'' or ''made with organic (specified ingredients or food group(s)).''

The following nonagricultural substances may be used as ingredients in or on processed products labeled as ''organic'' or ''made with organic (specified ingredients or food group(s))'' only in accordance with any restrictions specified in this section.

(a) *Nonsynthetics allowed:*

Acids (Alginic; Citric—produced by microbial fermentation of carbohydrate substances; and Lactic).
Agar-agar.
Bentonite.
Calcium carbonate.
Calcium chloride.
Carageenan.
Colors, nonsynthetic sources only.
Dairy cultures.
Diatomaceous earth—food filtering aid only.
Enzymes—must be derived from edible, nontoxic plants, nonpathogenic fungi, or nonpathogenic bacteria.
Flavors, nonsynthetic sources only and must not be produced using synthetic solvents and carrier systems or any artificial preservative.
Kaolin.
Magnesium sulfate, nonsynthetic sources only.
Nitrogen—oil-free grades.
Oxygen—oil-free grades.
Perlite—for use only as a filter aid in food processing.
Potassium chloride.
Potassium iodide.
Sodium bicarbonate.
Sodium carbonate.
Tartaric acid.
Waxes—nonsynthetic (Carnauba wax; and Wood resin).
Yeast—nonsynthetic, growth on petrochemical substrate and sulfite waste liquor is prohibited (Autolysate; Bakers; Brewers; Nutritional; and Smoked—nonsynthetic smoke flavoring process must be documented).

(a) *Synthetics allowed:*

Alginates.
Ammonium bicarbonate—for use only as a leavening agent.
Ammonium carbonate—for use only as a leavening agent.
Ascorbic acid.
Calcium citrate.
Calcium hydroxide.
Calcium phosphates (monobasic, dibasic, and tribasic).
Carbon dioxide.
Chlorine materials—disinfecting and sanitizing food contact surfaces, *Except*, That, residual chlorine levels in the water shall not exceed the maximum residual disinfectant limit under the Safe Drinking Water Act (Calcium hypochlorite; Chlorine dioxide; and Sodium hypochlorite).
Ethylene—allowed for postharvest ripening of tropical fruit and degreening of citrus.
Ferrous sulfate—for iron enrichment or fortification of foods when required by regulation or recommended (independent organization).
Glycerides (mono and di)—for use only in drum drying of food.
Glycerin—produced by hydrolysis of fats and oils.
Hydrogen peroxide.
Lecithin—bleached.
Magnesium carbonate—for use only in agricultural products labeled ''made with organic (specified ingredients or food group(s)),'' prohibited in agricultural products labeled ''organic''.
Magnesium chloride—derived from sea water.
Magnesium stearate—for use only in agricultural products labeled ''made with organic (specified ingredients or food group(s)),'' prohibited in agricultural products labeled ''organic''.
Nutrient vitamins and minerals, in accordance with 21 CFR 104.20, Nutritional Quality Guidelines For Foods.
Ozone.
Pectin (low-methoxy).
Phosphoric acid—cleaning of food-contact surfaces and equipment only.
Potassium acid tartrate.
Potassium tartrate made from tartaric acid.
Potassium carbonate.
Potassium citrate.
Potassium hydroxide—prohibited for use in lye peeling of fruits and vegetables.
Potassium iodide—for use only in agricultural products labeled ''made with organic (specified ingredients or food group(s)),'' prohibited in agricultural products labeled ''organic''.
Potassium phosphate—for use only in agricultural products labeled ''made with organic (specific ingredients or food group(s)),'' prohibited in agricultural products labeled ''organic''.
Silicon dioxide.
Sodium citrate.
Sodium hydroxide—prohibited for use in lye peeling of fruits and vegetables.
Sodium phosphates—for use only in dairy foods.
Sulfur dioxide—for use only in wine labeled ''made with organic grapes,'' *Provided,* That, total sulfite concentration does not exceed 100 ppm.
Tocopherols—derived from vegetable oil when rosemary extracts are not a suitable alternative.
Xanthan gum.

(c)–(z) [Reserved]

6. In § 205.607, paragraph (c) is revised to read as follows:

§ 205.607 Amending the National List.

* * * * *

(c) A petition to amend the National List must be submitted to: Program Manager, USDA/AMS/TMP/NOP, 1400 Independence Ave., SW., Room 4008–So., Ag Stop 0268, Washington, DC 20250.

* * * * *

Dated: April 11, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Services.

[FR Doc. 03–9412 Filed 4–15–03; 10:52 am]

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 00–046P]

Nutrition Labeling: Nutrient Content Claims on Multi-Serve, Meal-Type Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend its nutrition labeling regulations to change the definition of ''meal-type'' products to allow for nutrient content claims on multiple-serve food containers, to adopt the definition of ''main dish'' used by the Food and Drug Administration (FDA), and to define how meal-type products and main dishes should be nutritionally labeled. The change in the definition of meal-type products would allow nutrient content claims to be based on 100 grams of product rather than on the serving size, which is based on the Reference Amounts Customarily Consumed (RACC) for the food components. These actions are being proposed in response to a petition filed by ConAgra, Inc. (the petitioner). The proposed changes will help to ensure that FSIS' nutrition labeling regulations are parallel, to the maximum extent possible, to the nutrition labeling regulations of FDA, which were promulgated under the Nutrition Labeling and Education Act (NLEA) of 1990.

DATES: Interested persons are requested to submit written comments by June 16, 2003.

ADDRESSES: Submit an original and two copies of comments to the FSIS Docket Clerk, Room 102, Cotton Annex Building, 300 12th Street, SW., Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Robert C. Post, Ph.D., Director, Labeling and Consumer Protection Staff, Office of Policy, Program and Employee Development, FSIS, at (202) 205–0279 or by fax at (202) 205–3625.

SUPPLEMENTARY INFORMATION:

Background

The Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*) authorize the Secretary of Agriculture to establish and maintain inspection programs designed to ensure that meat and poultry products distributed in commerce are wholesome, not adulterated, and properly marked, labeled, and packaged. FSIS regulates the labeling of meat and poultry products, and FDA has responsibility for the labeling of all other foods.

In January of 1993, FSIS and FDA published their final rules on nutrition labeling. Both agencies amended their respective regulations to (1) require either mandatory or voluntary nutrition labeling on most of the food products they regulate; (2) revise the list of required nutrients and food components; (3) specify a new format for declaring the nutrients and food components in nutrition labeling; (4) permit specific products to be exempt from nutrition labeling; (5) establish RACC specific for food categories; and (6) prescribe a simplified form of nutrition labeling and the conditions under which such labeling may be used.

If people are to use the nutrition information to construct healthy diets that include products from across the food supply, the two agencies recognized that the regulations need to be as consistent as possible. There was overwhelming support in response to the proposal on claims for FSIS to proceed with the adoption of FDA-defined nutrient content claims, including adopting a constant value of 100 grams for comparison of nutrient content claims on meal-type products. As a result, both agencies issued regulations establishing, as nearly uniform as possible, definitions for nutrient content claims to allow consumers to make valid comparisons among food product categories.

In addition, the agencies participated in the Interagency Committee on Serving Sizes to jointly establish the RACC for food and the criteria for converting RACC to serving sizes in common household measures. The final FSIS rule, among other things, established RACC for 23 meat (9 CFR 317.12(b)) and 22 poultry product categories (9 CFR 381.412(b)). These amounts were calculated to reflect the amount of food, including snacks, dinners, and condiments, that persons four years of age and older customarily consume. These calculations were based on consumption survey data and on data used by food manufacturers and grocers. RACC are designed to be used by food companies as the basis for determining the serving sizes for nutrition labeling of their products.

Nutrient content claims for both FDA and FSIS are composed of two defined parts: The amount (weight) of the nutrient and the amount (generally a serving) of food in which the nutrient is found. If the food is considered to be an individual food, the amount of food (a serving) is represented as the RACC for the food category. If the food is a meal-type product, the amount of food is measured by weight, *i.e.,* 100 grams. If a ''low-fat'' or ''healthy'' claim is used, the amount of fat is limited to a maximum of 3 grams per RACC for individual foods and 3 grams per 100 grams of product for single-serve meal-type products.

However, FSIS and FDA have established different criteria for what constitutes a meal. FSIS defined a ''meal-type'' product (9 CFR 317.313(l) and 381.413(l)) as a product for consumption by one person on one eating occasion that constitutes the major portion of a meal. For purposes of making a nutrition claim, a meal-type product must (1) make a significant contribution to the diet by weighing at least 6 ounces, but no more than 12 ounces per serving (container); (2) contain ingredients from two or more food groups, depending on the weight of the product; and (3) represent, or be in a form commonly understood to be, a meal (breakfast, dinner, etc). In addition, the serving size for meal-type products is defined as the entire content (edible portion only) of the package

FDA defined a ''meal-type'' product (21 CFR 101.13(l)) for the purpose of making a claim as a product that makes a major contribution to the total diet by (1) weighing at least 10 ounces per labeled serving; (2) containing not less than three 40-gram portions of food or combinations of foods from two or more of the four food groups; and (3) representing, or being in a form commonly understood to be, a meal (breakfast, dinner, etc). FDA's regulations do not restrict the use of the meal-type product claims to single-serve containers.

FDA also defined a ''main-dish'' product (21 CFR 101.13(m)) for the purpose of making a claim as a food that makes a major contribution to the meal by (1) weighing at least 6 ounces per labeled serving; (2) containing not less than 40 grams of food, or combinations of foods from at least two of four food groups; and (3) representing, or being in the form commonly understood to be, a main dish (*i.e.*, not a beverage or dessert). FSIS regulations do not define a ''main-dish'' product.

FSIS' and FDA's rationale for allowing different criteria to serve as the basis for evaluating nutrient content claims on meal-type products versus other types of foods is that meal-type products have potentially large variations in amounts customarily consumed, and the average serving size would not be an appropriate basis for comparison of nutrients. Rather, a constant value of 100 grams was determined to be an appropriate basis. It was further reasoned that restricting this category to a single-serving criterion and requiring that products within the category be represented as a meal would adequately distinguish these products from other similarly formulated products.

ConAgra's Petition

In September 1998, ConAgra petitioned FSIS to amend the definition

of ''meal-type'' products in its regulations to allow nutrient content claims on multi-serve food containers based on the same criteria as for meals that are sold in single-serving containers. Specifically, the petitioner sought an amendment of the definition of ''meat'' (9 CFR 317.313(l)) to include product in multiple-serving containers in the general principles (9 CFR 317.313) and the ''healthy'' regulations (9 CFR 317.363). FSIS' initial response was that the few changes requested by the petitioner would not be sufficient to address all of the issues and amend the regulations so that manufacturers can make consistent nutrition content claims on multi-serve containers. FSIS requested that the petitioner provide additional data to justify the changes it is seeking and clearly state the need for consistent definitions for main dish and meal-type products that do not compromise the established RACC for food products and that are consistent with the intent of the NLEA.

After several follow-up discussions with FSIS, ConAgra provided the Agency with marketing and consumption data that FSIS termed insufficient to justify granting the change in the regulations. FSIS said that it was concerned that to allow such claims could confuse and mislead consumers, create market inequities between sellers of individual food products and sellers of meal-type products, and discourage the development of products eligible for such claims. The Agency said that the data submitted by the petitioner did not alleviate those concerns.

In 2001, FSIS concluded that more conclusive data submitted by the petitioner indicated that there was a market for multi-serve meals that did not exist in 1993 when the nutrition labeling regulations were issued. Because of the increasing popularity of multi-serve meals and evidence that a significant number of consumers were purchasing such meals, FSIS said it was prepared to consider changing the regulatory definition of ''meal-type'' products and allowing nutrient content claims based on a 100 gram criterion as long as there are no established RACC for the food product category in question. It also said that consistency in nutrient content claims and RACC criteria for all meat and poultry products must be maintained in accordance with the regulations. The Agency noted that if Federal regulations regarding the basis for which nutrient content claims are made are modified for consistency, FSIS and FDA need identical definitions for what constitutes a meal and a main-dish product. FSIS granted the petition in November 2001. The petition and the supporting documentation are available in the FSIS Docket Room (*see* **ADDRESSES**) and on the FSIS Web site at *http://www.fsis.usda.gov.*

Costs and Benefits Associated With the Proposal

No significant cost impact is seen as a result of this proposed rule. All costs would be borne by industry, which petitioned for the change. The only labels that would be affected would be those of multi-serve, meal-type products above 6 ounces that would be able to bear nutrient content claims. The Agency believes that no more than 300 products currently on the market will be affected by the change. Lean and extra-lean products that have the same definition for meal-type products as main-dish products would not be affected. Therefore, the expected additional labeling costs would be nominal for the industry.

A more consistent format across similar food products would be of benefit to consumers, who would be able to make more informed choices in their food purchases. There is evidence that consumers are experiencing some confusion about how some food products are labeled.

The Proposed Rule

The proposed rule would provide consumers of meat and poultry products with additional consistency in nutrition labeling with FDA's requirements by amending § 317.309 and the parallel poultry regulations at § 381.409 to provide for the nutrition labeling of multi-serve meal-type products and of main-dish products. The proposal also would amend § 317.313(l) and § 317.313(m) and the parallel poultry regulations at § 381.413(l) and § 381.413(m) by revising the definitions of a ''meal-type'' product and a ''main-dish'' product for the purpose of making a claim on the packaging of the food products. In addition, the proposal would amend the individual nutrient content claim regulations for both meat and poultry products.

FSIS' paramount objectives in considering modification to its nutrition labeling regulations were that such changes not undermine the basic principles or intent of the misbranding provisions of the Federal Meat Inspection Act and the Poultry Products Inspection Act, and that such modifications result in labels that would not mislead consumers or create unfair marketing advantages for any segment of the food industry. The Agency also was concerned about extending the use of the 100-gram criterion for nutrient content claims to include products not in single-serve containers. Although useful, the 100-gram criterion does not provide nutrient information to consumers that is as definitive as the amount of nutrient per RACC.

However, in the interests of maintaining consistency between FSIS and FDA and of providing incentives to industry to develop meals and main dishes in multi-serve containers that are able to bear nutrient content claims, FSIS is proposing changes in its nutrition labeling regulations. The Agency believes that consumers will benefit from the information on the containers of products that were formulated to qualify to bear such claims.

Executive Order 12866 and the Regulatory Flexibility Act

This proposed rule has been determined to be not economically significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget. FSIS is responding to an industry petition for a labeling change affecting approximately 300 food products.

Executive Order 12778

This proposal has been reviewed under Executive Order 12778, Civil Justice Reform. When this rule becomes final:

(1) All State and local laws and regulations that are inconsistent with this rule will be preempted: (2) no retroactive effect will be given to this rule: and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Effect on Small Entities

The Administrator, FSIS, has made a determination that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposal would change the definition of ''meal-type'' products to allow for nutrient content claims on multi-serve food containers and adopt FDA's definition of ''main-dish'' products. In addition, small entities are exempt from nutrition labeling regulations if their products do not make nutrition claims or bear nutrition information.

Additional Public Notification

Public involvement in all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this proposed rule and are informed

about the mechanism for providing their comments, FSIS will announce it and make copies of this Federal Register publication through the FSIS Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on-line through the FSIS Web page located at *http://www/fsis.uisda.gov.* The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register**, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents and stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other persons who have requested to be included. Through the Listserv and Web page, FSIS is able to provide information to a much broader, more diverse audience.

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

Paperwork Requirements

This proposed rule has been reviewed under the Paperwork Reduction Act and imposes no new paperwork or recordkeeping requirements.

List of Subjects

9 CFR Part 317

Food labeling, Food packaging, Meat inspection, Nutrition.

9 CFR Part 381

Food labeling, Food packaging, Nutrition, Poultry and poultry products.

Proposed Rule

For the reasons discussed in the preamble, FSIS is proposing to amend 9 CFR, Parts 317 and 381, as follows:

PART 317—LABELING, MARKING DEVICES AND CONTAINERS

1. The authority citation for 9 CFR part 317 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

2. Section 317.309 would be amended by revising paragraph (b)(12) to read as follows:

§ 317.309 Nutrition label content.

* * * * *

(b) * * *

(12) The serving size for meal-type products and main-dish products as defined in § 317.313(l) and § 317.313(m) in single-serving containers will be the entire edible content of the package. Serving size for meal-type products and main-dish products in multi-serve containers will be based on the reference amount applicable to the product in § 317.312(b) if the product is listed in § 317.312(b). Serving size for meal-type products and main-dish products in multi-serve containers that are not listed in § 317.312(b) will be based on the reference amount according to § 317.312(c), (d), and (e).

* * * * *

3. Section 317.313 would be amended by revising paragraph (l) and by adding paragraph (m) to read as follows:

§ 317.313 Nutrient content claims; general principles

* * * * *

(l) For purposes of making a claim, a ''meal-type'' product will be defined as a product that:

(1) Makes a major contribution to the diet by

(i) Weighing at least 10 ounces per labeled serving, and

(ii) Containing not less than three 40 gram portions of food, or combinations of foods, from two or more of the following four food groups, except as noted in paragraph (l)(1)(ii)(E) of this section:

(A) Bread, cereal, rice, and pasta;

(B) Fruits and vegetables;

(C) Milk, yogurt, and cheese;

(D) Meat, poultry, fish, dry beans, eggs, nuts; except that:

(E) These foods will not be sauces (except for foods in the four food groups in paragraphs (l)(1)(ii)(A) through (D) of this section, that are in the sauces), gravies, condiments, relishes, pickles, olives, jams, jellies, syrups, breadings, or garnishes; and

(2) Is represented as, or is in the form commonly understood to be, a breakfast, lunch, dinner, meal, or entree. Such representations may be made either by statements, photographs, or vignettes.

* * * * *

§ 317.354 [Amended]

4. Section 317.354 would be amended as follows:

a. By adding the phrase ''and main-dish products as defined in § 317.313(m),'' after the phrase ''meal-type products as defined in § 317.313(l),'' whenever it occurs in the introductory text of paragraphs (b)(1), (c)(1), and (e)(1).

b. By adding the phrase ''and main-dish product as defined in § 317.313(m)'' after the phrase ''meal-type product as defined in § 317.313(l),'' whenever it occurs in the introductory text of paragraphs (b)(2) and (c)(2).

c. By adding the phrase ''or a main-dish product'' after the phrase ''meal-type product'' in paragraphs (d)(1) and (e)(2)(ii)(B).

§ 317.356 [Amended]

5. Section 317.356 would be amended as follows:

a. By adding the phrase ''and main-dish products as defined in § 317.313(m)'' after the phrase ''meal-type products as defined in § 317.313(l),'' whenever it occurs in paragraphs (b) introductory text and paragraph (c)(3).

b. By adding the phrase ''and main-dish product as defined in § 317.313(m)'' after the phrase ''meal-type product as defined in § 317.313(l),'' whenever it occurs in paragraphs (d)(1) introductory text and paragraph (d)(2)(i).

§ 317.360 [Amended]

6. Section 317.360 would be amended as follows:

a. By adding the phrase ''and main-dish products as defined in § 317.313(m)'' after the phrase ''meal-type products as defined in § 317.313(l),'' whenever it occurs in the introductory text of paragraphs (b)(2), (b)(4), and (c)(4).

b. By adding the phrase ''and main-dish product as defined in § 317.313(m)'' after the phrase ''meal-type product as defined in § 317.313(l),'' whenever it occurs in the introductory text of paragraphs (b)(3), (b)(5), and (c)(5).

c. By adding the phrase ''or a main-dish product'' after the phrase ''a meal-type product'' in paragraph (c)(1)(i).

§ 317.361 [Amended]

7. Section 317.361 would be amended as follows:

a. By adding the phrase ''and main-dish products as defined in § 317.313(m),'' after the phrase ''meal-type products as defined in § 317.313(l),'' whenever it occurs in the introductory text of paragraphs (b)(2), (b)(4), and (b)(6).

b. By adding the phrase ''and main-dish product as defined in § 317.313(m)'' after the phrase ''meal-type product as defined in § 317.313(l),'' whenever it occurs in the introductory text of paragraphs (b)(3), (b)(5), and (b)(7).

c. By adding the phrase ''or a main-dish product'' after the phrase ''a meal-type product'' in paragraph (b)(1)(i).

§ 317.362 [Amended]

8. Section 317.362 would be amended as follows:

a. By adding the phrase ''and main-dish products as defined in § 317.313(m)'' after the phrase ''meal-type products as defined in § 317.313(l),'' whenever it occurs in the introductory text of paragraphs (b)(2), (b)(4), (c)(2), (d)(2), (d)(4), and paragraph (e)(1) and (e)(2).

b. By adding the phrase ''and main-dish product as defined in § 317.313(m)'' after the phrase ''meal-type product as defined in § 317.313(l),'' whenever it occurs in the introductory text of paragraph (b)(3), (b)(5), (c)(3), (c)(5), and (d)(5).

c. By adding the phrase ''or a main-dish product'' after the phrase ''a meal-type product,'' in paragraphs (b)(1)(i) and (c)(1)(i).

§ 317.363 [Amended]

9. Section 317.363 would be amended as follows:

a. By adding the phrase ''main-dish product, as defined in § 317.313(m) and a,'' before the phrase ''meal-type product, as defined in § 317.313(l)'' in the introductory text of paragraphs (b)(2)(i) and (b)(3)(i).

b. By adding the phrase ''main dish and'' before the phrase ''meal-type products'' in the introductory text of paragraphs (b)(2)(i) and (b)(3)(i).

c. By adding the phrase ''main-dish product, as defined in § 317.313(m),'' in place of the phrase ''meal-type product as defined in § 317.313(l)'' in paragraph (b)(4)(i) and by adding the phrase ''main-dish products'' in place of the phrase ''meal-type products'' in paragraph (b)(4)(i).

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

10. The authority citation for Part 381 continues to read as follows:

Authority: 7 U.S.C. 138f, 450; 21 U.S.C. 451–470; 7 CFR 2.18, 2.53.

11. Section 381.409 would be amended by revising paragraph (b)(12) to read as follows:

§ 381.409 Nutrient label content.

* * * * *

(b) * * *

(12) The serving size for meal-type products and main-dish products as defined in § 381.413(l) and § 381.413 (m) in single-serve containers will be the entire edible content of the package. Serving size for meal-type products and main-dish products in multi-serve containers will be based on the reference amount applicable to the product in § 381.412(b) if the product is listed in § 381.412(b). Serving size for meal-type products and main-dish products in multi-serve containers that are not listed in § 381.412(b) will be based on the reference amount according to § 381.412(c), (d), and (e).

* * * * *

12. Section 381.413 would be amended by revising paragraph (1) and by adding paragraph (m) to read as follows:

§ 381.413 Nutrient content claims; general principles.

* * * * *

(l) For purposes of making a claim, a ''meal-type'' product will be defined as a product that:

(1) Makes a major contribution to the diet by:

(i) Weighing at least 10 ounces per labeled serving, and

(ii) Containing not less than three 40 gram portions of food, or combinations of foods, from two or more of the following four food groups, except as noted in paragraph (l)(1)(ii)(E) of this section:

(A) Bread, cereal, rice, and pasta;

(B) Fruits and vegetables;

(C) Milk, yogurt, and cheese;

(D) Meat, poultry, fish, dry beans, eggs, and nuts; except that:

(E) These foods will not be sauces (except for foods in the four food groups in paragraph (l)(1)(ii)(A) through (D) of this section that are in the sauces), gravies, condiments, relishes, pickles, olives, jams, jellies, syrups, breadings, or garnishes; and

(2) Is represented as, or is in the form commonly understood to be, a breakfast, lunch, dinner, meal, or entree. Such representations may be either by statements, photographs, or vignettes.

(m) For purposes of making a claim, a ''main-dish'' product will be defined as a food that:

(1) Makes a major contribution to a meal by:

(i) Weighing at least 6 ounces per labeled serving, and

(ii) Containing not less than 40 grams of food, or combinations of foods, from two or more of the following four food groups, except as noted in paragraph (m)(1)(ii)(E) of this section.

(A) Bread, cereal, rice, and pasta;

(B) Fruits and vegetables;

(C) Milk, yogurt, and cheese;

(D) Meat, poultry, fish, dry beans, eggs, and nuts; except that:

(E) These foods will not be sauces (except for foods in the four food groups in paragraph (m)(1)(ii)(A) through (D) of this section that are in the sauces), gravies, condiments, relishes, pickles, olives, jams, jellies, syrups, breadings, or garnishes; and

(2) Is represented as, or is in a form commonly understood to be, a main dish (*e.g.,* not a beverage or a dessert). Such representations may be made either by statements, photographs, or vignettes.

* * * * *

§ 381.454 [Amended]

13. Section 381.454 would be amended as follows:

a. By adding the phrase ''and main-dish products as defined in § 381.413(m),'' after the phrase ''meal-type products as defined in § 381.413(l)'' wherever it occurs in the introductory text of paragraphs (b)(1), (c)(1), and (e)(1).

b. By adding the phrase ''and main-dish product as defined in § 381.413(m)'' after the phrase ''meal-type product as defined in § 381.413(l),'' whenever it occurs in the introductory text of paragraphs (b)(2) and (c)(2).

c. By adding the phrase ''or in a main-dish product'' after the phrase ''meal-type product'' in paragraphs (d)(1) and (e)(2)(ii)(B).

§ 381.456 [Amended]

14. Section 381.456 would be amended as follows:

a. By adding the phrase ''and main-dish products as defined in § 381.413(m)'' after the phrase ''meal-type products as defined in § 318.413(l),'' whenever it occurs in paragraph (b) introductory text and paragraph (c)(3).

b. By adding the phrase ''and main-dish product as defined in § 381.413(m)'' after the phrase ''meal-type product as defined in § 381.413(m)'' whenever it occurs in paragraphs (d)(1) introductory text and paragraph (d)(2)(i).

§ 381.460 [Amended]

15. Section 381.460 would be amended as follows:

a. By adding the phrase ''and main-dish products as defined in § 318.413(m)'' after the phrase ''meal-type products as defined in § 381.413(l),'' whenever it occurs in the introductory text of paragraphs (b)(2), b)(4), and (c)(4).

b. By adding the phrase ''and main-dish product as defined in § 381.413(m)'' after the phrase ''meal-type product as defined in § 381.413(l),'' whenever it occurs in the introductory text of paragraphs (b)(3), (b)(5), and (c)(5).

c. By adding ''or a main-dish product'' after the phrase ''a meal-type product'' in paragraph (c)(1)(i).

§ 381.461 [Amended]

16. Section 381.461 would be amended as follows:

a. By adding the phrase ''and main-dish products as defined in § 381.413(m),'' after the phrase ''meal-type products as defined in § 381.413(l),'' whenever it occurs in the introductory text of paragraphs (b)(2), (b)(4), and (b)(6).

b. By adding the phrase ''and main-dish product as defined in § 381.413(m)'' after the phrase ''meal-type product as defined in § 381.413(l),'' whenever it occurs in the introductory text of paragraphs (b)(3), (b)(5), and (b)(7).

c. By adding the phrase ''or a main-dish product'' after the phrase ''of a meal-type product'' in paragraph (b)(1)(i).

§ 381.462 [Amended]

17. Section 381.462 would be amended as follows:

a. By adding the phrase ''and main-dish products as defined in § 381.413(m)'' after the phrase ''meal-type products as defined in § 381.413(l),'' whenever it occurs in the introductory text of paragraphs (b)(2), (b)(4), (c)(2), (d)(4) and paragraphs (e)(1) and (e)(2).

b. By adding the phrase ''and main-dish product as defined in § 381.413(m)'' after the phrase ''meal-type product as defined in § 381.413(l),'' whenever it occurs in the introductory text of paragraph (b)(3), (b)(5), (c)(3), (c)(5), (d)(3), and (d)(5).

c. By adding the phrase ''or a main-dish product'' after the phrase ''a meal-type product,'' in paragraphs (b)(1)(i) and (c)(1)(i).

§ 381.463 [Amended]

18. Section 381.463 would be amended as follows:

a. By adding the phrase ''main-dish product, as defined in § 381.413(m) and a,'' before the phrase ''meal-type product, as defined in § 381.413(l)'' in the introductory text of paragraph (b)(2)(i) and (b)(3)(i).

b. By adding the phrase ''main-dish and'' before the phrase ''meal-type products'' in the introductory text of paragraphs (b)(2)(i) and (b)(3)(i).

c. By adding the phrase ''main-dish product, as defined in § 381.413(m),'' in place of the phrase ''meal-type product, as defined in § 381.413(l)'' in paragraph (b)(4)(i) and by adding the phrase ''main-dish products'' in place of the phrase ''meal-type products'' in paragraph (b)(4)(i).

Done at Washington, DC, on April 9, 2003.

Garry L. McKee,

Administrator.

[FR Doc. 03–9258 Filed 4–15–03; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–05–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This proposal would require identification of the valves installed on the engine struts as hydraulic supply (fire) shutoff valves for the engine-driven pump, corrective action if necessary, and eventual replacement of discrepant valves with serviceable parts. This action is necessary to prevent leakage of hydraulic (flammable) fluid into an engine fire, which could result in an uncontrolled fire. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by June 2, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–05–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. 2003–NM–05–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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Frey, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6468; fax (425) 917–6590.

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 2003–NM–05–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.

2003–NM–05–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that various intermittent limit switch functioning problems have caused the failure of certain ''Circle Seal'' valves installed as the engine-driven pump (EDP) direct-current (DC) motor-operated shutoff valves on certain Boeing Model 747 series airplanes. This particular valve may malfunction if the motor limit switches are not actuated, causing the motor to run at the stop until the clutch fails. If the clutch fails, the valve cannot open and close for the affected hydraulic system. This failure mode was discovered during production testing on Model 747 series airplanes. The subject valve was incorrectly identified by the manufacturer as an acceptable optional part for Model 747 series airplanes. This valve may have been installed during production or normal maintenance. The EDP valve is intended to prevent hydraulic fluid from being supplied to an engine fire, which could result in an uncontrolled fire.

Related Rulemaking

The FAA previously issued similar rulemaking for the same unsafe condition on certain Boeing Model 737, 757, and 767 series airplanes. AD 2001–11–07, amendment 39–12249 (66 FR 31135, June 11, 2001), requires repetitive operational checks to detect malfunctioning of certain motor-operated hydraulic shutoff valves, and their eventual replacement with new valves as terminating action for the repetitive inspections.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–29A2102, including an Evaluation Form, dated June 29, 2000, which describes procedures for determining, by a records check or inspection, whether certain Circle Seal valves have been installed on the engine struts as the EDP DC motor-operated shutoff valves. Corrective action for discrepant valves includes repetitive tests of the hydraulic supply (fire) shutoff valves, immediate replacement of failed valves, and eventual replacement of all subject valves with serviceable valves. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 681 airplanes of the affected design in the worldwide fleet. The FAA estimates that 130 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to identify the valve, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $7,800, or $60 per airplane.

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

Replacing a valve, if required, would take approximately 6 work hours, at an average labor rate of $60 per work hour. Required parts and hydraulic fluid would cost approximately $4,438 per valve. Based on these figures, the cost impact of replacing a valve is estimated to be $4,798.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2003–NM–05–AD.

Applicability: Model 747 series airplanes, certificated in any category, as listed in Boeing Alert Service Bulletin 747–29A2102, dated June 29, 2000.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) 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 leakage of hydraulic (flammable) fluid into an engine fire, which could result in an uncontrolled fire, accomplish the following:

Part Identification

(a) Within 6 months after the effective date of this AD, check maintenance records or perform a general visual inspection of each engine strut to determine whether any discrepant valve is installed as a hydraulic supply (fire) shutoff valve for the engine-driven pump. A discrepant valve is a Circle Seal valve part number (P/N) S270T010–3 or a valve that cannot be readily identified.

Identify the part in accordance with Boeing Alert Service Bulletin 747–29A2102, excluding the Evaluation Form, dated June 29, 2000. If no discrepant valve is installed, no further work is required by this paragraph.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Corrective Actions for Discrepant Valves

(b) For any discrepant valve found during the part identification required by paragraph (a) of this AD:

(1) Within 6 months after the effective date of this AD, do a hydraulic supply (fire) shutoff valve test, in accordance with paragraph 3.J. of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–29A2102, dated June 29, 2000.

(i) If the valve passes the test, repeat the test in accordance with paragraph (b)(2) of this AD.

(ii) If the valve does not pass the test: Before further flight, replace the valve and do a hydraulic supply (fire) shutoff valve test, in accordance with paragraph 3.I. of the Accomplishment Instructions of the service bulletin.

(2) Repeat the test specified in paragraph (b)(1) of this AD on each discrepant valve at least every 6 months, until the actions specified by paragraph (b)(3) of this AD have been accomplished.

(3) Within 4 years after identifying the valve as required by paragraph (a) of this AD: Replace each discrepant valve with a serviceable valve and do a hydraulic supply (fire) shutoff valve test, in accordance with paragraph 3.I. of the Accomplishment Instructions of the service bulletin. Replacement of the valve terminates the repetitive tests required by paragraph (b)(2) of this AD for that valve.

Part Installation

(c) As of the effective date of this AD, no person may install a Circle Seal valve P/N S270T010–3 on any airplane unless the requirements of this AD are accomplished for that valve.

Alternative Methods of Compliance

(d) 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, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 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.

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

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–9301 Filed 4–15–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–184–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 Airplanes; Model DC–8–50 Series Airplanes; Model DC–8F–54 and DC–8F–55 Airplanes; Model DC–8–60 Series Airplanes; Model DC–8–70 Series Airplanes; and Model DC–8–70F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas airplanes. This proposal would require an inspection to determine the material composition of the auxiliary spar cap of the lower inboard of the left and right wings. For certain airplanes, this proposal also would require repetitive detailed and dye penetrant inspections for cracking of the spar cap, and corrective actions if necessary. This action is necessary to detect and correct stress corrosion cracking of the auxiliary spar cap, which could cause excessive loads to the structure attaching the support fitting of the main landing gear (MLG) to the wing, and result in loss of the MLG. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by June 2, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–184–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. 2001–NM–184–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 Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington FAA, or at the Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Jon Mowery, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5322; fax (562) 627–5210.

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 2001–NM–184–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. 2001–NM–184–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received numerous reports indicating that cracking has occurred in the auxiliary spar cap of the lower inboard near the outboard attach bolts on various McDonnell Douglas Model DC–8 airplanes. The cracking occurred on airplanes that have accumulated more than 36,000 total flight hours. Investigation indicates that the cracking appeared to be due to stress corrosion. Such cracking of the auxiliary spar cap, if not detected and corrected, could cause excessive loads on the structure attaching the support fitting of the main landing gear (MLG) to the wing, and result in loss of the MLG.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas DC–8 Service Bulletin 57–85, Revision 1, dated July 5, 1991. That service bulletin describes procedures for performing repetitive detailed and dye penetrant inspections to detect stress cracking of the auxiliary spar cap of the lower inboard of the left and right wings. For cracking that is within certain limits, the service bulletin describes corrective actions such as repair or rework and application of corrosion-inhibiting compound, if necessary. For any cracking that is outside the limits specified in the service bulletin, the service bulletin describes procedures for replacing the auxiliary spar cap with either a new spar cap made with 7075–T6 aluminum or with a new, improved spar cap made with 7075–T73 aluminum. Additionally, for any cracking that is detected at the bathtub end of both forward and aft bolt holes, the service bulletin describes procedures for replacement of those MLG fittings with new or serviceable fittings. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require an inspection to determine the material composition of the auxiliary spar cap. If the spar cap is made of 7075–T6 aluminum, the proposed AD would require accomplishment of the actions and procedures specified in the service bulletin described above for the repetitive inspections for cracking, and repair, rework, and replacement of the spar cap if necessary.

Operators should note that the FAA has received information indicating that there may be a parts availability problem in procuring spar caps made of 7075–T73 aluminum. However, we have determined that the repetitive inspections proposed by this AD can be allowed to continue in lieu of accomplishment of the terminating action (replacement of both spar caps with caps made of 7075–T73 aluminum). In making this determination, we consider that, in this case, long-term continued operational safety will be adequately assured by accomplishing the repetitive inspections to detect cracking of the auxiliary spar cap before it represents a hazard to the airplane.

Differences Between This NPRM and the Service Information

The FAA considers that, prior to performing the inspections and corrective actions described in the service bulletin above, it is necessary to perform an inspection to determine the material composition of the auxiliary spar cap of the lower inboard of the left and right wings. That inspection may be done per a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, or by performing an eddy current test of the auxiliary spar cap per the Non-Destructive Testing Standard Practice Manual MDC–93K0393 (NDTSPM) 06–10–01.006. If the auxiliary spar cap is composed of 7075–T6 aluminum, this proposed AD would require accomplishment of the actions specified in the service bulletin described above, as applicable.

Additionally, operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain cracking outside the limits specified in the service bulletin, this proposal would require the disposition of any such cracking that was detected to be accomplished per a method approved by the FAA.

Cost Impact

There are approximately 264 airplanes of the affected design in the worldwide fleet. The FAA estimates that 244 airplanes of U.S. registry would be affected by this proposed AD. We estimate that it would take approximately 2 work hours per airplane to accomplish the proposed inspection to determine the material of the spar cap. We estimate that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $29,280, or $120 per airplane, per inspection cycle.

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

Regulatory Impact

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory

Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 2001–NM–184–AD.

Applicability: Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 airplanes; Model DC–8–51, DC–8–52, DC–8–53, and DC–8–55 airplanes; Model DC–8F–54 and DC–8F–55 airplanes; Model DC–8–61, DC–8–62, and DC–8–63 airplanes; Model DC–8–61F, DC–8–62F, and DC–8–63F airplanes; Model DC–8–71, DC–8–72, and DC–8–73 airplanes; as listed in McDonnell Douglas DC–8 Service Bulletin 57–85, Revision 1, dated July 5, 1991; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 detect and correct cracking of the auxiliary spar cap, which could cause excessive loads to the structure attaching the support fitting of the main landing gear (MLG) to the wing, and result in loss of the MLG; accomplish the following:

Inspection To Determine the Material of the Auxiliary Spar Cap

(a) Within 24 months or 2,000 flight cycles after the effective date of this AD, whichever occurs later, inspect to determine the material composition of the auxiliary spar cap (Part Numbers 5615058–1 through –506 inclusive) of the lower inboard of the left and right wings, in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, or by performing an eddy current test of the auxiliary spar cap per the Non-Destructive Testing Standard Practice Manual MDC–93K0393 (NDTSPM) 06–10–01.006. If the material of the spar cap is 7075–T73 aluminum, no further action is required by this paragraph.

Inspections for Cracking and Follow-on Corrective Actions

(b) If the material of the auxiliary spar cap found during the inspection required by paragraph (a) of this AD is 7075–T6 aluminum: Within 2 years or 2,000 flight cycles after accomplishing the inspection required by paragraph (a) of this AD, perform a detailed inspection and a dye penetrant inspection for cracking of the auxiliary spar cap and the bathtub end of either the forward or the aft bolt hole of the lower inboard of the left and right wings, as applicable, per McDonnell Douglas DC–8 Service Bulletin 57–85, Revision 1, dated July 5, 1991.

Note 2: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(1) If no cracking is detected, repeat the inspection at intervals not to exceed 6,400 flight hours, until the auxiliary spar cap is replaced with a spar cap made with 7075–T73 aluminum, in accordance with the service bulletin.

(2) If any cracking of the auxiliary spar cap or at the bathtub end of either the forward or the aft bolt hole is detected that is within the limits specified in the service bulletin, before further flight, rework or repair the spar cap, as applicable, and apply corrosion inhibiting compound, in accordance with the service bulletin. Repeat the inspection for cracking at intervals not to exceed 1,600 flight hours, until the auxiliary spar cap is replaced with a spar cap composed of 7075–T73 aluminum. Replacement of both spar caps with 7075–T73 aluminum is terminating action for the requirements of this AD.

(3) If any cracking at the bathtub end of both the forward and aft bolt holes is detected that is within the limits specified in the service bulletin, before further flight, replace the MLG fitting with a new or serviceable fitting, in accordance with the service bulletin.

(4) If any cracking of the auxiliary spar cap is detected that is outside the limits specified in the service bulletin, before further flight, replace the auxiliary spar cap with a cap composed of 7075–T73 aluminum, in accordance with the service bulletin, or by a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. For a repair method to be approved by the Manager, Los Angeles ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

(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, Los Angeles ACO, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO, FAA.

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

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 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.

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

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–9302 Filed 4–15–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–48–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 727–200 series airplanes. This proposal would require installation of four lanyards on the forward access panel/door. This action is necessary to prevent the forward ceiling access panel/door from falling down and blocking the aisle, which would impede evacuation in an emergency. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by June 2, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–48–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. 2003–NM–48–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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Keith Ladderud, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6435; fax (425) 917–6590.

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 2003–NM–48–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. 2003–NM–48–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that, during a hard landing of a Model 727–200 series airplane, the forward ceiling access panel/door fell into the passenger aisle and blocked passengers from reaching the forward doors. This condition, if not corrected, could impede evacuation in an emergency.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Special Attention Service Bulletin 727–25–0298, dated February 13, 2003, which describes procedures for installing four lanyards on the forward access panel/door. This modification will restrict the forward ceiling panel drop to 6 inches. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 100 airplanes of the affected design in the worldwide fleet. The FAA estimates that 78 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $4,680, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2003–NM–48–AD.

Applicability: Model 727–200 series airplanes, certificated in any category, as listed in Boeing Special Attention Service Bulletin 727–25–0298, dated February 13, 2003.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) 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 the forward ceiling access panel/door from falling down and blocking the aisle, which would impede evacuation in an emergency, accomplish the following:

Lanyard Installation

(a) Within 18 months after the effective date of this AD, install 4 lanyards on the forward access panel/door, in accordance with Boeing Special Attention Service Bulletin 727–25–0298, dated February 13, 2003.

Alternative Methods of Compliance

(b) 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, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 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.

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

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–9303 Filed 4–15–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–64–AD]

RIN 2120–AA64

Airworthiness Directives; Robert E. Rust Models DeHavilland DH.C1 Chipmunk 21, 22, and 22A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); Reopening of the comment period.

SUMMARY: This document proposes to revise an earlier proposed airworthiness directive (AD) that would apply to certain Robert E. Rust (R.E. Rust) Models DeHavilland DH.C1 Chipmunk 21, 22, and 22A airplanes. The earlier NPRM would have required you to repetitively inspect the tailplane attachment brackets and replace each bracket. The earlier NPRM would have also required you to repetitively inspect each joint of the port and starboard engine mount frame and the rear upper mount frame tubes for cracks and/or damage and repair any cracks and/or damage found. The earlier NPRM resulted from reports of stress corrosion cracking found on the tailplane attachment brackets and fatigue cracking and chaffing of the engine mount frame. We incorrectly referenced replacing the tailplane attachment brackets (part number C1.TP.167) upon accumulating 9,984 hours time-in-service (TIS). The hour limitation should be 9,984 fatigue hours. Fatigue hours are hours TIS multiplied by the role factor (operational use) as defined in the manufacturer's service information. This proposed supplemental NPRM also adds an hour limitation for performing the repetitive inspection of the tailplane 1 attachment brackets. Since these actions impose an additional burden over that proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on these additional actions.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before June 23, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–64–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov.* Comments sent electronically must contain ''Docket No. 2000–CE–64–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Work 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from DeHavilland Support Limited, Duxford Airfield, Bldg. 213, Cambridgeshire, CB2 4QR, United Kingdom, telephone: +44 1223 830090, facsimile: +44 1223 830085, e-mail: *info@dhsupport.com.* You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Cindy Lorenzen, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia; telephone: (770) 703–6078; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that

summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2000–CE–64–AD.'' We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused Us To Issue the Earlier NPRM?

We received reports that an unsafe condition exists on certain R.E. Rust Models DeHavilland DH.C1 Chipmunk 21, 22, and 22A airplanes. After reviewing several of these airplanes, stress corrosion cracking was found on the tailplane attachment brackets and fatigue cracks and chaffing were found on the engine mount frame.

Cracks in the engine mount frame were found in the area of the junction of the front and rear top tube and engine mounting foot support brackets and in the front of the frame. We have determined that fatigue is the cause of the cracks. The upper aft mount frame tubes were also found to have damage caused by chaffing by the cowling support rod.

What Are the Consequences if the Condition Is Not Corrected?

These conditions, if not corrected, could result in failure of the tailplane attachment brackets and failure of the engine mount. Such failures could lead to loss of control of the airplane.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain R.E. Rust Models DeHavilland DH.C1 Chipmunk 21, 22, and 22A airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on November 12, 2002 (67 FR 68536). The NPRM proposed to require you to repetitively inspect the tailplane attachment brackets and replace each bracket. The NPRM also proposed to require you to repetitively inspect each joint of the port and starboard engine mount frame and the rear upper mount frame tubes for cracks and/or damage and repair any cracks and/or damage found.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: Change the Compliance Time for Replacing the Tailplane Attachment Brackets

What Is the Commenter's Concern?

The commenter states that replacement parts for the tailplane attachment brackets may not be available from the manufacturer within 90 days after the effective date of this AD. Therefore, the commenter suggests allowing more time to acquire parts by changing the compliance time for replacing the tailplane attachment brackets if cracks are found during the initial inspection from 90 days to 12 months after the effective date of this AD.

What Is FAA's Response to the Concern?

The commenter does not offer any solution to ensure the airworthiness of the airplanes until the parts become available. We cannot increase the compliance time unless other means to ensure the continued airworthiness of these airplanes are substantiated.

We will consider an alternative method of compliance if the alternative provides an equivalent level of safety as outlined in paragraph (e) of this AD.

We are not changing the final rule AD action based on this comment.

Comment Issue No. 2: Change the Compliance Time for the Repetitive Inspections of the Tailplane Attachment Brackets

What Is the Commenter's Concern?

The commenter suggests that the repetitive inspections of the tailplane attachment brackets should be changed to every 150 fatigue hour or 6 months, whichever comes first, in order to ensure the airworthiness of these airplanes. The NPRM only proposed inspections every 6 months.

What Is FAA's Response to the Concern?

We concur with the commenter. Requiring repetitive inspections at every 150 fatigue hours or 6 months, whichever comes first, will ensure that the unsafe condition will not go undetected on high usage airplanes for a long period of time and will ensure the airworthiness of the affected airplanes.

We will make this change. Fatigue hours are hours TIS multiplied by the role factor (operational use) as specified in British Aerospace Mandatory Technical News Sheet Series: Chipmunk (C1), No. 138, Issue: 5, dated August 1, 1985. Because adding the fatigue hours requirement to the repetitive inspection compliance time could increase the burden upon the public, we will reopen the comment period and issue a supplemental NPRM.

Comment Issue No. 3: Remove the Grace Period Allowed Beyond the Safe Life Limit for Replacing the Tailplane Attachment Brackets

What Is the Commenter's Concern?

The commenter states that the ultimate safe life limit of 9,984 fatigue hours for part number C1.TP.167 is a never exceed life and cannot be extended. Once an airplane has reached this safe life limit, the tailplane attachment bracket must be replaced before further flight.

What Is FAA's Response to the Concern?

We concur that a life limit is a never exceed limit. However, the safe life limit for the tailplane attachment bracket has not previously been established and enforced for the owners/operators of the affected airplanes. The life limit was not part of the type certificate data and was not previously mandated by an AD. Part of this proposed AD is establishing the safe life limit for this part. Removing the 90 day grace period for these airplanes already over or nearing 9,984 fatigue hours on the tailplane attachment bracket could inadvertently ground these airplanes when the AD becomes effective.

We are not changing the final rule AD action based on this comment.

The Supplemental NPRM

What Events Have Caused FAA To Issue a Supplemental NPRM?

In addition to adding the fatigue hour requirement to the repetitive inspection compliance time, we are correcting reference to the life limit as 9,984 fatigue hours instead of 9,984 hours TIS. Fatigue hours are hours TIS multiplied by the role factor (operational use).

How Will the Changes to the NPRM Impact the Public?

Proposing to change the intervals for performing the repetitive inspections of the tailplane attachment brackets to include an hour limitation and changing hours TIS to fatigue hours go beyond the scope of what was already proposed. Therefore, we are issuing a supplemental NPRM and reopening the comment period to allow the public additional time to comment on the proposed AD.

How Does the Revision to 14 CFR Part 39 Affect This Proposed AD?

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

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 54 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed inspections of the tailplane attachment brackets:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
32 workhours × $60 per hour = $1,920	No parts required	$1,920	$1,920 × 54 = $103,680.

We estimate the following costs to accomplish any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost	Total cost per airplane
3 workhours × $60 per hour = $180 per bracket	$600 per bracket (2 brackets per airplane).	$180 + $600 = $780.

We estimate the following costs to accomplish the proposed inspections of the engine mount frame:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
16 workhours × $60 per hour = $960	No parts required	$960	$960 × 54 = $51,840.

The FAA has no method of determining the number of repairs or replacements each owner/operator would incur over the life of each of the affected airplanes based on the results of the proposed inspections. We have no way of determining the number of airplanes that may need such repair. The extent of damage may vary on each airplane.

Compliance Time of This Proposed AD

What Would Be the Compliance Time of This Proposed AD?

The compliance time for the initial inspection proposed in this AD is ''within the next 90 days after the effective date of this AD.''

Why Is the Proposed Compliance Time Presented in Calendar Time Instead of Hours Time-in-Service (TIS)?

An unsafe condition specified by this proposed AD is caused by corrosion. Corrosion can occur regardless of whether the aircraft is in operation or is in storage. Therefore, to assure that the unsafe condition specified in the proposed AD does not go undetected for a long period of time, the compliance is presented in calendar time instead of TIS.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

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 proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed 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) 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 has been placed 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, under 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. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Robert E. Rust: Docket No. 2000–CE–64–AD

(a) *What airplanes are affected by this AD?* This AD affects R.E. Rust Models DeHavilland DH.C1 Chipmunk 21, 22, and 22A airplanes, serial numbers C1–001 through C1–1014, that are type certificated in any category.

Note 1: We recommend all owners/operators of DeHavilland DH.C1 Chipmunk 21, 22, and 22A airplanes, serial numbers C1–001 through C1–1014, with experimental airworthiness certificates comply with the actions required in this AD.

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent failure of the tailplane attachment brackets caused by stress corrosion cracking and failure of the engine mount, which could result in loss of the tail section and separation of the engine from the airplane respectively. Such failures could lead to loss of control of the airplane.

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

(1) Tailplane Attachment Brackets

Compliance	Actions	Procedures
(i) Initially inspect within the next 90 days after the effective date of this AD. (A) Inspect thereafter at intervals not to exceed 6 months or 150 fatigue hours, whichever occurs first, until the modification required by paragraph (d)(1)(ii) of this AD is incorporated. (B) When the modification required by paragraph (d)(1)(ii) is incorporated, you may terminate the repetitive inspections of the tailplane attachment brackets.	Inspect, using dye penetrant, the tailplane attachment brackets, part-number (P/N) C1.TP.167 (or FAA-approved equivalent part) for cracks.	In accordance with British Aerospace Military Aircraft and Aerostructures (BAe Aircraft) Mandatory Technical News Sheet CT (C1) No. 176, Issue 2, dated November 1, 1997; and Civil Modification Mandatory Modification No. Chipmunk H357, dated March 12, 1984. Calculate fatigue hours by multiplying the TIS by the role factor in accordance with British Aerospace Mandatory Technical News Sheet Series: Chipmunk (C1), No. 138, Issue: 5, dated August 1, 1985.
(ii) At whichever of the following that occurs first: (A) Prior to further flight after the inspection where any crack is found; or (B) Upon accumulating 9,984 fatigue hours or within the next 90 days after the effective date of this AD, whichever occurs later	Replace the tailplane attachment bracket by incorporating Modification H357 (P/N C1.TP.313) or FAA-approved equivalent part number. Installing P/N C1.TP.313 (or FAA-approved equivalent part number) terminates the repetitive inspection requirement of the tailplane attachment brackets.	In accordance with British Aerospace Military Aircraft and Aerostructures (BAe Aircraft) Mandatory Technical News Sheet CT (C1) No. 176, Issue 2, dated November 1, 1997; and Civil Modification Mandatory Modification No. Chipmunk H357, dated March 12, 1984. Calculate fatigue hours by multiplying the TIS by the role factor in accordance with British Aerospace Mandatory Technical News Sheet Series: Chipmunk (C1), No. 138, Issue: 5, dated August 1, 1985.
(iii) As of the effective date of this AD	Only install a tailplane attachment bracket that is P/N C1.TP.313. or FAA-approved equivalent part number.	Not applicable.
(iv) As of the effective date of this AD	Incorporate the following into the Aircraft Logbook: ''In accordance with AD **-**-**, the tailplane attachment bracket is life limited to 9,984 fatigue hours.''.	In accordance with British Aerospace Military Aircraft and Aerostructures (BAe Aircraft) Mandatory Technical News Sheet CT (C1) No. 176, Issue 2, dated November 1, 1997.

(2) Engine Mount Frames

Actions	Compliance	Procedures
(i) Inspect each joint of the port and starboard engine mount frame and the rear upper mount frame tubes for cracks and/or damage.	Initially inspect within the next 90 days after the effective date of this AD. Repetitively inspect thereafter at intervals not to exceed 600 hours TIS.	In accordance with British Aerospace Aerostructures Limited (BAe Aircraft) Mandatory Technical News Sheet CT (C1) No. 190, Issue 2, dated April 1, 1995.

Actions	Compliance	Procedures
(ii) If cracks and/or damage is found during any inspection required in paragraph (d)(2)(i) of this AD. (A) obtain a repair scheme from the manufacturer through the FAA at the address specified in paragraph (f) of this AD and incorporate this repair scheme, or repair in accordance with FAA Advisory Circular (AC) 43.13–1B, Change 1, dated September 27, 2001, Chapter 4, Paragraph 4–99; or. (B) replace with a new or serviceable part	Prior to further flight after the inspection in which any crack and/or damage is found. Repetitively inspect as required in paragraph (d)(2)(i) of this AD.	Repair in accordance with AC 43.13–1B, Change 1, dated September 27, 2001, Chapter 4, Paragraph 4–99 or in accordance with the repair scheme obtained from DeHavilland Support Limited, Duxford Airfield, Bldg. 213, Cambridgeshire, CB2 4QR, United Kingdom. Obtain this repair scheme through the FAA at the address specified in paragraph (f) of this AD. Replace in accordance with British Aerospace Aerostructures Limited (BAe Aircraft) Mandatory Technical News Sheet CT (C1) No. 190, Issue 2, dated April 1, 1995, or AC 43.13–1B, Change 1, dated September 27, 2001, Chapter 4, Paragraph 4–99.
(iii) Bind the rear upper mount frame tubes with a high density polythene tape at the location where the cowling support rod clip is secured.	Prior to further flight after the initial inspection required in paragraph (d)(1) of this AD.	In accordance with British Aerospace Aerostructures Limited (BAe Aircraft) Mandatory Technical News Sheet CT (C1) No. 190, Issue 2, dated April 1, 1995.

(e) *Can I comply with this AD in any other way?* To use an alternative method of compliance or adjust the compliance time, follow the procedures in 14 CFR 39.13. Send these requests to the Manager, Atlanta Aircraft Certification Office (ACO). Contact Cindy Lorenzen, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia; telephone: (770) 703–6078; facsimile: (770) 703–6097.

(f) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from DeHavilland Support Limited, Duxford Airfield, Bldg. 213, Cambridgeshire, CB2 4QR, United Kingdom, telephone: +44 1223 830090, facsimile: +44 1223 830085, e-mail: *info@dhsupport.com.* You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on April 10, 2003.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–9304 Filed 4–15–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA77

TRICARE; Changes Included in the National Defense Authorization Act for Fiscal Year 2002, (NDAA–02), and a Technical Correction Included in the NDAA–03

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This rule proposes several changes to the TRICARE program that were enacted by Congress in the NDAA–02 (December 28, 2001). Specifically, revisions to the definition of durable medical equipment (DME); adoption of the same pricing methods for durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) as are in effect for the Medicare program; clarification that rehabilitative therapy is a TRICARE benefit; addition of augmentative communication devices (ACD)/speech generating devices (SGD) as a TRICARE benefit; addition of hearing aids for family members of active duty members as a TRICARE benefit; revisions to the definition of prosthetics; permanent authority for transitional health care for certain members separated from active duty; and revisions to the time period of eligibility for transitional health care.

This proposed rule also addresses a technical correction found in section 706 of the NDAA–03 relating to transitional health care for dependents of certain members separated from active duty.

Public comments are invited and will be considered for possible revisions to the final rule.

DATES: Written comments will be accepted until June 16, 2003.

ADDRESSES: Forward comments to Medical Benefits and Reimbursement Systems, TRICARE Management Activity, 16401 East Centretech Parkway, Aurora, Colorado 80011–9066.

FOR FURTHER INFORMATION CONTACT: Ann N. Fazzini, Medical Benefits and Reimbursement Systems, TRICARE Management Activity, telephone, (303) 676–3803. Questions regarding payment of specific claims should be addressed to the appropriate TRICARE contractor.

SUPPLEMENTARY INFORMATION:

I. Durable Medical Equipment (DME)

Section 703 of the NDAA–02, Pub. L. 107–107, provides authority for any durable medical equipment that can improve, restore, or maintain the function of a malformed, diseased, or injured body part, or can otherwise minimize or prevent the deterioration of the patient's function or condition. It also provides authority for any durable medical equipment that can maximize the patient's function consistent with the patient's physiological or medical needs. Although the wording is not identical, TRICARE's policies and definitions in place at this time currently provide coverage within these criteria. Nonetheless, we are revising the current DME definition by adding the phrases found in the NDAA–02 to the regulatory definition of DME in order to ensure consistency between the law and the regulation.

Section 703 also makes available coverage to customize or accessorize durable medical equipment if it is essential for achieving therapeutic benefit for the patient; making the equipment serviceable; or otherwise assuring the proper functioning of the equipment. Our policies in place at this time provide coverage within these criteria. Specifically, TRICARE's current policy regarding Durable Medical Equipment includes a provision to allow customization, accessories, and

supplies that are essential to provide therapeutic benefit, or to assure the proper functioning of the equipment or to make the equipment serviceable. Nonetheless, we are revising the current DME definition by adding the NDAA–02 language to the regulatory definition of DME in order to ensure consistency between the law and the regulation.

II. Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Reimbursement

Section 707 of the NDAA–02, Pub. L. 107–107, changed the statutory authorization (in 10 U.S.C. 1079(j)(2)) that TRICARE payment methods ''may be'' determined to the extent practicable in accordance with Medicare payment rules to a mandate that TRICARE payment methods ''shall be'' so determined. As a result, TRICARE proposes to adopt Medicare's pricing of Durable Medical Equipment, Prosthetic, Orthotics, and Supplies (DMEPOS). Under Medicare, DMEPOS prices are established by using fee schedules, reasonable charge or average wholesale pricing (AWP). Most payments of DME are based on a fee schedule. A standard fee is established for each DMEPOS item by state. Payment is calculated using either the fee schedule amount or the actual charge submitted on the claim, whichever is lower. The fee schedule allowances include the application of national floors and ceilings. Reasonable charge allowances by Medicare are stipulated by Medicare law and not left to the discretion of the Medicare carrier. Medicare law specifically states that the amount allowed by Medicare must be the lowest of: The actual charge, the suppliers customary charge or the 50th percentile of arrayed and weighted customary charges in the absence of a customary charge for the specific service rendered; the prevailing charge, the Inflation-Indexed Charge or the Lowest Charge Level.

III. Rehabilitative Therapy

Section 704 of the NDAA–02, Pub. L. 107–107, authorizes providing rehabilitative therapy to improve, restore, or maintain function, or to minimize or prevent deterioration of function, of a patient when prescribed by a physician. We interpret the term ''rehabilitative therapies'' to include physical therapy, speech therapy, and occupational therapy. We are adding a definition of rehabilitative therapy to our regulation and incorporating the NDAA–02 language found in section 704 into the definition. Physical, speech, and occupational therapies are currently covered by TRICARE to improve and/or restore function. Additionally, current policies provide no restrictions on medically necessary and appropriate therapies—in other words, there is no dollar limit on the care nor is care restricted to a specific number of visits.

Section 701 of the NDAA–02, Pub. L. 107–107, provides a definition of custodial care as treatment or services regardless of who recommends such treatment of services or where such services are provided that (a) can be rendered safely and reasonably by a person who is not medically skilled; or (b) is or are designed mainly to help the patient with activities of daily living. The definition was revised by the interim final rule published in the **Federal Register,** 67 FR 40602, June 13, 2002.

We read the language in section 704 of the NDAA–02 in conjunction with the language in Section 701(c) of the NDAA–02 and conclude when TRICARE will cover rehabilitative therapies. That is, rehabilitative therapies shall be covered to improve, restore, or maintain function, or to minimize or prevent deterioration of function, of a patient when prescribed by a physician. The rehabilitative therapy must be medically necessary and appropriate, necessary to the establishment of a safe and effective maintenance program in connection with a specific medical condition, and not custodial care.

IV. Augmentative Communication Devices (ACD)/Speech Generating Device (SGD)

Section 702 of the NDAA–02, Pub. L. 107–107, provides that an ''augmentative communication device may be provided as a voice prosthesis'' under TRICARE. We propose a policy that is in line with the policy developed by the Centers for Medicare and Medicaid Services (CMS). We further propose using the same terminology used by Medicare when referring to this type of device—CMS refers to ''augmentative communication devices'' as ''speech generating devices''. In order to facilitate consistent terminology in the industry, we propose adopting the term ''speech generating device (SGD)''. In proposing this policy, we have also taken into consideration recommendations provided to us by the American Speech-Language-Hearing Association in defining this benefit.

V. Hearing Aids

Section 702 of the NDAA–02, Pub. L. 107–107, provides for coverage of a hearing aid if a family member of an active duty member has a ''profound'' hearing loss as determined under standards prescribed in regulations by the Secretary of Defense in consultation with the administering Secretaries. There is no industry standard or industry definition of ''profound'' hearing loss so we have developed one for TRICARE purposes and welcome comments regarding our proposed definition.

The policy proposed in this rule enhances current TRICARE coverage of hearing aids by: (1) Offering a hearing aid benefit via the TRICARE Basic Program to family members of an active duty member when the family member has a ''profound'' hearing loss; (2) differentiating hearing thresholds for adults and children; and, (3) revising the hearing threshold levels currently in TRICARE policy.

VI. Prosthetics

Section 702 of NDAA–02, Pub. L. 107–107, gives the Department the discretion to provide a prosthetic device that includes the following: (1) Any accessory or item of supply that is used in conjunction with the device for the purpose of achieving therapeutic benefit and proper functioning. (2) Services necessary to train the recipient of the device in the use of the device. (3) Repair of the device for normal wear and tear or damage. (4) Replacement of the device if the device is lost or irreparably damaged or the cost of repair would exceed 60 percent of the cost of replacement. (5) A prosthetic device customized for a patient may be provided under this section only by a prosthetic practitioner who is qualified to customize the device, as determined under regulations prescribed by the Secretary of Defense in consult with the other Secretaries.

TRICARE currently offers benefits for the above criteria 1, 2, 3, and 5. Regarding criterion (4), TRICARE currently allows for replacement when required due to growth or change in the patient's condition. Nonetheless, our policies will be revised to ensure consistency with the language found in section 702.

Regarding criterion 5, TRICARE has no specific provider requirements for a prosthetic practitioner to be qualified to customize the device. Rather, otherwise authorized providers currently provide prostheses and customization of prostheses. We are aware that CMS has established a Negotiated Rulemaking Committee on Special Payment Provisions and Requirements for Prosthetics and Certain Custom-Fabricated Orthotics. The purpose of this committee is to advise CMS on developing a proposed rule that would establish payment provisions and

requirements for providers of prostheses and custom-fabricated orthotics under the Medicare program. Once the Committee provides their findings, we will review them for consideration under the TRICARE program. In the meantime, we will continue to allow prostheses customization by otherwise authorized TRICARE providers.

This proposed rule also updates the definition of prosthetic device, and adds definitions for prosthetics and prosthetic supplies. This brings us in line with industry standards.

VII. Transitional Health Care

Section 736 of the NDAA–02, Pub. L. 107–107, makes permanent the authority for transitional health care benefits for certain members by deleting the expiration date that was in place for transitional health care benefits. Prior to Pub. L. 107–107, transitional health care benefits were to expire on December 31, 2001. Section 736 also extended coverage for either 60 or 120 days based on years of service to those eligible for transitional health care benefits. Further, it deleted coverage for dependents of those eligible for transitional coverage, but the Department of Defense created a demonstration project to include coverage for such dependents.

Section 706 of the National Defense Authorization Act for Fiscal Year 03 (NDAA–03) re-inserted transitional health care coverage benefits for dependents and deemed the provision to have been enacted as part of section 736 of the NDAA–02. Consequently, there is no need for this rule to include regulatory language addressing the removal of dependents from transitional health care coverage.

VIII. Regulatory Procedures

Section 801 of title 5, United States Code, and Executive Order 12866 requires certain regulatory assessments and procedures for any major rule or significant regulatory action, defined as one that would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This is not a major rule under 5 U.S.C. 801. It is a significant regulatory action but not economically significant, and has been reviewed by the Office of Management and Budget as required under the provisions of E. O. 12866. In addition, we certify that this proposed rule will not significantly affect a substantial number of small entities.

Paperwork Reduction Act

This rule, as written, imposes no burden as defined by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511). If, however, any program implemented under this rule causes such a burden to be imposed, approval thereof will be sought from the Office of Management and Budget in accordance with the Act, prior to implementation.

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.2(b) is proposed to be amended by revising the definitions of ''Durable medical equipment'', and ''Prosthetic device (prosthesis)'', by adding definitions of ''Augmentative Communication Device'', ''Profound hearing loss''; ''Prosthetic'', ''Prosthetic supplies'', ''Rehabilitative therapy'', and ''Speech generating device'' in alphabetical order to read as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

Augmentative communication device. See *Speech generating device.*

* * * * *

Durable medical equipment. Equipment for which the allowable charge is over $100 and which:

(1) Is medically necessary for the treatment of a covered illness or injury;

(2) Improves, restores, or maintains the function of a malformed, diseased, or injured body part, or can otherwise minimize or prevent the deterioration of the patient's function or condition;

(3) Can maximize the patient's function consistent with the patient's physiological or medical needs.

(4) Is primarily and customarily designed and intended to serve a medical purpose rather than primarily for transportation, comfort, or convenience.

(5) Can withstand repeated use;

(6) Provides the medically appropriate level of performance and quality for the medical condition present (that is, nonluxury or nondeluxe);

(7) Is other than spectacles, eyeglasses, contact lenses, or other optical devices, hearing aids (unless otherwise provided as a covered TRICARE benefit), or other communication devices (unless otherwise provided as a covered TRICARE benefit); and

(8) Is other than exercise equipment, spas, whirlpools, hot tubs, swimming pools or other such items.

* * * * *

Profound hearing loss (adults). An ''adult'' (a spouse as defined in section 199.3(b) of this part of a member of the Uniformed Services on active duty for 30 days) with a hearing threshold of:

(1) 40 dB HL or greater in one or both ears when tested at 500, 1,000, 1,500, 2,000, 3,000 or 4,000Hz; or

(2) 26 dB HL or greater in one or both ears at any three or more of those frequencies; or

(3) A speech recognition score less than 94 percent.

Profound hearing loss (children). A ''child'' (an unmarried child of an active duty member who otherwise meets the criteria (including age requirements) in section 199.3 of this part) with a 26dB or greater hearing threshold level in one or both ears when tested in the frequency range at 500, 1,000, 2,000, 3,000, or 4,000 Hz.

* * * * *

Prosthetic. Artificial legs, arms, and eyes.

Prosthetic device (prosthesis). Devices (other than a dental device) which replace all or part of an internal body organ (including contiguous tissue), or replace all or part of the function of a permanently inoperative or malfunctioning internal body organ are covered when furnished on a physician's order. Examples of prosthetic devices include cardiac pacemakers, breast prostheses (including a surgical brassiere) for post mastectomy patients, maxillofacial devices and devices which replace all or part of the ear or nose.

Prosthetic supplies. Supplies that are necessary for the effective use of a prosthetic device.

* * * * *

Rehabilitative therapy. Speech therapy, occupational therapy, and physical therapy to improve, restore, or maintain function, or to minimize or prevent deterioration of function, of a patient and prescribed by a physician.

* * * * *

Speech generating device. (1) Speech aids that provide an individual who has severe speech impairment with the ability to meet his functional speaking needs. Such devices are considered

prosthetic devices and are characterized by:

(i) Being a dedicated speech device, used solely by the individual who has severe speech impairment:

(ii) May have digitized speech output, using pre-recorded messages, less than or equal to 8 minutes recording time;

(iii) May have synthesized speech output, which requires message formulation by spelling and device access by physical contact with the device-direct selection techniques;

(iv) May have synthesized speech output, which permits multiple methods of message formulation and multiple methods of device access; or

(v) May be software that allows a laptop computer, desktop computer or personal digital assistant (PDA) to function as a speech generating device.

(2) Examples of devices that do not meet the above definition and are excluded from coverages as SGDs include, but are not limited to:

(i) Devices that are not dedicated speech devices, but are devices that are capable of running software for purposes other than for speech generation, *e.g.,* devices that can also run a word processing package, an accounting program, or perform other non-medical functions.

(ii) Laptop computers, desktop computers, or PDAs, which may be programmed to perform the same function as a speech generating device, are non-covered since they are not primarily medical in nature and do not meet the definition of prosthetic, prosthetic device, prosthetic supply, or durable medical equipment.

(iii) A device that is useful to someone without severe speech impairment is not considered an SGD.

* * * * *

3. Section 199.3 is proposed to be amended by revising paragraph (e) to read as follows:

§ 199.3 Eligibility.

* * * * *

(e) *Eligibility Under the Transitional Assistance Management Program (TAMP).* (1) Transitional health care benefits under TRICARE are authorized for the following eligibles:

(i) A member who is involuntarily separated from active duty and the dependents of the member.

(ii) A member of a reserve component who is separated from active duty to which called or ordered in support of a contingency operation if the active duty is active duty for a period of more than 30 days and the dependents of the member.

(iii) A member who is separated from active duty for which the member is involuntarily retained under 10 U.S.C. 12305, in support of a contingency operation and the dependents of the member.

(iv) A member who is separated from active duty pursuant to a voluntary agreement of the member to remain on active duty for a period of less than one year in support of a contingency operation and the dependents of the member.

(2) Time period of eligibility. Transitional health care shall be available for a specified period of time for members and dependents beginning on the date which the member is separated as follows:

(i) For members separated with less than 6 years of service, 60 days.

(ii) For members separated with 6 or more years of active service, 120 days.

* * * * *

4. Section 199.4 is proposed to be amended by revising paragraph (d)(3)(ii)(A), paragraph (d)(3)(vii), the text of paragraph (g)(41) preceding the note, paragraph (g)(47), paragraph (g)(51) and by adding new paragraph (e)(23), new paragraph (e)(24), and new paragraph (e)(25) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(d) * * *

(3) * * *

(ii) * * *

(A) Scope of benefit. Subject to the exceptions in paragraphs (B) and (C) below, only durable medical equipment (DME) which is ordered by a physician for the specific use of the beneficiary, and which complies with the definition of ''Durable Medical Equipment'' in Sec. 199.2 of this part, and which is not otherwise excluded by this Regulation qualifies as a Basic Program Benefit. In addition, any customization of durable medical equipment owned by the patient is authorized to be provided to the patient and any accessory or item of supply for any such authorized durable medical equipment, may be provided to the patient if the customization, accessory, or item of supply is essential for—

(1) Achieving therapeutic benefit for the patient

(2) Making the equipment serviceable; or

(3) Otherwise assuring the proper functioning of the equipment.

* * * * *

(vii) Prosthetics, prosthetic devices, and prosthetic supplies, as determined by the Secretary of Defense to be necessary because of significant conditions resulting from trauma, congenital anomalies, or disease. Additionally, the following are covered:

(A) Any accessory or item of supply that is used in conjunction with the device for the purpose of achieving therapeutic benefit and proper functioning;

(B) Services necessary to train the recipient of the device in the use of the device;

(C) Repair of the device for normal wear and tear or damage;

(D) Replacement of the device if the device is lost or irreparably damaged or the cost of repair would exceed 60 percent of the cost of replacement.

* * * * *

(e) * * *

(23) A speech generating device (SGD) as defined in § 199.2 of this part is covered as a voice prosthesis. The prosthesis provisions found in paragraph (d)(3)(vii) of this section apply.

(24) A hearing aid, but only for a dependent of a member of the uniformed services on active duty and only if the dependent has a profound hearing loss as defined in § 199.2 of this part. Medically necessary and appropriate services and supplies, including hearing examinations, required in connection with this hearing aid benefit are covered.

(25) Rehabilitation therapy as defined in § 199.2 of this part to improve, restore, or maintain function, or to minimize or prevent deterioration of function, of a patient when prescribed by a physician. The rehabilitation therapy must be medically necessary and appropriate, must be necessary to the establishment of a safe and effective maintenance program in connection with a specific medical condition, and must not be custodial care.

* * * * *

(g) * * *

(41) *Hair transplants, wigs, hair pieces, or cranial prosthesis.*

Note: * * *

* * * * *

(47) *Eye and hearing examinations.* Eye and hearing examinations except as specifically provided in paragraphs (c)(2)(xvi), (c)(3)(xi), and (e)(24) of this section, or except when rendered in connection with medical or surgical treatment of a covered illness or injury.

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(51) *Hearing aids.* Hearing aids or other auditory sensory enhancing devices, except those allowed in paragraph (e)(24) of this section.

* * * * *

4. Section 199.14 is proposed to be amended by redesignating paragraphs (k) through (n) as paragraphs (l) through (o) and adding a new paragraphs (k) to read as follows:

§ 199.14 Provider reimbursement methods.

* * * * *

(k) Reimbursement of Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS). Reimbursement of DMEPOS is based on the same amounts established under the Medicare DMEPOS fee schedule under 42 CFR part 414, subpart D.

* * * * *

Dated: April 9, 2003.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–9153 Filed 4–15–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–03–206]

RIN 1625–AA00

RIN 1625–AA11

Regulated Navigation Area and Safety Zone; Huntington Cleveland Harborfest and Parade of Sail, Cleveland Harbor, Cleveland, OH

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary regulated navigation area during the Huntington Cleveland Harborfest, and a moving safety zone for the Parade of Sail in the Port of Cleveland, Ohio. These regulations are necessary to manage vessel traffic and ensure the safety of both spectators and participant vessels. These regulations are intended to restrict vessel traffic from a portion of Lake Erie in the vicinity of Cleveland, Ohio.

DATES: Comments must reach the Coast Guard on or before May 10, 2003.

ADDRESSES: You may mail comments and related material to U.S. Coast Guard Marine Safety Office (MSO) Cleveland, 1055 East Ninth Street, Cleveland, Ohio, 44114. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and available for inspection or copying at MSO Cleveland between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Allen Turner, Chief, Port Operations Department, MSO Cleveland at (216) 937–0128.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD09–03–206), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please include a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not plan to hold a public meeting. But you may submit a request for a meeting by writing to MSO Cleveland at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

During Huntington Cleveland Harborfest, tall ships will moor in Cleveland Harbor at the Cleveland Port Authority and along Cleveland's Inner Harbor. A regulated navigation area (RNA) will be established inside Cleveland's break wall to protect those boarding the tall ships and spectator vessels from vessels transiting at excessive speeds creating large wakes, and also to prevent obstructed waterways.

A moving safety zone will be established around the Parade of Sail during the transit through Cleveland Harbor and Lake Erie in the vicinity of Cleveland, Ohio. A large number of spectator craft is expected which would result in congestion, the safety zone will ensure that spectator craft do not impede the path of the parade vessels.

Discussion of Proposed Rule

The RNA would be established from 12 p.m. on Wednesday, July 9, 2003, until 1 p.m. on Monday, July 14, 2003. The RNA would encompass all of Cleveland Harbor between a perpendicular line drawn from Dock 28 of Cleveland Port Authority across the breakwall; and a perpendicular line drawn from the northwestern edge of Burke Lake Front Airport across to the breakwall. Within the RNA, no vessel shall exceed 5 mph nor produce a wake. Any vessel within the RNA shall not pass within 50 feet of a moored tall ship. Any vessel within the RNA must adhere to the direction of the Captain of the Port or the on scene representative who will be the Patrol Commander.

On July 9, 2003, from 2 p.m. until the 8 p.m. the Parade of Sail, a moving safety zone would be established around all tall ships participating in the parade. The safety zone would extend 100 yards in all directions of each vessel officially participating in the parade. The parade will begin approximately 2 miles northwest of Cleveland Harbor inlet and pass through Cleveland Harbor via the main entrance channel. After coming through the main entrance, the parade will travel east down the inner harbor to the eastern end of the break wall and exit through the eastern inlet. The parade will turn around in Lake Erie east of the harbor, and then reenter the harbor through the eastern inlet of the break wall south of the original track. The safety zone will be in effect until the last vessel moors at approximately 8 p.m.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This determination is based on the short amount of time that vessels will be restricted from the zones, and the actual location of the safety zones within the waterways.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of commercial vessels intending to transit a portion of an activated safety zone.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: the proposed zone is only in effect for few hours on the day of the event. Vessel traffic can safely pass outside the proposed safety zone during the events. In cases where recreational boat traffic congestion is greater than expected and consequently obstructs shipping channels, commercial traffic may be allowed to pass through the safety zone with the permission of the Captain of the Port Cleveland. Before the effective period, the Coast Guard will issue maritime advisories to users who might be impacted through notification in the Ninth Coast Guard District Local Notice to Mariners, and through Marine Information Broadcasts. The Coast Guard has not received any reports from small entities negatively affected during previous similar events.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Cleveland (*see* **ADDRESSES.**)

Collection of Information

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

Federalism

We have analyzed this proposed rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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.

Energy Effects

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

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 32(g) of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. A written categorical exclusion determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

2. Add temporary § 165.T09–206 to read as follows:

§ 165.T09–206 Huntington Cleveland Harborfest and Parade of Sail.

(a) Regulated navigation area. (1) *Location.* All waters of Cleveland Harbor, including the Inner Harbor, encompassed by a line starting at 41°30′49.38″ N, 081°41′37.2″ W (northwest corner of Burke Lakefront Airport); then northwest to 41°31′1.2″ N, 081°41′49.2 W; then southwesterly following the breakwall to 41°30′41.4″ N, 081°42′25.2″ W; then southeasterly to 41°30′27″ N, 081°42′13.3 W (extending directly across the harbor from the northwestern corner of Dock 28 of the Cleveland Port Authority to the breakwall); then following the contours of the waterfront back to the point of origin including all portions of the Rock and Roll Museum inner harbor. All coordinates are North American Datum 1983.

(2) *Enforcement period.* This section is effective from 12 p.m. on Wednesday, July 9, 2003 through 1 p.m. on Monday, July 14, 2003. The section is effective during that same period.

(3) *Special regulations.* Vessels within the regulated navigation area (RNA) shall not exceed 5 miles per hour or shall proceed at no-wake speed, which ever is slower. Vessels within the RNA shall not pass within 20 feet of a moored tall ship. Vessels within the RNA must adhere to the direction of the Patrol Commander or other official patrol craft.

(b) *Safety zone.*—(1) *Location.* The following is a moving safety zone: All navigable waters and adjacent shoreline 100 yards ahead of the first official parade vessel, 50 yards abeam of each parade vessel, and 50 yards astern of the last vessel in the parade between the muster point at 41°31′30″ N, 081°45′00″ W until each official parade vessel is moored.

(2) *Enforcement period.* This section is effective from 12 p.m. on Wednesday, July 9, 2003 through 1 p.m. on Monday, July 14, 2003. Paragraph (b)(1) of this section will be enforced from 2 p.m. until 8 p.m. on Wednesday, July 9, 2003.

(c) *Regulations.* All vessel operators shall comply with the instructions of the U.S. Coast Guard Captain of the Port Cleveland or his on-scene representative which will be the Patrol Commander. Permission to deviate from the above rules must be obtained from the Captain of the Port or the Patrol Commander via VHF/FM radio, Channel 6 or by telephone at (216) 937–0111.

Dated: April 2, 2003.

Ronald F. Silva,

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

[FR Doc. 03–9358 Filed 4–15–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 275–0384b; FRL–7471–3]

Revisions to the California State Implementation Plan, Lake County Air Quality Control District and San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Lake County Air Quality Management District (LCAQMD) and San Diego County Air Pollution Control District (SDCAPCD) portions of the California State Implementation Plan (SIP). The LCAQMD and SDCAPCD revisions concern the emission of particulate matter (PM–10) from open burning. We are proposing to approve the local rules that regulate this emission source under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by May 16, 2003.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

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

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, (Mail Code 6102T), Room B–102, 1301 Constitution Avenue, NW., Washington, DC 20460.

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

Lake County Air Quality Management District, 885 Lakeport Boulevard, Lakeport, CA 95453.

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123.

A copy of a rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* This is not an EPA website and it may not contain the same version of the rule that was submitted to EPA. Readers should verify that the adoption date of the rule listed is the same as the rule submitted to EPA for approval and be aware that the official submittal is only available at the agency addresses listed above.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (Air–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

SUPPLEMENTARY INFORMATION: This proposal addresses the approval of local LCAQMD sections 226.5, 232.1, 238.5, 249.3, 250.5, 431.5, 431.7, 432.5, 433, 433.5, 436, and 436.5 and SDAPCD rule 101. This proposal also addresses the recision of SIP LCAQMD section 442 and SDCAPCD rules 101 through 112. In the rules section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second commend period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: March 5, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 03–9042 Filed 4–15–03; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[DC–T5–2003–01b; FRL–7483–7]

Clean Air Act Approval of Operating Permits Program Revision; District of Columbia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to maintain full approval of the title V operating permit program of the District of Columbia. In a notice of deficiency (NOD) published in the **Federal Register** on December 21, 2001 (66 FR 65947), EPA notified the District of Columbia of EPA's finding that the District's provisions for providing public notification of permitting actions did not fully comply with the requirements of the Clean Air Act (CAA) and its implementing regulations. On April 4, 2003, the District of Columbia submitted revisions to the public notification requirements of the operating permit program. The program revision adequately resolves the deficiency identified in the NOD and the District of Columbia maintains final full approval of the Clean Air Act title V operating permit program and this action proposes to approve the amendment. In the Final Rules section of this **Federal Register**, EPA is approving the District's operating permit program as a direct final rule without prior proposal because the Agency views this 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 adverse comments are received in response to this action, 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 proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by May 16, 2003.

ADDRESSES: Written comments should be mailed to Kristeen Gaffney, Acting Chief, Permits and Technical Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and District of Columbia Department of Public Health, Air Quality Division, 51 N Street, NE., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Paresh R. Pandya, (215) 814–2167, or by e-mail at *pandya.perry@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: April 9, 2003.

James W. Newsom,

Acting Regional Administrator, Region III.

[FR Doc. 03–9344 Filed 4–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0125; FRL–7302–3]

Indoxacarb; Proposed Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish a temporary tolerance for combined residues of Indoxacarb, (S)-methyl 7-chloro-2,5-dihydro-2-[[(methoxy carbonyl) [4-(trifluor omethoxy)phenyl]amino]carbonyl] indeno[1,2-e][1,3,4]oxadiazine-4a(3H)-carboxylate + its R-enantiomer [(R)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoro methoxy)phenyl]amino]carbonyl]indeno [1,2-e][1,3,4]oxadiazine-4a(3H)-carboxylate in or on peaches under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). This action is in response to university extension specialists, DuPont Crop Protection, and EPA's combined efforts to generate the information necessary for use of the reduced risk pesticide, Indoxacarb, on peaches for control of oriental fruit moth and plum cuculio. This proposed temporary tolerance supports a non-crop destruct experimental use permit (EUP) under section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of Indoxacarb on peaches in Georgia, Michigan, New Jersey, Pennsylvania, South Carolina, and West Virginia. This regulation proposes to establish a maximum permissible level for residues of Indoxacarb in this food commodity pursuant to section 408(e) of FFDCA, as amended by FQPA.

DATES: Comments, identified by docket ID number OPP–2003–0125, must be received on or before May 1, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Rita Kumar, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460–0001; telephone number: (703) 308–8291; e-mail address: kumar.rita@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS Code 111)
- Animal production (NAICS Code 112)
- Food manufacturing (NAICS Code 311)
- Pesticide manufacturing (NAICS Code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0125. 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 Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm.

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 ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not

included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0125. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2003–0125. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0125.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA., Attention: Docket ID Number OPP–2003–0125. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. 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 copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the proposed rule or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background and Statutory Findings

EPA, in cooperation with DuPont Crop Protection and university extension specialists, under section 408(e) of the FFDCA, 21 U.S.C. 346a, is proposing to establish a tolerance for combined residues of the insecticide Indoxacarb, in or on peaches at 10.0 parts per million (ppm). This action is in response to university extension specialists, DuPont, and EPA's combined efforts to generate the information necessary for registration of the reduced risk pesticide, Indoxacarb, on peaches for control of oriental fruit moth and plum curculio. This proposed temporary tolerance supports a non-crop destruct experimental use permit (EUP) under section 5 of FIFRA authorizing use of Indoxacarb on peaches in Georgia, Michigan, New Jersey, Pennsylvania, South Carolina, and West Virginia. Section 5 of FIFRA authorizes EPA to issue an experimental use permit for a pesticide. This provision was not amended by FQPA. EPA has established regulations governing such experimental use permits in 40 CFR part 172. Section 408(r) of FFDCA authorizes EPA to issue temporary tolerances for pesticide residues from FIFRA experimental use permits.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue * * *''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a tolerance for combined residues of Indoxacarb on peaches at 10.0 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by Indoxacarb are discussed in Table 1 of this unit as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies reviewed.

TABLE 1.— SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90–Day oral toxicity rodents	DPX-MP062 NOAEL = M 3.1 mg/kg/day F 2.1 mg/kg/day LOAEL = M 6.0 mg/kg/day, F 3.8 mg/kg/day based on decreased body weight, body weight gain, food consumption and food efficiency.
870.3150	90–Day oral toxicity in nonrodents	DPX-JW062 NOAEL = 5.0 mg/kg/day LOAEL = 19 mg/kg/day based on hemolytic anemia, as indicated by decrease in HGB, RBCs; increases in platelets, increased reticulocytes; and secondary histopathologic findings indicative of blood breakdown (pigment in Kupffer cells, renal tubular epithelium, and spleen and bone marrow macrophages); increase in splenic EMH; and RBC hyperplasia in bone marrow in dogs.
870.3200	21/28–Day dermal toxicity	DPX-MP062 NOAEL = 2,000 mg/kg/day LOAEL = >2,000 mg/kg/day in rats. DPX-MP062 NOAEL = 50 mg/kg/day LOAEL = 500 mg/kg/day based on decreased body weights, body weight gains, food consumption, and food efficiency in F*, and changes in hematology parameters (increased reticulocytes), the spleen (increased absolute and relative weight M* only, gross discoloration), clinical signs of toxicity in both sexes in rats.

TABLE 1.— SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.3700	Prenatal developmental in rodents	DPX-MP062 Maternal NOAEL = 2.0 mg/kg/day LOAEL = 4.0 mg/kg/day based on decreased mean body weights, body weight gains, food consumption. Developmental NOAEL = 2.0 mg/kg/day LOAEL = 4.0 mg/kg/day based on decreased fetal weights. DPX-JW062 Maternal NOAEL = 10 mg/kg/day LOAEL = 100 mg/kg/day based on mortality, clinical signs, and decreased mean body weights, body weight gains, and food consumption. Developmental NOAEL = 10 mg/kg/day LOAEL = 100 mg/kg/day based on decreased numbers of live fetuses/litter. DPX-JW062 Maternal NOAEL = 1.1 mg/kg/day LOAEL = 2.2 mg/kg/day based on decreased mean body weights, body weight gains, food consumption, and food efficiency. Developmental NOAEL = 1.1 kg/day LOAEL = 2.2 mg/kg/day based on decreased fetal body weights.
870.3700	Prenatal developmental in nonrodents	DPX-JW062 - rabbits Maternal NOAEL = 500 mg/kg/day LOAEL = 1,000 mg/kg/day based on slight decreases in maternal body weight gain and food consumption. Developmental NOAEL = 500 mg/kg/day LOAEL = 1,000 mg/kg/day based on decreased fetal body weights and reduced ossification of the sternebrae.
870.3800	Reproduction and fertility effects	DPX-JW062 Parental/Systemic NOAEL = 1.5 mg/kg/day LOAEL = 4.4 mg/kg/day based on decreased body weights, body weight gains, and food consumption of F_0 females, and increased spleen weights in the F_0 and F_1 females Reproductive NOAEL = 6.4 mg/kg/day LOAEL = 6.4 mg/kg/day Offspring NOAEL = 1.5 mg/kg/day LOAEL = 4.4 mg/kg/day based on decrease in the body weights of the F_1 pups during lactation.
870.4100	Chronic toxicity rodents	DPX-JW062 NOAEL = M 5, F 2.1 mg/kg/day LOAEL = M 10, F 3.6 mg/kg/day based on decr. body weight, body weight gain, and food consumption and food efficiency; decreased HCT, HGB and RBC at 6 months in F only. no evidence of carcinogenic potential
870.4100	Chronic toxicity dogs	DPX-JW062 NOAEL = M 2.3, F 2.4 mg/kg/day LOAEL = M 18, F 19 mg/kg/day based on decr. HCT, HGB and RBC; increased Heinz bodies and reticulocytes and associated secondary microscopic changes in the liver, kidneys, spleen, and bone marrow; increased absolute and relative liver weights.
870.4200	Carcinogenicity rats	DPX-JW062 see 870.4100. No evidence of carcinogenicity
870.4300	Carcinogenicity mice	DPX-JW062 NOAEL = M 2.6, F4.0 mg/kg/day LOAEL = M 14, F 20 mg/kg/day based on decreased body weight, body weight gain, and food efficiency and clinical signs indicative of neurotoxicity. No evidence of carcinogenicity
870.5100	Gene Mutation	DPX-MP062 strains TA97a, TA98, TA100 and TA1535 of *S. typhimurium* and strain WP2(uvrA) of *E. coli* were negative for mutagenic activity both with and without S9 activation for the concentration range 10–5,000 μg/plate DPX-JW062 strains TA97a, TA98, TA100 and TA1535 of *S. typhimurium* and strain WP2(uvrA) of *E. coli* were negative for mutagenic activity both with and without S9 activation for the concentration range 10–5,000 μg/plate.

TABLE 1.— SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.5300	Gene Mutation	DPX-MP062 negative for mutagenic activity for the following concentration ranges: 3.1–250 μg/mL (-S9); 3.1–250 μg/mL (+S9) DPX-JW062 negative for mutagenic activity for the following concentration ranges: Negative;100–1,000 μg/mL (-S9); 100–1,000 μg/mL (+S9), precipitate ≥1,000 μg/mL
870.5375	Cytogenetics	DPX-MP062 no evidence of chromosomal aberrations induced by the test article over background for the following concentration ranges: 15.7–1,000 μg/mL (±S9) DPX-JW062 no evidence of chromosomal aberrations induced by the test article over background for the following concentration ranges: 19–300 μg/mL (- S9), 19–150 μg/mL (+S9); partial insoluble and cytotoxicity ≥150 μg/mL
870.5395	Cytogenetics	DPX-MP062 no evidence of mutagenicity for the following dose ranges: 3,000–4,000 mg/kg - males; 1,000–2,000 mg/kg - females DPX-JW062 no evidence of mutagenicity at 2,500 or 5,000 mg/kg
870.5550	Other Effects	DPX-MP062 no evidence of mutagenic activity at the following concentration range: 1.56–200 μg/mL; cytotoxicity was seen at concentrations of ≥100 μg/mL DPX-JW062 No evidence of mutagenic activity at the following concentration range: 0.1–50 μg/mL, cytotoxicity observed at ≥50 μg/mL
870.6200	Acute neurotoxicity screening battery	DPX-MP062 NOAEL = M 100, F 12.5 mg/kg LOAEL = M 200 mg/kg based on decreased body weight gain, decreased food consumption, decreased forelimb grip strength, and decreased foot splay. F 50 mg/kg based on decreased body weight, body weight gain, and food consumption DPX-JW062 NOAEL= M > 2,000 mg/kg = F < 500 mg/kg LOAEL > M 2,000 mg/kg F < 500 mg/kg based on clinical signs, decreased body weight gains and food consumption, and FOB effects
870.6200	Subchronic neurotoxicity screening battery	DPX-MP062 NOAEL = M 0.57, F 0.68 mg/kg/day LOAEL = M 5.6, F 3.3 mg/kg/day based on decreased body weight and alopecia
870.7485	Metabolism and pharmacokinetics	Both DPX-MP062 and DPX-JW062 were extensively metabolized and the metabolites were eliminated in urine, feces, and bile. The metabolite profile for DPX-JW062 was dose dependent and varied quantitatively between males and females. Differences in metabolite profiles were also observed for the different label positions (indanone and trifluoromethoxyphenyl rings). All biliary metabolites undergo further biotransformation in the gut. The proposed metabolic pathway for both DPX-MP062 and DPX-JW062 has multiple metabolites bearing one of the two ring structures (see 870–4100 chronic toxicity rodents above).

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor (SF).

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently

used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (*e.g.,* risk is expressed as 1 x 10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for Indoxacarb used for human risk assessment is shown in Table 2 of this unit:

TABLE 2.— SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR INDOXACARB FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary (females 13–50 years of age)	NOAEL = 2.0 mg/kg/day UF = 100 Acute RfD = 0.02 mg/kg	FQPA SF = 1 aPAD = acute RfD÷FQPA SF = 0.02 mg/kg/day	Developmental rat toxicity study. developmental LOAEL = 4.0 mg/kg/day based on decreased fetal body weight.
Acute Dietary general population including infants and children	NOAEL = 12.5 mg/kg UF = 100 Acute RfD = 0.12 mg/kg	FQPA SF = 1 aPAD = acute RfD÷FQPA SF = 0.12 mg/kg/day	Acute oral rat neurotoxicity study. LOAEL = 50 mg/kg based on decreased body weight and body weight gain in females.
Chronic Dietary all populations	NOAEL = 2.0 mg/kg/day UF = 100 Chronic RfD = 0.02 mg/kg/day	FQPA SF = 1 cPAD = chronic RfD÷FQPA SF = 0.02 mg/kg/day	90–day rat subchronic toxicity study, 90–day rat neurotoxicity study, chronic/carcinogenicity rat study. LOAEL = 3.3 mg/kg/day based on decreased body weight, alopecia, body weight gain, food consumption and food efficiency; decreased hematocrit, hemoglobin and red blood cells only at 6 months. 3.3 mg/kg/day is the lowest LOAEL of the three studies.
Short-Term Oral (1–7 days) (Residential)	oral study NOAEL= 2.0 mg/kg/day	LOC for MOE = 100 (Residential, includes the FQPA SF)	Developmental rat toxicity study. Maternal LOAEL = 4.0 mg/kg/day based on decreased mean maternal body weights, body weight gains, and food consumption.
Intermediate-Term Oral (1 week - several months) (Residential)	oral study NOAEL= 2.0 mg/kg/day	LOC for MOE = 100 (Residential, includes the FQPA SF)	90–day rat subchronic toxicity study. LOAEL = 3.8 mg/kg/day based on decreased body weight, body weight gain, food consumption and food efficiency.
Short- (1–7 days), Intermediate- (1 week - several months), and Long-(several months - lifetime) Term Dermal (Occupational/Residential)	dermal study NOAEL= 50 mg/kg/day	LOC for MOE = 100 (Occupational) LOC for MOE = 100 (Residential, includes the FQPA SF)	28–day rat dermal toxicity study. LOAEL = 500 mg/kg/day based on decreased body weights, body weight gains, food consumption, and food efficiency in females, and changes in hematology parameters (increased reticulocytes), the spleen (increased absolute and relative weight males only, gross discoloration), and clinical signs of toxicity in both sexes.
Short-Term Inhalation (1–7 days) (Occupational/ Residential)	oral study NOAEL= 2.0 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Occupational) LOC for MOE = 100 (Residential, includes the FQPA SF)	Rat developmental toxicity study. Maternal LOAEL = 4.0 mg/kg/day based on decreased mean maternal body weights, body weight gains, and food consumption.
Intermediate-Term Inhalation (1 week - several months) (Occupational/Residential)	oral study NOAEL= 2.0 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Occupational) LOC for MOE = 100 (Residential, includes the FQPA SF)	90–day rat subchronic toxicity study. LOAEL = 3.8 mg/kg/day based on decreased body weight, body weight gain, food consumption and food efficiency.
Long-Term Inhalation (several months - lifetime) (Occupational/Residential)	oral study NOAEL= 2.0 mg/kg/day (inhalation absorption rate =100%)	LOC for MOE = 100 (Occupational) LOC for MOE = 100 (Residential, includes the FQPA SF)	90–day rat subchronic toxicity study, 90–day rat neurotoxicity study, chronic/carcinogenicity rat study. LOAEL = 3.3 mg/kg/day based on decreased body weight, body weight gain, food consumption and food efficiency; decreased hematocrit, hemoglobin and red blood cells only at 6 months.

TABLE 2.— SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR INDOXACARB FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Cancer (oral, dermal, inhalation)	''not likely'' to be carcinogenic to humans	N/A	no evidence of carcinogenicity in either the rat or mouse in acceptable carcinogenicity studies and no evidence of mutagenicity.

* The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.564) for the combined residues of Indoxacarb, in or on a variety of raw agricultural commodities. Including tolerances already established for: alfalfa, forage at 10 ppm; alfalfa, hay at 50 ppm; apple at 1.0 ppm; apple, wet pomace at 3.0 ppm; brassica, head and stem, subgroup at 5.0 ppm; cattle, goat, horse, sheep, and hog fat at 1.5 ppm; cattle, goat, horse, sheep, and hog meat at 0.05 ppm; cattle, goat, horse, sheep , and hog meat byproducts at 0.03 ppm; corn, sweet, forage at 10 ppm; corn, sweet, kernel plus cob with husk removed at 0.02 ppm; corn, sweet stover at 15 ppm; cotton gin byproducts at 15 ppm; cotton, undelinted seed at 2.0 ppm; lettuce, head at 4.0 ppm; lettuce, head at 5.0 ppm; lettuce, leaf at 10.0 ppm; milk at 0.15 ppm; and milk, fat at 4.0 ppm; peanut at 0.01 ppm; peanut, hay at 40 ppm; pear at 0.20 ppm; potato at 0.01 ppm; soybean, seed at 0.8 ppm; soybean, aspirated grain fractions at 45 ppm; and vegetables, fruiting, group at 0.50 ppm. Risk assessments were conducted by EPA to assess dietary exposures from Indoxacarb in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Dietary Exposure Evaluation Model (DEEM®) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: An acute Tier 2 (partially refined analysis) dietary assessment was performed with use of anticipated residues (ARs) from field trial data, processing factors (where applicable), and assumed 100% crop treated (CT) for all crops. ARs for meat, milk, poultry, and eggs (MMPE) raw agricultural commodities (RACs) were calculated also.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the DEEM® analysis evaluated the individual food consumption as reported by respondents in the USDA1989–1992 nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Chronic exposure estimates are expressed in mg/kg bw/day and as a percent of the cPAD. The chronic dietary assessment assumed tolerance level residues, DEEM® default processing factors, assumed 100% CT for all crops other than peaches, and 1% CT for the peach EUP (300 acres)(Tier 1).

iii. *Cancer.* There is no evidence for mutagenicity and there is no evidence of carcinogenicity in either the rat or mouse. Indoxacarb has been classified as ''not likely to be carcinogenic in humans'' by the Agency; therefore, no carcinogenic dietary risk analysis was performed.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E) of the FFDCA, EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) of the FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of the FFDCA, EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows:

Dietary exposure estimates were based on 1% PCT for peaches. This PCT of 1% was based on the fact that the 2–year experimental use permit was issued for only 300 acres of peaches to be treated annually, which amounts to 0.2% of the total peach acreage in the United States. The reason for using 1% instead of 0.2% is to allow for any uncertainties in the residue evaluation. Before making this tolerance permanent, reevaluation of dietary exposure will be performed using all available information. Other commodities were assumed to be 100% treated.

The Agency believes that the three conditions previously discussed have been met. With respect to Condition 1, EPA finds that the PCT information described 1% for Indoxacarb used on peaches is reliable and has a valid basis. A 2–year EUP has been issued for this use, which will allow for use of Indoxacarb on 300 acres of peaches in some eastern states. Before the use can be expanded for treatment of greater than 300 acres per year, permission from the Agency must be obtained. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk

assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which Indoxacarb may be applied in a particular area.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for Indoxacarb in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of Indoxacarb.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/ Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and SCI-GROW (screening concentration in ground water), which predicts pesticide concentrations in groundwater. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/ EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a percent reference dose (%RfD) or percent population adjusted dose (%PAD). Instead, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to Indoxacarb they are further discussed in the aggregate risk sections below.

Based on the PRZM/EXAMS and SCI-GROW models the estimated environmental concentrations (EECs) of Indoxacarb for acute exposures are estimated to be 13.7 parts per billion (ppb) for surface water and 0.02 ppb for ground water. The EECs for chronic exposures are estimated to be 3.7 ppb for surface water and 0.02 ppb for ground water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Indoxacarb is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether Indoxacarb has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, Indoxacarb does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that Indoxacarb has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity*. There is no evidence for either qualitative or quantitative susceptibility. In all developmental studies, the developmental endpoint occurs at the maternal LOAEL or above. Although there is no rabbit developmental toxicity study with indoxacarb, a study is not required since: (1) studies both using methyl cellulose comparing JW062 in the rabbit and rat demonstrate that the toxicity profiles for the rat and rabbit are similar and that the rat is the more sensitive species; (2) range finding studies in the rat comparing indoxacarb and JW062 indicate that the maternal and external developmental toxicity are comparable; (3) a dietary developmental toxicity study in the rat with JW062 had comparable toxicity to the gavage indoxacarb rat developmental toxicity study. Developmental toxicity only occurred at levels at or above maternal toxicity.

The reproduction toxicity study with JW062 can be used to satisfy the requirement for an indoxacarb study because: 1) systemic toxicity is at similar doses and of similar magnitude to that observed in subchronic feeding studies with both indoxacarb and JW062; 2) based on the data base, the HIARC determined that there was support for using data from dietary studies conducted with JW062 to satisfy the data requirements for indoxacarb.

The Agency has required a developmental neurotoxicity study as confirmatory data due to:

- Clinical signs of neurotoxicity in several studies, males and females, mice and rats, at some doses that do not cause mortality;
- Signs of neurotoxicity in the acute neurotoxicity study rat with indoxacarb (males and females), no mortality in males at neurotoxic doses;

- Clinical signs of neurotoxicity in the 90–day toxicity study rat indoxacarb (females), mortality;
- Clinical signs of neurotoxicity in the 90–day toxicity study mouse with the racemic mixture, JW062 (males and females), no mortality in females at neurotoxic doses, mortality in males;
- Clinical signs of neurotoxicity in the 18 month carcinogenicity study mouse with JW062 (males and females) high and mid dose, mortality at the high but no mortality at the mid dose; and
- Clinical signs of neurotoxicity in the developmental toxicity study rat with JW062 (using methyl cellulose as the vehicle), at doses causing mortality.

3. *Conclusion*. The Agency concluded that the FQPA safety factor could be reducecd to 1X for Indoxacarb because:

- There is no indication of quantitative or qualitative increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure;
- The requirement of a developmental neurotoxicity study is not based on the criteria reflecting special concern for the developing fetuses or young which are generally used for requiring a DNT study - and a safety factor (*e.g.*: neuropathy in adult animals; CNS malformations following prenatal exposure; brain weight or sexual maturation changes in offspring; and/or functional changes in offspring) - and therefore does not warrant an FQPA safety factor; and
- The dietary (food and drinking water) exposure assessments will not underestimate the potential exposures for infants and children
- There are no registered residential uses at the current time.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates drinking water level of comparison (DWLOCs) which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water [*e.g.,* allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure)]. This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to Indoxacarb will occupy 12% of the aPAD for the U.S. population, 69% of the aPAD for females 13 years and older, 67% of the aPAD for infants less than 1 year old and 36% of the aPAD for children 1 to 2 years old. In addition, there is potential for acute dietary exposure to Indoxacarb in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPad, as shown in Table 3 of this unit:

TABLE 3.— AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO INDOXACARB

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
U.S. Population	0.12	7	13.7	0.02	3,700
Females 13 +	0.02	69	13.7	0.02	180
All infants less than 1 year	0.12	67	13.7	0.02	400
Children 1 to 2	0.12	36	13.7	0.02	760

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to Indoxacarb from food will utilize 30% of the cPAD for the U.S. population, 29% of the cPAD for infants less than 1 year old and 79% of the cPAD for children 1 to 2 years old. There are no residential uses for Indoxacarb that result in chronic residential exposure to Indoxacarb. Based the use pattern, chronic residential exposure to residues of Indoxacarb is not expected. In addition, there is potential for chronic dietary exposure to Indoxacarb in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 4 of this unit:

TABLE 4.— AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON- CANCER) EXPOSURE TO INDOXACARB

Population Subgroup	cPAD mg/ kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.02	30	3.7	0.02	490
All infants less than 1 year old	0.02	29	3.7	0.02	140
Children 1 to 2	0.02	79	3.7	0.02	43

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Indoxacarb is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Indoxacarb is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population*. There is no evidence for mutagenicity and there is no evidence of carcinogenicity in either the rat or mouse. Indoxacarb has been classified as ''not likely to be carcinogenic in humans'' by the Agency; therefore, Indoxacarb is not expected to pose carcinogenic risk when used as directed.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to Indoxacarb residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (high performance liquid chromatography HPLC/UV Method AMR 2712–93) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: *furlow.calvin@epa.gov.*

B. International Residue Limits

There are no established or proposed Codex, Canadian, or Mexican maximum residue limits (MRLs) for residues of indoxacarb; therefore, international harmonization is not an issue at this time.

V. Conclusion

A 15–day comment period is being allowed for this proposed rule because of the speed of growth and the pest pressure, and the Agency's desire to be suportive of efforts by peach growers and researchers to find alternatives to organophosphates for control of oriental fruit moth and plum curculio in peaches. Additionally, the Agency feels that there is strong evidence in support of the safety of this proposed action.

Therefore, a temporary tolerance for 3 years is proposed for combined residues of Indoxacarb, (S)-methyl 7-chloro-2,5-dihydro-2-[[(methoxy carbonyl) [4-(trifluoromethoxy)phenyl] amino]carbonyl] indeno[1,2-e][1,3,4]oxadiazine-4a(3H)-carboxylate + its R-enantiomer] (R)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoro methoxy)phenyl]amino]carbonyl]indeno [1,2-e][1,3,4]oxadiazine-4a(3H)-carboxylate in peaches at 10.0 ppm.

VI. Statutory and Executive Order Reviews

This proposed rule is establishing a tolerance under section 408(d) of the FFDCA. EPA is proposing this regulation in cooperation with Research Extension Specialists at the University of Georgia, Rutgers University, Clemson University, Pennsylvania State University, Michigan State University, University of West Virginia, and DuPont de Nemours and Company. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to 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). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the tolerance in this proposed rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is

defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this proposed rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This proposed rule 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. Thus, Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 10, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

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Notices

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket No. 03–001–4]

Declaration of Extraordinary Emergency in New Mexico and Texas Because of Exotic Newcastle Disease

Exotic Newcastle disease (END) has been confirmed in the State of Texas, near the Texas-New Mexico border. The disease has been confirmed in backyard poultry, which are raised on private premises for hobby, exhibition, and personal consumption. Previously, END had been confirmed in the States of Arizona, California, and Nevada. The Secretary of Agriculture signed a declaration of extraordinary emergency with respect to END in California on January 6, 2003 (see 68 FR 1432, Docket No. 03–001–1, published January 10, 2003), a second declaration of extraordinary emergency with respect to END in Nevada on January 17, 2003 (see 68 FR 3507, Docket No. 03–001–2, published January 24, 2003), and a third declaration of extraordinary emergency with respect to END in Arizona on February 7, 2003 (see 68 FR 7338, Docket No. 03–001–3, published February 13, 2003).

END is a contagious and fatal viral disease affecting domestic, wild, and caged poultry and birds. It is one of the most infectious diseases of poultry in the world, and is so virulent that many birds die without showing any clinical signs. A death rate of almost 100 percent can occur in unvaccinated poultry flocks. END can infect and cause death even in vaccinated poultry. This disease in poultry and birds is characterized by respiratory signs accompanied by nervous manifestations, gastrointestinal lesions, and swelling of the head.

END is spread primarily through direct contact between healthy birds or poultry and the bodily discharges of infected birds or poultry. Within an infected flock, END is transmitted by direct contact, contaminated feeding and watering equipment, and aerosols produced by coughing, gasping, and other respiratory disturbances. Dissemination between flocks over long distances is often due to movement of contaminated equipment and service personnel, such as vaccination crews. Movement of carrier birds and those in an incubating stage accounts for most of the outbreaks in the pet bird industry.

The existence of END in Texas near the Texas-New Mexico border represents a threat to the U.S. poultry and bird industries. It constitutes a real danger to the national economy and a potential serious burden on interstate and foreign commerce. The United States Department of Agriculture (the Department) has reviewed the measures being taken by New Mexico and Texas to control and eradicate END and has consulted with the appropriate State Government and Indian tribal officials in New Mexico and Texas. Based on such review and consultation, the Department has determined that the measures being taken by the States are inadequate to control or eradicate END. Therefore, the Department has determined that an extraordinary emergency exists in New Mexico and Texas because of END.

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

Effective Date: declaration of extraordinary emergency shall become effective April 10, 2003.

Ann M. Veneman,

Secretary of Agriculture.

[FR Doc. 03–9321 Filed 4–15–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 01–040N]

Announcement of and Request for Comment on FSIS' Tentative Determinations on the Availability of *Salmonella* Test Results

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing its intention to make publicly available the results of its testing for *Salmonella* on livestock and poultry carcasses and in raw ground meat and poultry products. The Agency also intends to post the results of all completed sampling sets on its Web site. FSIS conducts the *Salmonella* testing as part of its Hazard Analysis and Critical Control Point (HACCP) verification activities. FSIS is acting in response to a petition submitted by the Center for Science in the Public Interest, suggestions made by meat and poultry processors, and suggestions made by the National Advisory Committee on Microbiological Criteria for Foods (NACMCF).

DATES: Comments must be received on or before May 16, 2003.

ADDRESSES: Please submit one original and two copies of written comments to the FSIS Docket Room, Docket No. 01–040N, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 112 Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. Comments may also be submitted via facsimile at (202) 205–0381. All comments received in response to this notice will be considered part of the public record, and will be available for viewing in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Daniel Engeljohn, Ph.D, Acting Assistant Deputy Administrator for Policy Analysis and Formulation, Office of Policy and Program Development, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700; (202) 205–0495.

SUPPLEMENTARY INFORMATION:

Introduction

On July 25, 1996, FSIS published a final rule in the **Federal Register** entitled, ''Pathogen Reduction; Hazard Analysis and Critical Control Point (PR/HACCP) Systems'' (61 FR 38806). This rule established, among other things, pathogen reduction performance standards for *Salmonella* that establishments slaughtering livestock and poultry and producing raw ground meat and poultry products must meet. FSIS conducts an ongoing testing program to determine compliance with these *Salmonella* performance standards for classes of livestock and poultry products.

FSIS has received a petition from the Center for Science in the Public Interest (CSPI) requesting that FSIS post on its website all plant-specific test results for *Salmonella* in carcasses and raw ground meat and poultry products, and that FSIS post such test results in a timely and relevant manner as they become available. CSPI contends that consumers could use plant-specific *Salmonella* results posted on the FSIS website to determine whether individual establishments are meeting the *Salmonella* performance standard and could make informed purchasing decisions on the basis of that information.

In addition, numerous establishments and industry associations have advised the Agency that it would be very valuable for them to receive the results of each sample as the Agency finishes its analysis during the course of a *Salmonella* set. Timely receipt of this information, the establishments say, will enable them to more readily associate the results with the conditions in their plants at the time the samples were taken and will facilitate corrections and improvements in their operations.

FSIS has determined that, if it makes the results available to establishments on a sample-by-sample basis, the agency will not be able to protect the confidentiality of the results until the conclusion of the collection and testing of full sample sets, as is currently the case. The industry representatives have stated that the opportunities created by having the results available on a timely basis outweigh any disadvantages of the information being publicly available. The NACMCF has expressed similar views.

Based on its consideration of the petition, the NACMCF's recommendation, and its contacts with industry, FSIS is announcing its intention to modify its handling of *Salmonella* testing results. The Agency requests comment on its plans.

Background

The Salmonella Performance Standards for Raw Meat and Poultry

In 9 CFR 310.25(b) and 381.94(b), FSIS has set out performance standards for the prevalence of *Salmonella* in livestock and poultry carcasses and raw ground meat and poultry products. FSIS samples and tests raw meat and poultry products in individual establishments to determine the prevalence of *Salmonella* in the products and to determine compliance with the *Salmonella* performance standards.

Prior to December 2001, FSIS used the sample results to directly enforce the performance standards in 9 CFR 310.25(b)(iii)(3) and 381.94(b)(iii)(3). These regulations state that failure to meet the performance standard in three consecutives tests ''constitutes failure to maintain sanitary conditions and failure to maintain an adequate HACCP plan.'' The Agency stated that it would suspend inspection as a result of such a failure because it would not be able to find that the product of an establishment that had failed three sets in a row was not adulterated.

A decision in early December 2001 by the U.S. Court of Appeals for the Fifth Circuit in *Supreme Beef Processors, Inc.* v. *USDA,* however, limited FSIS' ability to directly enforce the *Salmonella* performance standards in grinding operations. Based on the court's decision, a grinding operation's failure to meet a *Salmonella* performance standard is not in and of itself a noncompliance. However, the failure may be an indicator of noncompliances in aspects of the establishment's total food safety program, such as Sanitation Standard Operating Procedures (Sanitation SOPs) and HACCP plans. Thus, FSIS now uses sample set failures as an indication that there is something wrong in the establishment's HACCP system, and that the system needs to be carefully evaluated by the Agency. However, FSIS does not initiate enforcement actions based on individual *Salmonella* testing results. In addition to the *Salmonella* set failures, FSIS uses other pertinent information in its evaluation of an establishment's HACCP system. This information includes, but is not limited to, summary reports compiled from the evaluations of reviews of the establishment's SSOPs, prerequisite and good manufacturing programs, and HACCP plans by the consumer safety officer or food safety assessment team; documentation of observations and verification activities of in-plant inspection personnel; and generic *E. coli* and other microbial test results.

Public Release of Test Results and the Freedom of Information Act

The Agency held public meetings on March 6 and December 16, 1997, to inform industry constituents and consumer advocates that FSIS would send individual establishments the results of testing on their own product upon completion of the full sample sets, and that plant-specific results would be released to the public in accordance with the provisions of the Freedom of Information Act (FOIA) (5 U.S.C. § 552).[1] At the December 16, 1997, public meeting, FSIS presented an issue paper entitled, ''Public Release of *Salmonella* Testing Results,'' which outlined the Agency's position.[2] On April 2, 1998, FSIS published this issue paper in the **Federal Register** (63 FR 16245).[3] In this paper, FSIS stated that it planned to ''publish annually a report on the *Salmonella* testing program.'' Since then, FSIS has made the Agency's *Salmonella* test results available on the Web site through a progress report: *http://www.fsis.usda.gov/FOIA/popular.htm.* In this report, FSIS provides *Salmonella* testing results on an aggregate basis for large, small, and very small plants; the percent of products that have tested positive for *Salmonella*; and the prevalence of *Salmonella* with each product category. Prevalence, for the purposes of the FSIS HACCP verification activity, is not a statistical representation of the true presence of *Salmonella* in product. FSIS conducts statistically-based baseline

[1] Transcript of Proceedings, HACCP Implementation Meeting; Washington, DC, December 16, 1997, page 152–153. This document is available for review in the FSIS Docket Room Monday through Friday from 8:30 a.m. until 4:30 p.m. The document may also be accessed via the World Wide Web at *www.fsis.usda.gov/FOIA/popular.htm* as a related document under the Notices and Directives, and Federal Register Publications section. Transcript of Proceedings, Publication of Salmonella Testing Data; Washington, DC, March 6, 1997, page 3. This document is also available for review in the FSIS Docket Room Monday through Friday from 8:30 a.m. until 4:30 p.m. This document may also be accessed via the World Wide Web at *www.fsis.usda.gov/FOIA/popular.htm* as a related document under the Notices and Directives, and Federal Register Publications section.

[2] Transcript of Proceedings, HACCP Implementation Meeting; December 16, 1997, Washington, DC, page 151–153.

[3] Notice, Pathogen Reduction Performance Standards: Salmonella Testing Data, 63 FR 16243–16245, April 2, 1998. This document is available for review in the FSIS Docket Room Monday through Friday from 8:30 a.m. until 4:30 p.m. This document may also be accessed via the World Wide Web at *www.fsis.usda.gov/FOIA/popular.htm* under the Notices and Directives, and Federal Register Publications section.

studies to determine the true prevalence of microorganisms, including *Salmonella*.

FSIS has considered the *Salmonella* test results as information for use by the Agency in its deliberative process on how best to proceed with respect to the establishment involved. Predecisional information can be exempted from disclosure under the FOIA (5 U.S.C. 552(b)(5)). Accordingly, FSIS has not disclosed plant-specific testing results until the set was complete.

The FOIA requires that federal agencies make certain information that is released under the FOIA available to the public in electronic format and by computer telecommunications (5 U.S.C. 552(a)(2)). In response to legislative amendments to the FOIA (E–FOIA), on July 28, 2000, the U.S. Department of Agriculture published a final rule, ''USDA Freedom of Information Act Regulations'' (65 FR 46335), in which the Department adopted regulations governing the electronic release of information requested under FOIA. Significant in consideration of the CSPI petition is that these regulations provide that one reason to release information requested under FOIA electronically is that ''it has become or is likely to become the subject of subsequent requests for substantially the same records.'' *Salmonella* testing results have been, and continue to be, requested in significant numbers.

Recommendations From the National Advisory Committee on Microbiological Criteria for Foods

On October 8, 2002, the National Advisory Committee on Microbiological Criteria for Foods (NACMCF) made final a report that recommended that the data from the *Salmonella* performance standard program be made public, so as to provide guidance to industry in order that commercial operations may assess their process control.[4] The Committee points out that, when HACCP systems and other prerequisite programs in ground beef operations are adequate and verified, the measurement of *Salmonella* reflects the total process control, particularly the microbial conditions of raw material. The report also states that the information would be helpful in meeting the *Salmonella* performance standards. In addition, the report recommends that the *Salmonella* test results be made available to each establishment as they become available to facilitate Continuous Improvement Programs. Finally, the report states that making *Salmonella* data that is suitably codified to protect proprietary information available to the public, to the extent possible, should lead to generation of additional data and increased knowledge of the many facets influencing control of enteric pathogens on raw meat and poultry.

The CSPI Petition

As mentioned above, FSIS received a petition dated October 1, 2001, from CSPI requesting that FSIS post on its website all plant-specific test results for *Salmonella* in carcasses and raw ground meat and poultry products, and that FSIS continue to post such test results in a timely and relevant manner as they become available. According to CSPI, consumers could use plant-specific *Salmonella* results posted on the FSIS website to determine whether individual establishments are meeting the *Salmonella* performance standard and could make informed purchasing decisions on the basis of that information.

The petition states that the presence of *Salmonella* positives above the performance standard is an indication that the plant's system for controlling contamination is not working. Therefore, according to CSPI, posting the individual establishment test results on the web would encourage establishments to improve their sanitation procedures because consumers would be less likely to purchase products made by facilities that repeatedly exceed standards. Additionally, the petition states that posting test results on the FSIS Web site could benefit Federal and state health officials in their efforts to track the cause of food poisoning outbreaks and to identify contamination trends based on product type, plant geographical location, and seasonality. The petition also states that posting plant-specific *Salmonella* test results on the FSIS Web site would be consistent with the USDA's implementing regulations for FOIA. Quoting a House of Representatives report, the petitioner states that one of the purposes of the FOIA provisions requiring electronic release of information is to improve public access to agency records and information.

Industry and Consumer Advocate Comments and Concerns

Before and during the March 6, 1997, public meeting referred to above, many industry representatives raised concerns regarding posting *Salmonella* testing results on the World Wide Web. Some of their concerns were based on the assumption that foreign countries who do not monitor their own products, nor have equivalent process controls established to determine whether *Salmonella* is present on meat and poultry products, could use the *Salmonella* data to discriminate against U.S. product. They argued that use of the data could lead to the following results: (1) A negative impact on U.S. companies' efforts to secure markets and fair prices internationally; (2) use of the data by foreign governments as a pretext for imposing non-tariff barriers against U.S. product and to protect their own domestic industry; and (3) discrimination against specific U.S. products and establishments by foreign buyers if an establishment received positive *Salmonella* test results. In addition, they stated that the context in which the *Salmonella* testing results would be presented would also have an impact on the aforementioned effects.

At the same public meeting, consumer advocates favored publication of plant-specific *Salmonella* data along with the plant name, location, and product line.[5] They stated that progressive companies would want the results of their *Salmonella* tests known, and that the public is sophisticated enough to accept the fact that there are going to be positive *Salmonella* test results on some raw product.[6]

On the other hand, during the December 16, 1997, meeting, an industry representative opined that, ''it would be beneficial for plants to have the Salmonella data as it was collected so if a trend was developing, the plant could take some corrective action before the whole series was out.''[7]

In the five years that have followed, the concerns expressed by industry about foreign reaction to specific *Salmonella* results have not materialized. However, through numerous informal communications and at scheduled meetings, the Agency has received industry input that correlates with the last comment cited and with the NACMCF's recommendations.

[4] Final Response, NACMCF Final Response to the Questions Posed by FSIS regarding Performance Standards with Particular Reference to Ground Beef Products, Washington, DC, October 8, 2002. This document is available for review in the FSIS Docket Room Monday through Friday from 8:30 a.m. until 4:30 p.m. This document may also be accessed via the World Wide Web at *www.fsis.usda.gov/FOIA/popular.htm.*

[5] Transcript of Proceedings, Publication of Salmonella Testing Data; Washington, DC, March 6, 1997, page 75.

[6] Transcript of Proceedings, Publication of Salmonella Testing Data; Washington, DC, March 6, 1997, pages 70–72.

[7] Transcript of Proceedings, HACCP Implementation Meeting; December 16, 1997, Washington, DC, page 153.

Availability of FSIS' Salmonella Testing Program's Results

FSIS now agrees with CSPI and NACMCF that release of the *Salmonella* data as sample results are obtained, rather than at the completion of a full sample set, could lead to the generation of data and information that could be used to sort out which, if any, of the many factors that could influence control of enteric pathogens on raw meat and poultry is actually doing so. FSIS also agrees that providing *Salmonella* data to industry as test results are obtained will allow commercial operations to assess their process control more effectively.

Tentative Determinations

In light of the foregoing, FSIS intends to release *Salmonella* testing results to individual establishments as they become available and before the conclusion of the collection and testing of full sample sets. Receiving this information in this way should allow establishments to more readily identify their process control deficiencies and assess the relative efficacy of their process controls.

The Office of Public Health and Science (OPHS), Laboratory Sample Data Management Staff (LSDMS), has developed a double-folded mechanism to forward *Salmonella* testing results to individual establishments as they become available. First, all *Salmonella* testing results will be available via FSIS' Laboratory Electronic Application for Results Notification (LEARN) system. By maneuvering through the components of this electronic program, an inspector can copy the applicable page and forward it to an establishment's management official as ''notification'' as instructed by the contents of the LEARN directive—10,200.1. In addition, an establishment can elect to provide OPHS, LSDMS, with an e-mail address, and the establishment's *Salmonella* testing results will be e-mailed to them as they are entered into its internal database. If an individual requests *Salmonella* testing data for an establishment, FSIS intends to respond to the request in turn, generally providing the specific existent information requested. Once a sample set is concluded, FSIS will post the results on its Web site on an aggregate basis (*e.g.*, results will be identifiable only by the establishments' state and district locations). As sample sets continue to be collected and tested, FSIS will regularly update the content of the postings (*e.g.*, by season or quarter) throughout the year. FSIS will not make the establishments' sample-by-sample results available on its Web site because the Agency is not convinced of the value of posting this information. While the value of this information to the tested establishment is clear, the value to the general public is not. FSIS can see the value to the general public of more frequent posting of information about trends in *Salmonella* testing results than the current annual reports that the Agency issues.

Request for Comment

FSIS is seeking comment on its plan to modify its handling of *Salmonella* testing results. The Agency's final decision regarding the availability of *Salmonella* testing results will be published in the **Federal Register**.

Additional Public Notification

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

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

Done at Washington, DC, on April 7, 2003.

Dr. Garry L. McKee,

Administrator.

[FR Doc. 03–8971 Filed 4–15–03; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Hood/Willamette Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Action of meeting.

SUMMARY: The Hood/Willamette Resource Advisory Committee (RAC) will meet on Thursday, May 15, 2003. The meeting is scheduled to begin at 10 a.m. and will conclude at approximately 4 p.m. The meeting will be held at The Resort at the Mountain; 68010 East Fairway; Welches, Oregon; (503) 622–3101. The tentative agenda includes: (1) Report on status of 2002 and 2003 projects; (2) Election of chairperson; (3) Decision on overhead rate for 2004 projects; (4) Presentation of 2004 Projects; and (5) Public Forum.

The Public Forum is tentatively scheduled to begin at 1 p.m. Time alloted for individual presentations will be limited to 3–4 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits for the Public Forum. Written comments may be submitted prior to the May 15th meeting by sending them to Designated Federal Official Donna Short at the address given below. A field trip to visit Title II projects is scheduled for the next day, Friday, May 16, 2003 at the same location. The field trip will start at 8.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Donna Short; Sweet Home Ranger District, 3225 Highway 20; Sweet Home, Oregon 97386; (541) 367–9220.

Dated: April 10, 2003.

Dallas J. Emch,

Forest Supervisor.

[FR Doc. 03–9298 Filed 4–15–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Catron County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Catron County Resource Advisory Committee will meet in Reserve, New Mexico, on May 1, 2003, from 10 a.m. MDST to 4 p.m. MDST. The purpose of the meeting is to review potential projects and adopt operating

guidelines including the next meeting date.

DATES: The meeting will be held May 1, 2003.

ADDRESSES: The meeting will be held at the Catron County Courtroom of the Catron County Court House, 101 Main Street, Reserve, New Mexico 87830. A period of time will be allocated in the morning and afternoon for the committee to hear public comment.

FOR FURTHER INFORMATION CONTACT: Michael Gardner, Rural Community Assistant Staff, Gila National Forest, (505) 388–8212.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring Pub. L. 106–393 related matters to the attention of the Committee will have the opportunity at this meeting. Public input sessions will be provided on the agenda.

Dated: April 10, 2003.

Marcia R. Andre,

Forest Supervisor, Gila National Forest.

[FR Doc. 03–9299 Filed 4–15–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 030401077–3077–01]

Notice of Intent to Create an Infrared Spectroscopy Library

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The National Institute of Standards and Technology announces its intent to create a new Infrared Spectroscopic Library. The initial version of the new library will contain between 20,000 and 50,000 spectra from approximately the same number of chemical compounds. The initial version of the library will only be available as images of the original spectra. Interested parties are invited to submit comments to the address below.

DATES: Comments must be received by June 16, 2003.

ADDRESSES: Comments should be sent to the attention of Dr. W. Gary Mallard at the National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8380, Gaithersburg, MD 20899–8380.

FOR FURTHER INFORMATION CONTACT: Dr. W. Gary Mallard by writing to the above address or by e-mail at *gary.mallard@nist.gov* or by telephone at (301) 975–2444.

SUPPLEMENTARY INFORMATION: As part of its responsibilities under Title 15 U.S.C. 290 to collect, evaluate and publish high quality Standard Reference Data (SRD), NIST creates and maintains evaluated SRD databases. From time to time exceptional collections from non-governmental sources become available for distribution. One such source of infrared spectral data has become available. The data has been collected over a long period of time by an industrial laboratory, primarily in the condensed phase with a variety of instruments. The industrial laboratory plans to donate the data to NIST. It is the intent of NIST to create digitized images (TIFF or PDF) files of each of these spectra and index them in terms of their chemical identity and structure. The resulting data will be made available over the NIST WebBook (*http://webbook.nist.gov/chemistry*) for general use.

Infrared (IR) spectral data is used to identify unknown compounds. The location of the features of the IR data are characteristic of specific functional groups of the molecule. Large collections of IR data with many different structural features aid in the classification of the compound even if an identification cannot be made from the data.

We invite comments concerning this update.

Dated: April 9, 2003.

Karen H. Brown,

Deputy Director.

[FR Doc. 03–9305 Filed 4–15–03; 8:45 am]

BILLING CODE 3510–13–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination under the African Growth and Opportunity Act (AGOA)

April 10, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Determination.

SUMMARY: The Committee for the Implementation of Textile Agreements (CITA) has determined that handloomed fabric and handmade articles made from such handloomed fabric that are produced in and exported from Namibia qualify for preferential treatment under Section 112(a) of the African Growth and Opportunity Act. Therefore, imports of eligible products from Namibia with an appropriate AGOA Visa will qualify for duty-free treatment under the AGOA.

EFFECTIVE DATE: May 5, 2003.

FOR FURTHER INFORMATION CONTACT: Anna Flaaten, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION: The African Growth and Opportunity Act (Title I of the Trade and Development Act of 2000, Pub. L. 106-200)(AGOA) provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan African countries. In a letter to the Commissioner of Customs dated January 18, 2001, the United States Trade Representative directed Customs to require that importers provide an appropriate export visa from a beneficiary sub-Saharan African country to obtain preferential treatment under section 112(a) of the AGOA (66 FR 7837). The first digit of the visa number corresponds to one of 9 groupings of textile and apparel products that are eligible for preferential tariff treatment. Grouping ''9'' is reserved for handmade, handloomed, or folklore articles.

In Section 2 of Executive Order 13191 of January 17, 2001, CITA is authorized to ''consult with beneficiary sub-Saharan African countries and to determine which, if any, particular textile and apparel goods shall be treated as being handloomed, handmade, or folklore articles'' (66 FR 7272). Consultations were held on March 26, 2003 and CITA has now determined that handloomed fabrics and handmade articles made from such handloomed fabrics produced in and exported from Namibia are eligible for preferential tariff treatment under section 112(a) of the AGOA. In the letter published below, CITA directs the Commissioner of Customs and Border Protection to allow entry of such qualifying products from Namibia under Harmonized Tariff Schedule provision 9819.11.27, when accompanied by an appropriate export visa in grouping ''9''.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 10, 2003.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: The Committee for the Implementation of Textiles Agreements (CITA), pursuant to Sections 112(a) of the African Growth and Opportunity Act (Title I of Pub. L. No. 106-200) (AGOA) and Executive Order 13191 of January 17, 2001, has determined that, effective on May 5, 2003, handloomed fabric produced in Namibia and handmade articles produced in Namibia from such handloomed fabric shall be treated as being handloomed, handmade, or folklore articles under the AGOA, and that an export visa issued by the Government of Namibia for Grouping ''9'' is a certification by the Government of Namibia that the article is handloomed, handmade, or folklore. CITA directs you to permit duty-free entry of such articles accompanied by the appropriate visa and entered under heading 9819.11.27 of the Harmonized Tariff Schedule of the United States.

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–9327 Filed 4–15c–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

April 10, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection.

EFFECTIVE DATE: April 16, 2003.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

On April 11, 2003, CITA agreed to Taiwan's request for special shift for 2003 of 9.1 million square meters equivalent into Group I from Group II.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 68577, published on November 12, 2002.

James C. Leonard, III

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 10, 2003.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 1, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on April 16, 2003, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month limit [1]
Group I	
200–220, 224, 225/317/326, 226, 227, 300/301, 313–315, 360–363, 369–S [2], 369–O [3], 400–414, 469pt [4], 603, 604, 611, 613/614/615/617, 618, 619/620, 624, 625/626/627/628/629 and 666pt [5], as a group.	217,879,904 square meters equivalent.
Group II	
237, 239pt [6], 331pt. [7], 332, 333/334/335, 336, 338/339, 340–345, 347/348, 351, 352/652, 359–C/659–C [8], 659–H [9], 359pt. [10], 433-438, 440, 442, 443, 444, 445/446, 447/448, 459pt. [11], 631pt. [12], 633/634/635, 636, 638/639, 640, 641–644, 645/646, 647/648, 651, 659–S [13], 659pt. [14], 846 and 852, as a group.	613,275,380 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

[2] Category 369–S: only HTS number 6307.10.2005.

[3] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.0505. 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302,51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9882, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505 (Category 369pt.).

[4] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[5] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9884, 9404.90.8522 and 9404.90.9522.

[6] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[7] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[8] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[9] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[10] Category 359pt.: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359–C); 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

[11] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[12] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[13] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[14] Category 659pt.: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S); 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard, III

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–9351 Filed 4–15–03; 8:45 am]

BILLING CODE 3510–DR–S

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection; Comment Request—Residential Fire Survey

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Consumer Product Safety Commission (CPSC) requests comments on a proposed survey to evaluate (1) the causes of residential fires and (2) the role of smoke alarms, sprinklers, and fire extinguishers in those fires. The study will consist of a random digit dialing (RDD) telephone survey to identify households that had a fire within the previous three months. The survey will include both fires reported to the fire service and those not reported. Data collection will take place over a 12-month period and will identify consumer products involved in fire causes. The information will help CPSC and its federal partners, the U.S. Fire Administration and the Centers for Disease Control and Prevention, to focus efforts to reduce residential fire losses. CPSC will consider all comments received in response to this notice before requesting approval for this telephone survey from the Office of Management and Budget.

DATES: Written comments must be received by the Office of the Secretary not later than June 16, 2003.

ADDRESSES: Written comments should be captioned ''Residential Fire Survey'' and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to the attention of that office, room 419, North Tower, 4330 East-West Highway, Bethesda, Maryland, 20814. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at *cpsc-os@cpsc.gov.*

FOR FURTHER INFORMATION CONTACT: For information about the proposed collection of information, or to obtain a copy of the questions to be used for this collection of information, call or write Linda E. Smith, Division of Hazard Analysis, Directorate for Epidemiology, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814 telephone (301) 504–7310, or email *lsmith@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

Reduction of fire deaths is one of CPSC's strategic goals. An estimated 396,500 residential fires were attended by the fire service in 2001 and resulted in 3,140 deaths, 15,575 injuries, and $5.6 billion in property loss. Although residential fire losses have decreased greatly over the past 15 years, the U.S. continues to have one of the highest fire death rates per capita in the world.

One of the reasons for the observed reduction in fire deaths is thought to be the increased prevalence of smoke alarms, which are intended to give early warning of a fire and allow more time for the occupants to escape unharmed. Since 1984 when CPSC last conducted a survey of residential fires, the prevalence of smoke alarms in U.S. households has greatly increased. Prevalence, however, does not mean that the alarms will be operational. In 1992, a CPSC study of smoke alarms installed in residences showed that among households that had smoke alarms, 20 percent of the households had no alarms that worked. Changes continue to be made to smoke alarm technology and installation requirements with the intent of increasing the number of households with an adequate number of working alarms.

In 1984, it was estimated that fires that were not attended by the fire service accounted for 97 percent of all U.S. residential fires. CPSC and its fire partners wish to determine the current magnitude of the overall fire problem, including the prevalence of fires both attended and unattended by the fire service. In addition, CPSC wishes to learn if there has been a further reduction in the percentage of fires that are serious enough to warrant the attendance of the fire service, and the extent to which the involvement of smoke alarms has contributed to the reduced number of such fires.

The reduction of fire deaths, the most severe result of residential fires, is part of a collaborative effort by CPSC, the U.S. Fire Administration, and the Centers for Disease Control and Prevention. The resulting data are expected to provide statistically-based support and focus for integrated national programs, including the benefits derived by the use of smoke alarms, sprinklers, and fire extinguishers. The resulting data also will provide current estimates of all residential fires that involve specific types of consumer products, providing more comprehensive fire data upon which to target prevention activities.

B. Description of the Collection of Information

This collection of information will consist of a random digit dialing (RDD) telephone survey. Use of RDD will result in a probability sample of all U.S. households, ensuring that the estimates will be representative of the U.S. population. Selected high-risk subsets of the population will be over-sampled to ensure that the fire problem in those groups can be adequately characterized. These include rural households, and low socioeconomic households. Data collection will take place over a 12-month period to account for variation in the number and causes of fire that occur over the course of a year.

The intention of the survey is to contact both households that have experienced a fire during the previous 3 months and households that have not experienced a fire. Demographic data on fire and non-fire households will be collected so that fire risk can be calculated for different demographic groups.

Households that have had fires will be asked about the cause of the fire, the products involved in starting the fire, and the items that burned. Information about the severity of the fire will be collected, including deaths, non-fatal injuries, medical treatment, property damage, and whether the fire was attended by the fire service. Information will be obtained on the number, characteristics, and performance of smoke alarms. CPSC is particularly interested in obtaining information on the role of the smoke alarm in warning the occupants that there was a fire. Information also will be obtained on the presence and performance of fire sprinklers and fire extinguishers.

A contractor will conduct a cognitive pre-test of the telephone questionnaire using a Computer-Assisted Telephone Interviewing (CATI) program. Revisions to the CATI programming will be made based on the pretest. Data collection for the survey will be conducted over a one-year period. The contractor will then review and edit the data and construct a database for CPSC analysis.

C. Burden on Respondents

Households will be screened using RDD methodology to identify 1,500 households who have had a fire within the previous three months. The estimated incidence of fire households is approximately 2.5%. Screening to identify household qualification is expected to take an average of approximately 2 minutes. It is estimated that the study will require screening of 86,680 households to yield 1,500 qualified, cooperative respondents.

The interview with fire households is estimated to take an average of 22 minutes to administer over the telephone. In addition, a sub-sample of 2,000 non-fire households will be interviewed using a 6-minute demographic survey.

Given these estimates, the burden on respondents is calculated to be:

- 86,680 screening interviews @ 2 minutes = 173,360 minutes;
- 1,500 interviews with fire households @ 22 minutes = 33,000 minutes; and
- 2,000 interviews with non-fire households @ 6 minutes = 12,000 minutes,

for a total of 218,360 minutes, or 3,639.3 interviewing hours of burden for respondents. The staff estimates that the annualized cost to respondents for the hour burden for the collection of information is $85,305, based on $23.44 per hour (September 2002 Bureau of Labor Statistics, Department of Labor cost for employee compensation, private industry, state and local government.)

D. Requests for Comments

The Commission solicits written comments from all interested persons about the proposed survey to determine residential fire cause and smoke alarm performance. The Commission specifically seeks information relevant to the following topics:

- Whether the survey described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;
- Whether the estimated burden of the proposed collection of information is accurate;
- Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
- Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: April 9, 2003.

Todd Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 03–9256 Filed 4–15–03; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Senior Executive Service; Performance Review Board; Membership

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of names of members.

SUMMARY: This notice lists the individuals who have been appointed to the Commission's Senior Executive Service Performance Review Board.

EFFECTIVE DATE: April 16, 2003.

ADDRESSES: Consumer Product Safety Commission, Office of the Secretary, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Shawn Blain, Office of Human Resources Management, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504–7220.

Members of the Performance Review Board are listed below:

Mary Sheila Gall, Thomas Hill Moore, Susan W. Ahmed, Mary Ann T. Danello (alternate), William H. DuRoss, III (non-voting), Jacqueline Elder, Hugh McLaurin (alternate), Ronald L. Medford (alternate), Thomas W. Murr, Jr., Alan H. Schoem (alternate), Marc J. Schoem (alternate), Patricia M. Semple, Andrew G. Stadnik, Patrick D. Weddle.

Alternate members may be designated by the Chairman or the Chairman's designee to serve in the place of regular members who are unable to serve for any reason.

Dated: April 11, 2003.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 03–9363 Filed 4–15–03; 8:45 am]

BILLING CODE 6355–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Availability of Funds for Grants to Support New Senior Companion and Foster Grandparent Projects

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of funds.

SUMMARY: The Corporation for National and Community Service (hereinafter, the ''Corporation'') announces the availability of funding for grants to support, for twelve months, two new Senior Companion projects in geographic areas that do not fall within approved service areas of current Corporation-funded Senior Companion

projects, and three new Foster Grandparent projects in geographic areas that do not fall within approved service areas of current Corporation-funded Foster Grandparent projects. Public agencies (including state and local agencies and other units of government), non-profit organizations (including community-based organizations, both faith-based and secular), institutions of higher education, and Indian Tribes are eligible to apply. Sponsors of Senior Companion projects that receive no funds from the Corporation, other than funding for Programs of National Significance (PNS), are eligible to apply. Current sponsors of Senior Companion projects funded by the Corporation are not eligible to apply for funding of a new Senior Companion project.

The purpose of the Senior Companion Program (SCP) is to provide opportunities for income eligible individuals 60 years of age and over to serve adults with special needs. The purpose of the Foster Grandparent Program (FGP) is to provide opportunities for income eligible individuals 60 years of age and over to serve children and youth with special or exceptional needs on a person to person basis.

Individual Senior Companion grant awards will be approximately $210,000 to cover the costs of 46 new Senior Companion service years for twelve months. Individual Foster Grandparent grant awards will be approximately $205,600 to cover the costs of 45 Foster Grandparent service years for twelve months. Future funding is contingent on performance and the availability of appropriations.

DATES: The deadline for applications is 11:59 p.m. Eastern Daylight Time on June 6, 2003. However, if for some legitimate reason it is necessary for you to submit a paper application, we must receive it by 5 p.m. on June 6, 2003.

ADDRESSES: Applications must be submitted using eGrants, the Corporation's integrated, secure, web-based system for applications. Application guidelines and instructions can be obtained through our Web site at *http://www.cns.gov/egrants/index.html.* Application guidelines and instructions also can be obtained by contacting the appropriate Corporation State Office. Information on how to contact state offices is located on our Web site: *http://www.nationalservice.org.* Click on ''Contact Information'' at the very bottom of the page. If you cannot submit an application electronically, submit a paper application, together with an electronic version of the application on a 3.5'' diskette to facilitate data entry into the eGrants system, to the following address: Corporation for National and Community Service, National Senior Service Corps, Attn: Mr. Peter L. Boynton, Room 9401, 1201 New York Avenue, NW., Washington, DC., 20525. Due to delays in delivery of regular U.S.P.S. mail to government offices, there is no guarantee that your application will arrive in time to be considered. We suggest that if you are submitting a paper application, you use U.S.P.S. priority mail or a commercial overnight delivery service. Also, submit an explanation as to why you could not submit electronically. We will not accept an application that is submitted by facsimile.

FOR FURTHER INFORMATION CONTACT: Contact Peter Boynton at (202) 606–5000 ext. 554, or pboynton@cns.gov. TDD (202) 565–2799. This Notice, with the complete application guidelines included, is available on the Corporation's Web site at: *http://www.cns.gov/whatshot/notices.html.* Upon request, this information will be made available in alternative formats for people with disabilities.

Dated: April 10, 2003.

Teresa Scanell,

Director, National Senior Service Corps.

[FR Doc. 03–9329 Filed 4–15–03; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF EDUCATION

RIN 1820 ZA24

National Institute on Disability and Rehabilitation Research

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priority and selection criterion.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for Collaborative Research Projects in Traumatic Brain Injury (TBI) under the Disability and Rehabilitation Research Projects (DRRP) Program under the National Institute on Disability and Rehabilitation Research (NIDRR). The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2003 and later years. We take this action to focus research attention on an identified national need. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before May 16, 2003.

ADDRESSES: Address all comments about this proposed priority to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. If you prefer to send your comments through the Internet, use the following address: *donna.nangle@ed.gov.*

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475 or via the Internet: *donna.nangle@ed.gov.*

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding this proposed priority.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this priority in Room 3412, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed priority. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not

preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this proposed priority, we invite applications through a notice published in the **Federal Register**.

When inviting applications we designate each priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the competitive priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Note: The proposed priority supports President Bush's New Freedom Initiative (NFI). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html.*

The proposed priority is also in concert with NIDRR's Long-Range Plan (the Plan), which can be accessed on the Internet at the following site: *http://www.ed.gov/offices/OSERS/NIDRR/Products.*

Through the implementation of the NFI and the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms for integrating research and practice; and (6) disseminate findings.

Disability and Rehabilitation Research Projects (DRRP) Program

The purpose of the DRRP Program is to plan and conduct research, demonstration projects, training, and related activities that help to maximize the full inclusion and integration of individuals with disabilities into society and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (the Act). An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b).

General DRRP Requirements

- Involve, as appropriate, individuals with disabilities or their family members, or both, and persons who are members of groups that have traditionally been underrepresented in all aspects of the research as well as in design of clinical services and dissemination activities.
- Demonstrate knowledge of culturally appropriate methods of data collection, including understanding of culturally sensitive measurement approaches.
- Collaborate with other related projects, including the other funded Traumatic Brain Injury Model Systems (TBIMS) projects.

Priority

Background

In 1987, NIDRR established the TBI Model System (TBIMS) program by funding four projects to provide comprehensive, multidisciplinary rehabilitation services to persons who experience TBI and to conduct research to foster advances in TBI rehabilitation. Most recently, in FY 2002, NIDRR funded 16 TBIMS projects. The focus of these projects is research on interventions to improve outcomes for individuals who experience TBI. Contact information and abstracts on these 16 TBI Model Systems can be found at the National Rehabilitation Information Center (NARIC), *http://www.naric.com/search/pd/browse.html,* by scrolling down to the Health and Function chapter, and clicking on the link to the TBI projects.

The TBIMS projects serve a substantial number of individuals, allowing the projects to conduct clinical and community-based research and program evaluation. In addition, TBIMS projects contribute data on model systems patients to the TBI National Data Base maintained by the TBI National Data Center *(http://www.tbindc.org)* housed at Kessler Medical Rehabilitation Research and Education Corporation. Information is currently collected throughout the rehabilitation process, including points following discharge from the rehabilitation facility allowing for long-term follow-up of persons with TBI. There are currently over 3500 cases in this database.

As discussed, TBI model systems projects provide care to TBI survivors, contribute to the national database, and conduct focused research projects. NIDRR seeks to build upon the capacity within the model systems by providing funding to support large-scale collaborative research projects such as randomized trials or observational research that requires large sample sizes. These collaborative research efforts must include at least three existing model systems projects, but may also include non-model systems entities. You may obtain additional information about the background of this priority by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Proposed Priority

The Assistant Secretary proposes to fund Traumatic Brain Injury collaborative research projects for the purpose of generating new knowledge through research to improve treatment and services delivery outcomes for persons with TBI. A collaborative research project must:

(1) Collaborate with three or more of the 16 NIDRR TBI Model Systems projects;

(2) Conduct research on questions of significance to TBI rehabilitation, using clearly identified research designs such as randomized control trials, observational research methodologies, or longitudinal studies. The research must focus on areas identified in the NFI and the Plan, ensuring that each project has sufficient sample size and methodological rigor to generate robust findings.

(3) Areas of interest include health and function, technology for function, community integration and independent living, employment, and long-term outcomes.

(4) Disseminate research findings to clinical and consumer audiences, using accessible formats.

(5) Evaluate impact of research findings on improved outcomes for persons with TBI.

Proposed Selection Criterion

The emphasis on research rigor plus the importance of the collaborative research program require a modification to the selection criteria for this program. The Secretary proposes to add a criterion to reflect increased emphasis on research management. This criterion reads as follows: There must be a clearly delineated plan for research management, with focus on quality controls for data collection, management of research protocols, and provisions for oversight at collaborating sites.

Executive Order 12866

This notice of proposed priority has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed priority are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priority, we have determined that the benefits of the proposed priority justify the costs.

Summary of potential costs and benefits: The potential cost associated with this proposed priority is minimal while the benefits are significant. Grantees may anticipate costs associated with completing the application process in terms of staff time, copying, and mailing or delivery. The use of e-Application technology reduces mailing and copying costs significantly.

The benefits of the TBIMS and collaborative projects have been well established over the years that similar projects have been completed. This proposed priority will generate new knowledge through research to improve treatment and services delivery outcomes for persons with TBI through collaborative research projects.

The benefit of this proposed priority and proposed application and project requirements will be the establishment of new collaborative projects that support the President's NFI.

Applicable Program Regulations: 34 CFR part 350.

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(Catalog of Federal Domestic Assistance Number 84.133A, Disability Rehabilitation Research Project)

Program Authority: 29 U.S.C. 762(g) and 764(b).

Dated: April 11, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–9306 Filed 4–15–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–533–008]

Algonquin Gas Transmission Company; Notice of Supplemental Compliance Filing

April 10, 2003.

Take notice that on April 7, 2003, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Second Sub First Revised Sheet No. 634, effective March 4, 2003.

Algonquin states that the purpose of this filing is to supplement its March 14, 2003, tariff filing submitted in compliance with the Order on Compliance Filing issued by the Commission in Docket Nos. RP00–533–004 and RP03–193–000 on March 4, 2003 (March 4 Order) [102 FERC ¶ 61,264].

Algonquin states that copies of its filing have been mailed to all affected customers of Algonquin and interested state commissions, as well as to all parties listed on the Official Service List compiled by the Secretary of the Commission in Docket

No. RP00–533.

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 21, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9393 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–338–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

April 10, 2003.

Take notice that on April 7, 2003, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective May 8, 2003:

Seventh Revised Sheet No. 225, Original Sheet No. 380A.

CIG states that the proposed tariff provision permits CIG and a shipper, under certain circumstances, to combine multiple delivery points included in a transportation service agreement into an aggregate group for nominations, scheduling, allocations and invoicing purposes.

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.
Intervention and Protest Date: April 21, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9396 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–383–047]

Dominion Transmission, Inc.; Notice of Negotiated Rates

April 9, 2003.

Take notice that on March 31, 2003, Dominion Transmission, Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Sheet No. 1402, with an effective date of April 1, 2003.

DTI states that the tariff sheet relates to a negotiated rate transaction between DTI and Rochestar Gas and Electric corporation (RG&E). DTE states that the transaction provides RG&E with firm transportation service and conforms to the forms of service agreement contained in DTI's tariff. DTI states that the term of the agreement is for a primary term of April 1, 2003, through March 31, 2004, and from year to year thereafter.

DTI states that copies of the filing have been served upon DTI's customers, interested state commissions and on all persons on the official service list.

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. 03–9249 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–383–048]

Dominion Transmission, Inc.; Notice of Negotiated Rates

April 9, 2003.

Take notice that on March 31, 2003, Dominion Transmission, Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Sheet No. 1403, with an effective date of April 1, 2003.

DTI states that the tariff sheet relates to a negotiated rate transaction between DTI and PSEG Energy Resources & Trade, LLC (PSEG). The transaction provides PSEG with firm transportation service and conforms to the forms of service agreement contained in DTI's tariff.

DTI states that copies of the filing have been served upon DTI's customers, interested state commissions and on all persons on the official service list.

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. 03–9250 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–383–049]

Dominion Transmission, Inc.; Notice of Negotiated Rates

April 9, 2003.

Take notice that on March 31, 2003, Dominion Transmission, Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Sheet No. 1401, with an effective date of April 1, 2003.

DTI states that the tariff sheet relates to a negotiated rate transaction between DTI and Virginia Power Services Energy Corp., Inc (VPSE). The transaction provides VPSE with firm transportation service and conforms to the forms of service agreement contained in DTI's tariff.

DTI states that copies of the filing have been served upon DTI's customers, interested state commissions and on all persons on the official service list.

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. 03–9251 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–80–000]

Eastern Shore Natural Gas Company; Notice of Application

April 10, 2003.

Take notice that on April 1, 2003, Eastern Shore Natural Gas Company, (Eastern Shore), 417 Bank Lane, Dover, Delaware 19904, filed in Docket No CP03–80–000 an application pursuant to section 7(c) of the Natural Gas Act (NGA), for a certificate of public convenience and necessity to construct and operate certain pipeline facilities in Pennsylvania and Maryland in order to provide additional firm transportation capacity on its system, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the Commission's Web site at *http://www.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, call (202)502–8222 or for TTY, call (202)208–1659.

Eastern Shore proposes to construct and operate facilities in three phases, to be placed in service by November 1, 2003, November 1, 2004, and November 1, 2005, respectively.

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, 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 385.211 and 385.214) 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. Comments and protests 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 intervenors to file electronically.

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 environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, Commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

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 ion 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 to file comments or to intervene as early in the process as possible.

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.

Any questions regarding the application may be directed to Eric M. Pearson, Manager of Engineering, Eastern Shore Natural Gas Company, 417 Bank Lane, Dover, Delaware 19904, at (302)734–6710, ext. 6506.

Comment Date: May 1, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9391 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–336–012]

El Paso Natural Gas Company; Notice COmpliance Filing

April 9, 2003.

Take notice that on April 4, 2003, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1A, Substitute Fourth Revised Sheet No. 127, with an effective date of May 1, 2003.

El Paso states that the substitute tariff sheet is being filed to revise the list of Rate Schedule FT–2 shippers.

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 16, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9243 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–337–000]

El Paso Natural Gas Company; Notice of Revenue Crediting Report

April 9, 2003.

Take notice that on March 31 2003, El Paso Natural Gas Company (EPNG) tendered for filing its revenue crediting report for the calendar year 2002.

EPNG states that the report details EPNG's crediting of risk sharing revenues for the calendar year 2002 in accordance with Section 25.3 of the General Terms and Conditions of its Volume No. 1–A Tariff.

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 16, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9248 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Docket No. RP03–335–000.

Enbridge Offshore Pipelines (UTOS) LLC; Notice of Proposed Change in FERC Gas Tariff

April 9, 2003.

Take notice that on March 31, 2003, Enbridge Offshore Pipelines (UTOS) LLC, (UTOS) tendered for filing as part of it FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheets, to become effective on May 1, 2003:

First Revised Sheet No. 4.
Second Revised Sheet No. 100.
Second Revised Sheet No. 135.

UTOS states that the proposed changes would increase revenues from jurisdictional services by $977,555 based on the 12-month period ending November 30, 2002, as adjusted.

UTOS states that the principal reasons for the tariff change is: (1) Addition of an ACA Surcharge; (2) increased cost of capital; (3) recovery of a management fee and (4) continuing decline in level of transportation volumes.

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. 03–9246 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–333–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Tariff Filing

April 9, 2003.

Take notice that on April 2, 2003, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1,

Substitute Ninth Revised Sheet No. 41, proposed to be effective February 1, 2003.

Great Lakes states that the proposed tariff sheet is being filed to resolve the chronology and timing of recently approved revisions to Great Lakes' tariff in Docket

Nos. RP02–396–002 and RP03–189–000, so that the proposed tariff sheet will reflect the currently approved and effective tariff language. Great Lakes respectfully requests a waiver of the notice requirement so that the effective date of the proposed tariff sheet may be kept consistent with its original effective date of February 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. 03–9244 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–336–000]

Gulfstream Natural Gas System, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

April 9, 2003.

Take notice that on April 4, 2003, Gulfstream Natural Gas System, L.L.C.(Gulfstream) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, reflecting effective dates of April 1, 2003 and May 1, 2003, respectively.
Original Sheet No. 8C.
Original Sheet No. 8D.

Gulfstream states that this filing is being made to implement two negotiated rate transactions, one under Rate Schedule FTS and one under Rate Schedule ITS, pursuant to Section 31 of the General Terms and Conditions (GT&C) of Gulfstream'sFERC Gas Tariff.

Gulfstream also states that the tariff sheets being filed herewith identify these negotiated rates, including the exact legal name of the relevant shippers, the negotiated rates, the rate schedules, the contract terms, the receipt points, the delivery points, the Maximum Daily Quantity (MDQ), and the Maximum Hourly Flow Rate. Gulfstream also states that these proposed tariff sheets include footnotes where necessary to provide further detail on the agreements listed thereon.

Gulfstream states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 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 17, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9247 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–374–000]

Hackberry LNG Terminal, L.L.C.; Notice of Technical Conference

April 9, 2003.

On April 23, 2003, staff of the Office of Energy Projects (OEP) will convene a cryogenic design and technical conference concerning Hackberry LNG Terminal L.L.C.'s proposed liquefied natural gas (LNG) import terminal and storage facility in Cameron Parish, Louisiana.

The conference will be held on Wednesday, April 23, 2003 at 8:30 AM at the Holiday Inn Express in Sulphur, Louisiana. In view of the nature of security issues to be explored, the conference will not be open to the public. Attendance at the conference will be limited to existing parties to the proceeding and to representatives of interested local, State, and Federal agencies. Any person planning to attend the April 23rd conference must notify the Office of General Counsel (Joel Arneson) at (202) 502–8562 by noon on April 21, 2003. Participants will be required to sign a non-disclosure statement prior to admission.

In addition, the staff of OEP will conduct a workshop on issues related to LNG storage tank and retention system designs at 1 PM on April 23rd. This session will be open to the public and will also be held at the Holiday Inn Express.

Information concerning any changes to the above may be obtained from the Commission's Office of External Affairs at (202) 502–8004 or toll free at 1–(866) 208–FERC (208–3372).

Magalie R. Salas,

Secretary.

[FR Doc. 03–9234 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–245–000]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Technical Conference

April 10, 2003.

The Commission in its Order issued on February 28, 2003,[1] directed that a technical conference be held to address certain issues raised by Kinder Morgan's tariff filing to reflect the addition of a new interruptible storage-based park and loan service for its system under Rate Schedule S–PALS.

Take notice that the technical conference will be held on Tuesday, April 22, 2003, at 10 am, in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All interested parties and Staff are permitted to attend.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9394 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–79–000]

National Fuel Gas Supply Corporation; Notice of Application

April 10, 2003.

Take notice that on April 2, 2003, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP03–79–000 an application for authorization to abandon certain pipeline facilities, located in Steuben County, New York. The application is on file with the Commission and open to public inspection. It is available for review 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, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659.

National Fuel indicates that there will be no abandonment or decrease in service to any customers of as a result of the proposed abandonment.

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 nonparty 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 Commissions' 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. The 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.

Any questions regarding the application should be directed to David W. Reitz, Deputy General Counsel for National Fuel, 10 Lafayette Square, Buffalo, New York 14203 at (719) 857–7949, or at reitzd@natfuel.com.

Comment Date: May 1, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9390 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–53–001]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

April 9, 2003.

Take notice that on April 3, 2003, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, the following tariff sheets, with an effective date of May 27, 2003:

Sixth Revised Volume No. 1

[1] Kinder Morgan Interstate Gas Transmission LLC., 102 FERC ¶ 61,236 (2003).

Fourth Revised Sheet No. 4B
Second Revised Volume No. 2
Twenty-Sixth Revised Sheet No. 1B
Sixth Revised Sheet No. 1760

Natural states that the purpose of this filing is to cancel Natural's Rate Schedule X–129, which provided for a firm gas transportation service, with related interruptible overrun gas transportation service, by Natural for Texas Gas Transmission Corporation (Texas Gas) pursuant to a gas transportation agreement between Natural and Texas Gas dated October 20, 1981, as amended.

Natural states that the subject tariff sheets are being filed in compliance with Ordering Paragraph (A) of the Federal Energy Regulatory Commission's order issued March 21, 2003 in Docket No. CP03–53–000 (March 21st Order). Natural explains that such order authorized Natural to abandon, effective May 27, 2003, its firm gas transportation service with related interruptible overrun gas transportation service for Texas Gas authorized in Docket No. CP82–50, as amended.

Natural states that copies of the filing have been mailed to all parties set out on the Commission's official service list in Docket No. CP03–53.

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 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. 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. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: April 30, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9235 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–267–001]

Northern Natural Gas Company; Notice of Compliance Filing

April 10, 2003.

Take notice that on April 7, 2003, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1 the following tariff sheets, with an effective date of April 1, 2003:

Substitute Fifth Revised Sheet No. 221.
Substitute Original Sheet No. 222A.

Northern states that the filing is being made in compliance with the Commission's Order issued on March 26, 2003 in Docket No. RP03–267–000, *et al.*, regarding electronic contracting.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 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 21, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9395 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–038]

PG&E Gas Transmission, Northwest Corporation; Notice of Negotiated Rates

April 9, 2003.

Take notice that on April 4, 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, Seventh Revised Sheet No. 15 and Original Sheet No. 21A.

GTN states that these sheets are being filed to reflect the implementation of one Negotiated Rate Agreement. GTN requests that the Commission accept the proposed tariff sheets to be effective April 1, 2003.

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 16, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9252 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–334–000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

April 9, 2003.

Take notice that on April 4, 2003, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Tenth Revised Sheet No. 375, to become effective April 4, 2003.

Williston Basin states that it has revised the above-referenced tariff sheet found in Section 48 of the General Terms and Conditions of its Tariff to remove a retired receipt point, Point ID No. 03059 (Five Mile), from Williston Basin's Big Horn Pool.

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 16, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9245 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG03–55–000, et al.]

NM Mid-Valley Genco LLC, et al.; Electric Rate and Corporate Filings

April 9, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. NM Mid-Valley Genco LLC

[Docket No. EG03–55–000]

Take notice that on April 4, 2003, NM Mid-Valley Genco LLC (Applicant), with its principal office at 3650 IDS Center, 80 So. 8th Street, Minneapolis, MN 55402–2217, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935 and part 365 of the Commission's regulations.

Applicant states that it will own and operate the approximately 2.52 megawatt (gross) Mid-Valley Landfill Gas Project, located in the City of Rialto, San Bernardino, California, with the possibility of expansion up to an additional 3.78 megawatts, and will sell electric energy exclusively at wholesale.

Comment Date: April 30, 2003.

2. NM Colton Genco LLC

[Docket No. EG03–56–000]

Take notice that on April 4, 2003, NM Colton Genco LLC (Applicant), with its principal office at 3650 IDS Center, 80 So. 8th Street, Minneapolis, MN 55402–2217, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935 and part 365 of the Commission's regulations.

Applicant states that it will own and operate the approximately 1.26 megawatt (gross) Colton Landfill Gas Project, located in the City of Colton, San Bernardino, California, with the possibility of expansion up to an additional 1.26 megawatts, and will sell electric energy exclusively at wholesale.

Comment Date: April 30, 2003.

3. NM Milliken Genco LLC

[Docket No. EG03–57–000]

Take notice that on April 4, 2003, NM Milliken Genco LLC (Applicant), with its principal office at 3650 IDS Center, 80 So. 8th Street, Minneapolis, MN 55402–2217, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935 and part 365 of the Commission's regulations.

Applicant states that it will own and operate the approximately 2.52 megawatt (gross) Milliken Landfill Gas Project, located in the City of Ontario, San Bernardino, California, with the possibility of expansion up to an additional 1.26 megawatts, and will sell electric energy exclusively at wholesale.

Comment Date: April 30, 2003.

4. New York Independent System Operator, Inc.

[Docket No. ER03–18–002]

Take notice that on April 4, 2003, the New York Independent System Operator, Inc., (NYISO) filed corrected tariff revisions to its Market Administration and Control Area Services Tariff (Services Tariff).

NYISO states that copies of this filing have been served on all parties listed on the official service list. The NYISO states that it has also served a copy of this filing to all parties that have executed Service Agreements under the NYISO's Open-Access Transmission Tariff or Services Tariff, the New York State Public Service Commission, and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: April 25, 2003.

5. Carolina Power & Light Company

[Docket Nos. ER03–414–001 and ER03–415–001]

Take notice that on April 4, 2003, Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc., tendered for filing revised Facility Interconnection and Operating Agreements with Cogentrix of North Carolina, Inc., in accordance with Commission Order dated March 7, 2003.

Progress Energy Carolinas, Inc., states that a copy of the filing was served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment Date: April 25, 2003.

6. Entergy Services, Inc. and Entergy Power, Inc.

[Docket No. ER03–682–001]

Take notice that on April 2, 2003, Entergy Services, Inc. (ESI), on behalf of Entergy New Orleans, Inc. (ENO), and Entergy Power, Inc. (EPI) filed an amendment to its March 31, 2003 filing under section 205 of the Federal Power Act for approval of a power purchase agreement between the ENO and EPI as well as two additional purchase power agreements, between ENO and, respectively, Entergy Gulf States, Inc. and Entergy Arkansas, Inc

ESI states that copies of this filing were served on the affected state utility commissions.

Comment Date: April 23, 2003.

7. Yankee Atomic Electric Company

[Docket No. ER03–704–000]

Take notice that on April 4, 2003, Yankee Atomic Electric Company (Yankee) submitted for filing revisions to Yankee's wholesale power contract, Yankee Atomic Electric Company, Rate Schedule FERC No. 3 (the Power Contract) to resume collections to recover the costs of completing the decommissioning of Yankee's retired nuclear generating plant. Yankee states that the schedule of resumed decommissioning collections is based on a new decommissioning cost estimate (the 2003 Estimate). Yankee also states that the purpose of this filing is to reinitiate decommissioning cost collections under the Power Contract in order to fund the decommissioning of Yankee's Rowe Nuclear Generating Plant located in Rowe, Massachusetts based on the 2003 Estimate.

Yankee states that copies of this filing have been served on Yankee's wholesale customers and regulators in the states of Massachusetts, Connecticut, Rhode Island, Vermont, Maine and New Hampshire.

Comment Date: April 25, 2003.

8. Georgia Power Company

[Docket No. ER03–705–000]

Take notice that on April 4, 2003, Georgia Power Company filed a Notice of Cancellation notifying the Commission that the Interim Agreement for Gulf Power Company Scherer Unit 3 Transmission Facilities Service Payment to Georgia Power Company (designated Georgia Rate Schedule 824), dated August 31, 1989, and filed with the Federal Energy Regulatory Commission by Georgia Power Company, terminated by its own terms on June 1, 1995.

Comment Date: April 25, 2003.

9. PECO Energy Company

[Docket No. ER03–706–000]

Take notice that on April 4, 2003, PECO Energy Company (PECO) submitted for filing a Revised Title Page and First Revised Sheet Nos. 38, 40, 41, 42, 44, and 45 to the Construction Agreement between PECO and Old Dominion Electric Cooperative (Old Dominion) designated as Service Agreement No. 683 under the PJM Open Access Transmission Tariff. PECO states that the pages were revised pursuant to PJM's modifications to the scope of work required to interconnect the Rock Springs Electric Generating Facility located in Cecil County, Maryland.

PECO states that copies of this filing were served on Old Dominion and PJM Interconnection, L.L.C.

Comment Date: April 25, 2003.

10. Cleco Power LLC

[Docket No. ER03–707–000]

Take notice that on April 4, 2003, Cleco Power LLC, (Cleco Power) tendered for filing Fifth Revised Sheet Nos. 77 and 78, an Attachment E, from Cleco Power's open access transmission tariff, titled ''Index of Point-to-Point Transmission Service Customers'', to include TransAlta Energy Marketing (U.S) Inc., as a short-term firm and non-firm transmission customer. Cleco Power states that Cleco Power and TransAlta Energy Marketing (U.S) Inc., have executed agreements under which Cleco Power will provide short-term firm point-to-point transmission service and non-firm point-to-point transmission service to TransAlta Energy Marketing (U.S) Inc., under its Open Access Transmission Tariff.

Comment Date: April 25, 2003.

11. Pacific Gas and Electric Company

[Docket No. ER03–708–000]

Take notice that on April 4, 2003, Pacific Gas and Electric Company (PG&E) tendered for filing revisions to its Reliability Must-Run Service Agreements with the California Independent System Operator Corporation (ISO) for Helms Power Plant, PG&E First Revised Rate Schedule FERC No. 207, Humboldt Power Plant, PG&E First Revised Rate Schedule FERC No. 208, Hunters Point Power Plant, PG&E First Revised Rate Schedule FERC No. 209, and San Joaquin Power Plant, PG&E First Revised Rate Schedule FERC No. 211. PG&E states that this filing revises portions of the Rate Schedules to adjust Table B–2, Hourly Capital Item Charges, and Table B–4, Hourly Surcharge Penalty Rate, of Schedule B, ''Monthly Option Payment'' to recognize capital items placed in service pursuant to the terms of the RMR Agreements.

PG&E states that copies of this filing have been served upon the ISO, the California Electricity Oversight Board, and the California Public Utilities Commission.

Comment Date: April 25, 2003.

12. Louisiana Generating LLC

[Docket No. ER03–709–000]

Take notice that on April 4, 2003, Louisiana Generating LLC filed under section 205 of the Federal Power Act, and Commission Order No. 614, a request that the Commission accept for filing a revised market-based rate tariff; and grant any waivers necessary to make the revised tariff sheets effective as soon as possible.

Comment Date: April 25, 2003.

13. PJM Interconnection, L.L.C.

[Docket No. ER03–710–000]

Take notice that on April 4, 2003, PJM Interconnection, L.L.C. (PJM), submitted for filing an interconnection service agreement (ISA) and a construction service agreement (CSA) between PJM and Jersey-Atlantic Wind, LLC and Atlantic City Electric Company d/b/a Conectiv Power Delivery.

PJM requests a waiver of the Commission's 60-day notice requirement to permit a March 6, 2003 effective date for the ISA and CSA. PJM states that copies of this filing were served upon the parties to the agreements and the state regulatory commissions within the PJM region.

Comment Date: April 25, 2003.

14. Alliant Energy Corporate Services Inc.

[Docket No. ER03–712–000]

Take notice that on April 4, 2003, Alliant Energy Corporate Services Inc. (ALTM) tendered for filing a signed Service Agreement under ALTM's Market Based Wholesale Power Sales Tariff (MR–1) between itself and City of Bellevue, Iowa. ALTM respectfully requests a waiver of the Commission's notice requirements, and an effective date of March 31, 2003.

Comment Date: April 25, 2003.

15. Oregon Trail Electric Consumers Cooperative, Inc.

[Docket No. ES03–30–000]

Take notice that on April 2, 2003, Oregon Trail Electric Consumers Cooperative, Inc. (Oregon Trail) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to (1) make long-term borrowings under a loan agreement with the National Rural Utilities

Cooperative Finance Corporation (CFC) in an amount not to exceed $6 million and (2) make no more than $5 million of short-term borrowings under a line of credit agreement with CFC.

Oregon Trail also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: April 30, 2003.

16. Florida Power Corporation, dba Progress Energy Florida, Inc.

[Docket No. SC03–1–000]

Take notice that on April 2, 2003, Florida Power Corporation, dba Progress Energy Florida, Inc. (FPC), tendered for filing pursuant to Section 205 of the Federal Power Act an amendment to its open-access transmission tariff. FPC states that the purpose of the amendment is to recover stranded costs as a transmission surcharge if and when the City of Casselberry, Florida ''municipalizes'' and becomes a transmission customer of FPC. FPC further states that the customers within the City of Casselberry are currently served at retail by FPC. FPC requests an effective date for the tariff amendment upon commencement of transmission service by Casselberry. FPC requests waiver of the Commission's notice regulations for that purpose. FPC states that the basis for the stranded cost calculation is explained in the testimony and transmittal letter accompanying the tariff amendment.

The proposed tariff amendment affects only the City of Casselberry and would have no impact on any other customer under FPC's open-access transmission tariff. FPC has served a copy of the tariff amendment filing on the City of Casselberry and on the Florida Public Service Commission.

Comment Date: April 23, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field 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. 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. 03–9236 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–216–003, et al.]

TRANSLink Development Company, LLC, et al.; Electric Rate and Corporate Filings

April 8, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. TRANSLink Development Company, LLC

[Docket No. ER03–216–003]

Take notice that on April 2, 2003, TRANSLink Development Company, LLC, (TRANSLink Development), and the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing the definition and criteria of ''Material Effect,'' as those terms are used in the Appendix I Agreement between the Midwest ISO and TRANSLink Development, conditionally accepted by the Commission in its January 15, 2003 Order. The Midwest ISO has requested an effective date April 3, 2003.

In addition, the Midwest ISO states that it has electronically served a copy of this filing, without attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at www.midwestiso.org under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: April 23, 2003.

2. San Diego Gas & Electric Company

[Docket No. ER03–217–002]

Take notice that on April 3, 2003, San Diego Gas & Electric Company (SDG&E) tendered for filing pursuant to Commission's Order issued January 24, 2003, Service Agreements numbers 17 and 18, FERC Electric Tariff, First Revised Volume No. 6. SDG&E states that these agreements were accepted for filing on January 24, 2003, conditioned upon SDG&E's filing of designations for both interconnection agreements in compliance with Order No. 614 and Section 35.9(a) of the Commission's Regulations.

SDG&E states that copies of the filing have been served on Termoelectrica de Mexicali S. de R.L. de C.V., Termoelectrica U.S., LLC, and on the California Public Utilities Commission.

Comment Date: April 24, 2003.

3. Avista Corporation

[Docket No. ER03–435–001]

Take notice that on April 3, 2003, Avista Corporation (Avista) tendered for filing with the Federal Energy Regulatory Commission, a compliance filing in response to a Letter Order issued on March 19, 2003. Avista states that the Letter Order accepted for filing, effective January 1, 2003, an Agreement for the Purchase and Sale of Power between Avista Corporation and Public Utility District No. 1 of Douglas County, Washington (Rate Schedule) conditioned upon Avista filing a revised Rate Schedule properly paginated.

Avista states that copies of the filing were served upon Public Utility District No. 1 of Douglas County, the sole party to the Rate Schedule.

Comment Date: April 24, 2003.

4. San Diego Gas & Electric Company

[Docket No. ER03–548–001]

Take notice that on April 3, 2003, San Diego Gas & Electric Company (SDG&E) tendered for filing its First Revised Service Agreement No. 9 and First Revised Service Agreement No. 11 to SDG&E's FERC Electric Tariff, First Revised Volume No. 6, incorporating revisions to the Expedited Interconnection Facilities Agreements with CalPeak Power Enterprise, LLC and CalPeak Power Border, LLC, (collectively, CalPeak) respectively.

SDG&E states that the revised Service Agreements implement Internal Revenue Service Notice 2001–82, ''Expansion of Safe Harbor Provisions Under Notice 88–129'', which provides that in certain circumstances, regulated public utilities such as SDG&E will not realize income upon contributions by interconnecting electric generators of certain interconnection facilities. SDG&E further states that the amendment clarifies terms pertaining to creditworthiness requirements of CalPeak and the guarantor of CalPeak's financial obligations as contemplated by Section 10.22.

SDG&E states that copies of the filing have been served on CalPeak and on the California Public Utilities Commission.

Comment Date: April 24, 2003.

5. DB Energy Trading LLC

[Docket No. ER03–657–001]

Take notice that on April 2, 2003, DB Energy Trading LLC (DB Energy) tendered for filing an application for an order accepting its rate schedule to permit sales of power and capacity at market-based rates and granting certain waivers and blanket approvals. DB Energy requests waiver of the 60-day prior notice rule

Comment Date: April 17, 2003.

6. New York Independent System Operator, Inc.

[Docket No. ER03–690–000]

Take notice that on April 1, 2003, the New York Independent System Operator, Inc. (NYISO), filed proposed revisions to the NYISO's Market Administration and Control Area Services Tariff (Services Tariff) and Open Access Transmission Tariff (OATT). NYISO states that the proposed revisions are intended to limit the extent to which prices at the Hydro Quebec external proxy bus can rise to non-competitive levels. The NYISO has requested that the Commission make the filing effective on May 31, 2003.

NYISO states that a copy of this filing was served upon all signatories of the NYISO's OATT and Services Tariff.

Comment Date: April 22, 2003.

7. Michigan Electric Transmission Company, LLC

[Docket No. ER03–692–000]

Take notice that on April 1, 2003, Michigan Electric Transmission Company, LLC (METC) submitted an unexecuted Interconnection Facilities Agreement Between METC and the City of Hart (Facilities Agreement and Hart, respectively). METC requests an effective date of March 13, 2003 for the Facilities Agreement.

Comment Date: April 22, 2003.

8. ISG Sparrows Point Inc.

[Docket No. ER03–693–000]

Take notice that on April 1, 2003 ISG Sparrows Point Inc. (ISG Sparrows Point) petitioned the Federal Energy Regulatory Commission (Commission) for acceptance of ISG Sparrows Point FERC Electric Tariff, Original Volume Number 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations. ISG Sparrows Point requests an effective date for the rate schedule of May 1, 2003.

Comment Date: April 18, 2003.

9. PJM Interconnection, L.L.C.

[Docket No. ER03–694–000]

Take notice that on April 1, 2003, PJM Interconnection, L.L.C. (PJM), filed revisions to Schedule 3 of the PJM Operating Agreement to establish a charge on the submission of excessive numbers of bids or offers in the energy market or FTR auctions.

PJM proposes an effective date of June 1, 2003 for the operating agreement revisions.

PJM states that copies of this filing were served upon all PJM members and each state electric utility regulatory commission in the PJM region.

Comment Date: April 22, 2003.

10. Ocean Energy Services, Inc.

[Docket No. ER03–695–000]

Take notice that on March 31, 2003, Ocean Energy Services, Inc., tendered for filing a Notice of Cancellation for the Market Based Rate Schedule in Docket No. ER96–588–000 dated January 19, 1996.

Comment Date: April 14, 2003.

11. Florida Keys Electric Cooperative Association, Inc.

[Docket No. ER03–696–000]

Take notice that on April 2, 2003, Florida Keys Electric Cooperative Association, Inc. (FKEC) tendered for filing a revised rate for non-firm transmission service provided to the City Electric System, Key West, Florida (CES) in accordance with the terms and conditions of the Long-Term Joint Investment Transmission Agreement between the Parties.

FKEC states that a copy of this filing has been served on CES and the Florida Public Service Commissioner.

Comment Date: April 23, 2003.

12. PacifiCorp

[Docket No. ER03–697–000]

Take notice that on April 2, 2003, PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations a Notice of Cancellation of PacifiCorp's First Revised Rate Schedule No. 462 with Deseret Generation & Transmission Co-Operative effective July 31, 2003.

PacifiCorp states that copies of this filing were supplied to Deseret Generation & Transmission Co-Operative, the Utah Public Service Commission and the Public Utility Commission of Oregon.

Comment Date: April 23, 2003.

13. Georgia-Pacific Corporation

[Docket No. ER03–698–000]

Take notice that on April 2, 2003, Georgia-Pacific Corporation (G-P) tendered for filing a Notice of Cancellation of its Market-Based Rate Schedule, designated as FERC Electric Tariff, Original Volume No. 1, Original Sheet No. 1, which was originally accepted for filing by the Commission on December 8, 2000 in Docket Nos. ER00–3604–000 and ER00–3604–0001.

Comment Date: April 23, 2003.

14. Northeast Utilities Service Company

[Docket No. ER03–699–000]

Take notice that on April 3, 2003, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement to provide Non-Firm Point-To-Point Transmission Service to Cargill Power Markets, LLC under the NU System Companies' Open Access Transmission Service Tariff No. 9.

NUSCO states that a copy of this filing has been mailed to Cargill Power Markets, LLC. NUSCO also requests, that the Service Agreement become effective May 1, 2003.

Comment Date: April 24, 2003.

15. Smarr EMC

[Docket No. ER03–700–000]

Take notice that on April 3, 2003, Smarr EMC (Smarr) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 revisions to Smarr's First Revised Electric Rate Schedule FERC No. 1 and First Revised Electric Rate Schedule FERC No. 2.

Smarr states that copies of this filing have been mailed to each of Smarr's Member-Owner/Purchasers. Smarr respectfully requests that the amendments to its Rate Schedules become effective June 1, 2003.

Comment Date: April 24, 2003.

16. Southern California Edison Company

[Docket No. ER03–701–000]

Take notice that on April 3, 2003, Southern California Edison Company

(SCE) tendered for filing an increase in the rate for scheduling and dispatching services provided in 2003 as embodied in SCE's agreements with the following entities:

Entity	Rate Schedule FERC No.
1. Arizona Electric Power Cooperative	132
2. Arizona Public Service Company	348
3.Imperial Irrigation District	268
4. Metropolitan Water Districtof Southern California	292
5. M–S–R Public Power Agency	339
6. Pacific Gas and Electric Company	256, 318

SCE states that the proposed changes would increase revenues from these entities by $628 based on transactions for the twelve-month period. Since SCE is requesting an effective date of June 2, 2003, the prorated estimated increase in 2003 scheduling and dispatching service revenues would be $365.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California.

Comment Date: April 24, 2003.

17. Northeast Utilities Service Company

[Docket No. ER03–702–000]

Take notice that on April 3, 2003, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement to provide Firm Point-To-Point Transmission Service to Cargill Power Markets, LLC, under the NU System Companies' Open Access Transmission Service Tariff No. 9.

NUSCO states that a copy of this filing has been mailed to Cargill Power Markets, LLC. NUSCO also requests that the Service Agreement becomes effective May 1, 2003.

18. PJM Interconnection, L.L.C.

[Docket No. ER03–703–000]

Take notice that on April 1, 2003, PJM Interconnection, L.L.C. (PJM) filed amendments to the Reliability Assurance Agreement Among Load Serving Entities in the PJM Control Area (RAA), the PJM West Reliability Assurance Agreement Among Load Serving Entities in the PJM West Region (West RAA), the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (Operating Agreement) and the PJM Open Access Transmission Tariff (Tariff) to make the following changes:

1. Amend the West RAA and RAA and make conforming changes to the Operating Agreement and Tariff to eliminate the ''available capacity'' approach from the West RAA and replace it with an ''unforced capacity or 'UCAP' '' approach for the entire PJM region.

2. Amend the RAA and West RAA to change the voting and quorum requirements for the PJM Reliability Committee.

3. Amend the RAA to eliminate outdated provisions on procedures applicable before the ''Pool-Wide Choice Date.''

4. Amend the RAA and West RAA to eliminate the requirement to file new signatory pages with the Commission.

PJM requests that these amendments become effective on June 1, 2003. PJM states that copies of its filing were served upon all PJM members and each state electric utility regulatory commission in the PJM region.

Comment Date: April 22, 2003.

19. Florida Power & Light Company

[Docket No. ER03–716–000]

Take notice that on March 28, 2003 Florida Power & Light Company (FPL) tendered for filing a Notice of Termination of an Interconnection & Operation Agreement (IOA) between FPL and CPV Gulfcoast, Ltd. (CPVG). FPL states that termination of the IOA has been mutually agreed to by FPL and CPVG. FPL requests that the termination be made effective March 13, 2003 as mutually agreed by the parties. Given that termination of the IOA has been mutually agreed to by FPL and CPVG, FPL also requests that the Commission not act on FPL's February 14, 2003 filing of the 2nd Revised Service Agreement No. 195 and for it to be withdrawn from the docket.

Comment Date: April 18, 2003.

20. Old Dominion Electric Cooperative

[Docket No. ES03–31–000]

Take notice that on April 4, 2003, Old Dominion Electric Cooperative submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue short-term, secured or unsecured debt in an amount not to exceed $501 million.

Comment Date: April 23, 2003.

21. Texas-New Mexico Power Company

[Docket No. ES03–32–000]

Take notice that on April 4, 2003, Texas-New Mexico Power Company submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue short-term, unsecured debt in an amount not to exceed $291.3 million.

Comment Date: April 18, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9238 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

April 9, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12362–000.

c. *Date filed*: September 3, 2002.

d. *Applicant:* Idrogo Hydro Electric.

e. *Name of Project:* Medina Dam Project.

f. *Location:* On the Medina River, in Medina County, Texas. The project

would utilize the existing Medina Dam owned by the Bexar Medina Atascosa Water Control and Improvement District.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Michael Idrogo, Idrogo Hydro Electric, 317 West Rosewood Avenue, San Antonio, TX 78212, (210) 681–4894.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing motions to intervene, protests and comments*: 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Competing Application:* Project No. 12183–000, *Date Filed:* June 4, 2002, Date Notice Closed: October 8, 2002.

l. *The Description of Project:* The proposed pumped storage project would consist of : (1) The existing 1580-foot-long, 164-foot-high Medina Dam as the upper dam, (2) the existing Medina Lake as the upper reservoir having a surface area of 5,575 acres and storage capacity of 254,000 acre-feet and normal water surface elevation of 1,072 feet msl, (3) an existing 440-foot-long, 50-foot-high lower diversion dam, (4) an existing lower reservoir having a surface area of 400 acres with a storage capacity of 5,000 acre-feet and normal water surface elevation of 928 feet msl, (5) a proposed powerhouse containing three generating units having a total installed capacity of 3 MW, (6) a proposed 11-mile-long, 115 kV transmission line, and (7) appurtenant facilities.

The project would have an annual generation of 130 GWh that would be sold to a local utility.

m. 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, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. Competing Applications—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30 (b) and 4.36.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application. 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 ''e-filing'' link. The Commission strongly encourages electronic filing.

r. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9239 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

April 9, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12434–000.

c. *Date filed:* January 17, 2003.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Mississippi L&D#18 Project.

f. *Location:* On the Mississippi River, in Henderson and Des Moines Counties, Illinois and Iowa, utilizing the U.S. Army Corps of Engineers Mississippi Lock and Dam #18.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener

files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the Corps' existing Mississippi Lock and Dam # 18 and consist of: (1) Twelve proposed 80-foot-long, 108-inch-diameter steel penstocks, (2) a proposed powerhouse containing 12 generating units having a total installed capacity of 28 MW, (3) a proposed 1,000-foot-long, 14.7 kV transmission line, and (4) appurtenant facilities.

The applicant estimates that the average annual generation would be 172 GWh and would be sold to a local utility.

l. 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, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

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 ''e-filing'' link. The Commission strongly encourages electronic filing.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9240 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

April 9, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12435–000.

c. *Date filed:* January 17, 2003.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Mississippi L&D#24 Project.

f. *Location:* On the Mississippi River, in Pike and Calhoun Counties, Missouri and Illinois, utilizing the U.S. Army Corps of Engineers Mississippi Lock and Dam #24.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they

must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the Corps' existing Mississippi Lock and Dam # 24 and consist of: (1) Twenty proposed 80-foot-long, 114-inch-diameter steel penstocks, (2) a proposed powerhouse containing ten generating units having a total installed capacity of 50 MW, (3) a proposed 500-foot-long, 14.7 kV transmission line, and (4) appurtenant facilities.

Applicant estimates that the average annual generation would be 307 GWh and would be sold to a local utility.

l. 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, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

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 ''e-filing'' link. The Commission strongly encourages electronic filing.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9241 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2852–015]

New York State Electric & Gas Corporation; Notice of Teleconference

April 9, 2003.

a. *Date and Time of Teleconference*: May 7, 2003, 10 a.m. to 1 p.m.

b. *FERC Contact:* Patricia Leppert at (202) 502–6034; *patricia.leppert@ferc.gov* or John Costello at (202) 502–6119; *john.costello@ferc.gov*.

c. *Purpose of the Teleconference*: To clarify the January 22, 2003, letter from New York State Department of Environmental Conservation which provided comments on the Environmental Assessment for the Keuka Hydroelectric Project issued December 12, 2002. In addition, to clarify the January 6, 2003, letter from the New York State Office of Parks, Recreation, and Historic Preservation which provided comments on the draft Programmatic Agreement proposed by the Commission for the Keuka Project.

d. *Proposed Agenda*:

(1) Introduction Recognition of Participants Teleconference Objectives

(2) Clarification of the comments (a list of questions will be provided to the participants prior to the meeting)

(3) Summary of Meeting

(4) Follow-up Actions

e. To access the teleconference:

(1) Call 1–800–369–1828

(2) The Leader name is ''John Costello''

(3) The passcode is ''Costello''

Magalie R. Salas,

Secretary.

[FR Doc. 03–9242 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Soliciting Comments, Motions To Intervene, and Protests

April 10, 2003.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Application:* Non-Project Use of Project Lands and Waters.

b. *Project No.:* 199–199.

c. *Date Filed:* February 21, 2003.

d. *Applicant:* South Carolina Public Service Authority.

e. *Name of Project:* Santee-Cooper Project.

f. *Location:* Santee and Cooper Rivers (Lake Marion and Lake Moultrie) in Berkeley, Calhoun, Clarendon, Orangeburg, and Sumter Counties, South Carolina. The project occupies federal lands in the Francis Marion National Forest.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)-825(r) and §§ 799 and 801.

h. *Applicant Contact:* Mr. G. Denton Lindsay, Jr., Santee Cooper Property Management Division, One Riverwood Drive, PO Box 2946101, Moncks Corner, SC 29461–4003, (843) 761–8000.

i. *FERC Contact:* Any questions on this notice should be addressed to Diana Shannon, (202) 502–8887, or e-mail address: *diana.shannon@ferc.gov*.

j. *Deadline for filing motions to intervene, protests, comments:* April 30, 2003.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

k. *Description of Proposed Action:* The Applicant, on behalf of the South Carolina Department of Natural Resources (SCDNR), seeks approval to use project lands and waters to construct a 480-acre Greentree Reservoir in Lake Marion within a Forest Management area, for the purposes of enhancing habitat for waterfowl and other wildlife and for providing recreational opportunities to the public. Creation of the Greentree Reservoir will require approximately 9,500 feet of dike, adjacent rim ditch, placement of eight water control structures and a pump, and the dredging of a 6 x 280 foot intake channel. The site will be managed by the SCDNR. Approximately 340 of the 480 acres inside the diked area will be flooded to an average depth of 8.7 inches after November 1 and will be dewatered by March 1 of each year.

l. The 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, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene-Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules and Practice and Procedure 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents-Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the project number (199–199) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages e-filings. All documents should be filed with: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments-Federal, state, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9392 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–2001–000 and RM01–8–000]

Electric Quarterly Reports, Revised Public Utility Filing Requirements; Notice of Extension of Time

April 9, 2003.

On March 28, 2003, the Commission issued Order 2001–D, requiring public utilities to review their fourth quarter 2002 Electric Quarterly Report submissions to ensure that the data filed was correct. FERC staff had discovered several problems which affected data quality for many filers. If any errors were found in the review, utilities were directed to refile corrected data within fourteen days of the date of the order. The due date is April 11, 2003.

FERC staff is holding an EQR Workshop on April 11, 2003. Several filers expressed concern that they would not be able to participate in the EQR Workshop and make the necessary data corrections in a timely manner. In order to encourage participation in the EQR Workshop, we will extend the deadline for filing the corrected data required by Order 2001–D.

Notice is hereby given that the time to file corrections to the fourth quarter 2002 Electric Quarterly Report as required by Order 2001–D is extended to and including April 18, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9237 Filed 4–15–03; 8:45 am]

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DEPARTMENT OF ENERGY

Southeastern Power Administration

Proposed Rate Adjustment, Public Forum, and Opportunities for Public Review and Comment for Georgia-Alabama-South Carolina System of Projects

AGENCY: Southeastern Power Administration, DOE.

ACTION: Notice of proposed rate.

SUMMARY: Southeastern Power Administration (Southeastern) proposes to revise existing schedules of rates and charges applicable to the sale of power from the Georgia-Alabama-South Carolina System of Projects effective for a 4-year period, October 1, 2003, through September 30, 2007. Additionally, opportunities will be available for interested persons to review the present rates, the proposed rates and supporting studies, to participate in a forum and to submit written comments. Southeastern will evaluate all comments received in this process.

DATES: Written comments are due on or before July 15, 2003. A public information and comment forum will be held in Atlanta, Georgia, at 10 a.m., on May 29, 2003. Persons desiring to speak at the forum should notify Southeastern at least 3 days before the forum is scheduled, so that a list of forum participants can be prepared. Others may speak if time permits.

ADDRESSES: Written comments should be submitted to: Administrator, Southeastern Power Administration, Department of Energy, 1166 Athens Tech Road, Elberton, Georgia, 30635–6711. The public information and comment forum for the Georgia-Alabama-South Carolina System of Projects will be at the Westin Atlanta Airport, 4736 Best Road, Atlanta, Georgia (404) 762–7676.

FOR FURTHER INFORMATION CONTACT: Leon Jourolmon, Assistant Administrator, Finance & Marketing, Southeastern Power Administration, Department of Energy, 1166 Athens Tech Road, Elberton, Georgia, 30635, (706) 213–3800.

SUPPLEMENTARY INFORMATION: The Secretary of the Department of Energy (the Secretary), by order issued July 25, 2002 (67 FR 51564), confirmed and approved on an interim basis Wholesale Power Rate Schedules SOCO–1–A, SOCO–2–A, SOCO–3–A, SOCO–4–A, ALA–1–J, MISS–1–J, Duke-1–A, Duke-2–A, Duke-3–A, Duke-4–A, Santee-1–A, Santee-2–A, Santee-3–A, Santee-4–A, Pump 1–A , Pump-2, and Regulation-1 applicable to Georgia-Alabama-South Carolina System of Projects' power for a period ending September 30, 2007. These rate schedules have been submitted to the Federal Energy Regulatory Commission (FERC) in Docket No. EF02–3011–000 with a request for approval on a final basis.

Discussion: Existing rate schedules are predicated upon a June 2002 repayment study and other supporting data contained in FERC Docket No. EF02–3011–000. The current repayment study prepared in March 2003 shows that existing rates are not adequate to recover all costs required by present repayment criteria. Southeastern is proposing to establish rates that will recoup these unrecovered costs.

Existing rates for the Georgia-Alabama-South Carolina System have been in effect since October 1, 2002. Rates contained in FERC Docket No. ER02–3011–000 are predicated on a repayment study that did not include costs associated with pumped storage units at the Richard B. Russell project. Construction of the Russell pumped storage units was completed in 1993; however, U. S. District Court in Charleston, South Carolina, had issued an injunction prohibiting operation of these units. The injunction was entered on May 24, 1988. On May 3, 2002, the court dissolved this injunction. The Corps of Engineers declared these units commercially available on September 1, 2002. As of this date, Southeastern must include these costs in its costs for recovery.

Southeastern is proposing the following rate schedules to be effective for the period from October 1, 2003 through September 30, 2007.

Rate Schedule SOCO–1–B

Available to public bodies and cooperatives in Georgia, Alabama, Mississippi, and Florida to whom power may be wheeled and scheduled pursuant to contracts between the Government and Southern Company Services, Incorporated.

Rate Schedule SOCO–2–B

Available to public bodies and cooperatives in Georgia, Alabama, Mississippi, and Florida to whom power may be wheeled pursuant to contracts between the Government and Southern Company Services, Incorporated. The customer is responsible for providing a scheduling arrangement with the Government.

Rate Schedule SOCO–3–B

Available to public bodies and cooperatives in Georgia, Alabama, Mississippi, and Florida to whom power may be scheduled pursuant to contracts between the Government and Southern Company Services, Incorporated. The customer is responsible for providing a transmission arrangement.

Rate Schedule SOCO–4–B

Available to public bodies and cooperatives in Georgia, Alabama, Mississippi, and Florida. The customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement.

Rate Schedule ALA–1–K

Available to the Alabama Electric Cooperative, Incorporated.

Rate Schedule MISS–1–K

Available to the South Mississippi Electric Power Association to whom power may be wheeled pursuant to contract between the Government and Alabama Electric Cooperative, Inc.

Rate Schedule Duke–1–B

Available to public bodies and cooperatives in North Carolina and South Carolina to whom power may be wheeled and scheduled pursuant to contracts between the Government and Duke Power Company.

Rate Schedule Duke–2–B

Available to public bodies and cooperatives in North Carolina and South Carolina to whom power may be wheeled pursuant to contracts between the Government and Duke Power Company. The customer is responsible for providing a scheduling arrangement with the Government.

Rate Schedule Duke–3–B

Available to public bodies and cooperatives in North Carolina and South Carolina to whom power may be scheduled pursuant to contracts between the Government and Duke Power Company. The customer is responsible for providing a transmission arrangement.

Rate Schedule Duke–4–B

Available to public bodies and cooperatives in North Carolina and South Carolina served through the transmission facilities of Duke Power Company. The customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement.

Rate Schedule Santee–1–B

Available to public bodies and cooperatives in South Carolina to whom power may be wheeled and scheduled pursuant to contracts between the

Government and South Carolina Public Service Authority.

Rate Schedule Santee–2–B

Available to public bodies and cooperatives in South Carolina to whom power may be wheeled pursuant to contracts between the Government and South Carolina Public Service Authority. The customer is responsible for providing a scheduling arrangement with the Government.

Rate Schedule Santee–3–B

Available to public bodies and cooperatives in South Carolina to whom power may be scheduled pursuant to contracts between the Government and South Carolina Public Service Authority. The customer is responsible for providing a transmission arrangement.

Rate Schedule Santee–4–B

Available to public bodies and cooperatives in South Carolina served through the transmission facilities of South Carolina Public Service Authority. The customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement.

Rate Schedule SCE&G–1–B

Available to public bodies and cooperatives in South Carolina to whom power may be wheeled and scheduled pursuant to contracts between the Government and South Carolina Electric & Gas Company.

Rate Schedule SCE&G–2–B

Available to public bodies and cooperatives in South Carolina to whom power may be wheeled pursuant to contracts between the Government and South Carolina Electric & Gas Company. The customer is responsible for providing a scheduling arrangement with the Government.

Rate Schedule SCE&G–3–B

Available to public bodies and cooperatives in South Carolina to whom power may be scheduled pursuant to contracts between the Government and South Carolina Electric & Gas Company. The customer is responsible for providing a transmission arrangement.

Rate Schedule SCE&G–4–B

Available to public bodies and cooperatives in South Carolina served through the transmission facilities of South Carolina Electric & Gas Company. The customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement.

Rate Schedule Pump–1–A

Available to all customers of the Georgia-Alabama-South Carolina System and applicable to energy from pumping operations at the Carters and Richard B. Russell projects.

Rate Schedule Pump–2

Available to public bodies and cooperatives who provide their own scheduling arrangement and elect to allow Southeastern to use a portion of their allocation for pumping.

Rate Schedule Regulation–1

Available to public bodies and cooperatives in Georgia, Alabama, Mississippi, Florida, South Carolina, or North Carolina to whom regulation service is provided pursuant to contracts between the Government and the customer.

Rate Schedule Replacement–1

Available to all customers in the Georgia-Alabama-South Carolina System and applicable to replacement energy.

The proposed rates for capacity, energy, and generation services are as follows:

Capacity: $3.73 per kw per month.

Energy: 9.22 mills per kwh.

Generation Services: $0.12 per kw per month.

Under this scenario, 75 per cent of generation revenues are recovered from capacity sales and 25 per cent are recovered from energy sales. These rates are expected to produce an average revenue increase of $26.4 million in FY 2004 and all future years.

The rates for transmission, scheduling, reactive supply, and regulation and frequency response apply to all four scenarios and are illustrated in Table 1.

SOUTHEASTERN POWER ADMINISTRATION PROPOSED RATES FOR TRANSMISSION SCHEDULING, REACTIVE, AND REGULATION CHARGES

Rate schedule	Transmission charge $/KW/ month	Scheduling charge $/KW/ month	Reactive charge $/KW/ month	Regulation charge $/KW/ month
SOCO–1–B	2.08	0.0806	0.11	0.0483
SOCO–2–B	2.08	N/A	0.11	N/A
SOCO–3–B	N/A	0.0806	N/A	0.0483
SOCO–4–B	N/A	N/A	N/A	N/A
ALA–1–K	N/A	N/A	N/A	N/A
MISS–1–K	1.88	N/A	N/A	N/A
Duke–1–B	0.87	N/A	N/A	N/A
Duke–2–B	0.87	N/A	N/A	N/A
Duke–3–B	N/A	N/A	N/A	N/A
Duke–4–B	N/A	N/A	N/A	N/A
Santee–1–B	1.52	N/A	N/A	N/A
Santee–2–B	1.52	N/A	N/A	N/A
Santee–3–B	N/A	N/A	N/A	N/A
Santee–4–B	N/A	N/A	N/A	N/A
SCE&G–1–B	1.01	N/A	N/A	N/A
SCE&G–2–B	1.01	N/A	N/A	N/A
SCE&G–3–B	N/A	N/A	N/A	N/A
SCE&G–4–B	N/A	N/A	N/A	N/A
Pump–1–A	N/A	N/A	N/A	N/A
Pump–2	N/A	N/A	N/A	N/A
Regulation–1	N/A	N/A	N/A	N/A
Replacement–1	N/A	N/A	N/A	N/A

The referenced repayment studies are available for examination at 1166 Athens Tech Road, Elberton, Georgia 30635–6711. Proposed Rate Schedules SOCO–1–B, SOCO–2–B, SOCO–3–B, SOCO–4–B, ALA–1–K, MISS–1–K, Duke–1–B, Duke–2–B, Duke–3–B, Duke–4–B, Santee–1–B, Santee–2–B, Santee–3–B, Santee–4–B, SCE&G–1–B, SCE&G–2–B, SCE&G–3–B, SCE&G–4–B, Pump–1–A, Pump–2, Regulation–1, and Replacement–1 are also available.

Dated: March 28, 2003.

Charles A. Borchardt,

Administration.

[FR Doc. 03–9326 Filed 4–15–03; 8:45 am]

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DEPARTMENT OF ENERGY

Western Area Power Administration

Collections from Central Valley Project Power Contractors to Carry Out the Restoration, Improvement, and Acquisition of Environmental Habitat Provisions of the Central Valley Project Improvement Act of 1992

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of final procedures.

SUMMARY: The Western Area Power Administration (Western), by publication of this notice, announces final procedures for the collection of the Restoration Fund. Western published the proposed procedures in the **Federal Register** on October 29, 2002. Included in this notice is a discussion of the comments on the proposed procedures. These procedures supersede the procedures published in the **Federal Register** on August 4, 1998.

DATES: The final procedures will become effective January 1, 2005, and will remain in effect until superseded.

ADDRESSES: Information regarding the final procedures, including comments, letters, and other supporting documents made or kept by Western to develop these final procedures, is available for public inspection and copying at the Sierra Nevada Region Office, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710.

FOR FURTHER INFORMATION CONTACT: Ms. Melinda C. Grow, Public Utilities Specialist, Rates Division, Sierra Nevada Customer Service Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710, telephone (916) 353–4443, e-mail *grow@wapa.gov.*

SUPPLEMENTARY INFORMATION: Section 3407 of the Central Valley Project Improvement Act (CVPIA) (Pub. L. 102–575, Stat. 4706, 4726) establishes in the Treasury of the United States the Central Valley Project (CVP) Restoration Fund (Restoration Fund) to carry out the habitat restoration, improvement, and acquisition provisions of the CVPIA. The CVPIA further requires the Secretary of the Interior to assess and collect annual mitigation and restoration payments from CVP Water and Power Contractors (Restoration Payments). The Secretary of the Interior, through the Bureau of Reclamation (Reclamation), is responsible for determining and collecting CVP Water and Power Contractors' share of the annual Total Restoration Fund Payment Obligation.

Because Western markets and transmits CVP power and maintains all CVP power contracts, Western agreed to collect the Restoration Payments from CVP Power Contractors. Western executed a letter of agreement with Reclamation to establish procedures for depositing collections from CVP Power Contractors into the Restoration Fund.

Through an open and public process, the existing procedures became effective on September 3, 1998, and remain in effect until superseded (63 FR 41561, August 4, 1998). Western indicated that it would review the procedures associated with the assessment and collection of the Restoration Payments from CVP Power Contractors every 5 years or if one of the following occurs: (1) If there is a significant change to or suspension of the legislation, (2) if a material issue arises, (3) if an apparent inequity in the procedures is discovered, or (4) if any significant change occurs that affects the procedures.

Western published a new marketing plan (2004 Power Marketing Plan) in the **Federal Register** on June 25, 1999. The 2004 Power Marketing Plan specifies the terms and conditions under which Western will market power from CVP and the Washoe Project beginning January 1, 2005 (64 FR 34417). Since the current method to assess and collect Restoration Fund payments from CVP Power Contractors is tied to the 1994 Marketing Plan (57 FR 45782, October 5, 1992) and long-term firm CVP power contracts will expire on December 31, 2004, it is necessary to change the method of assessing and collecting Restoration Payments from CVP Power Contractors.

Western will prorate and assess to CVP Power Contractors the annual Power Restoration Payment Obligation (PRPO), as determined by Reclamation. Western will issue each CVP Power Contractor a monthly Restoration Fund Bill reflecting its share of the PRPO. The CVP Power Contractors will pay that amount to Western. Western will transfer all amounts collected from CVP Power Contractors to Reclamation for deposit into the Restoration Fund.

Public Notice and Comment

Summarized below is the process Western used to ensure involvement of interested parties in the development of the final procedures for the assessment and collection of Restoration Fund payments from CVP Power Contractors.

1. Western published a notice in the **Federal Register** (67 FR 65974) on October 29, 2002. This notice officially announced the proposed procedures, initiated the public consultation and comment period, and announced the public information and comment forums.

2. Western sent letters on November 1, 2002, to all CVP preference customers and interested parties transmitting the **Federal Register** notice dated October 29, 2002, and announcing the times and locations for two public forums.

3. Western held public information and comment forums on November 20, 2002, at its Sierra Nevada Region office in Folsom, California. At the public information forum, Western explained the proposed procedures and answered questions. Western held the public comment forum after the public information forum to give the public the opportunity to comment for the record. Three representatives from the following organizations made oral comments.

Northern California Power Agency (California).
Navigant Consulting Inc., on behalf of the Sacramento Municipal Utility District (California).
City of Palo Alto (California).

4. Western received six comment letters during the public consultation and comment period. Western reviewed and considered all comments received by the end of the public consultation and comment period, December 30, 2002, in developing the final procedures.

Western received written comments from the following organizations:

Sacramento Municipal Utility District (California).
Northern California Power Agency (California).
Tuolumne Public Power Agency (California).
Calaveras Public Power Agency (California).
Silicon Valley Power—City of Santa Clara (California).

Trinity Public Utility District (California).

Below are the paraphrased comments Western received and Western's responses to those comments. Specific comments are used for clarification when necessary.

A. Definition and Usage of the Terms

Comment: There was some confusion with respect to the definition and usage of the term ''Total Power Restoration Fund Payment Obligation'' as articulated in the proposed procedures. The definition intended to describe the payments collected from both Water and Power Contractors and yet the definition title only included power. Further, the use of this term confuses the meaning of the first section of the proposed procedures as to when Western is referring to the Water and Power contractors. The commentor requested clarification on the use of this term.

Response: Western evaluated the use of this term throughout the proposed procedures. The definition, as well as the usage of this term, was changed to clarify its usage and is reflected in the final procedures.

Comment: The commentor requested the inclusion of the ancillary service, regulation, in the definition of the Base Resource. Western should consider defining the Base Resource as only those resources that produce power from CVP and Washoe operations, as well as the Enron contract, and that no other products will be considered as part of the 2004 Power Marketing Plan Base Resource.

Response: The 2004 Marketing Plan (64 FR 34417) as well as the Base Resource Contracts have consistently defined the Base Resource '' * * * as the CVP and Washoe Project power output and any additional purchases (as determined by Western) to be available for marketing after meeting the requirements of Project Use and First Preference customers and any other adjustments required for maintenance, reserves, transformation losses and [certain] ancillary services.'' While the Base Resource contracts do include the term ''regulation'' in this definition, Western believes that this service is covered by the 2004 Marketing Plan's definition under '' * * * certain ancillary services.'' Western proposes to change the method for Restoration Fund collections due to the publication of the 2004 Marketing Plan. Western wishes to maintain definition consistency and, therefore, intends to use the same definition for Base Resource as indicated in the 2004 Marketing Plan and the Base Resource Contracts.

B. Inclusion of the PRPO in Western's Power Rate

Comment: Western should consider including the PRPO as part of the CVP revenue requirement and include it in the power rates.

Response: The Secretary of the Interior, through Reclamation, is responsible for assessing and collecting the mitigation and restoration payments from CVP Power and Water contractors. Since Reclamation does not have a formal business relationship with CVP Power Contractors, Western entered into a written agreement with Reclamation that establishes procedures to deposit the Restoration Fund Payments collected from CVP Power Contractors into the Restoration Fund. With regard to Restoration Fund collections, Western acts only as a billing agent on behalf of Reclamation. However, Western does not assume any financial liability for balances which are not collected from the CVP Power Contractors. All legal actions for the collection of Restoration Payments owed by Power Contractors will be initiated by Reclamation in cooperation with Western. Therefore, Western believes it is inappropriate to include the PRPO in the CVP power rate.

C. Allocating the PRPO

Comment: The 2004 Marketing Plan allocates power to the Power Contractors as the Base Resource only after meeting the requirements of Project Use and the First Preference Customers and any adjustments for maintenance, reserves, transformation losses, and certain ancillary services. Depending on reservoir levels, hydrology and water conditions, and Reclamation's water deliveries, there could be times when the Power Contractors receive little or no power benefit from CVP. The commentor stated that during these times, the only beneficiaries of CVP power are the water contractors, and they should pay the full burden of the Restoration Fund. The commentor suggested that instead of using the Power Contractor's Base Resource Percentage as the determinant for assessing an individual Power Contractor, Western should use the actual energy used by the Power Contractor.

Response: The PRPO due from the Power Contractors each year is assessed by Reclamation. Through the Letter of Agreement, Western has agreed to collect the PRPO from the Power Contractors regardless of the amount of power received from CVP resources. Therefore, even if Western were to base a Power Contractor's PRPO obligation on power deliveries, which is similar to the methodology used by Western in the 1998 procedures, Western would have to reduce the billing determinants and increase the Restoration Fund multipliers in order to collect the full PRPO. The end result would be the same. As a billing agent for Reclamation, this role does not afford Western the authority, nor the right, to change the amount assessed to CVP Water customers from the Total Restoration Fund Payment Obligation. Given these circumstances and in an effort to stabilize the Power Contractors' payments, Western proposed a method of calculation based on the Power Contractor's individual Base Resource percentages multiplied by the PRPO.

Comment: Several commentors advocated support of the proposed methodology to use a Power Contractor's Base Resource percentage as the basis for Restoration Fund payments.

Response: Western considered the comments provided on the allocation methodology and agrees with using the Base Resource percentage in the final procedures.

D. Year-end Reconciliation Process

Comment: Western should provide further clarification on the program year and billing months for the year-end reconciliation process as it relates to the Exchange Program. One commentor suggested changing the computation to include exchanges for all 12 months of the fiscal year, rather than exchanges that occur from October through July.

Response: Western intends the year-end reconciliation process to assist in rectifying underpayment made by recipients of exchange energy and overpayments by other Power Contractors. Throughout the year, after Western prepares the monthly power bills, Western will track the amount of exchange energy used and given up by respective Power Contractors. In a typical year, this tracking system will begin with power deliveries for a 12-month period from the July to June service months. In the first year of implementation, the transition year, the tracking system will capture exchange energy associated with power deliveries during the January 1, 2005, through the June 2005 service period. This tracking system will culminate in a year-end reconciliation process that will result in a true-up on August's Restoration Fund bills. Depending on a Power Contractor's net usage of the Exchange Program, there will be either an additional charge or a credit applied to August's Restoration Fund bill. Western considered conducting a monthly

reconciliation as suggested, but due to time and resource limitations, Western decided to use the annual true-up instead. Western provided further clarification on these annual reconciliation procedures in the final procedures.

E. Third-Party Payment

Comment: Western should ensure that billing and payment procedures are flexible enough to accept payments from third-party billing agents, such as the recently created CVP Business Corporation.

Response: Western understands that some Power Contractors may wish to use a third-party for payment of their share of the PRPO. Although such a business arrangement does not transfer the Power Contractor's obligation to make payment, Western understands that the Power Contractor might wish to use a third-party agent. As such, Western has ensured that the final procedures allow for third-party agents to make payments on behalf of the Power Contractors.

F. First Preference Customer Exclusion

Comment: Several commentors supported Western's proposal to exempt First Preference customers from payments to the Restoration Fund in recognition of the contributions these counties have made toward restoration programs.

Response: Western proposed excluding all First Preference customers as a result of the significant environmental contributions of the Trinity River Division and New Melones projects toward CVPIA Restoration Fund programs. After evaluating comments provided during the comment period and reviewing documents that support these environmental benefits, Western plans to maintain the position of exclusion for this subset of customers and document this in the final procedures.

Comment: Several commentors opposed the exclusion of the First Preference customers from Restoration Fund payments. Comments stated that the Trinity Public Utility District (TPUD) has already been receiving an increase in the payments of in-lieu-of (ILO) taxes for impacts of the CVP on Trinity County. This increase of ILO taxes, coupled with the temporary exclusion granted to TPUD for Restoration Fund collections, provides more than appropriate compensation for the impacts experienced by Trinity County as a result of the construction of Trinity Dam. Similarly, other comments questioned Western's intent to include Calaveras and Tuolumne counties in the exclusion. The comment indicated that these two counties already benefit from Western's new marketing plan proposal to deliver firm load factor energy to them, even though New Melones may not generate power for months.

Response: Western's rationale for excluding First Preference customers from post-2004 Restoration Fund collections is based on the contributions the Trinity and New Melones Dam projects and their operation have had toward environmental efforts in the areas of mitigation and restoration as they apply to CVPIA and other legislation.

Western considered the environmental contributions of the Trinity River Division (TRD) and New Melones Project as the basis for excluding First Preference customers. Western did not base this decision on the financial impacts upon the individual First Preference customers. Some customers commented or inferred that this was necessary for Western to base its decision. Western examined this financial data as requested by the customers; however, these calculations do not provide a full representation of the benefits and/or burdens experienced by the First Preference customers. There are other intangible benefits provided by the TRD and New Melones Project that either directly or indirectly provide environmental mitigation in support of CVPIA and/or projects supported by the CVPIA Restoration Fund. Since the First Preference customers' energy entitlements are limited to a mathematical calculation associated with the generation of each respective dam, any change to the generation output or reoperation directly affects the calculation of the First Preference customers' energy entitlement. This concept is a necessary basis for Western's decision to exclude First Preference customers from future Restoration Fund collections.

Comment: One commentor disagreed with Western including the Sierra Conservation Center (SCC) in the exclusion, believing that the construction of the New Melones Dam had no impact on SCC.

Response: The authorizing legislation of the TRD and the New Melones Project (Pub L. 69–386 (Trinity), Pub. L. 87–874 (New Melones)) does not discriminate among First Preference customers within the counties of origin. In the interest of consistency and equity, all preference customers within the counties will be treated the same. The basis for Western's rationale for exclusion is contingent on the benefit or contribution that the Trinity and New Melones project operations have had on CVPIA environmental mitigation and restoration.

Comment: Western should consider limiting the period of exclusion to no longer than 5 years, as circumstances regarding the rationale for exclusion change periodically.

Response: Western reviewed the procedures and agrees to include a provision in the final procedures that provides for a review process every 5 years or earlier if certain conditions are met.

Acronyms and Definitions

As used throughout the remainder of this notice, the following acronyms and definitions when used with initial capitalization, whether singular or plural, have the following meanings:

2004 Power Marketing Plan: The final marketing program for power marketed by the Sierra Nevada Region after 2004 established through a public process and published in the June 25, 1999, **Federal Register** (64 FR 34417).

Administrator: The Administrator of the Western Area Power Administration.

Base Resource: CVP and Washoe Project power output and existing power purchase contracts extending beyond 2004 determined by Western to be available for marketing, after meeting the requirements of Project Use and First Preference Customers, and any adjustments for maintenance, reserves, transformation losses, and certain ancillary services.

Billing Month: The month CVP Power Contractors will be billed for the Restoration Payments.

Billing Year: The period, September through August, that represents the annual Restoration Fund billing cycle.

Central Valley Project (CVP): The multipurpose Federal water and power project extending from the Cascade Range in northern California to the plains along the Kern River south of the city of Bakersfield.

CVP Improvement Act of 1992 (CVPIA): Title 34 of Pub. L. 102–575, 106 Stat. 4706 *et seq.* A legislative act, enacted on October 30, 1992, that defines provisions for habitat restoration, improvement and acquisition, and other fish and wildlife restoration activities in the CVP area of California.

DOE: United States Department of Energy.

Exchange Program: A program established in accordance with the 2004 Power Marketing Plan and intended to allow customers to more effectively use their power allocations.

First Preference Customer: A customer wholly located in Trinity, Calaveras, or

Tuolumne counties, California, as specified under the Trinity River Division Act (69 Stat. 719) and the New Melones provisions of the Flood Control Act of 1962 (76 Stat. 1173, 1191–1192).

Fiscal Year (FY): The Federal fiscal year that currently begins October 1 and ends September 30.

Interior: United States Department of the Interior.

kW: Kilowatt, the electrical unit of capacity that equals 1,000 watts.

kWh: Kilowatthour, the electrical unit of energy that equals the generation of 1,000 watts over 1 hour.

Letter of Agreement: Letter of Agreement No. 93–SAO–10156, a written agreement between Reclamation and Western that establishes procedures to deposit the Restoration Payments collected from CVP Power Contractors into the Restoration Fund.

Midyear Adjustment: The adjustment to the annual PRPO as determined by Reclamation on or about April 1 of each year.

Power: Capacity and energy.

Power Contractor: An entity purchasing CVP power from Western under a contract with a term in excess of 1 year.

Power Restoration Payment Obligation (PRPO): The portion of the Total Restoration Payment Obligation calculated and assigned annually to CVP Power Contractors by Reclamation.

Project Use: The power used to operate CVP or Washoe Project facilities in accordance with authorized purposes and pursuant to Reclamation law.

Reclamation: United States Department of the Interior, Bureau of Reclamation.

Restoration Fund: The CVP Restoration Fund, established by section 3407 of the CVPIA, into which revenues provided by the CVPIA are deposited and from which funds are appropriated by the Secretary to carry out the habitat restoration, improvement, and acquisition provisions of the CVPIA.

Restoration Fund Bill(s): The instrument prepared and issued monthly as a mechanism for collecting the Restoration Payments from CVP Power Contractors.

Restoration Payment(s): The amount(s) recorded as payable on CVP Power Contractors' Restoration Fund Bills.

Secretary: Secretary of DOE.

Total Restoration Fund Payment Obligation: The total amount of payments collected from the CVP Water and Power Contractors calculated annually by Reclamation.

Washoe Project: The Federal water project located in the Lahontan Basin in west-central Nevada and east-central California, as described in Western's final 2004 Power Marketing Plan for the Sierra Nevada Region.

Western: United States Department of Energy, Western Area Power Administration.

Final Procedures

Determination of the PRPO

Reclamation is responsible for assigning the PRPO for the CVP Power Contractors. On or about July 1 of each year, Reclamation will provide a letter to Western's Regional Manager of the Sierra Nevada Region with the determined PRPO amount and a detailed explanation of the computation for the upcoming FY. Upon receiving the letter from Reclamation, Western will notify each CVP Power Contractor of the annual PRPO and the monthly amounts to be collected from CVP Power Contractors.

Allocating the PRPO

Western will allocate the PRPO among CVP Power Contractors each FY. After notification by Reclamation, Western will calculate the annual obligation for each CVP Power Contractor. Western will base its calculation on the assigned Base Resource percentage for each CVP Power Contractor as specified in their power contracts. This annual obligation will be divided by the number of months in the FY; *i.e.*, twelve, or in the case of FY 2005, the number of months remaining in the FY; *i.e.*, nine, to determine the monthly obligation.

Since the 2004 Power Marketing Plan does not begin until January 1, 2005, and Restoration Fund collections for FY 2005 (October 1, 2004, through September 30, 2005) begin prior to this, FY 2005 will be a transition year for Restoration Fund collections from Power Contractors.

Western will base Restoration Fund collections from Power Contractors for October through December 2004 upon the existing collection methodology articulated in the August 4, 1998, **Federal Register**. Western intends to begin collection under these new proposed procedures beginning with January 2005 collections. As a point of clarification, Western will bill the Power Contractors for the October 2004 collection in their September 2004 bills based upon energy and capacity amounts for their June 2004 service month. A similar process will continue through the December 2004 collection.

In December 2004, Western will total the Restoration Fund collections made by the Power Contractors from October and November 2004, and the amounts payable for December 2004, and subtract this amount from the annual PRPO to calculate the balance to collect for the remaining months of the FY. Western will multiply this total by each Power Contractor's Base Resource percentage. This amount will then be divided by nine, representing the remaining months in the FY (January through September) to determine each Power Contractor's monthly obligation.

Year-End Reconciliation Process

Implementation of the Exchange Program may result in some Power Contractors receiving small amounts of energy in excess of their Base Resource percentage in some months. Although recipients of this exchange energy will pay for this power, Restoration Fund obligations are based on the Power Contractors' percentage of the Base Resource excluding exchange energy. Alternatively, some Power Contractors that are not able to use all of their Base Resource and return it as exchange energy could be overpaying their Restoration Fund obligations, since their actual power usage might be less than their Base Resource percentage in a given month.

In an effort to rectify underpayment made by recipients of exchange energy and overpayments by other Power Contractors, Western will conduct a reconciliation process, otherwise known as an annual true-up, before preparing August Restoration Fund Bills. This reconciliation will require Western to identify energy amounts exchanged among individual Power Contractors on a monthly basis. Normally, with the exception of the first year of implementation, the applicable billing periods will track exchange energy associated with power deliveries from July to June service months. During the first year of implementation, the tracking system will track exchange energy from January 1, 2005, through the June 2005 service month. This information will provide the basis for determining the amount of energy exchanged during the billing year.

Western will add an additional charge, or a balloon payment, to the August Restoration Fund Bills for each Power Contractor who received exchange energy during the past year that exceeded their Base Resource percentage. Conversely, Western will also post an offsetting credit on their August bills for those Power Contractors that provided exchange energy, thus decreasing the amount of Base Resource energy received.

Exclusion of First Preference Customers From the Power Restoration Payment Obligation

Western has discretion how the PRPO is assessed to CVP Power Contractors. As a consequence, Western reviewed the contribution the Trinity River Division and New Melones projects provide, either directly or indirectly, to environmental mitigation in support of CVPIA and/or projects supported by the CVPIA Restoration Fund.

The Trinity River Division's contribution to, and support of, environmental mitigation and restoration is many fold. The diversion of Trinity River water through the Trinity River Division's plants and tunnels benefits CVPIA related projects due to its unique characteristics. The lower temperature of Trinity River water makes the Sacramento River more conducive to spawning of endangered and threatened fish species. In addition, other benefits include the dilution effects the Trinity River water affords Spring Creek Dam releases/overflows and the substantial volume increase provided to the Sacramento River. Further, the final outcome of the Supplemental Environmental Impact Statement for the Trinity Record of Decision may make it necessary to further reoperate Trinity Dam to comply with river flow requirements. It is possible that the First Preference entitlement calculation for Trinity County may be reduced, thus effecting the energy entitlement authorized by law. The construction of the New Melones Dam, though originally intended to provide flood control protection, is now also valuable for the benefits it provides for environmental mitigation. Like the TRD, its benefit to the CVP in assisting to meet CVPIA goals and programs is unique and unlike the benefit that any other facility can provide. New Melones' water releases to the Stanislaus River, which flow ultimately into the San Joaquin River, bear the sole CVP burden of complying and supporting the Vernalis Adaptive Management Plan (VAMP) as prescribed in Water Right Decision 1641. This program was based on the Bay-Delta hearings, supports the State's Water Quality Plan, and is also contained in CVPIA legislation. This program requires that water pulse flow targets be met and maintained so that 12 years of studies are available and analyzed for use by the State Water Quality Review Board. In essence, this program has contributed toward a reoperation of New Melones in an effort to support VAMP. In addition, New Melones' water releases help to support other fish habitat and riparian projects along the Stanislaus and San Joaquin rivers as well as water conditions in the California Delta, as required by CVPIA.

The environmental benefits of the TRD and New Melones projects toward CVPIA Restoration Fund programs are significant. Since CVPIA was enacted, these facilities have been reoperated so CVP meets the standards and guidelines set forth by CVPIA. With the reoperation of these facilities and the fact that the First Preference customers' energy entitlements are based on the generation output of these facilities, their reoperation ultimately affects these customers. These circumstances provide a basis by which to exclude Restoration Fund collections from any First Preference customers within the affected areas.

Adjustment to the PRPO

Each FY's annual PRPO is subject to a Midyear Adjustment determined by Reclamation. The Midyear Adjustment occurs on or about April 1 of each FY, following Reclamation's annual determination of available CVP water supply for the year. Reclamation notifies Western, in writing, of the Midyear Adjustment. Upon receiving Reclamation's notification, Western will factor the Midyear Adjustment amount into the calculation for the remaining PRPO for the year. The bills for the remainder of the billing year will reflect the adjusted PRPO. Western will then notify each CVP Power Contractor of the Midyear Adjustment to the annual PRPO.

Collection of CVP Power Contractors' Restoration Fund Payment

Each CVP Power Contractor and any applicable thirdparty agents will receive a Restoration Fund Bill each month on or about the twenty-fifth (25th) but no later than the last day of the month. The Restoration Fund billing cycle for each FY will begin within 30 days following August 1 or the date written notification of the annual PRPO is received from Reclamation, whichever occurs later.

Payment Due Date

All CVP Power Contractors' Restoration Payments are due and payable before the close of business twenty calendar days after each Restoration Fund Bill is issued, or the next business day thereafter, if said day is a Saturday, Sunday, or Federal holiday.

Late Payment Charges Assessed to Delinquent Restoration Payments

Western will add a late payment charge of five hundredths percent (0.05%) of the principal amount unpaid for each day the Restoration Fund Bill payment is delinquent. Payments received will be first applied to the charges for the late payment assessed on the principal and then to the payment of the principal.

Deposit of CVP Power Contractors' Restoration Payments Into the Restoration Fund

On or about the twenty-seventh (27th) calendar day of the month following each Billing Month, Western will transfer all of the Restoration Payments received, including late payment charges, to Reclamation for deposit into the Restoration Fund. The thirtieth (30th) of September of each FY is the last day Western will transfer Restoration Payments, including late payment charges, to Reclamation for that FY.

Review Process

Western will review the procedures for the assessing and collecting of Restoration Payments from the CVP Power Contractors every 5 years or if one of the following occurs: (1) If there is a significant change to or suspension of the legislation, (2) if a material issue arises, (3) if an apparent inequity in the procedures is discovered, or (4) if any significant change occurs that affects the procedures.

Availability of Information

All studies, comments, letters, memorandums, or other documents made or kept by Western for developing the final procedures, will be made available for inspection and copying at Western's Sierra Nevada Region Office, 114 Parkshore Drive, Folsom, CA 95630–4710.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities. Western has determined that this action relates to rates or services offered by Western and, therefore, is not a rule within the purview of the Act.

Environmental Compliance

In compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*), the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500 through 1508), and the Integrated DOE NEPA Implementing Procedures (10 CFR part 1021), Western has determined this action is

categorically excluded from the preparation of an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866. This notice is not required to be cleared by the Office of Management and Budget.

Dated: March 27, 2003.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 03–9325 Filed 4–15–03; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0012; FRL–7303–8]

Perfluorooctanoic Acid (PFOA), Fluorinated Telomers; Request for Comment, Solicitation of Interested Parties for Enforceable Consent Agreement Development, and Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has identified potential human health concerns from exposure to perfluorooctanoic acid (PFOA) and its salts, although there remains considerable scientific uncertainty regarding potential risks. EPA is requesting public comment on pertinent topics of interest, as discussed in this document, and the submission of additional data concerning these chemicals. EPA is also soliciting the identification of interested parties who want to monitor or participate in negotiations on one or more enforceable consent agreements (ECAs) under section 4 of the Toxic Substances Control Act (TSCA) concerning PFOA and fluorinated telomers which may metabolize or degrade to PFOA, and is announcing the first public meeting for these ECA negotiations.

DATES: Comments on this notice must be received on or before May 16, 2003.

Notify EPA in writing on or before May 16, 2003 of your desire to be accorded ''interested party'' status for the purpose of participating in or monitoring the negotiations for development of ECAs concerning PFOA and telomers.

A public meeting has been scheduled to initiate negotiations on an ECA for PFOA and telomers, from 1 p.m. to 5 p.m., on Friday, June 6, 2003.

ADDRESSES: Submit your comments, identified by docket ID number OPPT–2003–0012, online at *http://www.epa.gov/edocket/* (EPA's preferred method), or by mail to EPA Docket Center (7407), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. For additional comment submission methods and detailed instructions, go to Unit I.C. of the **SUPPLEMENTARY INFORMATION.**

Submit your notification for ''interested party'' status separately from any comments submitted, identified ''Attention: PFOA ECA Notification'' by mail to Brigitte Farren, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. To protect personal information from disclosure to the public, please submit these notifications separately from your comments and do not use any online electronic commenting system to submit this notification.

The public meeting to initiate negotiations on ECAs for PFOA and telomers will be held at the Environmental Protection Agency, EPA East Bldg., Rm. 1153, 1201 Constitution Ave., NW., Washington, DC.

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

For technical information contact: Mary Dominiak, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8104; e-mail address: *dominiak.mary@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to manufacturers, importers, processors, exporters, distributors, and users of PFOA, fluoropolymers, fluoroelastomers, and telomer chemicals. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0012. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102–Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. Additional information concerning the topics discussed in this notice can be found in Administrative Record (AR)–226: PFOS, PFOA, Telomers, and Related Chemicals, which was established by the Agency in 2000 to receive information on various fluorinated chemicals, including PFOA. These materials are also available in the EPA Docket Center. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other

information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. (Please note, however, that to protect personal information from disclosure to the public, you should not follow the instructions in this section to submit your notification for ''interested party'' status. Such notification should be submitted separately from any comments on this document using the specific instructions provided under **ADDRESSES**. Do not use any online electronic commenting system to submit this notification.) To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPPT–2003–0012. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2003–0012. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2003–0012. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI,

please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views on the various options we propose, new approaches we have not considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has prepared a preliminary risk assessment (Ref. 1) on perfluorooctanoic acid (PFOA) (Octanoic acid, pentadecafluoro-; Chemical Abstracts Service Registry Number (CAS No.) 335–67–1) and its salts, predominantly ammonium perfluorooctanoate (APFO) (Octanoic acid, pentadecafluoro-, ammonium salt (CAS No. 3825–26–1)). This preliminary assessment indicates potential nationwide human exposure to low levels of PFOA. Based on certain animal studies, there could be a potential risk of developmental and other adverse effects associated with these exposures in humans. However, this assessment also reflects substantial uncertainty about the interpretation of the risk. EPA has identified areas where additional information could be very helpful in allowing the Agency to develop a more accurate assessment of the potential risks posed by PFOA and the other compounds addressed in this notice, and to identify what voluntary or regulatory mitigation or other actions, if any, would be appropriate. EPA is making this preliminary assessment public in order to identify the Agency's concerns, to indicate areas where additional information or investigation would be useful, and to request the submission of data addressing these issues.

EPA is also soliciting the identification of parties who would be interested in monitoring or participating in negotiations for the development of one or more ECAs under section 4 of TSCA on PFOA and on fluorinated telomers (hereafter ''telomers'') which may metabolize or degrade to PFOA. The intent of the ECAs would be to develop additional information, particularly environmental fate and transport information, to enhance understanding of the sources of PFOA in the environment and the pathways by which human exposure to PFOA is occurring.

III. Background

In 1999, EPA began an investigation after receiving data on perfluorooctyl sulfonate (PFOS) indicating that PFOS was persistent, unexpectedly toxic, and bioaccumulative. These data also showed that PFOS had been found in very low concentrations in the blood of the general population and in wildlife around the world. 3M Company (3M), the sole manufacturer of PFOS in the United States and the principal manufacturer worldwide, announced in May 2000 that it was discontinuing its perfluorooctanyl chemistries, including PFOS. EPA followed the voluntary 3M phaseout with regulatory action under TSCA section 5 to limit any future manufacture or importation of PFOS before EPA has had an opportunity to review activities and risks associated with the proposed manufacture or importation (Ref. 2).

In June 2000, EPA indicated that it was expanding its investigation of PFOS to encompass other fluorochemicals, including PFOA, in order to determine whether these other fluorochemicals might present concerns similar to those found with PFOS. EPA was concerned in part because 3M had also found PFOA in human blood during the studies on PFOS (Ref. 3).

In September 2002, the Director of OPPT initiated a priority review on PFOA because the developmental toxicity data, the carcinogenicity data, and the blood monitoring data presented in an interim revised hazard assessment raised the possibility that PFOA might meet the criteria for consideration under TSCA section 4(f) (Refs. 4 and 5). When the priority review commenced, EPA anticipated completing the review within a few months. However, as explained in this notice, there remain substantial uncertainties associated with the preliminary risk assessment. EPA believes these uncertainties may be reduced through acquisition of the information described in this notice. EPA is therefore continuing the priority review in order to acquire this information and better inform the Agency's decisionmaking.

A. PFOA Sources and Uses

PFOA and its salts are fully fluorinated organic compounds that can be produced synthetically and formed through the degradation or metabolism of certain other manmade fluorochemical products. PFOA is a synthetic chemical and is not naturally occurring. Consequently, all PFOA in the environment is attributable to human activity.

PFOA is used primarily to produce its salts, which are used as essential processing aids in the production of fluoropolymers and fluoroelastomers. Although they are made using PFOA, finished fluoropolymer and fluoroelastomer products are not expected to contain PFOA. In recent years, less than 600 metric tons per year of PFOA and its salts have been manufactured or imported in the United States (Ref. 6). The major fluoropolymers manufactured using PFOA salts are polytetrafluoroethylene (PTFE) and polyvinylidine fluoride (PVDF). PTFE has hundreds of uses in many industrial and consumer products, including soil, stain, grease, and water resistant coatings on textiles and carpet; uses in the automotive, mechanical, aerospace, chemical, electrical, medical, and building/construction industries; personal care products; and non-stick coatings on cookware. PVDF is used primarily in three major industrial sectors: Electrical/electronics, building/construction, and chemical processing.

PFOA can be commercially manufactured by two major alternative processes: The Simons Electro-Chemical Fluorination (ECF) process, and a telomerization process. Releases from manufacturing processes are one source of PFOA in the environment. Historically, most U.S. production was by 3M using the ECF process. 3M discontinued its manufacture of PFOA between 2000 and 2002, and other domestic producers are using the telomerization process exclusively.

In the ECF process, an electric current is passed through a solution of anhydrous hydrogen fluoride and an organic feedstock of octanoic acid or a derivative. The ECF process replaces the

carbon-hydrogen bonds on molecules of the organic feedstock with carbon-fluorine bonds. Perfluorination occurs when all the carbon-hydrogen bonds are replaced with carbon-fluorine ones. The ECF process yields between 30–45% straight chain (normal) perfluorooctanonyl fluoride (PFOF), along with a variable mixture of byproducts and impurities. The output of the ECF process consists of a complex combination of chemical substances with varying molecular weights, including higher and lower straight-chain homologues; branched-chain perfluoroalkyl fluorides of various chain lengths; straight-chain, branched, and cyclic perfluoroalkanes and ethers; and other byproducts. After disposal or recovery of some of the byproducts and impurities, the acid fluoride is base hydrolyzed in batch reactors to yield PFOA. The PFOA salts are synthesized by base neutralization of the acid to the salt in a separate reactor.

In the telomerization process, tetrafluoroethylene is reacted with other fluorine-bearing chemicals to yield fluorinated intermediates which are readily converted into PFOA. This process yields predominantly straight-chain acids with an even number of carbon atoms. Distillation can be used to obtain pure components. Commercial products manufactured through the telomerization process, sometimes known as telomers, are generally mixtures of perfluorinated compounds with even carbon numbers, although the process can also produce compounds with odd carbon numbers.

In addition to releases from the deliberate manufacture of PFOA through either the ECF or telomerization processes, and from the use of PFOA and its salts in the manufacture and processing of fluoropolymers and fluoroelastomers, PFOA may have entered the environment through other sources. 3M has indicated that PFOA may have been present as a trace contaminant in some of the fluorochemical products which it discontinued manufacturing between 2000 and 2002 (Ref. 7). Because these products are no longer being manufactured, they will likely not be a significant potential future source of PFOA.

EPA has also received data which indicate that the 8–2 telomer alcohol (1-Decanol, 3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,10-heptadecafluoro- (CAS No. 678–39–7)) although not itself made with PFOA, can be metabolized by living organisms or biodegrade under environmental conditions to produce PFOA (Refs. 8 and 9). Other telomer chemicals have not been tested to determine whether they may also metabolize or degrade to form PFOA. Telomers are used widely in a range of commercial products, including some that are directly released into the environment, such as fire fighting foams, as well as soil, stain, and grease resistant coatings on carpets, textiles, paper, and leather. The extent to which these telomer-containing products might degrade to release PFOA is unknown. However, anecdotal evidence of the atmospheric presence of telomer alcohols in a multi-city North American survey suggests that telomers may be one source of environmental PFOA (Ref. 10). Additional fate information is necessary to determine whether and the extent to which telomer product degradation may be a source of PFOA.

EPA is not currently aware of any other potential sources of PFOA in the environment. EPA specifically requests comment on this issue, and the submission of any data identifying or characterizing PFOA sources. EPA is especially interested in the thermal stability and oxidative degradation products of materials containing PFOA or telomer chemicals which are incinerated.

B. Hazard and Exposure

EPA has conducted a detailed review of all available hazard and exposure information on PFOA. This review is available in the Agency's *Revised Draft Hazard Assessment on PFOA and Its Salts* (Ref. 11). This draft hazard assessment has not been formally peer reviewed, but has been reviewed internally by the EPA Office of Research and Development (ORD).

PFOA is persistent in the environment. It does not hydrolyze, photolyze, or biodegrade under environmental conditions. Based on recent human biomonitoring data provided by industry, which found PFOA in the blood of workers and the general population in all geographic regions of the United States, exposure to PFOA is potentially nationwide, although the routes of exposure for the general population are unknown.

Several epidemiological studies on the effects of PFOA in humans have been conducted on workers. An association with PFOA exposure and prostate cancer was reported in one study; however, this result was not observed in an update to the study in which the exposure categories were modified. A non-statistically significant increase in the levels of the hormone estradiol in workers with high serum PFOA levels (>30 parts per million (ppm)) was also reported, but none of the other hormone levels analyzed indicated any adverse effects.

APFO is the most widely used salt of PFOA, and most animal toxicity studies have been conducted with APFO. An extensive array of animal toxicity studies have been conducted in rodents and monkeys. These studies have shown that APFO exposure can result in a variety of toxic effects in animals including liver toxicity, developmental toxicity, and immunotoxicity. In addition, rodent bioassays have shown that chronic APFO exposure is associated with a variety of tumor types. The mechanisms of APFO tumorigenesis are not clearly understood. At this time, EPA is evaluating the scientific evidence and has not reached any conclusions on the potential significance to humans of the rodent cancer data.

There are marked gender differences in the elimination of PFOA in rats. In addition, there are substantial differences in the half-life of PFOA in rats, monkeys, and humans. The gender and species differences are not completely understood and therefore the extent of potential risks to humans is uncertain.

C. Preliminary Risk Assessment

Because TSCA section 4(f) is focused narrowly on the specific toxicity endpoints of cancer, birth defects, and gene mutation, the preliminary risk assessment prepared as part of this priority review focused on the potential risks for developmental toxicity in humans. EPA did not include cancer risk in this preliminary assessment due to questions concerning the potential significance to humans of the rodent cancer data. Because data indicate that PFOA is not mutagenic, concern for gene mutation was not an issue for this preliminary assessment.

The preliminary risk assessment used a margin of exposure (MOE) approach (Ref. 1). For many risk assessments, the MOE is calculated as the ratio of the administered dose from the animal toxicology study to the estimated human exposure level. The human exposure is estimated from a variety of potential exposure scenarios, each of which requires a variety of assumptions.

A more accurate estimate of the MOE can be derived if measures of internal dose are available for humans and the animal model. In this preliminary risk assessment, serum levels of PFOA, which are a measure of internal dose, were available for some administered dose levels in the rat 2-generation reproductive toxicology study and from human biomonitoring studies. Thus, internal dose was used for the

calculation of MOEs in this assessment. The actual values of the MOEs derived must be viewed with caution, however, due to the differences in kinetics between humans and rodents. The range of MOEs in the preliminary assessment encompasses some values that would indicate potential concern and other values that would indicate a low level of concern. Due to the uncertainties in the assessment, and the possibility that the additional information discussed in this notice might reduce those uncertainties, the Agency has not attempted further interpretation of these MOEs at this time. The interpretation of the significance of the MOEs for ascertaining potential levels of concern will necessitate a better understanding of the appropriate dose metric in rats, and the relationship of the dose metric to the human serum levels.

As this priority review of PFOA progresses, EPA will continue to develop the characterization of hazard and potential risk associated with exposure to PFOA. Because the scientific interpretation issues in this case are particularly complex, given the unusual properties and behavior of PFOA and the absence of data on exposure pathways and levels, EPA anticipates that a more comprehensive risk analysis will be taken to the Agency's Science Advisory Board for review and comment in fall 2003. The preliminary risk assessment described in this notice has not been formally peer reviewed, but has gone through internal review by multiple EPA offices, including ORD, the Office of Science Coordination and Policy (OSCP), the Office of Pesticide Programs (OPP), and the Office of Policy, Economics, and Innovation (OPEI). The preliminary risk assessment has also been the subject of an external letter peer review.

D. Uncertainties and Data Needs

Although EPA has concerns with respect to the potential nationwide presence of PFOA in blood and with the potential for developmental and other effects suggested by animal studies, there are significant uncertainties in the Agency's quantitative assessment of the risks of PFOA. In addition, the uncertainties discussed in this unit with respect to the identification of the pathway or pathways that result in human exposure to PFOA (air, water, food, etc.), and the uncertainties associated with how PFOA gets into those pathways (including the products or processes that are responsible for the presence of PFOA in the environment) make it difficult to determine what, if any, particular risk mitigation measures would be appropriate. The Agency believes that the additional information identified in this notice would better inform this priority review and Agency decisionmaking with respect to PFOA.

The sources of PFOA in the environment, as described in Unit II.A., are not fully defined or understood. Historically, direct PFOA releases during the manufacture of PFOA and its use in the manufacture and processing of fluoropolymers and fluoroelastomers have been quantified at some sites. Industry has identified and implemented voluntary control technologies to reduce releases, as well as to improve PFOA recovery for recycling or destruction, as described in Unit II.E. The effectiveness of these programs could be assessed, possibly through the ECA process described in Unit V., by monitoring PFOA levels at the respective facilities and determining if the release reduction and waste management programs are reducing the PFOA levels in the media surrounding the affected facilities. PFOA exposures and releases to the environment may also come from the distribution of PFOA in aqueous dispersions of fluoropolymers used by processors to apply coatings to metals and textiles, a topic which industry is also attempting to resolve.

In addition, the question of the potential contribution to PFOA levels from telomer manufacture and from telomer product degradation remains. The universe of specific telomer chemicals that may ultimately degrade or metabolize to PFOA has not been fully defined. Preliminary data suggest that only higher perfluorinated homologues (chemicals with carbon chain lengths of eight and higher) would be converted into PFOA via normal environmental pathways. The 8–2 telomer alcohol has been shown to biodegrade and metabolize to form PFOA, but other telomer chemicals, including telomer iodides and telomer-derived polymers, have not yet been tested. Determining possible telomer product sources of PFOA may be particularly difficult because these fluorochemicals are typically used in products in very low concentrations, indicating that any individual source contribution by specific products could be very small, widely distributed, and difficult to detect. For example, products contaminated with volatile, unreacted telomer alcohol residuals could potentially release those residuals into the environment where they could be subject to biodegradation.

The exposure routes leading to the presence of PFOA in human blood are not known. The nationwide presence of PFOA in human blood, contrasted with the limited geographic locations of fluorochemical plants making or using the chemical, suggests that there must be additional sources of PFOA in the environment, and exposures beyond those attributable to direct releases from industrial facilities. But whether these exposures are due to PFOA in the air, the water, on dusts or sediments, in dietary sources, or through some combination of routes is currently unknown. Data evaluating the environmental presence of PFOA in water are very limited and site-specific. Data on the presence of PFOA in air or soil are not currently available. Data on the presence of PFOA in wildlife suggest that animals are not as likely as humans to have PFOA in their blood, and that PFOA is not found as widely in animals as PFOS. Whether these differences may be due to different exposure pathways or to differences in how the chemicals are processed or retained by animals and humans is unknown. The technical difficulties of detecting and accurately measuring the chemical in all these various media, particularly in the low concentrations that EPA would anticipate, are considerable.

The preliminary risk assessment on potential developmental toxicity was based on a comparison of serum levels in the 2-generation rat reproductive study with those found in the human population. However, there are considerable species differences in the kinetics of PFOA. Interpretation of the significance of the MOEs for ascertaining potential levels of concern will necessitate a better understanding of the appropriate dose metric in rats, and the relationship of the dose metric to the human serum levels.

Finally, there are some uncertainties regarding the use of the human biomonitoring data. Although the available data include a range of populations with various demographics in many States and all geographic areas of the country, there may be some populations that are not represented. Because it is unknown how the human exposures are occurring, proximity to a manufacturing facility may or may not be a factor in exposure. However, populations living near these facilities were not sampled. Therefore, it is possible that PFOA serum levels may be underestimated for certain portions of the U.S. population. The children's sample was derived from blood collected in 1994/1995; therefore, it may not reflect the current status of PFOA in children's blood.

Voluntary activities by industry are underway as described in Unit II.E. to help address some of these uncertainties

and data gaps. For example, pharmacokinetics studies examining the biological processing of PFOA in rats are expected to be completed in the summer and fall of 2003. These studies may help to reduce the uncertainty in the estimation of risk to humans. In addition, EPA has submitted a nomination to the Centers for Disease Control and Prevention (CDC) to include PFOS, PFOA, and certain related fluorochemicals in the next National Health and Nutrition Examination Survey (NHANES). This would provide a national baseline of PFOA exposure, both to indicate whether current data are representative of the U.S. population and to offer a gauge with which to measure the effectiveness of actions to reduce exposures.

EPA will continue to develop and clarify issues relating to hazard, exposure, and risk as the priority review continues and the Agency receives additional information that allows further resolution of the uncertainties identified in this unit.

Additional data beyond EPA's current activities and the voluntary efforts undertaken by the industry may be necessary to resolve the existing uncertainties and fill remaining data gaps, including gaps not yet identified. EPA requests comment on these issues, and particularly requests that comments include the submission of any additional data that may help to fill these gaps. Certain specific information requests are identified in Unit IV.

E. Ongoing Voluntary Activities

In 2000, EPA opened a non-regulatory public docket file, Administrative Record AR–226, for information on PFOS, PFOA, telomers, and related fluorinated chemicals, and began to express its concerns to the global fluorochemical industry (Ref. 3). In response, the industry began providing information to the Agency, all of which has been placed into AR–226. Two industry groups, the Fluoropolymer Manufacturing Group (FMG) and the Telomer Research Program (TRP), formed and began pursuing voluntary collective actions to address issues associated with PFOA and the telomers. 3M continued its ongoing research efforts despite having discontinued the manufacture of both PFOS and PFOA. Much of the information reflected in the EPA's revised draft hazard assessment and preliminary risk assessment on PFOA was provided through these voluntary activities on the part of industry.

In March 2003, EPA received letters from 3M, FMG, and TRP documenting their ongoing voluntary programs and outlining their plans for continuing research and product stewardship activities (Refs. 7, 12, and 13). These letters have been placed in the public docket for this notice and can be accessed as described in Unit I.B.2. The letters contain substantial additional information concerning the specifics of the voluntary industry actions beyond what is presented in this notice.

In its letter, 3M indicated that it would not resume the manufacture of PFOA for commercial sale; that it would continue its medical monitoring efforts for workers and provide biannual reports to EPA and update its epidemiological study reports to EPA every 5 years; and that it will continue monitoring groundwater, surface water, and other environmental media and provide a summary report to EPA within 2 years. 3M also stated that it would work with other members of industry to conduct additional validation of PFOA analytical methods and sampling protocols and to participate in human health and environmental fate and effects studies of PFOA. 3M also indicated that the facilities and employees of its subsidiary, Dyneon LLC, would continue to be part of the 3M monitoring program.

The members of the FMG—Asahi Glass Fluoropolymers USA, Inc.; Daikin America, Inc.; E.I. duPont de Nemours & Company; and Dyneon LLC—indicated that they and their parent companies represent most of the known use of APFO for the production of fluoropolymers both in the United States and worldwide. Their letter includes commitments to reduce emissions of APFO from fluoropolymer and APFO manufacturing facilities on a global, individual company-wide basis by a minimum of 50% by 2006; to conduct studies on both finished polymers and finished products from these polymers to determine if any exposure to the general population can be related to the fluoropolymer industry; to conduct studies on emissions from fluoropolymer processing facilities to determine the level of current emissions; and to develop additional toxicological data on APFO. The companies noted that they are participating in activities through the Association of Plastics Manufacturers in Europe (APME) to conduct pharmacokinetics studies in rats and develop a pharmacokinetic model, and would share those data with EPA as they are developed, beginning in spring 2003. The companies indicated that they would continue to follow principles of product stewardship similar to those described in the Responsible Care® programs of the American Chemistry Council and the Synthetic Organic Chemical Manufacturers Association in their efforts to support toxicological research, control occupational exposures in their own facilities, monitor employee health, assist customers in protecting their employees, and meet the general commitment to reduce emissions to the environment. The companies stated that they will continue to use appropriate criteria, including such standards as the interim air and water screening levels and water quality guidelines recently adopted in West Virginia, to evaluate operations and emissions (Refs. 14 and 15). The letter includes a schedule for the completion of various studies already underway.

The members of the TRP—AGA Chemicals (Asahi Glass); Clariant GmbH; Daikin America, Inc.; and E.I. duPont de Nemours & Company—indicated that they comprise the major telomer producers, and that they are evaluating telomer products sold in the United States to determine whether they contribute to significant human or environmental exposure to PFOA. They noted that their evaluation has six key components: Analysis of products and articles; analysis of ''aged'' products and ''in use'' articles; characterization of potential release of PFOA from telomer-based product manufacture; characterization of potential release of PFOA from telomer-treated article manufacture; analysis of possible biodegradation of telomer-based polymeric products; and evaluation of the ultimate fate and disposal routes for telomer-treated articles in the United States. The letter includes lists and schedules for these various evaluation components, as well as for the submission of additional information to the Agency.

EPA appreciates the industry response to the Agency's concerns regarding PFOA and the telomers, and looks forward to continued cooperation on assessment and management activities. EPA invites the participation of additional interested persons in these efforts. EPA considers that the timely submission of the information which industry has already committed to provide will be essential to developing a better and more complete understanding of the potential risks of PFOA. However, in light of the concerns identified to date, the Agency will continue its ongoing expeditious review.

While the voluntary industry activities as described in the letters will provide substantial additional information, EPA considers it likely that

issues will remain even after these activities are complete, and that the results of some of these programs may well identify additional questions that will need to be answered. EPA requests comment on these issues.

IV. Specific Requests for Comments, Data, and Information

EPA specifically requests comments, data, and information on the following topics.

A. Use and Production Volume Information

What are the specific chemical identities (by Ninth Collective Index name and CAS No., if available) of the telomer chemicals, including polymers derived from these telomers, and of the fluoropolymers and fluoroelastomers made with PFOA or related chemicals, currently in commerce? In what volumes and at what locations are these chemicals manufactured or imported? How and in what volumes are these chemicals used? What are the benefits of these chemicals and products in their specific uses, and what alternatives to these chemicals may be available for specific uses?

B. Exposure Information

How are products containing the chemicals identified in Unit IV.A. used? How are these products disposed of? What environmental releases occur at manufacturing and processing facilities where these chemicals are used? What data are available on worker exposures to these chemicals? What data are available on exposures to the general population? What data are available on measured levels of these chemicals in humans and the environment, in all environmental media? What data are available on the biodegradation of these chemicals, on releases of these chemicals from consumer and industrial products, and on their breakdown during product biodegradation, incineration, and other disposal practices?

C. Monitoring and Related Information

EPA specifically requests that any persons who have in their possession existing human or environmental monitoring data indicating or assessing the presence of PFOA and related fluorochemicals in humans, in wildlife, or in any environmental media, including studies conducted in other countries, provide those data to the Agency in response to the publication of this notice to enhance the understanding of PFOA presence in the environment and of the pathways leading to exposures. EPA includes in this request any existing data not otherwise provided to EPA concerning the toxicity, pharmacokinetics, and half-life of PFOA in organisms.

D. Additional Data

Are there other pieces of information not addressed in Unit IV. A., B., and C., that would help EPA more accurately assess the risks of these chemicals and determine appropriate further action, if warranted?

V. Enforceable Consent Agreement Development

EPA is interested in developing one or more ECAs under TSCA section 4 and 40 CFR part 790 for PFOA and telomers that focus on identifying environmental fate and transport information, as well as other relevant information to enhance understanding of the sources of PFOA in the environment and the pathways by which human exposure to PFOA is occurring. The objective of the ECA process is to conclude one or more ECAs that will set in place an industry-sponsored testing program that will address a number of EPA's current data needs for PFOA and telomers. EPA expects that industry will meet the voluntary testing commitments made in their letters of intent, as discussed in Unit III.E. Therefore, EPA anticipates that the ECA process will focus generally on testing issues beyond or supplemental to those contained in the industry letters of intent.

A. Solicitation of Interested Parties

EPA is soliciting interested parties to monitor or participate in negotiations on ECAs for PFOA and telomers. As discussed in Unit III.E., 3M; AGA Chemicals; Asahi Glass Fluoropolymers USA, Inc.; Clariant GmbH; Daikin America, Inc.; Dyneon LLC; and E.I. duPont de Nemours & Company, have been pursuing voluntary collective actions to address issues associated with PFOA and telomers and have been keeping EPA informed of these activities. Any person who desires treatment as an ''interested party'' during the development of the ECAs must respond in writing to this notice on or before May 16, 2003 following the instructions in Unit I., and must specifically request that they be given ''interested party'' status. These interested parties will not incur any obligations by being so designated. Negotiations will be conducted in one or more meetings, all of which will be open to the public. EPA will contact all interested parties who have expressed a desire to participate in or monitor the ECA negotiations and advise them of all meeting dates. EPA will also notify the public of such meeting dates in the electronic public docket for this action. The negotiation time schedule for PFOA and telomers will be established at the first negotiation meeting. It is EPA's current intent to move quickly to attempt to finalize any ECAs, if possible. If an ECA is not established in principle within a reasonable time-frame, negotiations will be terminated, and any unmet data needs may be pursued via a test rule promulgated under TSCA section 4. If the data generated from the ECA do not meet the Agency's needs, EPA reserves the right to proceed with rulemaking to obtain the needed data. EPA also reserves the right to announce and convene subsequent ECA negotiations for additional data, if the testing from voluntary activities, the initial ECA, or from a test rule identify additional data gaps which must be filled.

B. ECA Process and Public Participation in Negotiations

EPA will provide the public with an opportunity to comment on and participate in the development of any ECAs on PFOA and telomers to ensure that the views of interested parties are taken into account during the ECA process. This process is described generally in this unit, and is more fully addressed in 40 CFR part 790.

Individuals and groups who respond to this notice by May 16, 2003 and request treatment as interested parties will have the status of interested parties. All negotiating meetings for the development of this ECA will be open to the public and minutes of each meeting will be prepared by EPA and placed in the official public docket for this action. The Agency will advise interested parties and the public of meeting dates and make available meeting minutes, testing proposals, background documents, and other relevant materials exchanged at or prepared for negotiating meetings. Where tentative agreement is reached on an acceptable testing program, a draft ECA will be made available for comment by interested parties and, if necessary, EPA will hold a public meeting to discuss any comments that have been received and determine whether revisions to the ECA are appropriate. EPA will not reimburse costs incurred by non-EPA participants in this ECA negotiation process.

Enforceable consent agreements will only be concluded where an agreement can be obtained, which is satisfactory to the Agency, manufacturers or processors who are potential test sponsors, and other interested parties, concerning the need for and scope of testing. In the

absence of an ECA, EPA reserves the right to proceed with rulemaking.

More specifically, EPA will not enter into an ECA if either the Agency and affected manufacturers or processors cannot reach an agreement on the provisions of the ECA, or the draft ECA is considered inadequate by other interested parties who have submitted timely objections to the draft ECA. However, EPA may reject these objections if the Agency concludes that:

1. They are not made in good faith;

2. They are untimely;

3. They are not related to the adequacy of the proposed testing program or other features of the ECA that may affect EPA's ability to fulfill the goals and purposes of TSCA; or

4. They are not accompanied by a specific explanation of the grounds on which the draft ECA is considered objectionable.

EPA will prepare an explanation of the basis for each ECA. That document will summarize the agreement (including the needed data development), explain the objectives of the data collection/development activity, and outline the chemicals' use and exposure characteristics. That document, which will also announce the availability of the final ECA, will be published in the **Federal Register**. Upon the successful completion of an ECA, export notification under TSCA section 12(b) would be required for all signatories to the ECA who export or intend to export the chemicals subject to the ECA. A separate action would be published in the **Federal Register** following the announcement of the ECA to apply the export notification requirement to others by adding the ECA chemicals to the list of chemicals subject to testing consent orders at 40 CFR 799.5000.

VI. References

These references have been placed in the official docket that was established under docket ID number OPPT–2003–0012 for this action as indicated in Unit I.B.2. Reference documents identified with an Administrative Record number (AR226–XXXX) are available in the public version of the official docket maintained in the OPPT Docket. Copies of these documents may be obtained as described in Unit I.B.2.

1. USEPA. Preliminary Risk Assessment of the Developmental Toxicity Associated with Exposure to Perfluorooctanoic Acid (PFOA) and its Salts. OPPT, Risk Assessment Division. Washington, DC. April 10, 2003.

2. **Federal Register**. (65 FR 62319, October 18, 2000) (FRL–6745–5); (67 FR 11008; March 11, 2002) (FRL–6823–6); (67 FR 11014, March 11, 2002) (FRL–6823–7); (67 FR 72854, December 9, 2002) (FRL–7279–1).

3. (AR226–0639) PFOS Presentation to CMA. Auer, Charles M., USEPA. Washington, DC. June 19, 2000.

4. (AR226–1127) Revision of PFOA Hazard Assessment and Next Steps. Memorandum from Charles M. Auer to Oscar Hernandez, Mary Ellen Weber, and Ward Penberthy. USEPA. Washington, DC. September 27, 2002.

5. Section 4(f) of TSCA (15 U.S.C. 2603 (4)).

6. (AR226–0620) Sulfonated Perfluorochemicals in the Environment: Sources, Dispersion, Fate, and Effects. 3M. St. Paul, MN. March 1, 2000.

7. Environmental, Health And Safety Measures Relating to Perfluorooctanoic Acid and Its Salts (PFOA). Letter from Dr. Larry Wendling, 3M, to Stephen L. Johnson, USEPA. 3M. St. Paul, MN. March 13, 2003.

8. Characterization of Fluorinated Metabolites by a Gas Chromatographic-Helium Microwave Plasma Detector; The Biotransformation of 1H, 1H, 2H, 2H-Perfluorodecanol to Perfluorooctanoate. Hagen, Donald F.; Belisle, John; Johnson, James D.; and Venkateswarlu, P. *Analytical Biochemistry*. 118, 336–343 (1981).

9. (AR226–1149). Revision 1, Biodegradation Screen Study for Telomer-Type Alcohols. Lange, Cleston C. Pace Analytical Services, Minneapolis, MN. November 6, 2002.

10. Mabury, Scott. Annual Report of Activities for Telomer Research Program Grant to University of Toronto. University of Toronto, Toronto, Canada. September 2002.

11. (AR226–1136) Revised Draft Hazard Assessment of Perfluorooctanoic Acid and Its Salts. USEPA, OPPT, Risk Assessment Division. Washington, DC. November 4, 2002.

12. Voluntary Actions to Evaluate and Control Emissions of Ammonium Perfluorooctanoate (APFO). Letter from Charles D. Allen, Asahi Glass Fluoropolymers USA, Inc.; Takahiko Sakanoue, Daikin America, Inc.; James E. Gregory, Dyneon LLC.; and Richard J. Angiullo, E.I. duPont de Nemours & Company, to Stephen L. Johnson, USEPA. March 14, 2003.

13. Letter of Intent for the Telomer Research Program from H. Okuno, AGA Chemicals, Inc.; Hans Ludwig Panke and Reinhard Jung, Clariant GmbH; Takahiko Sakanoue, Daikin America, Inc.; and Stephen H. Korzeniowski, E.I. duPont de Nemours & Company, to Stephen L. Johnson, USEPA. March 14, 2003.

14. Order on Consent between E.I. duPont de Nemours & Company and USEPA, Region III and Region V. Philadelphia, PA. March 12, 2002.

15. West Virginia Department of Environmental Protection. Final Ammonium Perfluorooctanoate (C8) Assessment of Toxicity Team (CATT) Report. Charleston, WV. August 2002.

List of Subjects

Environmental protection, Chemicals, Hazardous substances.

Dated: April 14, 2003.

Stephen L. Johnson,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 03–9418 Filed 4–14–03; 1:26 pm]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0078; FRL–7299–2]

Kansas State Plan for Certification of Applicators of Restricted Use Pesticides; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent.

SUMMARY: The State of Kansas has submitted to EPA programmatic amendments to its State Plan for Certification and Training of Applicators of Restricted Use Pesticides. The proposed amendment establishes new requirements for the recertification of pesticide applicators. Notice is hereby given of the intention of the Regional Administrator, Region VII, to approve the revised Plan for the Certification of Applicators of Restricted Use Pesticides. EPA is soliciting comments on the proposed amendments.

DATES: Comments, identified by docket ID number OPP–2003–0078, must be received on or before May 16, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: John T. Tice, Water, Wetlands and Pesticides Division, WWPD-PEST, 100 Centennial Mall N., Room 289, Lincoln, NE 68508; telephone number: (402) 437–5080; e-mail address: Tice.john@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those involved in agriculture and anyone involved with the distribution and application of pesticides for agricultural purposes. Others involved with pesticides in a non-agricultural setting may also be affected. In addition, it may be of interest to others, such as, those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0078. 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 Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. 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.

In addition to the sources listed in this unit, you may obtain copies of the amended Kansas Certification Plan, other related documents, or additional information by contacting:

1. John T. Tice at the address listed under **FOR FURTHER INFORMATION CONTACT**.

2. Jeanne Fox, Kansas Department of Agriculture, 109 SW 9th St., Third Floor, Topeka, KS 66612; telephone number: (785) 296–2265; e-mail address: jfox@kda.state.ks.us.

3. Jeanne Heying, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–3240; e-mail address: heying.jeanne@epa.gov.

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 ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0078. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2003–0078. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention: Docket ID Number OPP–2003–0078.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0078. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. 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 copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has reviewed the revised Kansas Certification Plan and finds it in compliance with FIFRA and 40 CFR part 171 and is announcing its intention to approve the amended plan and seeks public comment.

List of Subjects

Environmental protection, Education, Pests and pesticides.

Dated: April 7, 2003.

Nathaniel Scurry,

Regional Administrator, Region VII.

[FR Doc. 03–9339 Filed 4–15–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0116; FRL–7300–8]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by October 13, 2003, or May 16, 2003 for EPA Registration Numbers: 003008–00021, 075341–00001, and 075341–00007, orders will be issued canceling these registrations. The Agency will consider withdrawal requests postmarked no later than October 13, 2003 or 30 days after publication in the **Federal Register** for EPA Registration Numbers indicated above.

FOR FURTHER INFORMATION CONTACT: James A. Hollins, Information Resources Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5761, e-mail address: *hollins.james@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number

OPP–2003–0116. 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 Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to cancel 34 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in Table 1 of this unit:

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration no.	Product Name	Chemical Name
000100–00754	Supracide 25WP	O,O-Dimethyl phosphorodithioate, S-ester with 4-(mercaptomethyl)-2-
000279 AZ–93–0002	Prevail FT Termiticide	Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-,
000279 AZ–93–0009	Ammo 2.5 EC Insecticide	Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-,
000279 AZ–95–0004	Biflex TC Termiticide	(2-Methyl{1,1′-biphenyl}-3-yl)methyl 3-(2-chloro-3,3,3-trifluoro-1-
000572–00329	Urban Insect Spray	O,O-Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
000655–00318	Prentox Warfarin Technical	3-(alpha-Acetonylbenzyl)-4-hydroxycoumarin
000655–00441	Prentox Residual Concentrate DV-One	O,O-Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate 2,2-Dichlorovinyl dimethyl phosphate
000655–00557	Prentox Diazinon 14G	O,O-Diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
000655–00644	Prentox Pyronyl Oil Concentrate #1233-A	N-Octyl bicycloheptene dicarboximide (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
000655–00788	Carbaryl 5D	1-Naphthyl-N-methylcarbamate
000655–00789	Prentox Carbaryl 10D	1-Naphthyl-N-methylcarbamate
001757–00041	Amerstat 233	Tetrahydro-3,5-dimethyl-2H-1,3,5-thiadiazine-2-thione
003008–00021	Osmose Special K-33 Preservative	Arsenic acid Chromic acid Cupric oxide
004822–00084	Bolt Ant and Roach Killer	o-Isopropoxyphenyl methylcarbamate
004822–00318	Raid Ant & Roach Killer	o-Isopropoxyphenyl methylcarbamate (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
005011–00060	Formula GH-18	1,2-Dibromo-2,2-dichloroethyl dimethyl phosphate
007173–00072	Rozol Rodenticide Mineral Oil Concentrate	2-((p-Chlorophenyl)phenylacetyl)-1,3-indandione
007173–00216	Maki Paraffin Blocks with Bitrex	3-(3-(4′-Bromo-(1,1′-biphenyl)-4-yl)-3-hydroxy-1-phenylpropyl)-4-hydroxy-2H-1-
010163 AZ–02–0001	Sandea Herbicide	3-Chloro-5-(((((4,6-dimethoxy-2-pyrimidinyl)amino)carbonyl)amino)
010163 OR–99–0003	Savey Ovicide/Miticide 50-WP	trans-5-(4-Chlorophenyl)-N-cyclohexyl-4-methyl-2-oxo-3-thiazolidinecarboxamide
010163 WA–95–0002	Metasystox-R Spray Concentrate	S-(2-(Ethylsulfinyl)ethyl) O,O-dimethyl phosphorothioate
010163 WA–95–0003	Metasystox-R Spray Concentrate	S-(2-(Ethylsulfinyl)ethyl) O,O-dimethyl phosphorothioate
010182 AZ–93–0007	Prelude Termiticide/Insecticide	Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-,
010182 AZ–93–0008	Demon TC Insecticide	Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-,
019713 AZ–94–0005	Drexel Dimethoate 4EC	O,O-Dimethyl S-((methylcarbamoyl)methyl) phosphorodithioate
019713 AZ–96–0004	Drexel Dimethoate 2.67	O,O-Dimethyl S-((methylcarbamoyl)methyl) phosphorodithioate
041200–00002	Rabon 350 Mineral	Gardona (cis-isomer)
062719 ID–94–0013	Lorsban 4E-HF	O,O-Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
065361 CA–89–0059	Plantfume 103 Smoke Generator	O,O,O,O-Tetraethyl dithiopyrophosphate

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
067379 AZ–90–0014	Vinco Formaldehyde Solution	Formaldehyde
071711 ID–02–0005	Moncut 70-DF	a,a,a-Trifluoro-3′-isopropoxy-o-toluanalide
071711 OR–01–0015	Moncut 50WP	a,a,a-Trifluoro-3′-isopropoxy-o-toluanalide
075341–00001	Hollow Heart Concentrate	Sodium arsenate Sodium dichromate Sodium fluoride
075341–00007	Osmoplastic SD Wood Preserving Compound	Coal tar creosote Sodium dichromate Sodium fluoride

Unless a request is withdrawn by the registrant within 180 days (30 days where indicated) of publication of this notice, orders will be issued canceling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during the indicated comment period.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number:

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company no.	Company Name and Address
000100	Syngenta Crop Protection, Inc., Box 18300, Greensboro, NC 27419.
000279	FMC Corp.Agricultural Products Group, 1735 Market St, Philadelphia, PA 19103.
000572	Rockland Corp., 686 Passaic Ave.Box 809, West Caldwell, NJ 07007.
000655	Prentiss Inc., C.B. 2000, Floral Park, NY 11001.
001757	Drew Industrial Division, Ashland Chemical Co., One Drew Plaza, Boonton, NJ 07005.
003008	Osmose Inc., 980 Ellicott St, Buffalo, NY 14209.
004822	S.C. Johnson & Son Inc., 1525 Howe Street, Racine, WI 53403.
005011	Aire-Mate Inc., Box 406, Westfield, IN 46074.
007173	Liphatech, Inc., 3600 W. Elm Street, Milwaukee, WI 53209.
010163	Gowan Co, Box 5569, Yuma, AZ 85366.
010182	Zeneca Ag Products, Inc., Box 18300, Greensboro, NC 27419.
019713	Drexel Chemical Co, 1700 Channel Ave.Box 13327, Memphis, TN 38113.
041200	Midway Co-Op, Inc., Box 40, Osborne, KS 67473.
062719	Dow Agrosciences LLC, 9330 Zionsville Rd 308/2E225, Indianapolis, IN 46268.
065361	Glad-A-Way Gardens Inc., 2669 E. Clark Ave., Santa Maria, CA 93455.
067379	Associated Citrus Packers Inc., 2 W. 6th St, Yuma, AZ 85364.
071711	Nichino America, Inc., 4550 New Linden Hill Rd., Suite 501, Wilmington, DE 19808.
075341	Osmose Utilities Services, Inc., 980 Ellicott Street, Buffalo, NY 14209.

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

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before October 13, 2003 or May 16, 2003 for EPA Registration Numbers 003008–00021, 075341–00001 and 075341–00007. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in the **Federal Register** of June 26, 1991 (56 FR 29362) (FRL–3846–4). Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action.

Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold, or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product. Exception to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in a Special Review action, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: April 1, 2003.

Linda Vlier Moos

Acting Director, Information Resources Services Division, Office of Pesticide Programs.

[FR Doc. 03–8959 Filed 4–15–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0281; FRL–7299–1]

Pesticides; North American Free Trade Agreement Guidance Document on Requirements for Tolerances on Imported Commodities; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document provides detailed guidance on data requirements that meet North American Free Trade Agreement (NAFTA) standards for the establishment of pesticide import tolerances or maximum residue levels in Canada, Mexico, and the United States. It has been developed consistently with the goals of the North American Free Trade Agreement. This guidance document does not change the U.S. data requirements for obtaining a U.S. import tolerance. This notice starts a 60–day public comment period, during which the public is encouraged to submit comments to EPA in accordance with procedures described in Unit I. of this document.

DATES: Comments, identified by docket ID number OPP–2002–0281, must be received on or before June 16, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Robert McNally, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8085; fax number: (703) 308–8041; e-mail address: mcnally.robert@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

Does this Action Apply to Me?

You may be potentially affected by this action if you sell, distribute, manufacture, or use pesticides for agricultural applications, produce food, distribute or sell food, or implement governmental pesticide regulations. Potentially affected entities may include, but are not limited to:

- Food manufacturers (NAICS 311), e.g., commercial processors
- Pesticide manufacturers (NAICS 32532), e.g., pesticide registrants and pesticide producers

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0281. 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 Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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 ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For members of the public submitting comments, 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 ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the person who submitted the comment, and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2002–0281. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID number OPP–2002–0281. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2002–0281.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA., Attention: Docket ID number OPP–2002–0281. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. 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 ID 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. Background

A. What Action is the Agency Taking?

This notice constitutes and announces the availability of the NAFTA Guidance Document on Data Requirements for Tolerances on Imported Commodities. It has been developed consistently with the goals of the NAFTA. A common NAFTA approach to import tolerances will promote trade between North America and the rest of the world.

B. What is the Agency's authority for taking this action?

In the **Federal Register** of June 1, 2000 (65 FR 35069) (FRL–6559–30, EPA issued a guidance on import tolerances. The NAFTA Guidance Document on Data Requirements for Tolerances on Imported Commodities is consistent with the earlier U.S. guidance.

EPA regulates pesticides under two major statutes: The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). FIFRA requires that pesticides be registered (licensed) by EPA before they may be sold or distributed for use in the U.S. Section 408 of the FFDCA authorizes EPA to establish, modify, or maintain tolerances or tolerance exemptions for pesticide residues in or on food. Any food with pesticide residues not covered by a tolerance or tolerance exemption or with residues in excess of the tolerance may be subject to regulatory action by the U.S. government (including seizure). Pesticide tolerances and exemptions are enforced by individual States and the U.S. Food and Drug Administration for most foods, and by the U.S. Department of Agriculture for meat, poultry, and some egg products.

EPA has an obligation under section 408 of the FFDCA to establish tolerances for pesticide chemicals at levels that are ''safe.'' EPA also has an obligation to ensure that the tolerances continue to be ''safe'' over time, since new information may alter EPA's earlier safety finding under the FFDCA.

List of Subjects

Environmental protection, NAFTA pesticides and tolerances.

Dated: March 27, 2003.

Lois A Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 03–9338 Filed 4–15–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7484–5]

Toxicological Review of Benzene—Noncancer Effects

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the final document, *Toxicological Review of Benzene—Noncancer Effects* (EPA/635/R–02/001F), prepared by the Office of Research and Development's (ORD) National Center for Environmental Assessment (NCEA).

ADDRESSES: The document is available on NCEA's Web site at *http://www.epa.gov/ncea* under the *What's New* and *Publications* menus. A limited number of paper copies will be available from EPA's National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, OH 45242; telephone: 1–800–490–9198 or 513–489–8190; facsimile: 513–489–8695. Please provide your name and mailing address and the title and EPA number of the requested publication.

FOR FURTHER INFORMATION CONTACT: For further information, please contact David Bayliss, National Center for Environmental Assessment-Washington (8623D), U.S. Environmental Protection Agency, Washington, DC 20460; telephone: 202–564–3294; facsimile: 202–565–0078; e-mail: *bayliss.david@epa.gov.* For general information contact: Technical Information Staff, NCEA–W (8623D), U.S. Environmental Protection Agency, Washington, DC 20460; telephone: 202–564–3261; facsimile: 202–565–0050; e-mail: *nceadc.comment@epa.gov.*

SUPPLEMENTARY INFORMATION: The *Toxicological Review of Benzene—Noncancer Effects* characterizes the potential noncancer health hazards associated with environmental exposure to benzene. This toxicological review will serve as a scientific document for hazard identification and dose-response assessment in updating the noncancer health effects summary on benzene in the EPA's Integrated Risk Information System (IRIS).

The Toxicological Review concludes that chronic benzene exposure may pose several types of noncancer human health hazards. Hematotoxicity, *e.g.*, progressive deterioration of hematopoietic function, has been consistently reported to be the most sensitive indicator of noncancer toxicity in both experimental animal studies and occupationally exposed humans. The hazards can result from inhalation, oral or dermal exposure, though the exposure circumstances vary. The Toxicological Review includes estimates of chronic exposure levels for oral exposure (reference dose) and inhalation exposure (reference concentration) that are thought to be without appreciable risk.

Earlier drafts of the assessment were subjected to independent expert peer review, as well as to public review and comment. The comments of the expert panel and the public are addressed in the revisions of the draft document.

Dated: April 10, 2003.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. 03–9341 Filed 4–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7484–4]

Anniston Lead Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: Under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), the United States Environmental Protection Agency (''EPA'') proposes to enter into a Prospective Purchaser Agreement (''PPA'') regarding the Anniston Lead Superfund Site in Anniston, Calhoun County, Alabama. EPA proposes to enter into the PPA with Habitat for Humanity of Calhoun County, Inc. (Habitat). Pursuant to the PPA, Habitat will conduct time-critical removal actions at the properties (''Properties'') covered by the PPA under EPA oversight. The PPA provides Habitat with a covenant not to sue from the United States for Existing Contamination on the Properties and releases any Superfund liens on the Properties as well. EPA will consider comments on the proposed PPA until May 16, 2003.

EPA may withdraw from or modify the proposed PPA should such comments disclose facts or considerations which indicate the proposed PPA is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region IV, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303, 404/562–8887.

Written comments may be submitted to Ms. Batchelor at the above address within 30 days of the date of publication.

Dated: April 3, 2003.

Archie Lee,

Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 03–9349 Filed 4–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7483–8]

Joyce National Powder Company Superfund Site, CERCLA Section 122(h) Administrative Settlement; Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, As Amended

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative cost recovery settlement concerning the Joyce National Powder Company Superfund Site, Eldred Township, McKean County, Pennsylvania (Proposed Settlement). The Proposed Settlement with Robert F. Gustke and Paul G. Modie (Settling Parties) has been approved by the Attorney General, or her designee, of the United States Department of Justice. The Proposed Settlement was signed by the Regional Administrator of the U.S. Environmental Protection Agency (EPA), Region III, on March 17, 2003, pursuant to section 122(h) of CERCLA, 42 U.S.C. 9622(h), and is subject to review by the public pursuant to this notice.

The Proposed Settlement resolves EPA's claim for past response costs under section 107 of CERCLA, 42 U.S.C. 9607, against the Settling Parties, and requires the Settling Parties to pay to the EPA Hazardous Substance Superfund $190,000 in reimbursement of Past Response Costs, which had totaled $676,147.37. Settling Parties agreed that Robert F. Gustke will pay $165,000 and Paul G. Modie will pay $25,000. The Settling Parties will receive a Covenant Not to Sue for present and future liabilities at this Site.

For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement. EPA will consider all comments received and may withdraw or withhold consent to the proposed settlement if such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. EPA's response to any written comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

DATES: Comments must be provided on or before May 16, 2003.

ADDRESSES: The proposed settlement agreement is available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. A copy of the proposed settlement agreement may be obtained from Suzanne Canning, Regional Docket Clerk (3RC00), U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103; telephone number (215) 814–2476. Comments should reference the ''Joyce National Powder Company Superfund Site'' and ''EPA Docket No. CERCLA–03–2003–0036DM'' and should be forwarded to Suzanne Canning at the above address.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Casaletto (3RC42), (215) 814–2647, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

Dated: April 9, 2003.

James W. Newsom,

Acting Regional Administrator, Region III.

[FR Doc. 03–9342 Filed 4–15–03; 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 8, 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 16, 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: 3060–1015.

Title: Ultra Wideband Transmission Systems Operating under Part 15 (ET Doc. 98–153).

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit entities; Not-for-profit institutions.

Number of Respondents: 500.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 500 hours.

Total Annual Costs: $625.

Needs and Uses: The information will be used to coordinate the operation of the Ultra Wideband (UWB) transmission systems in order to avoid interference with sensitive U.S. government radio systems. Initial operation in a particular area may not commence until the information has been sent to the Commission. The UWB operators will be required to provide the name, address and other pertinent contact information of the user, the desired geographical area of operation, and the FCC ID number, and other nomenclature of the UWB device. This information will be collected by the Commission and forwarded to the National Telecommunications and Information Administration (NTIA under the U.S. Department of Commerce. This information collection is essential to controlling potential interference to Federal radio communications.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 03–9308 Filed 4–15–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–03–51–A (Auction No. 51); DA 03–1065]

Auction of Regional Narrowband PCS Licenses Scheduled for September 24, 2003; Comment Sought on Package Bidding Procedures, Reserve Prices or Minimum Opening Bids, and Other Auction Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the auction of six regional Personal Communications Service (PCS) licenses in the 900 MHz band (''narrowband PCS'' scheduled to commence on September 24, 2003 (Auction No. 51). This document also seeks comment on package bidding procedures, reserve prices or minimum opening bids and other auction procedures.

DATES: Comments are due on or before April 17, 2003 and reply comments are due on or before April 24, 2003.

ADDRESSES: Comments and reply comments must be sent by electronic mail to the following address: *auction51@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Auctions and Industry Analysis Division: *For legal questions:* Christopher Shields at (202) 418–0660. *For general auction questions:* Lisa Stover at (717) 338–2888. *For questions about package bidding:* Martha Stancill at (202) 418–0660 or Craig Bomberger at (202) 418–0660. Commercial Wireless Division: *For service rule questions:* Amal Abdallah at (202) 418–7307, Evan Baranoff at (202) 418–7142, JoAnn Epps at (202) 418–0620 or Dwain Livingston at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 51 Comment Public Notice* released on April 3, 2003. The complete text of the *Auction No. 51 Comment Public Notice,* including the attachments, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The *Auction No. 51 Comment Public Notice* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.*

I. General Information

1. By the *Auction No. 51 Comment Public Notice,* the Wireless Telecommunications Bureau (''Bureau'') announces the auction of six regional Personal Communications Service (PCS) licenses in the 900 MHz band (''narrowband PCS'') scheduled to commence on September 24, 2003 (''Auction No. 51''). These licenses were previously included as part of the inventory for Auction No. 50, *Auction No. 50 Comment Public Notice,* 67 FR 72417 (December 5, 2002). The one comment that the Bureau received in response to the *Auction No. 50 Comment Public Notice* stated that the regional licenses are uniquely complimentary and proposed a combinatorial (package bidding) auction, *Auction No. 50 Procedures Public Notice,* 68 FR 15174 (March 28, 2003). The commenter noted that these regional licenses effectively constitute a nationwide license and suggested that they would be more highly valued as a combined package by prospective auction participants intending to deploy nationwide service. After consideration of the issues raised by the comments, the Bureau determined that it may be appropriate to use package bidding for the regional licenses. Accordingly, the Bureau removed the six regional licenses from the Auction No. 50 inventory and announced that they would be included in Auction No. 51.

2. The following table describes the licenses that will be included in Auction No. 51:

Region	Channel no.	Channel description	Frequency bands (MHz)	Bandwidth (kHz)
Northeast	17	12.5 kHz/50 kHz paired	901.8250–901.8375, 930.70–930.75	62.5
South	16	12.5 kHz/50 kHz paired	901.8125–901.8250, 930.65–930.70	62.5
South	17	12.5 kHz/50 kHz paired	901.8250–901.8375, 930.70–930.75	62.5
Midwest	17	12.5 kHz/50 kHz paired	901.8250–901.8375, 930.70–930.75	62.5
Central	17	12.5 kHz/50 kHz paired	901.8250–901.8375, 930.70–930.75	62.5
West	17	12.5 kHz/50 kHz paired	901.8250–901.8375, 930.70–930.75	62.5

3. The Balanced Budget Act of 1997 requires the Commission to ''ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed * * * before issuance of bidding rules, to permit notice and comment on proposed auction procedures * * *.'' Consistent with the provisions of the Balanced Budget Act and to ensure that potential bidders have adequate time to familiarize themselves with the specific rules that will govern the day-to-day conduct of an auction, the Commission directed the Bureau, under its existing delegated authority, to seek comment on a variety of auction-specific procedures prior to the start of each auction. The Bureau therefore seeks comment on the proposed Auction No. 51 procedures as set forth in sections following the ''II. Introduction to Package Bidding.''

II. Introduction to Package Bidding

4. ''Package bidding'' refers to an auction design in which bidders may place bids on groups, or *packages,* of licenses. A bid on a package is an all-or-nothing bid for all of the licenses in that package. This is a departure from the Bureau's usual simultaneous multiple-round (SMR) design, in which bidders only have the ability to submit individual bids for each license. Like the Bureau's existing SMR design, its

current implementation of package bidding uses a simultaneous multiple-round design. In addition to submitting bids on packages, bidders may also submit bids on individual licenses.

A. License Complementarities

5. Under certain circumstances, package bidding may be desirable for bidders that wish to aggregate licenses. Bidders have aggregated licenses under our SMR auction design. However, package bidding may be appropriate when bidders have strong and divergent complementarities among licenses, and when package bidding rules do not introduce other undue difficulties. Complementarities exist when the value of the whole is greater than the sum of the parts. In the context of spectrum auctions, complementarities could result in a bidder being willing to pay more for two licenses together than the sum of the amounts it would be willing to pay for either license individually. That is, a bidder willing to pay $1 million for a license covering Washington, DC, or $1 million for a license covering Baltimore, Maryland, would be willing to pay more than $2 million for both licenses together.

6. Divergent complementarities exist when the patterns of complementarities are different for different bidders. For example, if one bidder has complementarities for a geographic aggregation and another bidder has complementarities for a bandwidth aggregation, then either of these bidders achieving its desired aggregation would prevent the other bidder from doing so. That is, if there are two licenses available in each of two markets, a bidder successfully aggregating both licenses in one market (bandwidth aggregation) precludes another bidder from aggregating one license in each market (geographic aggregation).

B. Exposure Problem

7. The *exposure problem* is a financial risk that occurs when a bidder, in hopes of also winning complementary items, bids more for a single object than the object alone is worth to that bidder. Package bidding allows bidders to mitigate the exposure problem by placing all-or-nothing bids on packages of licenses.

8. The following builds upon the previous example of a bidder willing to pay $1 million for a license covering Washington, DC, or $1 million for a license covering Baltimore, Maryland, but willing to pay more than $2 million for both licenses together. For purposes of this explanation, assume that the bidder is willing to pay $3 million for both licenses together.

9. In an SMR auction in which bids are submitted on individual licenses, the bidder would clearly be willing to bid $1 million for each of the Washington and Baltimore licenses, for a total of $2 million. If the auction price of one of those licenses exceeds $1 million, the bidder faces a dilemma. The bidder can stop bidding for a license when the license price exceeds what the bidder is willing to pay for that license alone, or the bidder can keep bidding in hopes of winning both licenses. This exposes the bidder to a financial risk. On the one hand, if the bidder wins both licenses by bidding $1 million for Washington and $1.5 million for Baltimore, it will pay a total of $2.5 million for both licenses, which is less than the $3 million it is willing to pay for both licenses together. Thus, the bidder would be satisfied with its decision to bid $1.5 million for the Baltimore license even though that license alone is only worth $1 million to the bidder. On the other hand, if the bidder bids $1.5 million for the Baltimore license (again, in hopes of winning both licenses) but wins only that license and not the Washington license as well, the bidder would have to pay more for the Baltimore license than the license is worth to the bidder.

10. In a package bidding auction, the bidder in the example could submit package bids to avoid such a risk. The bidder could create a package of the Washington and Baltimore licenses and submit a bid for the package. The bidder would either win the package— *i.e.*, both licenses—at the amount it bid for the package, or it would not win the package. By placing a bid on a package, the bidder would not have to worry about the possibility of only winning part of the package. That is, the bidder could bid up to $3 million for the package and thereby express what it is willing to pay not only for the licenses but also for the complementarity of the licenses.

C. Threshold Problem

11. Allowing package bidding potentially introduces a *threshold problem*—the difficulty that multiple bidders for the single licenses (or smaller packages) that constitute a larger package may have in outbidding a single bidder on the larger package, even though the multiple bidders may value the sum of the parts more than the single bidder values the whole. This may occur because bidders for parts of a larger package each have an incentive to hold back in the hope that a bidder for another part will increase its bid sufficiently for the bids on the pieces collectively to beat the bid on the larger package. The package bidding procedures that the Bureau proposes are designed to facilitate the emergence of bids that will overcome this problem. Specifically, the Bureau proposes to allow bids on licenses and packages that individually are not high enough to enter immediately into the provisionally winning set. This allowance is meant to facilitate price discovery and diminish the threshold problem. Effectively, bidders can take ''baby steps'' toward getting into the provisionally winning set. Additionally, under these proposed package bidding procedures, the auction will close after two consecutive rounds with no new bids. Thus, after a round with no new bids, bidders will be notified that if no new bids are placed in the subsequent round, the auction will close.

D. Other Package Bidding Highlights

12. Implementing package bidding requires changes in some of the procedures used in the Bureau's SMR auctions. Some of the main differences are introduced in this section in order to highlight the differences between the Bureau's proposed package bidding procedures for Auction No. 51 and the Bureau's SMR auction procedures. Later in this public notice, in the ''Auction Structure'' and ''Bidding Procedures'' sections, the Bureau seeks comment on the package bidding procedures for Auction No. 51.

i. Provisionally Winning Bids

13. In an SMR auction it is a simple matter to determine high bids. At the end of a bidding round, the high bids are determined based on the highest gross bid amount received for each license. A high bid from a previous round is sometimes referred to as a ''standing high bid.'' A ''standing high bid'' remains the high bid until there is a higher bid on the same license at the close of a subsequent round.

14. In a package bidding auction, provisionally winning bids are similar to standing high bids. Provisionally winning bids are the set of bids that maximizes revenue at the end of a particular round. The set of provisionally winning bids cannot include overlapping bids; each license may be assigned only once. In the event of tied bids or tied sets of bids, ties are broken randomly. The set of provisionally winning bids may, of course, include package bids as well as individual license bids.

15. Unlike in an SMR auction, a provisionally winning bid does not necessarily remain a provisional winner until there is a higher bid on the same license or package at the close of a

subsequent round. That is, a bid on a license that is a provisionally winning bid at the end of a round might not be a provisionally winning bid at the end of a subsequent round even if no other bids are received for that license. Determining the provisionally winning bids in a package bidding auction is more complex than determining the standing high bids in an SMR auction. In a package bidding auction, whether a bid is a provisional winner depends on both the amount of the bid and the amount of revenue generated in the auction when that bid is combined with other bids submitted in the auction. With package bidding it is possible that, because of an increase in the bids submitted by one or more other bidders, a previous round's provisionally winning bid may cease to be a provisional winner in a subsequent round even though no higher bid has been placed on that license or package. In a package bidding auction, competing bids for a license or package consist of not only other bids for the same license or package, but also bids on packages that include any of the same licenses. Moreover, because of this, a bid that is not a provisionally winning bid at the end of a given round could become a provisionally winning bid at the end of a subsequent round. This is explained further in the following section.

ii. All Bids Considered

16. Under the Bureau's proposed package bidding procedures, all bids placed in an auction are considered throughout the course of the auction. This is in contrast with the SMR procedures under which, at the conclusion of a round, only new bids placed in that round and standing high bids are considered. Bidders in a package bidding auction must therefore be mindful that even if a bid did not become a provisional winner when placed, it could become a provisionally winning bid later in the auction.

17. The following table portrays the six licenses available in Auction No. 51:

Channel	Region				
	West	Central	Midwest	South	Northeast
16				CN–RPC002–16 (South–16)	
17	CN–RPC005–17 (West–17)	CN–RPC004–17 (Central–17)	CN–RPC003–17 (Midwest–17)	CN–RPC002–17 (South–17)	CN–RPC001–17 (Northeast–17)

18. For purposes of this example, assume that bidders place the following bids in a round: $50,000 for each of the six licenses and $200,000 for the package South–16/South–17/Northeast–17 (the northeast region license and both licenses in the south region). The resulting provisionally winning bids following the round would be as follows (the individual license bids of $50,000 for each of South–16, South–17 and Northeast–17 are not provisionally winning bids and are not shown):

Channel	Region				
	West	Central	Midwest	South	Northeast
16					
17	$50,000	$50,000	$50,000	$200,000	

Total revenue = $350,000

19. Next, assume that a bidder places a bid of $160,000 for the package South–16/South–17 (both licenses in the south region) in the next round, and no other new bids are placed.

Channel	Region				
	West	Central	Midwest	South	Northeast
16					
17				$160,000	

20. Then, the provisionally winning bids following that round would be as follows:

Channel	Region				
	West	Central	Midwest	South	Northeast
16					
17	$50,000	$50,000	$50,000	$160,000	$50,000

Total revenue = $360,000

21. Note that in this example the bid of $50,000 for the northeast region license was not a provisionally winning bid after the first round but became a provisionally winning bid after the next round. The new bid of $160,000 for package of both licenses in the south region, when considered with the previous $50,000 bid for the northeast region license, was able to beat the previous $200,000 bid for the package of the northeast region license and both licenses in the south region.

22. Considering bids from all rounds allows more potential combinations of bids, and therefore, potentially greater flexibility for bidders to submit bids that may become part of the provisionally winning set. As in the example, it helps ensure that bids on single licenses or small packages can combine with other bids to become winners, even when a different combination of bids has comprised the provisionally winning set for a number of rounds. Considering bids from all prior rounds also permits the bids of bidders no longer eligible to participate in the auction to become part of the provisionally winning set when that is the most economically efficient outcome. Moreover, considering all bids throughout the auction encourages sincere bidding.

iii. Mutually Exclusive Rounds

23. As explained in the previous section, all bids placed throughout the course of the auction are considered when determining the winning bids. However, the proposed procedures restrict how the bids are considered. Bids placed by a bidder in one round are considered mutually exclusive of that bidder's bids placed in all other rounds. If a bidder places a bid for one license in one round and for another license in another round, one bid or the other could be a provisionally winning bid, but not both at the same time. Likewise, if a bidder places several bids in one round and several bids in another round, any or all of the bids from one round or the other could be provisionally winning bids, but not bids from both rounds at the same time.

24. Using the example from the previous section, assume that in the first round of the example the $50,000 bid for each of the six licenses was placed by Bidder 1 and the $200,000 bid for the package of the northeast region license and both licenses in the south region was placed by Bidder 2. In the next round of the example, the bid of $160,000 for the package of both licenses in the south region was placed by Bidder 1. Under these assumptions, the provisionally winning bids at the end of the second round could include Bidder 1's bids from one round or the other, but not both—i.e., any or all of Bidder 1's $50,000 bids for each of the six licenses from the first round, or Bidder 1's bid of $160,000 for the package of both licenses in the south region from the second round. Since the choice of Bidder 1's bids in the first round achieves greater revenue, the provisionally winning bids after the second round would remain the same as after the first round:

Channel	Region				
	West	Central	Midwest	South	Northeast
16					
17	$50,000	$50,000	$50,000	$200,000	

Bidder 1 Bidder 2

Total revenue = $350,000

25. This treatment of bids as mutually exclusive across rounds is done on a per bidder basis. The provisionally winning bids could include Bidder 1's bids from one round and Bidder 2's bids from a different round.

26. This mutually exclusive treatment of bids—for each bidder, allowing its bids from only one round to become provisionally winning bids—allows bidders to mind budget constraints and to pursue backup strategies. For example, if a bidder wants the license in the west region or the license in the central region but not both, the bidder could place a bid for one of the licenses in one round and a bid for the other license in the next round. Because the bids are considered mutually exclusive, only one could become a provisionally winning bid.

iv. Renewing Bids

27. The proposed procedures include bid renewal to provide a mechanism that bidders can use so that their bids from different rounds are not considered mutually exclusive. For example, assume a bidder places a bid for the west region license in one round. In the following round, the bidder places a bid for the central region license and renews its bid on the west region license. Then, after that round, either bid or both could become a provisionally winning bid.

28. This concludes the ''II. Introduction to Package Bidding.'' In the following ''Auction Structure'' and ''Bidding Procedures,'' sections, the Bureau seeks comment on the specific package bidding procedures for Auction No. 51.

III. Auction Structure

A. Simultaneous Multiple Round With Package Bidding

29. The Bureau proposes to award all licenses included in Auction No. 51 in a simultaneous multiple-round with package bidding (SMR–PB) auction. This methodology offers every license for bid at the same time with successive bidding rounds in which bidders may place bids. Bidders will be able to submit bids on individual licenses, as in the Bureau's simultaneous multiple round auction design, but may also submit all-or-nothing bids on packages of licenses. The Bureau seeks comment on this proposal.

B. Upfront Payments and Initial Maximum Eligibility

30. The Bureau has delegated authority and discretion to determine an appropriate upfront payment for each license being auctioned. Upfront payments related to the specific spectrum subject to auction protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction. The total upfront payment does

not affect the dollar amount a bidder may bid on licenses.

31. For Auction No. 51 the Bureau proposes to calculate upfront payments on a license-by-license basis using the following formula:

$.00001 * kHz * License Area Population, rounded.

The Bureau seeks comment on this proposal.

32. The amount of the upfront payment submitted by a bidder will determine the initial maximum eligibility (as measured in bidding units) for each bidder. Each license is assigned a specific number of bidding units equal to the upfront payment, on a bidding unit per dollar basis. This number does not change during the auction. A bidder's upfront payment is not attributed to specific licenses or packages. Rather, a bidder may place bids on licenses and packages as long as the total number of bidding units associated with those licenses and packages does not exceed the bidder's eligibility. For a package, the Bureau proposes to calculate the bidding units by adding together the bidding units of the individual licenses that make up the package. Eligibility cannot be increased during the auction. Thus, in calculating its upfront payment amount, an applicant should determine the maximum number of bidding units (either individually or in a package) it may wish to bid on in any single round and submit an upfront payment covering that number of bidding units. The Bureau seeks comment on this proposal. The Bureau lists the proposed bidding units and upfront payments for all licenses in Attachment A of the *Auction No. 51 Comment Public Notice.*

C. Activity and Eligibility Rules

33. In order to ensure that the auction closes within a reasonable period of time, an activity rule provides incentives for bidders to participate throughout the auction. The activity rule requires each bidder to have active bids in each round that account for a specified fraction of the bidder's current eligibility, as measured in bidding units. A bidder that does not satisfy the activity rule will either use an activity rule waiver (if any remain) or lose bidding eligibility for the next round. Losing eligibility matters to bidders because a bidder's bidding activity cannot exceed its current eligibility.

i. Measuring Activity

34. In SMR auctions, a bidder's activity in a round is determined by adding the bidding units associated with licenses on which the bidder is active. A bidder is considered active on a license in the current round of an SMR auction if it is either the high bidder at the end of the previous bidding round (and did not withdraw the high bid in the current round), or if it submits a bid in the current round (and does not subsequently remove the bid). In a package bidding auction, calculating activity levels in a round is not as simple because a bidder can submit bids on different packages that contain one or more of the same licenses. To illustrate this, suppose a bidder submits bids on the following packages in round *t*:

Package/Licenses	Bidding units
Package A:	
South–16 (38,000 bu)	76,000 bu
South–17 (38,000 bu)	
Package B:	
Northeast–17 (34,000 bu).	
South–17 (38,000 bu)	108,000 bu
Central–17 (36,000 bu)	

35. For Auction No. 51, the Bureau proposes to measure a bidder's bidding activity in a round as the maximum number of bidding units the bidder can win considering new bids placed and provisionally winning bids renewed in that round. Thus, when a bidder submits bids in a round the FCC Automated Auction System will determine the set of bids, among the bidder's new bids and renewed provisionally winning bids, that contains the most bidding units and has no overlap among the licenses. For instance, in the example, the two bids contain four distinct licenses. The sum of the bidding units associated with these four licenses is 146,000. However, since both packages contain license South–17, this bidder cannot win both packages at the same time. Under the Bureau's proposal the maximum number of bidding units that the bidder can win is the 108,000 associated with Package B, so the bidder's bidding activity is 108,000 bidding units. The Bureau seeks comment on this proposal.

36. A bidder is also considered to be active if the bidder has provisionally winning bids from the previous round. A bidder's bids made in different rounds will be considered mutually exclusive, so the bidding units associated with provisionally winning bids must be viewed independently from the bidding units associated with current round bids. The Bureau proposes to define a bidder's eligibility activity in a round as the greater of (i) its bidding activity in the round and (ii) the bidding units associated with the bidder's provisionally winning bids from the prior round. To illustrate how eligibility activity will be calculated in a round the Bureau continues with its example. Suppose this bidder has provisionally winning bids on the following licenses from round *t–1*:

License	Bidding units
South–16	38,000 bu
South–17	38,000 bu

37. The number of bidding units associated with this bidder's provisionally winning bids is 76,000. Recall that the bidder's bidding activity for the round is 108,000 bidding units. The eligibility activity for this bidder in round *t* is therefore 108,000, the greater of its bidding activity (108,000 bidding units) and the bidding units associated with its bids in the provisionally winning set (76,000 bidding units).

ii. Auction Requirement

38. For Auction No. 51, the Bureau proposes that, in each round of the auction, a bidder desiring to maintain its current eligibility would be required to have eligibility activity equal to sixty percent (three-fifths) of its current eligibility. For a bidder that failed to meet the activity requirement in a given round, the Automated Auction System would reduce the bidder's eligibility for the next round to five-thirds times its eligibility activity in the current round. Thus, a bidder's eligibility in the current round is equal to either its eligibility in the previous round (bidder met the activity requirement) or five-thirds of its eligibility activity in the previous round (bidder did not meet the activity requirement), whichever is less:

Eligibility (t) = Min (Eligibility (t–1), 5/3*Eligibility Activity (t–1))

39. Activity rule waivers provide an exception to this rule and are discussed in the next section, ''Activity Rule Waivers and Reducing Eligibility.''

40. In addition, the Bureau proposes to retain the discretion to increase to eighty percent (four-fifths) the proportion of bidding units on which bidders must be active to retain their current eligibility. Any such change will be announced to bidders prior to the beginning of the round in which the change takes effect. The Bureau seeks comment on these proposals. Commenters that believe these activity rules should be modified should explain their reasoning and comment on the desirability of an alternative approach. Commenters are advised to support their claims with analyses and suggested alternative activity rules.

iii. Activity Rule Waivers and Reducing Eligibility

41. For Auction No. 51, the Bureau proposes that each bidder be provided with five activity rule waivers that may be used at the bidder's discretion during the course of the auction as set forth. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's eligibility activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license or package. Activity rule waivers are principally a mechanism for auction participants to avoid the loss of auction eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

42. The Automated Auction System assumes that bidders with insufficient eligibility activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an ''automatic waiver'') at the end of any bidding round in which a bidder's eligibility activity is below the activity requirement unless: (i) The bidder has no activity rule waivers remaining; or (ii) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements. **Note:** If a bidder has no waivers remaining and does not satisfy the activity requirement, its current eligibility will be permanently reduced, possibly eliminating the bidder from further bidding in the auction.

43. A bidder with insufficient eligibility activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the biddermust affirmatively override the automatic waiver mechanism during the bidding period by using the ''reduce eligibility'' function in the bidding system. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in the previous section. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

44. The activity rule waivers described are automatic waivers. Under the Bureau's SMR auction design, bidders can submit automatic or proactive waivers. Unlike automatic waivers, proactive waivers keep the auction open absent other bidding activity. The Bureau proposes not to allow bidders to submit proactive waivers in the context of package bidding for Auction No. 51. As part of the package bidding design for Auction No. 51 the Bureau is proposing a two-round simultaneous stopping rule, in which the bidding on all licenses remains open until the second consecutive round in which no new bids are placed. After the second consecutive such round, bidding closes simultaneously on all licenses. The two-round stopping rule affords bidders some additional time to consider their current status, and eliminates the need for bidders to use a proactive activity rule waiver to prevent the auction from closing in the current round. The Bureau seeks comment on this proposal.

D. Information Relating to Auction Delay, Suspension, or Cancellation

45. For Auction No. 51, the Bureau proposes that, by public notice or by announcement during the auction, it may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Bureau emphasizes that exercise of this authority is solely within its discretion, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. The Bureau seeks comment on this proposal.

IV. Bidding Procedures

A. Round Structure

46. The Commission will conduct this auction over the Internet. Telephonic Bidding will also be available, and the FCC Wide Area Network will be available as well.

47. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. The package bidding format will consist of sequential bidding rounds, each followed by the release of round results. Details regarding the location and format of round results will also be included in a subsequent public notice.

48. The Bureau has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors. The Bureau seeks comment on this proposal.

B. Reserve Price or Minimum Opening Bid

49. The Balanced Budget Act calls upon the Commission to prescribe methods for establishing a reasonable reserve price or a minimum opening bid when FCC licenses are subject to auction, unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission has directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction.

50. Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which no bids are accepted. It is generally used to accelerate the competitive bidding process. Also, the auctioneer often has the discretion to lower the minimum opening bid amount later in the auction. It is also possible for the minimum opening bid and the reserve price to be the same amount.

51. In light of the Balanced Budget Act's requirements, the Bureau proposes to establish minimum opening bids for Auction No. 51. The Bureau believes a minimum opening bid, which has been used in other auctions, is an effective bidding tool.

52. Specifically, for Auction No. 51, the Commission proposes the following license-by-license formula for calculating minimum opening bids:

$.00001 * kHz * License Area Population, rounded.

53. For a package, the Bureau proposes to calculate the minimum opening bid by adding together the minimum opening bids of the individual licenses that make up the package. The Bureau lists the proposed minimum opening bids for all licenses in Attachment A of the *Auction No. 51 Comment Public Notice*. The Bureau seeks comment on this proposal.

C. Packages

54. The Bureau proposes that, in addition to bidding on individual

licenses, bidders be permitted to create and bid on up to twelve different packages of their own choosing during the course of the auction. Bidders will not be required to identify or create their packages before the start of the auction, but may create their packages as the auction progresses. A bidder may modify or delete a package it has created up until the point where it has bid on the package and the round has closed. If the bidder submits a bid on a package and subsequently removes the bid during the same round, the bidder has the option of also deleting or modifying the package. However, once a bidder bids on a package and the round closes, the package may not be modified or deleted and counts as one of the bidder's twelve allowable packages. A bid on an individual license does not count as a bid on a package; packages consist of two or more licenses. The Bureau seeks comment on this proposal.

D. Winning and Provisionally Winning Bids

55. Winning bids in a package bidding auction are the set of ''consistent'' bids (non-overlapping, and for each winning bidder, only bids made or renewed in the same round) on individual licenses and packages that maximizes total revenue when the auction closes. Provisionally winning bids are the set of consistent bids that maximizes total revenue in a particular round (they would win if the auction were to close in that round), assigning each license to either a bidder or the FCC. When determining winning and provisionally winning bids, all bids made in every round throughout the course of the auction (except for bids that are placed and subsequently removed during the same round) will be considered. In addition, each license is treated as having a bid placed by the FCC at $1000 less than the minimum opening bid. This procedure will ensure that a bid on a license or package at the minimum opening bid always beats the FCC bid.

56. Since there can be more than one set of consistent bids that produces the maximum revenue, the Bureau proposes to use a procedure that randomly selects among these tied sets when determining the provisionally winning bids. This tie breaking procedure involves two steps: (i) The assignment of a selection number to each bid, and (ii) the determination of, among all tied bid sets, the set that produces the maximum sum of selection numbers. The Bureau seeks comment on this proposal.

57. A bid's selection number is the sum of *n* pseudo-random numbers where *n* is the number of licenses comprising the bid's package. A bid's selection number will be included in the publicly-available round results released after each round.

58. Once the selection numbers have been generated for each bid, the second step of the tie breaking procedure will decide the provisionally winning bids. Computer software is used to determine, among all tied bid sets, the set that produces the maximum sum of selection numbers. Thus, the set of provisionally winning bids is the set of consistent bids that maximizes revenue and maximizes the sum of selection numbers. Each bid will be assigned a new selection number in every round. Consequently, if there are ties, the set of provisionally winning bids may change even after a round in which there are no new bids. The solver will not be run after the last round of the auction, so that the winning set is the same as the set of provisional winners generated after the next-to-the-last round (*i.e.*, there won't be any surprise winners).

59. Please note that it is possible that a provisionally winning bid might not be the highest bid on the particular license or package. This possibility is primarily due to each bidder's bids being considered mutually exclusive across rounds. For example, if one bidder has placed the highest bid on each of two different licenses in two different rounds (and did not renew the earlier of the two bids), then those two bids are considered as mutually exclusive and only one of them can be a provisionally-winning bid.

E. Minimum Acceptable Bids and Bid Increments

60. The Bureau proposes that in each round, eligible bidders will be able to place bids on a given license or package in any of nine different amounts. The Automated Auction System interface will list the nine acceptable bid amounts for each license and package. In the first round of the auction, the minimum acceptable bid for a license or package will be equal to its minimum opening bid. The Bureau proposes that in all subsequent rounds, the minimum acceptable bid for a license or package will be the greatest of: (i) The minimum opening bid; (ii) the bidder's own previous high bid on a license or package plus *x*%, where the Bureau will specify the value of *x* in each round; and (iii) the current price estimate of the license plus *z*%, or for a package, the sum of the current price estimates for the licenses in the package plus *z*%, where the Bureau will specify the value of *z* in each round.

61. Current price estimates are estimates of the prices of the individual licenses being auctioned. The estimates take into account the minimum opening bids for the licenses as well as all the bids placed in the auction and, therefore, reflect all available information that has been revealed in the auction about the relative demands for the licenses. Current price estimates for the component licenses of a package that is provisionally winning are constrained to sum to the provisionally winning bid for the package. These estimates are generated during round results following every round of the auction as part of the mathematical optimization process used by the Bureau to determine the provisionally winning bids. The precise methodology used to calculate current price estimates is described in Attachment B of the *Auction No. 51 Comment Public Notice*. Until a bid is placed on a license or on a package containing that license, by any bidder in any round, the current price estimate is the FCC bid amount.

62. The Bureau proposes to retain an exception to part (iii) for calculating the minimum acceptable bid for a ''global'' package—a package consisting of all six of the licenses available in the auction. After the first round of the auction, part (iii) of the minimum acceptable bid rule for a global package will always be the revenue generated by the provisionally winning bid set in the previous round plus *w*%. The Bureau makes this distinction in order to retain the ability to ensure that bids for the global package will continue to increase even if it employs a percentage *z* that does not guarantee that outcome.

63. The result of the minimum acceptable bid calculation will be rounded using the Bureau's standard rounding procedure. Initially, the Bureau proposes to set *x* at ten, *z* at five and *w* at five, but retains the discretion to adjust these variables during the course of the auction.

64. For bids higher than the minimum acceptable bid—*i.e.*, multi-increment bids—the Bureau proposes to define the amount of the additional bid increments as *v*% of the minimum acceptable bid, where the minimum acceptable bid is determined as discussed. Initially, the Bureau proposed to set *v* at ten, but proposes to retain the discretion to adjust the amount during the course of the auction. Thus, when *v* equals ten, a bidder will be able to place multi-increment bids of the minimum acceptable bid plus approximately 10%, 20%, etc. with the maximum bid being approximately equal to the minimum acceptable bid plus 80%.

65. The Bureau retains the discretion to change minimum acceptable bids, and to do so on a license-by-license and package-by-package basis, if

circumstances so dictate. The Bureau will do so by announcement in the Automated Auction System. The Bureau seeks comment on these proposals.

F. Last and Best Bids

66. The Bureau proposes to allow bidders that wish to drop out of the auction or that believe they are about to lose their bidding eligibility to have an opportunity before they drop out to place up to two mutually exclusive sets of ''last and best'' bids on any licenses or packages for which they remain eligible. This is a limited exception to minimum acceptable bids and to click-box bidding. Such bids may be of any amount (in thousand dollar increments) between the bidder's previous high bid on the license or package and the amount of the highest acceptable bid for the license or package in the current round (the eighth increment above the minimum acceptable bid). If a bidder chooses this option, it will not be permitted to make any further bids during the auction. The Bureau seeks comment on this proposal.

G. Renewed Bids

67. Without regard to the minimum acceptable bid requirement, the Bureau proposes to allow a bidder to ''renew'' in the current round the highest previous bid it made on any license or package; that is, it may resubmit the bid without increasing the amount bid. No eligibility activity or bidding activity is conferred for renewing a non-provisionally winning bid. Renewed provisionally winning bids confer bidding activity (non-renewed provisionally winning bids count toward eligibility activity). Renewed bids will be treated as being made in the current round.

68. Renewals provide bidders a means to ensure that bids from previous rounds are considered in addition to the bids placed in the current round. Otherwise, bids made in different rounds are treated as mutually exclusive, so that the bidder may win some or all of the bids from the current round, or a previous round, but not both. The Bureau seeks comment on this proposal.

H. Information Regarding Bid Removal and Bid Withdrawal

69. For Auction No. 51, the Bureau proposes the following bid removal procedures. Before the close of a bidding period, a bidder has the option of removing any bid placed in that round. By removing selected bids in the bidding system, a bidder may effectively ''unsubmit'' any bid placed within that round. A bidder removing a bid placed in the same round is not subject to a withdrawal payment. Once a round closes, a bidder may no longer remove a bid.

70. The Bureau proposes for Auction No. 51 that bidders not be permitted, in any round, to withdraw bids made in previous rounds. With the implementation of package bidding, bidders should not face exposure risks as they might in a simultaneous multiple round auction design. Bid withdrawal was designed to allow bidders to back out of failed aggregations—to avoid winning some licenses that are worth little to them without the others they need to implement their business plan. Therefore, to the extent that bids are allowed on all packages of licenses with significant complementarities, the use of withdrawals to mitigate such risk is no longer necessary. The Bureau seeks comment on this proposal.

I. Stopping Rule

71. The Bureau has discretion ''to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time.'' For Auction No. 51 the Bureau proposes to employ a two-round simultaneous stopping rule. A two-round simultaneous stopping rule means that all licenses remain open until two consecutive rounds have occurred in which no new bids are received. After the second consecutive such round, bidding closes simultaneously on all licenses. Thus, unless circumstances dictate otherwise, bidding would remain open on all licenses until bidding stops on every license. Renewed bids are not considered new bids for purposes of the stopping rule; in other words, a round in which the only bids that are placed are renewed bids is considered a round with no new bids for purposes of the stopping rule. Last and best bids are considered new bids for purposes of the stopping rule. The Bureau seeks comment on this proposal.

72. The Bureau proposes to reserve the right to declare that the auction will end after a specified number of additional rounds (''special stopping rule''). The Bureau proposes to exercise this option only in certain circumstances, such as, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the Bureau is likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or increasing the minimum acceptable bids. The Bureau seeks comment on these proposals.

V. Conclusion

73. Comments are due on or before April 17, 2003, and reply comments are due on or before April 24, 2003. Because of the disruption of regular mail and other deliveries in Washington, DC, the Bureau requires that all comments and reply comments be filed electronically. Comments and reply comments must be sent by electronic mail to the following address: *auction51@fcc.gov*. The electronic mail containing the comments or reply comments must include a subject or caption referring to Auction No. 51 Comments. The Bureaus request that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Copies of comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. Copies of comments and reply comments will also be available from the Commission's copy contractor: Qualex International, 445 12th Street, SW., Room CY-B402, Washington, DC 20554; phone (202) 863–2893; fax (202) 863–2898; e-mail *qualexint@aol.com*.

74. In addition, the Bureau requests that commenters fax a courtesy copy of their comments and reply comments to the attention of Kathryn Garland at (717) 338–2850.

75. This proceeding has been designated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules.

Federal Communications Commission.

Margaret Wiener,

Chief, Auctions and Industry Analysis Division, WTB.

[FR Doc. 03–9389 Filed 4–15–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 17304NF.
Name: Direct Worldwide Logistics, Inc.
Address: 7520 Lawndale Avenue, Houston, TX 77012.
Date Revoked: March 20, 2003.
Reason: Surrendered license voluntarily.

License Number: 15898N.
Name: FSL International Inc.
Address: 12616 So. Yukon Avenue, Hawthorne, CA 90250.
Date Revoked: February 19, 2003.
Reason: Surrendered license voluntarily.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 03–9312 Filed 4–15–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License

Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary licenses has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
17304F	Direct Worldwide Logistics, Inc., 7520 Lawndale Avenue, Houston, TX 77012.	March 20, 2003.
17322N	Trans State Logistics, Inc., 1011 So. Fremont Avenue, Suite 203, Alhambra, CA 91803.	December 8, 2002.
2023F	Pike Shipping Co., Inc., 2 Canal Street, 22nd Floor, New Orleans, LA 70130.	January 10, 2003.
4156F	Gulf Eagle USA, Inc., 502 McCormick Drive, Suite H, Glen Burnie, MD 21061.	July 18, 2002.
4028NF	BNX Shipping Inc., 2029 E. Cashdan Street, Rancho Dominguez, CA 90220.	February 24, 2003.
156F	W. M. Stone & Company, Incorporated, 838 Granby Street, Norfolk, VA 23514.	March 24, 2003.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 03–9313 Filed 4–15–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Guardship America, Inc., 9435 Washington Boulevard, Suite J, Laurel, MD 29723. *Officers:* Syl Taylor, C.F.O./Director (Qualifying Individual), Leslie G. Samuels, President.

Global Marine Transportation Inc., 205 W. 88th Street, Suite 4C, New York, NY 10024. *Officer:* Gloria P. Avendano, President (Qualifying Individual).

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Thiel-Logistics USA,Inc., 3200 N.W. 112 Avenue, Miami, FL 33172. *Officers:* Lorenzo Lorenzo, Vice President (Qualifying Individual), Gunther Thiel, Chairman.

Perfect Express Corporation, 220 North Inglewood Avenue, Inglewood, CA 90301. *Officers:* Fang Hsien (Vincent) Lu, Vice President (Qualifying Individual), Patrick Chen, President/CEO.

Keystone Global Logistics, LLC, 309 Anderson Street, Crescent, PA 15046. *Officers:* Mariusz J. Bielawski, President (Qualifying Individual), Sheree Moorhouse, Vice President.

A A Pacific Inc., 1275 Anderson Avenue, Unit #6, Fort Lee, NJ 07024. *Officers:* Kefei Zhao, Marketing Director (Qualifying Individual), Xiaomei Liu, President.

RBA Logistics, Inc., 2804 N. Cannon Blvd, Kannapolis, NC 28083. *Officers:* Paul L. Blackwelder, Vice President (Qualifying Individual), Mary O. Bare, President.

Kabayan Cargo, Travel & Remittance Services, 1628 Sumatra Street, Hayward, CA 94544. Tranquilino Dionisio Gaspar, Sole Proprietor.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant

A.M. Cargo Services, Inc., 5220 N.W. 72 Avenue, Bay #4, Miami, FL 33166–4858. *Officers:* Anna Maria Musumeci, President (Qualifying Individual), Anthony Musumeci, Director.

Dated: April 11, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–9314 Filed 4–15–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: *Background.*

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the

OMB 83–I's and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for comment on information collection proposals.

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before June 16, 2003.

ADDRESSES: Comments may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e–mail to *regs.comments@federalreserve.gov*, or faxing them to the Office of the Secretary at 202–452–3819 or 202–452–3102. Comments addressed to Ms. Johnson may also be delivered to the Board's mail facility in the West Courtyard between 8:45 a.m. and 5:15 p.m., located on 21st Street between Constitution Avenue and C Street, NW. Members of the public may inspect comments in Room MP–500 between 9:00 a.m. and 5:00 p.m. on weekdays pursuant to 261.12, except as provided in 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

A copy of the comments may also be submitted to the OMB desk officer for the Board: Joseph Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Cindy Ayouch, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Proposal to approve under OMB delegated authority the extension for three years, with revision, of the following reports:

1. *Report title:* Report of Transaction Accounts, Other Deposits, and Vault Cash
Agency form number: FR 2900
OMB control number: 7100–0087
Frequency: Weekly, quarterly
Reporters: Depository institutions
Annual reporting hours: 779,506 hours
Estimated average hours per response: 3.50 hours
Number of respondents: 3,888 weekly and 5,135 quarterly
Small businesses are affected.
General description of report: This information collection is mandatory (12 U.S.C. 248(a), 461, 603, and 615) and is given confidential treatment (5 U.S.C. 552(b)(4)).
Abstract: Nonexempt institutions B currently defined as those with reservable liabilities greater than the exemption amount B file the FR 2900 weekly if their total deposits are greater than or equal to the nonexempt deposit cutoff and quarterly if their total deposits are less than the nonexempt deposit cutoff. U.S. branches and agencies of foreign banks and Edge and agreement corporations are required to report the FR 2900 weekly regardless of their deposit size. These mandatory reports are used by the Federal Reserve for administering Regulation D (Reserve Requirements of Depository Institutions) and for constructing, analyzing, and controlling the monetary and reserve aggregates.
Current actions: The Federal Reserve proposes the following revisions: (1) changing the definition of ''nonexempt institutions'' to be any depository institution with net transaction accounts greater than the exemption amount, effective with the September 2003 panel shift; (2) instituting a new ''reduced reporting limit'' B any institution with total deposits at or above a $1 billion reduced reporting limit would report the FR 2900 weekly, effective with the September 2003 panel review; (3) reducing the reporting frequency for the two nonpersonal time deposit items on the FR 2900 to one day each year, effective September 2003; (4) raising the nonexempt deposit cutoff to $150.0 million, an upward adjustment from the 2003 indexed level of $112.3 million, effective for the September 2003 panel review; and (5) adding the item ''net Eurocurrency liabilities'' to the FR 2900, to be reported one day each year beginning June 2004.

2. *Report title:* Annual Report of Total Deposits and Reservable Liabilities
Agency form number: FR 2910a
OMB control number: 7100–0175
Frequency: Annually
Reporters: Depository institutions
Annual reporting hours: 3,052
Estimated average hours per response: 30 minutes
Number of respondents: 6,103
Small businesses are affected.
General description of report: This information collection is mandatory (12 U.S.C. 248(a) and 461) and is given confidential treatment (5 U.S.C. 552 (b)(4)).
Abstract: Currently, the FR 2910a is filed by (non–FR 2900) institutions whose total deposits are greater than or equal to the exemption amount and by all other institutions whose total deposits cannot be verified as being below the exemption amount. This mandatory report is used by the Federal Reserve for administering Regulation D (Reserve Requirements of Depository Institutions) and for constructing, analyzing, and controlling the monetary and reserve aggregates.
Current actions: The Federal Reserve proposes adding the item ''net transaction accounts'' to the FR 2910a, effective June 2003; and changing the reporting date for the FR 2910a to June 30th, effective June 2003.

3. *Report title:* Report of Repurchase Agreements (RPs) on U.S. Government

and Federal Agency Securities with Specified Holders

Agency form number: FR 2415

OMB control number: 7100–0074

Frequency: Weekly, quarterly, or annually

Reporters: U.S chartered commercial banks, U.S branches and agencies of foreign banks, thrift institutions, and credit unions

Annual reporting hours: 2,615 hours

Estimated average hours per response: 30 minutes

Number of respondents: 84 weekly, 128 quarterly, and 350 annually

Small businesses are not affected.

General description of report: This information collection is voluntary (12 U.S.C. 248(a)(2) and 3105(b)) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: This voluntary report collects one data item, repurchase agreements (RPs), in denominations of $100,000 or more, in immediately–available funds, on U.S. government and federal agency securities, transacted with specified holders. Depository institutions file the FR 2415 report either weekly, quarterly or annually depending on the volume of their RPs. In general, the larger the respondent's level of RPs, the more frequent its reporting. The weekly panel reports daily data once each week; the quarterly panel files daily data for the four one–week reporting periods that contain quarter–end dates; the annual panel reports daily data only for the week encompassing June 30 each year. The primary purpose of the data is for construction of the RP component of the M3 monetary aggregate and for analysis of depository institutions' funding practices.

Current actions: The Federal Reserve proposes the following revisions: (1) raising the thresholds for re–screening existing FR 2415 respondents on all three reporting panels; (2) reducing the cutoff for screening U.S. banks that do not file the FR 2415; and (3) adding credit unions to the existing reporting panels.

4. *Report title:* Monthly Survey of Industrial Electricity Use

Agency form number: FR 2009a,b,c

OMB control number: 7100–0057

Frequency: Monthly

Reporters: FR 2009a/c: Electric utility companies; FR 2009b: Cogenerators

Annual reporting hours: FR 2009a/c: 1,920 hours; FR 2009b: 900 hours

Estimated average hours per response: FR 2009a/c: 1 hour; FR 2009b: 30 minutes

Number of respondents: FR 2009a/c: 160; FR 2009b: 150

Small businesses are affected.

General description of report: This information collection is voluntary (12 U.S.C. 225a, 263, 353 et seq, and 461) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: The survey collects information on the volume of electric power delivered during the month to classes of industrial customers. There are three versions of the survey: the FR 2009a and FR 2009c collect information from 137 electric utilities, the FR 2009a in Standard Industrial Codes (SIC) codes and the FR 2009c in North American Industry Classification System (NAICS) codes. The FR 2009b collects information from 124 manufacturing and mining facilities that generate electric power for their own use (cogenerators). The electric power data are used in deriving the Federal Reserve's monthly index of industrial production (IP) as well as for calculating the monthly estimates of electric power used by industry. The IP index is widely used by the Federal Reserve, other government agencies, businesses, and academia for economic analysis, policy review, and research.

Current actions: The Federal Reserve proposes to continue using the FR 2009a report form. This report form was approved for discontinuance in 2000 owing to the industrial output index being revised to reflect the new North American Industry Classification System (NAICS) from the Standard Industrial Classification (SIC) codes. However, many respondents continue to prefer reporting in SIC codes. The FR 2009c is in the same format as the FR 2009a but uses NAICS instead of SIC codes. The Federal Reserve also propose to reduce the authorized panel size to 160 utilities and 150 cogenerators to more accurately reflect the target population.

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following reports:

1. *Report title:* Allocation of Low Reserve Tranche and Reservable Liabilities Exemption

Agency form number: FR 2930/2930a

OMB control number: 7100–0088

Frequency: Annually and on occasion

Reporters: Depository institutions

Annual reporting hours: 47 hours

Estimated average hours per response: 15 minutes

Number of respondents: 186

Small businesses are affected.

General description of report: This information collection is mandatory: FR 2930 (12 U.S.C. 248(a), 461, 603, and 615) and FR 2930a: (12 U.S.C. 248(a) and 461) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: The FR 2930 and FR 2930a provide information on the allocation of the low reserve tranche and reservable liabilities exemption for depository institutions having offices (or groups of offices) that file separate FR 2900 deposit reports. The data collected on these reports are needed for the calculation of required reserves.

2. *Report title:* Report of Foreign (Non–U.S.) Currency Deposits

Agency form number: FR 2915

OMB control number: 7100–0237

Frequency: Quarterly

Reporters: Depository institutions

Annual reporting hours: 306 hours

Estimated average hours per response: 30 minutes

Number of respondents: 153

Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 248(a)(2) and 347(d)) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: The FR 2915 collects weekly averages of the amounts outstanding for foreign (non–U.S.) currency deposits held at U.S. offices of depository institutions, converted to U.S. dollars and included in the FR 2900. Foreign currency deposits are subject to reserve requirements and, therefore, are included in the FR 2900. However, because foreign currency deposits are not included in the monetary aggregates, the FR 2915 data are used to remove foreign currency deposits from FR 2900 data in calculating the monetary aggregates. FR 2915 data also are used to monitor the volume of foreign currency deposits.

Proposal to approve under OMB delegated authority the discontinuation of the following report:

1. *Report title:* Report of Certain Eurocurrency Transactions

Agency form number: FR 2950/2951

OMB control number: 7100–0087

Frequency: Weekly, quarterly

Reporters: Depository institutions

Annual reporting hours: 20,248 hours

Estimated average hours per response: 1 hour

Number of respondents: 389 weekly and 5 quarterly

Small businesses are affected.

General description of report: This information collection is mandatory [FR 2950: (12 U.S.C. 248(a), 461, 603, and 615)] and [FR 2951: (12 U.S.C. 248(a), 461, and 347(d))] and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: The FR 2950/2951 collects information on Eurocurrency liabilities

from depository institutions that obtain funds from foreign (non–U.S.) sources or that have foreign branches. This report is filed with the same frequency as the FR 2900. These mandatory reports are used by the Federal Reserve for administering Regulation D (Reserve Requirements of Depository Institutions) and for constructing, analyzing, and controlling the monetary and reserve aggregates.

Current actions: The Federal Reserve proposes discontinuing the FR 2950/2951 in May 2004, contingent upon some report items being added to the bank credit family of reports. (The Weekly Report of Assets and Liabilities for Large Banks: FR 2416; OMB No. 7100–0075; the Weekly Report of Selected Assets: FR 2644; OMB No. 7100–0075; and the Weekly Report of Assets and Liabilities for Large U.S Branches and Agencies of Foreign Banks: FR 2069; OMB No. 7100–0030)

Board of Governors of the Federal Reserve System, April 10, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–9262 Filed 4–15–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: *Background.* On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–I's and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for comment on information collection proposal.

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before [insert date 60 days from publication in the Federal Register].

ADDRESSES: Comments may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e–mail to *regs.comments@federalreserve.gov*, or faxing them to the Office of the Secretary at 202–452–3819 or 202–452–3102. Comments addressed to Ms. Johnson may also be delivered to the Board's mail facility in the West Courtyard between 8:45 a.m. and 5:15 p.m., located on 21st Street between Constitution Avenue and C Street, N.W. Members of the public may inspect comments in Room MP–500 between 9:00 a.m. and 5:00 p.m. on weekdays pursuant to 261.12, except as provided in 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

A copy of the comments may also be submitted to the OMB desk officer for the Board: Joseph Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Cindy Ayouch, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Proposal for approval under OMB delegated authority to conduct the following survey:

Report title: Survey of Small Business Finances

Agency form number: FR 3044

OMB control number: 7100–0262

Frequency: One–time

Reporters: Small businesses

Annual reporting hours: 5,100 hours

Estimated average hours per response: 1 hour

Number of respondents: 5,100

Small businesses are affected.

General description of report: This information collection would be voluntary and authorized by law (12 U.S.C. §§ 252(a)(1), 1817(j), and 1841 et seq.). Individual respondent data would be provided in a public–use file. However, any information that could identify respondent firms, or the financial institutions that they use, would be excluded from the public dataset pursuant to the Freedom of Information Act (5 U.S.C. § 552(b)(4)).

Abstract: This voluntary survey would be similar to the 1987, 1993, and 1998 Surveys of Small Business Finances (SSBF). In part, this survey would be conducted to collect information needed to satisfy the requirements of Section 2227 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996. This law requires the Board to conduct a study and submit a report to the Congress every five years ''...detailing the extent of small business lending by all creditors....''

The 2003 SSBF would gather data from small businesses on their financial relationships, credit experiences, lending terms and conditions, income and balance sheet information, the location and types of financial institutions used, and other firm characteristics. The survey would be conducted by a private survey firm,

which would be chosen in a competitive bidding process. In conjunction with the Federal Reserve, the survey firm would update and finalize the questionnaire for the new survey. The survey firm would then conduct two pre–tests with a minimum of fifty small business firms in each pre–test. Following pre–test revisions to the questionnaire, the survey would be conducted by means of computer–assisted telephone interviews. Interviewing would likely commence in early 2004.

Board of Governors of the Federal Reserve System, April 10, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–9264 Filed 4–15–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 9, 2003.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. MainSource Financial Group, Greensburg, Indiana; to acquire 100 percent of the voting shares of First Community Bancshares, Inc., Bargersville, Indiana, and thereby indirectly acquire voting shares of First Community Bank & Trust, Bargersville, Indiana.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. The Jere J. Ruff Family Limited Partnership, II, Longview, Texas; to acquire 44.26 percent of the voting shares of The First State Bank, Hallsville, Texas.

2. Ruff Management, L.L.C., Longview, Texas; to acquire 52.32 percent of the voting shares of The First State Bank, Hallsville, Texas.

3. Ruff Partners, Ltd., Longview, Texas; to acquire 52.32 percent of the voting shares of The First State Bank, Hallsville, Texas.

Board of Governors of the Federal Reserve System, April 10, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–9263 Filed 4–15–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1256–N]

RIN 0938–AM60

Medicare Program; Notice of Ambulance Fee Schedule in Accordance With Federal District Court Order

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the steps CMS is taking to comply with the Order in *Lifestar Ambulance Service, Inc.* v. *United States,* No. 4:02–CV–127–1 (M.D. Ga. Jan. 16, 2003) Medicare Covered Ambulance Services.

EFFECTIVE DATE: This notice is effective on April 16, 2003.

FOR FURTHER INFORMATION CONTACT: Anne Tayloe, (410) 786–4546.

SUPPLEMENTARY INFORMATION:

I. Background

Section 4531 of the Balanced Budget Act of 1997 (BBA) required the Secretary of the Department of Health and Human Services to establish a national fee schedule (FS) for payment of ambulance services through a negotiated rulemaking process. The statute provided that the Secretary phase in the application of payment rates under the FS in an efficient and fair manner and that the aggregate amount of payment for such services under the new FS not exceed the amount that would have been paid under the old system (42 U.S.C. § 1395m(l)(1), (2), (3)). The BBA provided that the FS would apply to services furnished on or after January 1, 2000.

The September 12, 2000 proposed rule (65 FR 55078) and the February 27, 2002 final rule (67 FR 9100) both provide for payment for ambulance services to be made in two parts: a base rate and a payment for mileage. Section 423 of the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), which was passed after the publication of the proposed rule and prior to the promulgation of the final rule, provided that during the phase-in of the FS there would be full payment of any national mileage rate for ambulance services furnished by suppliers in States where the Medicare carrier did not previously pay separately for all mileage within the county from which the beneficiary is transported. Two States have been identified as qualifying under this provision: North Carolina and Tennessee. The BIPA states that this provision shall apply to services furnished on or after July 1, 2001. The FS was implemented on April 1, 2002 by the February 27, 2002 final rule. The final rule announced the 5-year phase-in that is based on a blend of a percentage of the payment based on the old payment system with a percentage of the payment based on the FS according to the following schedule:

Calendar year	Percentage of old payment system	Percentage of fee schedule
2002*	80	20
2003	60	40
2004	40	60
2005	20	80
2006	0	100

*April 1, 2002 through December 31, 2002 only.

The full national FS mileage rate in those States that qualify for section 423 of the BIPA (North Carolina and Tennessee) has been paid as of April 1, 2002.

In *Lifestar Ambulance Service, Inc.* v. *United States,* No. 4:02–CV–127–1

(M.D. Ga. Jan 16, 2003), three ambulance suppliers seeking to represent a nationwide class of ambulance suppliers sued the Secretary, arguing that he has no discretion to give the FS an effective date other than January 1, 2000. The district court agreed with the plaintiff suppliers and issued an order certifying a nationwide class of ambulance suppliers and requiring the Secretary to adopt a FS for the January 1, 2000 through March 31, 2002 period. The court's decision also requires the Secretary to pay full mileage in accordance with the BIPA provision for the July 1, 2001 through March 31, 2002 period. *Id.* at 20–21.

II. Provisions of the Notice

The purpose of this notice is to comply with the court's order requiring a FS to be established for the January 1, 2000 through March 31, 2002 period. By this notice, the Secretary is establishing a FS based on the FS as described in the February 27, 2002 final rule, with a modified phase-in as follows:

Calendar year	Percentage of old payment system	Percentage of fee schedule
2000*	95	5
2001	90	10
2002	80	20

*January 1, 2002 through March 31, 2002.

Additionally, in accordance with the district court's order, the Medicare program will pay full BIPA mileage for services provided on or after July 1, 2001.

The BBA provided that the Secretary shall phase in the application of payment rates under the FS in an efficient and fair manner. As previously detailed, based on the discretion afforded the Secretary by the BBA, the final rule published on February 27, 2002 provided for a linear progression from the prior payment system to FS payments, commencing with a 20 percent/80 percent blended payment for the last three quarters of FY 2002, and ending with a 100 percent FS payment for FY 2006.

Five percent, 10 percent, and 20 percent is the most appropriate progression of blending percentages for the January 1, 2000 through March 31, 2002 period. For the first quarter of 2002, 20 percent is the same blending percentage as the percentage already used for the FS during the other 9 months in 2002. The 5 percent and 10 percent are the most appropriate percentages for 2000 and 2001, in that they comply with the statutory requirement for an efficient and fair phase-in, and are consistent with the linear progression in blending percentages promulgated in the February 27, 2002 final rule.

The *Lifestar* court recognized the Secretary's statutory discretion to set the phase-in percentages for the January 1, 2000 through March 31, 2002 period. The court also stated that these phase-in percentages must provide meaningful relief to the *Lifestar* plaintiffs. The FS described in this notice provides meaningful relief as evidenced in more detail under the impact section, below. We estimate that 2/3 of 15,000 suppliers will be receiving a total of $81 million for this period.

The statute at 42 U.S.C. 1395(m)(l)(3)(B) provides that FS payment amounts in subsequent years to the first year of the FS be set equal to the FS payment amounts from the previous year increased by a statutorily prescribed inflation factor. The FS final rule used data from 1998 and inflated it using the statutorily prescribed inflation factors to obtain the 2002 amounts. See 67 FR 9100, 9125. To determine the FS amounts for earlier years (that is, the period of January 1, 2000 through December 31, 2001), we have deflated the FS amounts for 2002 by the same statutorily prescribed ambulance inflation factors. These deflation factors are:

Calendar year	Deflation percentage
2000/2001	3.7
2001/2002	2.2

III. Appeal of Lifestar Decision/ Recoupment

The Secretary has appealed the *Lifestar* decision. In the event the district court's decision is reversed on appeal, any FS or BIPA mileage payment made in accordance with this notice for the January 1, 2000 through March 31, 2002 period will be subject to recoupment.

IV. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.

The court's January 16, 2003 order in *Lifestar* requires establishment of a FS for the January 1, 2000 through March 31, 2002 period within 90-days of the date of the order. It would be impracticable to provide a period for prior notice and comment and still meet the 90-day deadline. In fact, the Congress has recognized the impracticability of providing prior notice and comment where a statutory provision must be implemented within 150 days. *See* 42 U.S.C. 1395hh(b)(2)(B) (providing that a notice of proposed rulemaking is not required if a statute establishes a specific deadline for implementation that is less than 150 days from enactment).

Therefore, we find good cause to waive the notice of proposed rulemaking and comment period with respect to the issuance of this notice.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

VI. Regulatory Impact Statement

We have examined the impacts of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

There are approximately 15,000 suppliers nationwide that submit claims to Medicare for ambulance services. The Medicare program pays approximately $2.1 billion in Medicare benefits per year for these services. We estimate that approximately two-thirds of suppliers will benefit from this January 1, 2000 through March 31, 2002 FS and that the aggregate amount of program spending will be approximately $81 million. The break out of this expenditure is as follows:

Calendar year	Program expenditures (in millions)
2000	$16
2001	$43
2002	$22
Total	$81

These amounts include approximately $16 million by which suppliers in North Carolina and Tennessee will benefit due to implementation of the BIPA ambulance mileage provision for the period of July 1, 2001 through March 31, 2002.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). The aggregate amount of program spending to comply with the court's order will be approximately $81 million. Therefore this notice is not a major notice as defined in Title 5, United States Code, section 804(2) and is not an economically significant notice under Executive Order 12866.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. Individuals and States are not considered to be small entities. We have determined that this notice will not have a significant economic impact on a substantial number of small entities. Therefore, we are not preparing an analysis for the RFA.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We have determined that this notice will not have a significant effect on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing an analysis for section 1102(b) of the Act.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditures in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This notice has no consequential effect on State, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This notice will not have a substantial effect on State or local governments.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

Authority: Sections 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 1, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: April 11, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–9503 Filed 4–15–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: (301) 496–7057; fax: (301) 402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Method and Materials for Promoting Migration of T Cells to the Vasculature of a Tumor

Patrick Hwu and Mary Tschoi (NCI). Serial No. 60/447,497 filed 14 Feb 2003. *Licensing Contact:* Jonathan Dixon; (301) 435–5559; *dixonj@od.nih.gov*.

Adoptive immunotherapy with T cells is a promising therapeutic modality for cancer. However, the effectiveness of this method of treatment appears to be limited by the inefficient migration of T cells to the tumor site. The present invention provides materials and methods that promote the migration of T cells to the vasculature of a tumor.

This invention discloses a novel method of administering modified autologous T cells, which bind to cell-surface molecules on endothelial cells of the vasculature of a tumor. Using the disclosed method and modified T cells, investigators were able to promote the migration of T cells to molecules expressed on the vasculature of tumors. It is anticipated that this method and these modified autologous T cells will improve the effectiveness of adoptive immunotherapy for a variety of tumors, including melanoma and many carcinomas and sarcomas.

This research has been described, in part, in Dudley *et al.*, Science 298:850–854 (25 October 2002).

Amplification and Overexpression of Septin9 MLL Septin-Like Fusion (MSF) and Methods Related Thereto

Cristina Montagna *et al.* (NCI). DHHS Reference No. E–003–2003. *Licensing Contact:* Matthew Kiser; (301) 435–5236; *kiserm@od.nih.gov*.

This invention pertains to methods of detecting cancer, a method of inhibiting a protein, oligonucleotides for use therein, a method of inducing apoptosis, methods of testing a candidate drug for efficacy as an anti-cancer drug and methods for evaluating the progression of cancer.

The inventors have demonstrated that the Septin9 gene in mice (MSF gene in humans) is amplified in cancer models for breast cancer. Furthermore, it has been shown that the product encoded by this gene is overexpressed in cancer. In this regard, the present invention provides methods of detecting cancer in a mammal. One method comprises determining whether or not the mammal has an amplification of the Septin9 (MSF) locus or an ortholog of the gene. In this method, overexpression of the protein or of the nucleic acid molecule is indicative of cancer. Another method

comprises determining whether or not the mammal has an overexpression of a protein or of a nucleic acid molecule, wherein the protein or the nucleic acid molecule is encoded by a MSF gene, a Septin9 gene, or an ortholog. In this method, overexpression of the protein or the nucleic acid molecule is indicative of cancer.

Additionally, the present invention also provides a method of inhibiting a protein encoded by the Septin9 gene (MSF gene) or an ortholog in a cell. The method comprises administering to the cell an interference RNA in an amount sufficient to reduce mRNA stability and inhibit protein synthesis. Isolated or purified oligonucleotides, which are suitable for use in the above method, are also disclosed.

This research is described, in part, in Montagna *et al.*, The septin 9 (MSF) gene is amplified and overexpressed in mouse mammary gland adenocarcinomas and human breast cancer cell lines, Cancer Research, in press.

Methods of Inhibiting Metastasis or Growth of a Tumor Cell

Sam Hwang (NCI).
Serial No. 60/425,472 filed 12 Nov 2002.
Licensing Contact: Jonathan Dixon; (301) 435–5559; e-mail: *dixonj@od.nih.gov*.

Cancer metastasis is the primary mechanism of clinical morbidity and mortality in patients from cancer. Recently, chemokine receptors have been shown to potentially play a role in tumor metastasis. One such receptor, CXC Chemokine Receptor-4 (CXCR-4), is expressed in many cancer-derived cell lines, from breast carcinoma and melanoma.

The present invention discloses the use of polypeptides to block CXCR-4-mediated metastasis. One such polypeptide, an 18 amino acid peptide named T22, has been shown to block CXCR-4 in CXCR-4-expressing melanoma cells. This invention shows that CXCR-4 can be blocked through the use of the T22 peptide to prevent the spreading of melanoma tumor cells in the lungs in a murine model of melanoma metastasis. By not allowing cells to metastasize, this invention could potentially reduce the morbidity and mortality that are normally associated with metastatic melanoma.

Method of Distinguishing Epithelioid Melanoma from Fibroblastoid Melanoma

Denise Simmons (NCI).
DHHS Reference No. E–233–2002 filed 31 Oct 2002.
Licensing Contact: Matthew Kiser; (301) 435–5236; *kiserm@od.nih.gov*.

The incidence of primary cutaneous malignant melanoma is increasing such that, at the beginning of this century, the lifetime risk for developing melanoma approached one in 75 in the United States. In addition, the death rate from melanoma has doubled over the last 50 years.

Melanoma in humans can have epithelioid or fibroblastoid morphology. The fibroblastoid morphology has been associated with resistance to treatment and escape mechanisms. Therefore, there is a need for a method of distinguishing epithelioid and fibroblastoid melanoma. The ability to distinguish epithelioid and fibroblastoid melanoma would be useful in diagnosis and determining treatment protocols. It is an object of the present invention to provide such a method.

The present invention provides a method of distinguishing epithelioid melanoma from fibroblastoid melanoma. The method comprises assaying a sample of melanoma cells for retinyl ester synthesis. Retinyl ester synthesis is indicative of the melanoma cells being epithelioid, whereas the absence of retinyl ester synthesis is indicative of the melanoma cells being fibroblastoid.

This research is described, in part, in Simmons *et al.*, Carcinogenesis, Vol. 23 No. 11, pp 1821–1830, November 2002.

Chondropsin-Class Antitumor V-ATPase Inhibitor Compounds, Compositions and Methods of Use Thereof

Michael Boyd and Kirk Gustafson (NCI).
DHHS Reference No. E–191–2002 filed 24 Jul 2002.
Licensing Contact: George Pipia; (301) 435–5560; *pipiag@od.nih.gov*.

Vacuolar type (H+) ATPase (V-ATPase) has been described as ''a universal proton pump of eukaryotes''. V-ATPase is responsible for maintaining internal acidity and is important in myriad of physiological functions, such as sorting of membrane proteins, proinsulin conversion, neurotransmitter uptake, and cellular degradation process. This new chondropsin, Poecillastrin-A, is a cytotoxic, 33-member ring, macrolide lactam, isolated from the sponge Poecillastra sp. It is structurally related to the chondropsin class of macrolide lactams. However, it possesses unique patterns of methylation and oxygenation, and it is the first member of this family of polyketide derivatives with a 33-membered macrocyclic ring. Its in vitro antitumor activity is comparable to that of the chondropsins, however the new structural features found in Poecillastrin-A broaden the known structural diversity of this family of potent antiproliferative and cytotoxic macrolide lantams. The chondropsins and poecillastrin A produce a distinctive pattern of differential cytotoxicity in the NCI's 60 cell antitumor screen that directly correlates with selective V-ATPase inhibitors. This compound and its derivatives could be directed to any cancer types and may have applicability as highly selective anticancer small molecule inhibitors.

This research is described, in part, in M. A. Rashid *et al.*, Organic Letters 2002, 4, 3293–3296. Also, for a reference on selective V-ATPase inhibitors see: M. R. Boyd *et al.*, J. Pharmacol. Exp. Ther. 2001, 297, 114–120.

Scorpionate-Like Pendant Macrocyclic Ligands, Complexes and Compositions Thereof, and Methods of Using Same

Martin Brechbiel and Hyun-soon Chong (NCI).
DHHS Reference No. E–063–2002/0 filed 03 Jun 2002.
Licensing Contact: Matthew Kiser; (301) 435–5236; kiserm@od.nih.gov.

Monoclonal antibodies (mAbs) have been employed as targeting biomolecules for the delivery of radionuclides into tumor cells in radioimmunotherapy (RIT). Numerous clinical trials have been performed to validate this modality of cancer therapy. Several useful B^- emitting radionuclides, including ^{131}I, ^{90}Y, ^{177}Lu, and ^{153}Sm, have been employed for labeling mAbs for RIT applications. The pure B^- emitting radionuclide ^{90}Y has been extensively studied in RIT due to its physical properties. The macrocyclic chelating agent 1,4,7,10-tetraazacyclododecane-N,N′,N″,N‴-tetraacetic acid (''DOTA'') is well-known to be an effective chelator of Y(III) and lanthanides. In general, DOTA conjugated to mAbs displays relatively slow and inefficient radiolabeling with Y(III) isotopes under mild conditions. This is contrary to the rapid and high-yield radiolabeling (> 90%) of mAbs conjugated with bifunctional derivatives of the acyclic chelating agent diethylenetriaminepentaacetic acid (DTPA). Thus, there is still a need for a compound that possesses complex stability comparable to that of DOTA, the excellent practical complexation kinetics of DTPA, and increased stability in vitro and in vivo. The subject invention provides such a compound.

The invention provides substituted 1,4,7-triazacyclononane-N,N′,N″-triacetic acid compounds with a pendant donor amino group, metal

complexes thereof, compositions thereof and methods of using same. The compounds of the present invention possess the same octadentate coordinating groups as DOTA and DTPA; however, these compounds have a combined macrocyclic and acyclic character. The macrocyclic component chosen is based upon 1,4,7-triazacyclononane-N,N′,N″-triacetic acid (''NOTA''), while the acyclic component is a pendant bis(carboxymethyl)amino donor group that is connected by an alkylene bridge that is optionally substituted with an aralkyl group. The cooperative binding of the pendant donor groups coupled with the pre-organization and macrocyclic effect of the NOTA sub-structure accelerates complexation with metal ions and isotopes (*e.g.*, Y(III), Gd(III); etc.) while maintaining a high level of stability of the complexes.

Compositions and Methods for Inhibiting Vascular Channels and Methods of Inhibiting Proliferation

Myung Hee Park, Paul M.J. Clement, Hartmut M. Hanauske-Abel, Edith C. Wolff, Hynda K. Kleinman, Bernadette M. Cracchiolo (NIDCR).

DHHS Reference No. E–320–2001/0 filed 23 Aug 2001 and PCT/US02/26909 filed 23 Aug 2002.

Licensing Contact: Matthew Kiser; (301) 435–5236; *kiserm@od.nih.gov*.

Angiogenesis, the recruitment of new blood vessels, is recognized as an important factor in tumor proliferation in many types of cancer. It is generally accepted that therapeutic approaches that inhibit angiogenesis effectively limit, or even prevent, the formation of solid tumors. It has also been shown that anti-angiogenic therapeutics allow conventional radiation therapy and chemotherapy to be more effective.

This invention pertains to certain compounds that inhibit angiogenesis in a previously unrecognized way. These compounds also inhibit the proliferation of cells within intraepithelial neoplasias (clusters of abnormally proliferating epithelial cells that are the origin of cancers). The subject compounds specifically block the formation of the amino acids hypusine and hydroxyproline. The former is the critical residue of eukaryotic translation initiation factor 5A (eIF5A), which is important in cell cycle progression, and hydroxyproline constitutes the critical residue of the collagens. The targeted enzymes are deoxyhypusine hydroxylase and prolyl 4-hydroxylase, respectively.

This invention provides evidence for an important role of eIF–5A in angiogenesis, and discloses a family of compounds with useful clinical properties. Specifically, these compounds include the core structures and potential derivatives of ciclopirox olamine, deferiprone, deferoxamine, and 2,2′-dipyridyl.

Ciclopirox olamine has potential for treatment of oral-pharyngeal cancer, and chemoprevention and treatment of cervical and vulvar cancer. Notably, this drug is FDA-approved in the USA as a topical medication against fungal infections while, in Europe, it is also approved for the treatment of yeast infections of the genital tract. The compound has a known clinical profile and lacks teratogenicity, potentially expediting clinical trials for new cancer treatment indications.

sFRP and Peptide Motifs That Interact With sFRP and Methods of Their Use

Jeffrey Rubin, Aykut Uren (both of NCI), Matthew Gillespie, Nicole Horwood, (both of St. Vincent's Institute of Medical Research), Brian Kay and Bernard Weisblum

Serial No. PCT/US02/00869 filed 10 Jan 2002; Serial No. 60/260,908 filed 10 Jan 2001.

Licensing Contact: Susan S. Rucker; (301) 435–4478; email: *ruckers@od.nih.gov*.

These patent applications describe and claim inventions related to the protein sFRP–1 and methods of regulating signal transduction pathways using sFRP–1. sFRP–1 is a member of a family of secreted proteins (secreted Frizzled Related Proteins) that were originally identified as being able to bind to Wnt proteins. When bound to Wnts, sFRP–1 alters the ability of Wnt protein to bind its receptor (Frizzled), typically acting as an antagonist of Wnt signaling.

More particularly, the patent applications and inventions claimed therein relate to methods for influencing bone remodeling using sFRP–1. In particular, the patent application and claimed inventions relate to methods of inhibiting osteoclastogenesis with the sFRP–1 protein. The ability to inhibit osteoclast formation may be of value in developing treatments for diseases such as post menopausal osteoporosis, Paget's disease, lytic bone metastases, multiple myeloma, hyperparathyroidism, rheumatoid arthritis, periodontitis and hypercalcemia of malignancy.

In addition to describing the method of inhibiting osteoclast formation, the patent applications disclose various peptides containing a conserved motif that allows the peptide containing the motif to bind to sFRP–1.

This work has been published as WO 02/055547 (July 10, 2002).

Dated: April 8, 2003.

Steven M. Ferguson,

Acting Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–9284 Filed 4–15–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: (301) 496–7057; fax: (301) 402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Scytovirins and Related Conjugates, Antibodies, Compositions, Nucleic Acids, Vectors, Host Cells, Methods of Production and Methods of Using Scytovirin

Michael R. Boyd (NCI), Barry R. O'Keefe (NCI), Tawnya C. McKee (NCI), Heidi R. Bokesch (SAIC).

Serial No. 60/381,322 filed 16 May 2002,

Licensing Contact: Sally Hu; (301) 435–5606; *hus@od.nih.gov.*

This invention provides: (1) Isolated and purified antiviral peptides or antiviral proteins named Scytovirins isolated and purified from aqueous extracts containing the cyanobacteria, Scytonema varium; (2) an antibody which binds an epitope of Scytovirin isolated and purified from Scytonema

varium; (3) a purified nucleic acid molecule that comprises a sequence which encodes an amino acid sequence homologous to Scytovirin; (4) a vector comprising the isolated and purified nucleic acid molecule and a host cell or organism comprising the vector; (5) a conjugate comprising the peptide and an effector component; and (6) a method of inhibiting prophylactically and therapeutically a viral infection. Thus, this invention may represent potential new therapeutics for treatment of retroviral infections, including AIDS. This invention is further described in Bokesch *et al.*, ''A Potent Anti-HIV Protein from the Cultured Cyanobacteria Scytonema varium,'' Biochemistry, 2003, 42, 2578–2584.

Benzoylalkylindolepyridinium Compounds and Pharmaceutical Compositions Comprising Such Compounds

William G. Rice, Mingjun Huang, Robert W. Buckheit, Jr., David G. Covell, Grzegorz Czerwinski, Christopher Michejda, and Vadim Makarov (NCI).

DHHS Reference No. E–278–98/1 filed 18 Dec 2000 (PCT/US01/48311).

Licensing Contact: Sally Hu; (301) 435–5606; e-mail: *hus@od.nih.gov.*

The present invention provides novel antiviral compounds active against HIV. These compounds, referred to as benzoylalkylindolepyridinium compounds (BAIPs) are effective against HIV isolates that have developed mutations rendering conventional drugs ineffective. BAIPs apparently do not require intracellular phosphorylation nor bind to the reverse transcriptase (RT) active site, which distinguishes their mechanism of action from the dideoxynucleoside (ddN) and acyclic nucleoside phosphonate (ANP) nucleoside analog drugs. ddN and ANP have proven clinically effective against limited human immunodeficiency virus (HIV) infection, but resistance rapidly emerges due to mutations in and around the RT active site. The BAIPs also may be distinguished from non-nucleoside reverse transcriptase inhibitors (NNRTIs), in part because the BAIPs bind to a different site on the RT enzyme. The usage of NNRTIs is limited by the rapid emergence of resistant strains also. Moreover, unlike the NNRTIs, BAIPs of the present invention have been shown to be effective against HIV-1, HIV-2 and simian immunodeficiency virus (SIV) proliferation. Thus, BAIPs are broadly antiviral, non-nucleoside reverse transcriptase inhibitors (BANNRTIs).

Spontaneous Breathing Apparatus and Method

Theodor Kolobow (NHLBI).

Serial No. 08/933,003 filed 18 Sep 1997; PCT/US98/19714 filed 18 Sep 1998; Serial No. 09/555,229 filed 26 May 2000.

Licensing Contact: Michael Shmilovich; 301/435–5019; email: *mish@codon.nih.gov.*

A novel assisted breathing system and method that greatly decreases/eliminates the work of breathing and is under the total control of the patient.

The system includes a minitracheostomy tube, a reverse thrust gas insufflation catheter introduced through a special minitracheostomy tube to deliver well humidified air/oxygen to near the carina, and a threshold valve to limit airway plateau pressure. Inspiration is effected through spontaneous closing of the glottic opening, while expiration follows opening of the glottis. The patient can control the rate of respiration and tidal volumes. Lung inflation is therefore passive and accounts for the nominal work of breathing. Speech, sound, and coughing ability remains unimpeded.

Ultrasound-Hall Effect Imaging System And Method

Han Wen (NHLBI).

Serial No. 60/021,204 filed 03 Jul 1996; PCT/US97/11272 filed 02 Jul 1997; Serial No. 09/202,459 filed 14 Dec 1998; and related foreign patent applications.

Licensing Contact: Michael Shmilovich; (301) 435–5019; email: *mish@codon.nih.gov*.

The invention provides for a novel ultrasound-based imaging modality that is based on the interaction of a static magnetic field and conductive moieties in the imaged sample under electrical excitation. The invention also provides a novel ultrasound-based imaging modality that provides a contrast mechanism which reflects the conductivity distribution of the medium being imaged. The disclosed methods and system have the following advantages over other ultrasonic imaging systems: (a) The method is not limited to contrast based solely on acoustic properties; (b) it dispenses with acoustic beam excitation and is suitable for fast 2D and 3D image formation with wide angle signal reception. A working prototype system has been constructed and demonstrated 3D imaging. Results are published in peer reviewed journals: H. Wen, Ultrason. Imaging 2000 Apr;22(2):123–136; H. Wen, Ultrason. Imaging 1999 Jul;21(3):186–200; H. Wen *et al.*, Ultrason. Imaging 1998 Jul;20(3):206–220; H. Wen *et al.*, IEEE TransBiomed. Eng. 1998 Jan;45(1):119–124.

Dated: April 8, 2003.

Steven M. Ferguson,

Acting Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–9285 Filed 4–15–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Mutant A. nidulans Strains Requiring Anticancer or Antifungal Compounds for Growth

Katherine Jung *et al.* (NCI)

DHHS Reference No. E–312–2002/0 (Biological Materials)

Licensing Contact: Susan Ano; 301/435–5515; *anos@od.nih.gov.*

This technology describes four genetically modified strains of Aspergillus nidulans that bear mutations in the gene encoding γ-tubulin, a protein required for initiation of microtubule formation and mitosis. As a result of the mutations, these strains require the presence of an antimicrotubule agent as either an absolute or conditional requirement for growth, making the strains useful for

drug discovery screens. Related proteins α- and β-tubulin, which form the actual microtubules, are used in drug discovery efforts for anticancer drugs and are the targets of chemotherapeutics paclitaxel and vincristine. Significantly, identifying compounds that affect γ-tubulin function, which is fundamentally different than that of α- and β-tubulin, could lead to new types or classes of anticancer or antifungal compounds that act in a different manner. Furthermore, use of these strains in drug discovery offers the advantage of detecting growth against a background of no growth, compared to more typical methods of detecting decreased growth. Additionally, since microtubules are involved in a myriad of cell processes such as cell division, cell motility, and intracellular transport; these mutant strains could be useful in the study of these processes. These cell lines are available for licensing through Biological Materials Licenses. Related research has been published in Jung *et al.*, Mol. Biol. Cell 12: 2119–2136, 2001.

Mutant S. pombe Strains Carrying a Human γ-tubulin Gene or a Multicopy S. pombe γ-tubulin Plasmid

Katherine Jung *et al.* (NCI)
DHHS Reference No. E–313–2002/0 (Biological Materials)
Licensing Contact: Susan Ano; 301/435–5515; *anos@od.nih.gov.*

This technology describes two strains of Schizosaccharomyces pombe that have been genetically modified to affect the expression of γ-tubulin, a protein required for initiation of microtubule formation and mitosis. One strain carries a null mutation for expression of its γ-tubulin gene but has been transformed with DNA encoding human γ-tubulin. The second strain carries the S. pombe γ-tubulin gene on a multicopy plasmid and thus overexpresses S. pombe γ-tubulin. Since microtubules are involved in a myriad of cell processes such as cell division, cell motility, and intracellular transport, these mutant strains could be useful in the study of these and other processes, in particular by screening to discover compounds of medical and agricultural use. Specifically, the S. pombe strain carrying the human γ-tubulin gene could be used to identify potential antineoplastic agents, since compounds that specifically inhibit the growth of this strain will target human γ-tubulin. Compounds that inhibited growth of the strain overexpressing fungal γ-tubulin but not human γ-tubulin would be potential antifungal agents. These cell lines are available for licensing through Biological Materials Licenses. Related research has been published in Horio & Oakley, J. Cell Biol. 126: 1465–1473, 1994.

Polyclonal Antibodies Specific to Phosphorylation and Acetylation Sites of Human p53

Dr. Ettore Appella (NCI)
DHHS Reference No. E–262–2002/0
Licensing Contact: Sally Hu; 301/435–5606; *hus@od.nih.gov.*

This invention describes the antibodies that are specific to phosphorylated and acetylated sites of p53 and might be used as a powerful tool to study the function of the modifications and the mechanisms that regulate activation of p53. Those polyclonal antibodies have been raised by inoculating an animal with synthetic peptide mimicking the modified residue and its surrounding under conditions which elicit immune response. Those antibodies also can be used in medical diagnostics. They can be applied to monitor activity of corresponding enzymes, which catalyze the particular modification in the state of phosphorylation and acetylation of p53. The polyclonal antibodies from this invention are available for licensing via biological material licenses (BML).

Method for the Diagnosis and Treatment of Vascular Disease

Toren Finkel *et al.* (NHLBI)
DHHS Reference Nos. E–037–2003 filed 15 Nov 2002 and E–125–2003 filed 05 Feb 2003
Licensing Contact: Fatima Sayyid, 301/435–4521; *sayyidf@od.nih.gov.*

Cardiovascular disease is a major health risk throughout the industrialized world. Atherosclerosis, the most prevalent of cardiovascular diseases, is the principal cause of heart attack, stroke, and gangrene of the extremities. It is also the principal cause of death in the United States.

This invention portrays a method for diagnosing decreased vascular function, detecting increased cardiovascular risk and diagnosing atherosclerosis. An embodiment includes assaying the number of endothelial progenitor cells and treating a subject with decreased vascular function by administering a therapeutically effective amount of endothelial progenitor cells.

Related research has been published in Hill *et al.*, New England Journal of Medicine 348: 593–600 Feb 13 2003.

Cyr61 as a Marker for Acute Renal Failure

Drs. Robert A. Star and Yasunari Muramatsu (NIDDK)
Provisional Patent Application Serial No. 60/367,411 filed 25 Mar 2002
Licensing Contact: Pradeep Ghosh; 301/435–5282; *ghoshp@od.nih.gov.*

This invention relates to a method of diagnosing Acute Renal Failure (ARF) at an early stage by determining urinary cysteine-rich protein, Cyr61 levels and a method for treating early ARF by administering Cyr61. Acute renal failure is a disease of high morbidity and mortality and therapeutic interventions are still lacking. The invention is based on the fact that acute renal ischemia is associated with increased Cyr61 mRNA and protein levels. Cyr61 is a member of connective tissue growth factor family and plays an important role in the wound repair and neovascularization process. Increased expression of Cyr61 mRNA in ARF results in enhanced synthesis of Cyr61 protein and because Cyr61 is a secreted protein, the urine level of Cyr61 increases in ARF patients. Increased levels of urinary Cyr61 may thus have a potential as a diagnostic marker for ARF. In addition, because of its neovascularization properties, administration of Cyr61 may stimulate the renal repair process and/or prevent renal injury. Therefore, Cyr61 is a biomarker that also has potential therapeutic use for the treatment of ARF in patients with ischemia, sepsis, or following renal transplantation.

Dated: April 8, 2003.

Steven M. Ferguson,

Acting Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–9287 Filed 4–15–03; 8:45 am]
BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Small Business Initiatives Research (topics 182 and 184).

Date: April 16, 2003.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Executive Plaza South, Room 6005, 6120 Executive Blvd., Rockville, MD 20852. (Telephone conference call).

Contact Person: Sherwood Githens, Ph.D., Scientific Review Administrator, Special Review and Logistics Branch, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8068, Bethesda, MD 20892. (301) 435–1822.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 9, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9271 Filed 4–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Innovative Technologies for the Molecular Analysis of Cancer.

Date: April 25, 2003.

Time: 12 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Executive Plaza South, Room 6005, 6100 Executive Boulevard, Rockville, MD 20852. (Telephone conference call.)

Contact Person: Sherwood Githens, PhD, Scientific Review Administrator, Special Review and Logistics Branch, National Cancer Institute, National Institute of Health, 6116 Executive Boulevard, Room 8068, Bethesda, MD 20892. (301) 435–1822.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 9, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9272 Filed 4–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Re-Competition of the Cooperative Breast Cancer Tissue Resource.

Date: April 24, 2003.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Boulevard, 607, Rockville, MD 20852. (Telephone conference call.)

Contact Person: C. Michael Kerwin, Ph.D., Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8057, MSC 8329, Bethesda, MD 20892–8329. 301–496–7421. *kerwinm@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS.)

Dated: April 9, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9273 Filed 4–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Clinical Research in Peripheral Arterial Disease.

Date: June 12–13, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Columbia Hotel, 10207 Wincopin Circle, Columbia, MD 21044.

Contact Person: Katherine M. Malinda, Scientific Review Administrator, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7198, Bethesda, MD 20892. 301/435–0297.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS.)

Dated: April 8, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9269 Filed 4–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Sleep Disorders Research Advisory Board.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Sleep Disorders Research Advisory Board.

Date: June 25, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To discuss sleep research and education priorities and programs.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Contact Person: Carl E. Hunt, MD, Director, National Center on Sleep Disorders Research, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 10138, Bethesda, MD 20892. 301 435–0199.

Information is also available on the Institute's/Center's Home Page: *www.nhlbi.nih.gov/meetings/index.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 8, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9270 Filed 4–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Agent of Bioterrorism Pathogenesis and Host Defense.

Date: May 13, 2003.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817. (Telephone conference call.)

Contact Person: Eleazar Cohen, Ph.D., Scientific Review Administrator, Scientific Review Program, NIAID/NIH, 6700B Rockledge Drive, Rm 2220, Bethesda, MD 20892. 301–496–2550. *ec17w@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 8, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9268 Filed 4–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, ZAA1–BB (18)—Review of R41 Applications.

Date: April 28, 2003.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Wilco Building, 6000 Executive Boulevard, Bethesda, MD 20892. (Telephone conference call).

Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003. 301–443–9787. *etaylor@niaaa.nih.gov.*

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, ZAA1–BB (16) SBIR.

Date: April 28, 2003.

Time: 11 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Wilco Building, 6000 Executive Boulevard, Bethesda, MD 20892. (Telephone conference call).

Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003. 301–443–9787. *etaylor@niaaa.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: April 9, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9274 Filed 4–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Mental Health Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Mental Health Council.

Date: May 8–9, 2003.

Closed: May 8, 2003, 10:30 a.m. to recess.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Open: May 9, 2003, 8:30 a.m. to adjournment.

Agenda: Presentation of NIMH Director's report and discussion of NIMH program and policy issues.

Place: National Institutes of Health, Building 31C, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Jane A. Steinberg, Ph.D., Director, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609. 301–443–5047.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's Home Page: *www.nimh.nih.gov/council/advis.cfm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: April 9, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9275 Filed 4–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Male-Sites: Contraceptive Clinical Trials.

Date: May 5, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Hameed Khan, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892. (301) 435–6902. *khanh@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: April 9, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9276 Filed 4–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Disease; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Biomechanics & Inflammation in Osteoarthritis.

Date: April 28, 2003.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892. (Telephone conference call)

Contact Person: Richard J. Bartlett, Ph.D., Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Natcher Bldg./Bldg. 45, MSC 6500/Room 5AS–37B, Bethesda, MD 20892. (301) 594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: April 9, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9277 Filed 4–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Review of Cooperative Agreements.

Date: May 2, 2003.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Telephone conference call).

Contact Person: Charisee A. Lamar, Ph.D., Scientific Review Administrator, NIAMS, One Democracy Plaza, 6701 Democracy Blvd., Suite 879, Bethesda, MD 20892, (301) 451–6514.

(Catalogue of Federal Domestic Assistance Programs Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: April 9, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9278 Filed 4–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, ''INVEST''.

Date: May 15, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: April 9, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9279 Filed 4–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice hereby given of a meeting of the Board of Scientific Counselors, NIDA.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Drug Abuse, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDA.

Date: May 14–15, 2003.

Time: 9 a.m. to 12 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Intramural Research Program, National Institute on Drug Abuse, Johns Hopkins Bayview Campus, Bldg. C, 2nd Floor Auditorium, Baltimore, MD 21224.

Contact Person: Stephen J. Heishman, Ph.D., Research Psychologist, Clinical Pharmacology Branch, Intramural Research Program, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5500 Nathan Shock Drive, Baltimore, MD 21224, (410) 550–1547.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: April 9, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9280 Filed 4–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant

applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Review of Research Program Projects.

Date: May 5, 2003.

Time: 8:30 a.m to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Tracy A. Shahan, Ph.D., Scientific Review Administrator, National Institutes of Health, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Bethesda, MD 20892, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: April 9, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9281 Filed 4–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council for Nursing Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Nursing Research.

Date: May 20–21, 2003.

Open: May 20, 2003,

Time: 1 p.m. to 5 p.m.

Agenda: For discussion of program policies and issues.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room D, Bethesda, MD 20892.

Closed: May 21, 2003, 9 AM to Adjournment.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room D, Bethesda, MD 20892.

Contact Person: Mary Leveck, PHD, Deputy Director, NINR, NIH, Building 31, Room 5B05, Bethesda, MD 20892, (301) 594–5963.

Information is also available on the Institute's/Center's Home Page: *http://www.nih.gov/ninr/a—advisory.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: April 9, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9282 Filed 4–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: β_2 Microglobulin Fusion Proteins and High Affinity Variants

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license worldwide to practice the inventions embodied in: U.S. Provisional Patent Application 60/088,813, filed June 10, 1998; International Patent Application No. PCT/US99/12309, filed June 3, 1999 (published as WO 9964597A1); and U.S. Patent Application Ser. No. 09/719,243, filed December 7, 2000; to Vaccinex, Inc., having a place of business in Rochester, NY. The United States of America is an assignee to the patent rights of these inventions.

The contemplated exclusive license may be limited to the development of human therapeutics for cancer and other infectious diseases.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before June 16, 2003 will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Michael A. Shmilovich, J.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–5019; Facsimile: (301) 402–0220; e-mail: *shmilovichm@od.nih.gov*. A signed Confidential Disclosure Agreement will be required to receive copies of the patent application.

SUPPLEMENTARY INFORMATION: The patent applications cover immunologically active fusion proteins of an immunogenic peptide, β_2 microglobulin or a high affinity mutant of β_2m, and an optional linker between the first and second domains and/or a single peptide preceding the N-terminal of the first domain. Expressed fusion proteins are cytotoxic $CD8^+$ T lymphocyte (CTL) activating and enhance immunogenicity. The fusion proteins, the nucleic acids encoding them, and the cell lines expressing them have broad utility in activating CTLs in response to viral or tumor antigens. The fusion proteins can be used as adjuvants in vaccines that enhance the efficacy of viral or cancer antigen presentation by MHC–1 presenting cells. As a therapeutic, the fusion proteins can be used in vivo or ex vivo to enhance the immunogenicity of cancer cells.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: April 7, 2003.

Steven M. Ferguson,

Acting Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 03–9286 Filed 4–15–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program (NTP) Board of Scientific Counselors Technical Reports Review Subcommittee Meeting; Review of Draft NTP Technical Reports

Pursuant to Pub. L. 92–463, notice is hereby given of the next meeting of the NTP Board of Scientific Counselors Technical Reports Review Subcommittee on May 22, 2003 in the Rodbell Auditorium, Rall Building, South Campus, National Institute of Environmental Health Sciences (NIEHS), 111 T.W. Alexander Drive, Research Triangle Park, North Carolina. The meeting will begin at 8:30 a.m.

Agenda

The primary agenda topic is the peer review of six draft NTP Technical Reports of rodent toxicology and carcinogenesis studies conducted by the NTP. The reports are listed in the table below in the tentative order of their review. There will be a brief presentation describing the p53 (+/−) and the p16 (+/−) haploinsufficient transgenic mouse models for short-term cancer bioassays prior to the reviews of the aspartame and acesulfame potassium reports.

The agenda and roster of Subcommittee members will be available prior to the meeting on the NTP Web homepage at *http://ntp-server.niehs.nih.gov* and upon request to the NTP Executive Secretary, Dr. Mary S. Wolfe, PO Box 12233, 111 T.W. Alexander Dr., MD A3–01, Research Triangle Park, NC 27709, T: 919–541–0530; F: 919–541–0295; e-mail: *wolfe@niehs.nih.gov.* Following the meeting, summary minutes will be available on the NTP Web site and in hard copy upon request to the Executive Secretary. Plans are underway for making this meeting available for viewing on the Internet (*http://www.niehs.nih.gov/external/video.htm*).

The NTP Board of Scientific Counselors Technical Reports Review Subcommittee meeting is open to the public. Attendance at this meeting is limited only by the space available. Individuals who plan to attend are asked to register with the NTP Executive Secretary (*see* contact information above). The names of those registered will be given to the NIEHS Security Office in order to gain access to the campus. Persons attending who have not pre-registered may be asked to provide pertinent information about the meeting, *i.e.*, title or host of meeting before gaining access to the campus. All visitors (whether or not you are pre-registered) will need to be prepared to show 2 forms of identification (ID) (*e.g.*, driver's license, government ID). Persons needing special assistance, such as sign language interpretation or other reasonable accommodation in order to attend, are asked to notify the NTP Executive Secretary at least seven business days in advance of the meeting (see contact information above).

Draft Reports Available for Public Review and Comment

Approximately one month prior to the meeting, the draft reports will be available for public review, free of charge, through ehpOnline (*http://ehp.niehs.nih.gov*). Printed copies of the draft NTP Technical Reports can be obtained, as available, from Central Data Management (CDM), NIEHS, PO Box 12233, MD EC–03, Research Triangle Park, NC 27709, T: 919–541–3419, F: 919–541–3687, e-mail: *CDM@niehs.nih.gov.*

Comments on any of the NTP Technical Reports are welcome. Time will be provided at the meeting for oral public comment on the reports. Persons requesting time for an oral presentation on a particular report are asked to notify the Executive Secretary (contact information given above) by May 14, 2003 and provide their contact information (name, affiliation, mailing address, phone, fax, e-mail), and supporting organization (if any). Persons registering to make comments are asked to provide a written copy of their statement to the Executive Secretary on or before May 14, 2003, to enable review by the Subcommittee and NTP staff prior to the meeting. These statements can supplement or expand an oral presentation. Each speaker will be allotted at least 7 minutes and, if time permits, up 10 minutes for presentation of oral comments. Each organization is allowed one time slot per report being reviewed. Registration for making public comments will also be available on-site. If registering on-site to speak and reading comments from printed text, the speaker is asked to provide 25 copies of the statement. These copies will be distributed to the Subcommittee and NTP staff and will supplement the record.

Written comments without an oral presentation at the meeting are also welcome. Comments should include contact information for the submitter (name, affiliation, mailing address, phone, fax, and e-mail) and supporting organization (if any). Written comments should be received by the Executive Secretary on or before May 14, 2003, to enable distribution to the Subcommittee and NTP staff for their review and consideration prior to the meeting.

Request for Additional Information

The NTP would welcome receiving toxicology and carcinogenesis information from completed, ongoing or planned studies as well as current production data, human exposure information, and use patterns for any of the chemicals listed in this announcement. Please send this information to CDM at the address given above. CDM will forward the information to the appropriate NTP staff scientist.

NTP Technical and Toxicity Report Series

The NTP conducts toxicology and carcinogenesis studies of agents of public health concern. Any scientist, organization, or member of the public may nominate a chemical for NTP testing. Details about the nomination process are available on the NTP Web site (*http://ntp-server.niehs.nih.gov*, select How to Nominate Substances). The results of short-term rodent toxicology studies are published in the NTP Toxicity Report series. Longer-term studies, generally, rodent carcinogenicity studies, are published in the NTP Technical Report series. Shorter-term carcinogenicity studies will appear in a new Technical Report Series being unveiled at the upcoming meeting. The studies of aspartame and acesulfame potassium will be the first two studies reported in the new series. Study abstracts for all reports are available at the NTP Web site under NTP Study Information. PDF files of completed reports are available free-of-charge from ehpOnline under Publications and hard copies of published reports can be obtained through subscription to ehpOnline (*http://ehp.niehs.nih.gov/* contact information: T: 919–653–2595 or 866–541–3841, e-mail: *ehponline@ehp.niehs.nih.gov*).

NTP Board of Scientific Counselors

The NTP Board of Scientific Counselors (''the Board'') is a technical advisory body composed of scientists from the public and private sectors who provide primary scientific oversight and

peer review to the NTP. Specifically, the Board advises the NTP on matters of scientific program content, both present and future, and conducts periodic review of the program for the purpose of determining and advising on the scientific merit of its activities and overall scientific quality. The Technical Reports Review Subcommittee of the Board provides scientific peer review of the findings and conclusions of NTP Technical Reports. The Report on Carcinogens Subcommittee of the Board provides scientific peer review of nominations to the Report on Carcinogens, a Congressionally mandated listing of agents known or reasonably anticipated to be human carcinogens.

The Board's members are selected from recognized authorities knowledgeable in fields such as toxicology, pharmacology, pathology, biochemistry, epidemiology, risk assessment, carcinogenesis, mutagenesis, molecular biology, behavioral toxicology, neurotoxicology, immunotoxicology, reproductive toxicology or teratology, and biostatistics. The NTP strives for equitable geographic distribution and for minority and female representation on the Board.

Dated: April 8, 2003.

Kenneth Olden,

Director, National Toxicology Program.

NATIONAL TOXICOLOGY PROGRAM (NTP) TECHNICAL REPORTS TENTATIVELY SCHEDULED FOR REVIEW BY THE NTP BOARD OF SCIENTIFIC COUNSELORS TECHNICAL REPORTS REVIEW SUBCOMMITTEE ON MAY 22, 2003 AT THE NATIONAL INSTITUTE OF ENVIRONMENTAL HEALTH SCIENCES, RESEARCH TRIANGLE PARK, NC

Chemical CAS number	Report number	Primary uses	Route and exposure levels	Review order
Propylene Glycol Mono-*t*-butyl Ether 57018–52–7.	TR 515	Solvent	Two-year study by inhalation 0, 75, 300, or 1,200 ppm in air to F344/N rats and B6C3F1 mice.	1
2-Methylimidazole 693–98–1.	TR 516	Chemical and pharmaceutical intermediate.	Two-year study by feed 0, 300, 1,000, or 3,000 ppm to male F344/N rats 0, 1,000, 2,500 or 5,000 ppm to female F344/N rats 0, 625, 1,250, or 2,500 ppm to male and female B6C3F1 mice.	2
Triethanolamine 102–71–6	TR 518	Large variety of industrial and manufacturing applications.	Two-year dermal study 0, 200, 630, or 2,000 mg/kg to male B6C3F1 mice and 0, 100, 300, or 1,000 mg/kg to female B6C3F1 mice.	3
Stoddard Solvent IIC 64742–88–7.	TR 519	Paint and dry cleaning solvent	Two-year study by inhalation 0, 550, 1,100, or 2,200 mg/cubic meter in air to F344/N rats and B6C3F1 mice.	4
Aspartame 22839–47–0	NEW 01	Artificial sweetener	Nine-month study by feed 0, 3,125, 6,250, 12,500, 25,000, or 50,000 ppm to p53 (+/−) haploinsufficient mice.	5
Acesulfame Potassium 55589–62–3.	NEW 02	Artificial sweetener	Nine-month study by feed 0, 0.3%, 1%, or 3% to p53 (+/−) haploinsufficient mice.	6

[FR Doc. 03–9283 Filed 4–15–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Directorate of Information Analysis and Infrastructure Protection; National Infrastructure Advisory Council; Notice of Open Meeting

The National Infrastructure Advisory Council (NIAC) will meet on Tuesday, April 22, 2003, from 4:30 p.m. until 6:30 p.m. EDT. The meeting, which will be held telephonically, will be open to the public via a ''listen only'' telephone bridge line. Members of the public interested in attending by telephone should call (toll free) 1–800–304–8043 or (toll) 1–719–955–1038 and, when prompted, enter pass code 1129948.

The Council advises the President of the United States on the security of information systems for critical infrastructure supporting other sectors of the economy, including banking and finance, transportation, energy, manufacturing, and emergency government services. At this meeting, the Council will discuss potential future issues to take up for consideration and potential dates for future meetings.

Agenda:

I. Opening of Meeting and Roll Call of Members: Nancy J. Wong, Director, Office of Planning and Partnerships, U.S. Department of Homeland Security (DHS)/Designated Federal Officer, NIAC.

II. Opening Remarks: Robert P. Liscouski, Assistant Secretary of Homeland Security for Infrastructure Protection, DHS; Richard K. Davidson, Chairman, NIAC; and John T. Chambers, Vice Chairman, NIAC.

III. Introduction of Possible Topics for Future NIAC Study: Chairman Davidson.

a. Internet Protocol ver. 6: Vice Chairman Chambers.

b. Cyber Vulnerability Disclosure Guidelines: Vice Chairman Chambers and John W. Thompson, Chairman and CEO, Symantec Corporation, Member of the NIAC.

c. Other topics: NIAC Members.

IV. Discussion of Topics: NIAC Members.

V. Discussion of Possible Dates for Future Meetings: Chairman Davidson, NIAC Members.

VI. Adjournment

Written comments may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Council members, the Council suggests that presenters forward the public presentation materials ten days prior to the meeting date to the following address: Mr. Eric T. Werner, Office of Planning and Partnerships, Directorate of Information Analysis and Infrastructure Protection, U.S. Department of Homeland Security, 14th Street & Constitution Avenue, NW., Room 6073, Washington, DC 20230.

For more information contact Eric Werner on (202) 482–7470.

Dated: April 11, 2003.

Eric T. Werner,

Council Liaison Officer.

[FR Doc. 03–9368 Filed 4–11–03; 4:24 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

[CA–668–1040 (P)]

Call for Nominations for the Santa Rosa and San Jacinto Mountains National Monument Advisory Committee

AGENCY: Bureau of Land Management, Interior; Forest Service, Agriculture.

SUMMARY: Under the Santa Rosa and San Jacinto Mountains National Monument Act of 2000, Public Law 106–351 (16 U.S.C. 431 note), the Department of the Interior's Bureau of Land Management and the Department of Agriculture's U.S. Forest Service are opening nominations for five members of the public to serve on the Santa Rosa and San Jacinto Mountains National Monument Advisory Committee. Nominations will be accepted for forty-five days following the publication date of this notice. The call for nominations is for representatives for the California Department of Fish and Game or the California Department of Parks and Recreation, the cities of Palm Springs and La Quinta, a representative of a local conservation organization, and a representative of a local developer or builder organization.

Committee members will be appointed to serve 3-year terms. The three-year term would begin November 2003. All members will serve without pay but will be reimbursed for travel and per diem expense at the current rates for government employees under 5 U.S.C. 5703. The Secretary of the Interior will make appointments to the Committee with the concurrence of the Secretary of Agriculture.

The Santa Rosa and San Jacinto Mountains National Monument Act of 2000 (Act) required that the Secretaries of the Interior and Agriculture establish a National Monument Advisory Committee (Committee) to advise them on resource management issues associated with the Santa Rosa and San Jacinto Mountains National Monument, specifically providing guidance on the National Monument Plan. This notice requests the public to submit nominations for five memberships on the Committee. The Committee is managed under the provisions of the Federal Advisory Committee Act.

SUPPLEMENTARY INFORMATION: As directed by the Act, the Secretary of the Interior and the Secretary of Agriculture jointly established an advisory committee for the Santa Rosa and San Jacinto Mountains National Monument (Monument). The Committee's purpose is to advise the Secretaries with respect to the preparation and implementation of a management plan for the Monument. The Committee meets every other month on a Saturday. The purpose of the Committee is to gather and analyze information, conduct studies and field examinations, hear public testimony, ascertain facts, and, in an advisory capacity only, develop recommendations concerning planning for the management and uses of the National Monument. The designated Federal officer, or his or her designee, in connection with special needs for advice, may call additional meetings. A Committee Chairperson and Vice Chairperson will be elected by the Committee from among its' members annually.

Any individual or organization may nominate one or more persons to serve on the Committee. Individuals may nominate themselves for Committee membership. You may obtain nomination forms that each agency requires from the BLM or Forest Service by contacting the individuals listed in **ADDRESSES** below. To make a nomination, you must submit completed nomination forms, letters of reference from the represented interests or organization, and any other information that speaks to the nominee's qualification, to the offices listed above. You may make nominations for the following categories of interest, as specified in the Act: (1) a representative of the California Department of Fish and Game or the California Department of State Parks (2) a representative from each of the following cities: Palm Springs and La Quinta (3) a representative of a local conservation organization (4) a representative of a local developer or builder organization. Nominations to the Committee should describe and document the proposed member's qualifications for membership on the Advisory Committee. Nomination packets will include the nominee's legal name.

DATES: Submit nomination packets to the address listed below no later than 45 days after the publication of this notice to call for nominations in the **Federal Register**.

ADDRESSES: Request nomination packets and send completed nomination packets to: Advisory Committee Nominations, Ms. Danella George, Bureau of Land Management, PO Box 581260, North Palm Springs, California, 92258–1260.

FOR FURTHER INFORMATION CONTACT: Ms. Danella George, Santa Rosa and San Jacinto Mountains National Monument, (760) 251–4800.

Dated: February 25, 2003.

Danella George,

Designated Federal Official, Santa Rosa and San Jacinto Mountains National Monument Advisory Committee, and Santa Rosa and San Jacinto Mountains National Monument Manager, Bureau of Land Management.

[FR Doc. 03–9123 Filed 4–15–03; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Colorado: Filing of Plats of Survey

April 8, 2003.

SUMMARY: The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 am., April 8, 2003. All inquiries should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215–7093.

(33% to CO–956–1420–BJ–0000–241A)
(6.7% to CO–956–7130–BJ–7377–241A)
(6.7% to CO–956–7130–BJ–7378–241A)
(6.6% to CO–956–1910–BJ–4239–241A)
(47% to CO–956–9820–BJ–CO01–241A)

The plat representing the dependent resurvey and survey in Township 50 North, Range 8 West, New Mexico Principal Meridian, Group 1370, Colorado, was accepted January 6, 2003.

The plat representing the dependent resurvey and survey in Township 50 North, Range 9 West, New Mexico Principal Meridian, Group 1370, Colorado, was accepted January 6, 2003.

The plat representing the corrective dependent resurvey for the ¼ sec. cor. of secs. 31 and 36, W. bdy. of T. 48 N., R. 8 W., New Mexico Principal, Group 1346, Colorado, was accepted February 7, 2003.

The plat representing the corrective dependent retracement, correcting the 1966–1990 tie to the section corner of sections 13, 18, 19 and 24, on the W. bdy. of T. 44 N., R. 13 W., New Mexico Principal Meridian, Group 937, Colorado, was accepted February 27, 2003.

The supplement plat, amending lots 9 and 12, in the E½NW¼ of section 30, to Parcels A and B of Lots 1 and 4, T. 38 N., R. 3 West, New Mexico Principal Meridian. Parcels A of Lots 1 and 4 are in government ownership and Parcels B

of Lots 1 and 4 are in Private ownership. This based upon the plats approved May 20, 1884 , October 28, 1996 and Warranty Deed, Serial No. CO184, Dated September 5, 1950, was accepted March 4, 2003.

These surveys and plats were requested by the Bureau of Land Management for administrative and management purposes.

The plat representing the dependent resurvey of a portion of the east boundary, and the dependent resurvey of certain mineral surveys in the NE¼ of section 12, T. 1 S., R. 72 W, Sixth Principal Meridian, Group 1337, Colorado, was accepted January 28, 2003.

The plat representing the dependent resurvey of Mineral Survey Number 17116, the Leroy lode, in SE¼ of section 1, T. 1 S., R. 72 W, Sixth Principal Meridian, Group 1337, Colorado, was accepted January 28, 2003.

The plat representing the dependent resurvey of Mineral Survey Number 15850, the Zephyr and Cyclone lodes, in NW¼ of section 1, T. 1 S., R. 72 W, Sixth Principal Meridian, Group 1337, Colorado, was accepted January 28, 2003.

The plat representing the dependent resurvey of Mineral Survey Number 15085, the Jack Pine and Orion lodes, in section 20, T. 1 S., R. 72 W, Sixth Principal Meridian, Group 1337, Colorado, was accepted February 26, 2003.

The plat representing the subdivision survey of section 10, T. 1 S., R. 72 W, Sixth Principal Meridian, Group 1337, Colorado, was accepted February 26, 2003.

The plat representing the dependent resurvey of the S½ mile between section 1 and 2, and Mineral Survey Number 16383, Frederick and a portion of the Warrior lodes, in section 2, T. 1 S., R. 72 W, Sixth Principal Meridian, Group 1337, Colorado, was accepted February 26, 2003.

These surveys and plats were requested by Zone Land Surveyor, Arapahoe-Roosevelt National Forest, for a pilot forest health partnership between the Forest Service and Boulder County, and for management purposes.

The plat (3 sheets), of the dependent resurvey of Track 37 and survey of Track 37 A and Track 37 B, in section 1, T. 24 S., R. 69 W., Sixth Principal Meridian, Group 1294, Colorado, was accepted February 12, 2003.

This survey and plats were requested by the Forest Supervisor, Pike and San Isabel Nation Forest, for boundary identification and management purposes.

The plat representing the dependent resurvey and survey in the SW¼ of section 30, T. 5 S. R. 82 W., Sixth Principal Meridian, Group 1375, Colorado, was accepted February 19, 2003.

The supplemental plat , creating new lots 16 and 17, from old lot 5, in section 5, T. 1 S., R. 99 W., Sixth Principal Meridian Colorado, was accepted March 10, 2003.

This survey and plats requested by the White River National Forest for the purpose of land exchanges and management purposes.

The plat, representing the dependent resurvey and survey in section 4, T. 7 S., R. 74 W., Sixth Principal Meridian, Group 1380, Colorado, was accepted March 10, 2003.

This survey and plat were requested by the Federal Highway Administration for the the purpose of boundary identification for highway improvement projects.

Darryl A. Wilson,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 03–9265 Filed 4–15–03; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice of Availability of the Programmatic Environmental Assessment for Exploration Activities in the Eastern Sale Area; Eastern Planning Area, Gulf of Mexico Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability of a programmatic environmental assessment.

SUMMARY: The Minerals Management Service (MMS) has prepared a programmatic environmental assessment (PEA) for exploration drilling and associated activities in the current sale area of the Eastern Planning Area (EPA) on the Gulf of Mexico (GOM) outer continental shelf (OCS). The MMS published notice in the **Federal Register** on June 3, 2002, that a PEA was in preparation.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Dr. Thomas W. Bjerstedt, telephone (504) 736–5743.

SUPPLEMENTARY INFORMATION: The PEA considered the area-wide environmental impacts of exploration drilling in the current sale area of the Eastern Planning Area. The PEA implements the tiering process for National Environmental Policy Act (NEPA) documentation outlined in 40 CFR 1502.20, which encourages agencies to tier environmental documents to eliminate repetitive discussions of the same issue. The site-specific EA's that MMS prepares for an operator's Exploration Plan in this area can be tiered from the PEA and the EA analyses can focus on the specific activities proposed. The PEA itself tiers from the Final EIS for Lease Sale 181 (MMS 2001–051).

Public Comments: The June 3, 2002, **Federal Register** notice solicited comments on any new information or issues that should be considered in the PEA. No comments pertaining to this notice were received by MMS. On July 12, 2002, MMS sent letters to the Governors of Louisiana, Alabama, Mississippi, and Florida. This letter informed them that a PEA was in preparation that considered area-wide resources and impacts from exploratory drilling in the EPA sale area, and solicited new information or issues for consideration in the PEA. The State of Florida replied on August 26, 2002, stating a number of issues for consideration in the PEA. The State of Alabama replied on August 8, 2002, stating that the State's concerns were expressed in earlier letters to the GOM Regional Director dated September 26, 2001, and May 28, 2002, regarding the 2002–2007 Central and Western Planning Area Multisale Draft EIS (MMS–2002–056), and the Proposed Notice of Sale for the Eastern GOM Lease Sale 181, respectively. The State was concerned about visual impacts presented by OCS drilling or production structures less than 15 miles offshore Alabama's coastline and about the potential for mercury contamination in association with OCS platforms. The States of Louisiana and Mississippi did not reply to the GOM Regional Director's July 12, 2002, letter. The MMS considered or addressed all of the issues provided by the States in the preparation of the PEA.

Dated: March 20, 2003.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 03–9331 Filed 4–15–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice of Preparation of a Programmatic Environmental Assessment for Structure Removal Operations in the Gulf of Mexico (2003)

AGENCY: Minerals Management Service, Interior.

ACTION: Preparation of a programmatic environmental assessment.

SUMMARY: The Minerals Management Service (MMS) will prepare a programmatic environmental assessment (PEA) to assess the potential impacts of explosive and nonexplosive structure removal operations in the Gulf of Mexico. Preparation of the PEA is an important step in the decision process for future permitting for the removal of offshore structures and for further consultation and coordination with other Federal agencies.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Mr. T.J. Broussard, telephone (504) 736–3245.

SUPPLEMENTARY INFORMATION: The PEA will focus on the decommissioning activities related to the explosive and non-explosive severing of seafloor obstructions and facilities (*e.g.*, wellheads, caissons, conductors, platforms, mooring devices) and the subsequent salvage operations that may be employed. The PEA will examine the potential impacts of structure removal operations on marine and socioeconomic environments. The geographic area of the proposed action includes all water depths of the Central and Western Planning Areas and the 256-block area currently available for leasing in the Eastern Planning Area. The PEA will be used as part of the rulemaking process by the National Oceanographic and Atmospheric Administration for incidental take regulations under Subpart I of the Marine Mammal Protection Act and to initiate consultation for explosive, structure removal operations under Section 7 of the Endangered Species Act. Topics of primary concern to be addressed in the PEA include removal technologies, industry needs related to water depth and location, and the potential impacts of structure removal operations on marine and socioeconomic environments.

Public Comments: The MMS requests that affected and/or interested parties submit their comments regarding any information or issues that should be addressed in the PEA to the Minerals Management Service, Gulf of Mexico OCS Region, Office of Leasing and Environment, Attention: Regional Supervisor (MS 5410), 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Comments should be enclosed in an envelope labeled ''Comments on the Structure Removal Operations PEA.'' You may also comment by e-mail to *environment@mms.gov.* Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments must be submitted no later than 30 days from the date of publication of this Notice in the **Federal Register**.

Dated: March 25, 2003.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 03–9330 Filed 4–15–03; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1020 (Final)]

Barium Carbonate From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–1020 (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 of barium carbonate, provided for in subheading 2836.60.00 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigation, 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 17, 2003.

FOR FURTHER INFORMATION CONTACT: George Deyman (202) 205–3197), 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 this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of barium carbonate from China 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 investigation was requested in a petition filed on September 30, 2002, by Chemical Products Corp., Cartersville, GA.

Participation in the investigation 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 this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 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 investigation 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

[1] For purposes of this investigation, the Department of Commerce has defined the subject merchandise as ''barium carbonate, regardless of form or grade.''

representatives, who are parties to the investigation.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, 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 investigation. A party granted access to BPI in the preliminary phase of the investigation 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 this investigation will be placed in the nonpublic record on July 16, 2003, and a public version will be issued thereafter, pursuant to § 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on July 31, 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 July 24, 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 July 28, 2003, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 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 § 207.23 of the Commission's rules; the deadline for filing is July 25, 2003. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.25 of the Commission's rules. The deadline for filing posthearing briefs is August 7, 2003; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before August 7, 2003. On August 26, 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 August 28, 2003, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 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 § 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (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: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

Issued: April 9, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–9336 Filed 4–15–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–431 (Final)]

Drams and Dram Modules From Korea

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of a countervailing duty investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of countervailing duty investigation No. 701–TA–432 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(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 subsidized imports from Korea of DRAMs and DRAM modules, provided for in subheadings 8473.30.10 and 8542.21.80 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigation, 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: April 7, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade

[1] For purposes of this investigation, the Department of Commerce has defined the subject merchandise as DRAMs from Korea, whether assembled or unassembled. Assembled DRAMs include all package types. Unassembled DRAMs include processed wafers, uncut die, and cut die. Processed wafers fabricated in Korea, but assembled into finished semiconductors outside Korea are also included in the scope. Processed wafers fabricated outside Korea and assembled into finished semiconductors in Korea are not included in the scope.

The scope of this investigation additionally includes memory modules containing DRAMs from Korea. A memory module is a collection of DRAMs, the sole function of which is memory. Memory modules include single in-line processing modules, single in-line memory modules, dual in-line memory modules, small outline dual in-line memory modules, Rambus in-line memory modules, and memory cards or other collections of DRAMs, whether unmounted or mounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules that contain additional items which alter the function of the module to something other than memory, such as video graphics adapter boards and cards, are not included in the scope. This investigation also covers future DRAM module types.

The scope of this investigation additionally includes, but is not limited to, video random access memory and synchronous graphics RAM, as well as various types of DRAMs, including fast page-mode, extended data-out, burst extended data-out, synchronous dynamic RAM, Rambus DRAM, and Double Data Rate DRAM. The scope also includes any future density, packaging, or assembling of DRAMs. Also included in the scope of this investigation are removable memory modules placed on motherboards, with or without a central processing unit, unless the importer of the motherboards certifies with the Customs Service that neither it, nor a party related to it or under contract to it, will remove the modules from the motherboards after importation. The scope of this investigation does not include DRAMs or memory modules that are re-imported for repair or replacement.

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 this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background. The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in Korea of DRAMs and DRAM modules. The investigation was requested in a petition filed on November 1, 2002, by Micron Technology, Inc., Boise, ID.

Participation in the investigation 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 this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 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 investigation 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 investigation.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, 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 investigation. A party granted access to BPI in the preliminary phase of the investigation 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 this investigation will be placed in the nonpublic record on June 10, 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 this investigation beginning at 9:30 a.m. on June 24, 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 June 17, 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 June 19, 2003, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 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 § 207.23 of the Commission's rules; the deadline for filing is June 17, 2003. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.25 of the Commission's rules. The deadline for filing posthearing briefs is July 1, 2003; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before July 1, 2003. On July 16, 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 July 18, 2003, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 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 § 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (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: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

By order of the Commission.

Issued: April 11, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–9333 Filed 4–15–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–204–9]

Steel: Monitoring Developments in the Domestic Industry

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigation.

EFFECTIVE DATE: April 10, 2003.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202–205–3200), 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 this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On March 5, 2003, the Commission established a schedule for the conduct of the subject investigation (68 FR 12380, March 14, 2003). The Commission is revising its schedule for the investigation as follows: the hearings will be held at the U.S. International Trade Commission Building at 9:30 a.m. on July 10, 2003 (stainless steel products), July 17, 2003 (carbon and alloy tubular products), July 22, 2003 (carbon and alloy flat products), and July 24, 2003 (carbon and alloy long products), and the deadlines for filing posthearing briefs are July 18, 2003 (for material covered at the hearing on July 10, 2003), July 25, 2003 (for material covered at the hearing on July 17, 2003), and August 1, 2003 (for material covered at the hearings on July 22 and 24, 2003).

For further information concerning this investigation see the Commission's notice cited above and the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 206, subparts A and F (19 CFR part 206).

Authority: This investigation is being conducted under authority of section 204(a) of the Trade Act of 1974; this notice is published pursuant to § 206.3 of the Commission's rules.

Issued: April 11, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–9332 Filed 4–15–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation TA–2104–5]

U.S.-Chile Free Trade Agreement: Potential Economywide and Selected Sectoral Effects

AGENCY: United States International Trade Commission.

ACTION: Scheduling of public hearing and notice of opportunity to submit comments.

EFFECTIVE DATE: April 10, 2003.

SUMMARY: The public hearing on this matter has been scheduled for May 1, 2003. Notice of institution for this investigation was published in the **Federal Register** on March 19, 2003 (68 FR 13324).

FOR FURTHER INFORMATION CONTACT: Further information may be obtained from James Stamps, Project Leader, Office of Economics (202–205–3227). For information on the legal aspects of this investigation, contact William Gearhart of the Office of the General Counsel (202–205–3091). For media information, contact Peg O'Laughlin (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810).

Public Hearing: A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on May 1, 2003. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, no later than 5:15 p.m., April 21, 2003. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., April 24, 2003; the deadline for filing post-hearing briefs or statements is 5:15 p.m., May 8, 2003. In the event that, as of the close of business on April 21, 2003, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary of the Commission (202–205–1816) after April 21, 2003, to determine whether the hearing will be held.

Written Submission: In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements (original and 14 copies) concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitted desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's rules of practice and procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties. The Commission intends to publish only a public report in this investigation. Accordingly, any confidential business information received by the Commission in this investigation and used in preparing the report will not be published in a manner that would reveal the operations of the firm supplying the information. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than 5:15 p.m. on May 8, 2003. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by § 201.8 of the Commission's rules, as amended, 67 FR 68036 (Nov. 8, 2002). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

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*).

List of Subjects

Chile, tariffs, trade, imports and exports.

Issued: April 10, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–9335 Filed 4–15–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–1006, 1008, and 1009 (Final)]

Urea Ammonium Nitrate Solutions From Belarus, Russia, and Ukraine

Determinations

On the basis of the record [1] developed in the subject investigations, 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

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

imports from Belarus, Russia,[2] and Ukraine of urea ammonium nitrate solutions, provided for in subheading 3102.80.00 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 these investigations effective April 19, 2002, following receipt of a petition filed with the Commission and Commerce by the Nitrogen Solutions Fair Trade Committee, an ad hoc coalition of U.S. urea ammonium nitrate solutions producers, consisting of CF Industries, Inc., Long Grove, IL; Mississippi Chemical Corp., Yazoo City, MS; and Terra Industries, Inc., Sioux City, IA. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of urea ammonium nitrate solutions from Belarus, Russia, and Ukraine 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 investigations 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 65143). Pursuant to Commerce's notice of extension of the time limits for its final antidumping determinations (67 FR 67823, November 7, 2002), the Commission published a notice of revised schedule in the **Federal Register** of November 20, 2002 (67 FR 70093). The hearing was held in Washington, DC, on February 20, 2003, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on April 10, 2003. The views of the Commission are contained in USITC Publication 3591 (April 2003), entitled Urea Ammonium Nitrate Solutions from Belarus, Russia, and Ukraine: Investigations Nos. 731–TA–1006, 1008, and 1009 (Final).

By order of the Commission.
Issued: April 10, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–9334 Filed 4–15–03; 8:45 am]

BILLING CODE 7020–02–P

[2] On February 19, 2003, Commerce signed a suspension agreement concerning UAN from Russia; however, pursuant to petitioners' request on the following day, Commerce continued its investigation and published notices of suspension, continuance, and completion of the investigation in the **Federal Register** of March 3, 2003 (68 FR 9977–9984). The Commission thus continued its investigation of subject imports from Russia pursuant to 19 U.S.C. 1673c(g).

DEPARTMENT OF JUSTICE

Antitrust Division

U.S. v. Archer-Daniels-Midland Company and Minnesota Corn Processors, LLC; Public Comments and Plaintiff's Response

Notice is hereby given pursuant to section 2(d) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), that the Public Comments and Plaintiff's Response thereto have been filed with the United States District Court of the District of Columbia in *United States* v. *Archer-Daniels-Midland Company,* Case Number: 1:02-cv-1768 (JDB).

On September 6, 2002, the United States filed a civil antitrust Complaint alleging that the proposed acquisition by Archer-Daniels-Midland Company (''ADM'') of Minnesota Corn Processors, LLC (''MCP'') would violate section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleged that ADM and MCP are two of the largest corn wet millers in the United States, competing to manufacture and sell corn syrup and high fructose corn syrup (''HFCS'') to many of the same purchasers throughout the United States and Canada. ADM's acquisition of MCP would have eliminated this competition and increased concentration in the already highly concentrated corn syrup and HFCS markets, making anticompetitive coordination among the few remaining corn wet millers in these markets more likely. As as result, the proposed acquisition would have substantially lessened competition for the manufacture and sale of corn syrup and HFCS products in violation of section 7 of the Clayton Act.

Public comment was invited within the statutory 60-day comment period. The three comments received, and the response thereto, are hereby published in the **Federal Register** and filed with the Court. Copies of these materials are available for inspection at the U.S. Department of Justice, Antitrust Division, Suite 215 North, 325 7th Street, NW., Washington, DC 20530 (telephone: 202–514–2692), and at the Clerk's Office of the U.S. District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001.

Constance K. Robinson,

Director of Operations, Antitrust Division.

Response of the United States to Public Comments on the Proposed Final Judgment

Communications with respect to this document should be addressed to:

Roger W. Fones, Chief, Donna N. Kooperstein, Assistant Chief; Michael P. Harmonis, Jessica K. Delbaum, Attorneys.

Transportation, Energy & Agriculture Section, Antitrust Division, U.S. Department of Justice, 325 Seventh Street, NW., Washington, DC 20530. (202) 307–6357.

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) (''Tunney Act''), plaintiff, the UNITED STATES OF AMERICA, acting under the direction of the Attorney General, hereby files comments received from members of the public concerning the proposed Final Judgment in this civil antitrust suit and the Response of the United States to those comments.

I. Factual Background

A. The Parties to the Transaction

Archer-Daniels-Midland Company (''AMD'') and Minnesota Corn Processors, LLC (''MCP'') were two of the largest corn wet millers in the United States, competing to manufacture and sell corn syrup, high fructose corn syrup (''HFCS'') and other wet-milled products principally to the food and beverage industries in the United States and Canada. In addition, both firms manufactured and sold fuel ethanol, and they also procured, transported, stored, manufactured, processed, and merchandised a wide variety of other agricultural commodities and products.

B. The Proposed Acquisition

On July 11, 2002, ADM entered into an agreement with MCP to acquire MCP's corn wet milling business, including MCP's two corn wet milling plants in Marshall, Minnesota and Columbus, Nebraska and its network of regional blending, storage, and distribution stations. As a result of the transaction, MCP has become a wholly-owned subsidiary of ADM.

C. The Complaint

On September 6, 2002, the United States Department of Justice (the ''Department'') filed a complaint with this Court alleging that ADM's acquisition of MCP substantially would lessen competition in the markets for

corn syrup and HFCS in the United States and Canada, in violation of section 7 of the Clayton Act (15 U.S.C. 18). The transaction would have eliminated the competition between ADM and MCP, making anticompetitive coordination among the few remaining corn wet millers more likely in those markets.

D. The Proposed Settlement

The Department, ADM, and MCP filed a joint stipulation for entry of a proposed Final Judgment settling this action on September 6, 2002. The proposed Final Judgment contains three principal provisions for relief. First, it requires ADM and MCP to have dissolved CornProductsMPC Sweeteners LLC (''CPMCP'') on or prior to December 31, 2002. CPMCP was the marketing and sales joint venture that MCP had formed with Corn Products International (''CPI'' to serve as the exclusive sales and distribution outlet in the United States, Canada, and Mexico for most corn syrup and HFCS products made by CPI and MCP in the United States. Second, prior to or simultaneously with the closing of ADM's acquisition of MCP, the proposed Final Judgment requires the defendants to have provided CPI written notice of their election to dissolve CPMCP. Upon written notice of their election to dissolve CPMCP, the defendants additionally were required to have provided CPI with written notice that CPI is permitted to conduct independent operations in competition with the defendants and CPMCP. Third, the proposed Final Judgment requires the defendants to compete independently of CPMCP and CPI. The proposed Final Judgment does not affect or alter any obligations of ADM and MCP to facilitate or ensure that CPMCP completes the performance of any existing contracts or commitments to its customers.

E. Compliance With The Tunney Act

To date, the parties have compiled with the provisions of the Tunney Act as follows:

(1) The Complaint and proposed Final Judgment were filed on September 6, 2002;

(2) The Competitive Impact Statement (''CIS'') was filed on September 13, 2002;

(3) Defendants filed statements pursuant to 15 U.S.C. 16(g) on September 17 and 18, and October 2, 2002;

(4) A summary of the terms of the proposed Final Judgment and CIS was published in the Washington Post, a newspaper of general circulation in the District of Columbia, for seven days during the period September 23, 2002, through September 29, 2002;

(5) The Complaint, proposed Final Judgment and CIS were published in the **Federal Register** on November 7, 2002, 67 FR 67,864 (2002); [1]

(6) The 60-day public comment period specified in 15 U.S.C. 16(b) commenced on November 7, 2002, and terminated on January 7, 2003; and

(7) The United States hereby files the comments of members of the public (attached as Appendix A) together with this Response of the United States to the comments, pursuant to 15 U.S.C. 16(b).

The United States will move this Court for entry of the proposed Final Judgment after the comments and the Response are published in the **Federal Register**. The proposed Final Judgment cannot be entered before that publication. 15 U.S.C. 16(d).

II. Legal Standard Governing the Court's Public Interest Determination

Upon the publication of the public comments and this Response, the United States will have fully complied with the Tunney Act. After receiving the United States' motion for entry of the proposed Final Judgment, the Court must determine whether it ''is in the public interest.'' 15 U.S.C. 16(e). In doing so, the Court must apply a deferential standard and should withhold its approval only under very limited conditions. *See, e.g., Mass. Sch. of Law at Andover, Inc.* v. *United States,* 118 F.3d 776, 783 (D.C. Cir. 1997). Specifically, the Court should review the proposed Final Judgment ''in light of the violations charged in the complaint and * * * without approval only [a] if any of the terms appear ambiguous, [b] if the enforcement mechanism is inadequate, [c] if third parties will be positively injured, or [d] if the decree otherwise makes 'a mockery of judicial power.''' *Id.* (quoting *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1462 (D.C. Cir. 1995)).

With this standard in mind, the Court should review the comments of members of the public concerning the proposed Final Judgment and the United States' Response to those comments. As this Response makes clear, entry of the proposed Final Judgment is in the public interest.

III. Summary of Public Comments

In a total of three comments, nine individuals and three organizations expressed their views on the proposed Final Judgment. Their comments are summarized below.

Peter C. Carstensen, Professor of Law at the University of Wisconsin Law School, writing on behalf of himself, the National Farmers Union, the Organization for Competitive Markets, and Professors Paul Brietzke, John Connor, Thomas Greaney, Neil E. Harl, Delbert Robertson, Stephen Ross, and Kyle Stiegert, filed a comment that is critical of the Department's CIS in several respects. Professor Carstensen states that the Department's CIS failed to disclose or discuss: (1) MCP's and CPI's separate market shares in the corn syrup and HFCS markets identified in the complaint; (2) ADM's direct and indirect ownership interests in Tate & Lyle PLC (''Tate & Lyle''), the corporate parent of A.E. Staley Manufacturing Company (''Staley''); (3) a recent decision by the United States Court of Appeals for the Seventh Circuit, in the HFCS antitrust litigation; (4) additional relief that would go beyond the competitive harm from the merger; and (5) the impact of ADM's acquisition of MCP in the market for ethanol. Professor Carstensen concludes that the Department should file a revised CIS, one that provides additional factual and other information he requests.

The American Antitrust Institute (''AAI''), an independent education, research, and advocacy organization, filed a comment endorsing the comment filed by Professor Carstensen.

C. LeRoy Deichman, a former farmer-member of MCP and certified professional agronomist, complains that MCP may have manipulated the shareholder vote on ADM's proposal to acquire MCP. Mr. Deichman also is disappointed that the acquisition eliminates MCP as a positive role model for other farmer-cooperative organizations, and he is concerned that the transaction might lead to lower prices for farmers and higher prices to consumers of corn sweeteners and ethanol.

IV. The Department's Response To Specific Comments

We now turn to the comments that raise questions about our analysis or that suggest relief different or supplemental to that contained in the proposed Final Judgment. Copies of this Response, without the Appendix, are being mailed to those who filed comments.

A. Professor Carstensen's Comment

Congress enacted the Tunney Act, among other reasons, ''to encourage additional comment and response by providing more adequate notice [concerning a proposed consent judgment] to the public,'' S. REp. No.

[1] The Department also posted the Complaint, proposed Final Judgment and the CIS on its Web site, *http://www.usdoj.gov/atr/cases/indx358.htm.*

93–298, at 5 (1973); H.R. Rep. No. 93–1463, at 7 (1974), reprinted in 1974 U.S.C.C.A.N. 6535, 6538. The CIS is the primary means by which Congress sought to provide more adequate notice to the public. The Tunney Act requires that the CIS recite:

(1) The nature and purpose of the proceeding;

(2) A description of the practices or events giving rise to the alleged violation of the antitrust laws;

(3) An explanation of the proposal for a consent judgment, including an explanation of any unusual circumstances giving rise to such proposal or any provision contained therein, relief to be obtained thereby, and the anticipated effects on competition of such relief;

(4) The remedies available to potential private plaintiffs damaged by the alleged violation in the event that such proposal for the consent judgment is entered in such proceeding;

(5) A description of the procedures available for modification of such proposal; and

(6) A description and evaluation of alternatives to such proposal actually considered by the United States.

15 U.S.C. 16(b). In this case, the Department has satisfied all of these requirements. See CIS at 1–3 (explaining the nature and purpose of the proceeding), 3–6 (describing events that gave rise to the alleged violation of the antitrust law), 6–7 (explaining the proposed Final Judgment), 7 (explaining remedies available to potential private plaintiffs), 7–8 (explaining procedures available for modifying the proposed Final Judgment), and 8 (describing and evaluating alternatives to the proposed Final Judgment).

Professor Carstensen's comments purport to challenge the content of the CIS but are in fact criticisms of the Department's enforcement decisions, specifically the scope of the Complaint and the substance of the proposed Final Judgment. As explained below, these criticisms are without merit.

1. The Department Is Not Required To Disclose in the Complaint or the CIS MCP's and CPI's Separate Market Shares in the Corn Syrup and HFCS Markets

The Complaint at, ¶¶ 19–20, sets out market concentration data, including individual capacity shares for ADM and CPMCP (the joint venture of MCP and CPI), in the relevant corn syrup and HFCS markets in the United States and Canada, alleging that these markets are highly concentrated and that the concentration levels will substantially increase after the transaction.[2] This is a sufficient allegation of market concentration in a Section 7 case. *See, e.g., United States* v. *Philadelphia Nat'l Bank,* 374 U.S. 321, 363–64 (1963) (noting that acquisition by a firm that would control 30% of the market after the acquisition threatens undue concentration and is presumptively unlawful). Professor Carstensen contends that the CIS should set forth separate market shares attributable to each of the CPMCP partners, MCP and CPI, so that the post-remedy change in the Herfindahl-Hirschman Index (''HHI'') can be calculated. See Professor Carstensen's Comment at 5.[3]

But such precise calculations are neither required by law nor very informative in assessing the effectiveness of the remedy in this case.[4] As the Complaint alleges and the CIS explains, the harm from ADM's acquisition of MCP was an increased likelihood of successful anticompetitive coordination among the remaining firms. The goal of the proposed Final Judgment, therefore, is to preserve the number of effective independent competitors. An independent competitor is effective if it has enough productive capacity to increase its output significantly in response to anticompetitive price increases. The proposed Final Judgment accomplishes this goal by requiring that ADM and MCP dissolve CPMCP by December 31, 2002, thus preserving the number of effective independent competitors, including CPI.

Professor Carstensen suggests without explanation that ADM and CPI may not compete after acquisition. *See* Professor Carstensen's Comment at 7. Based on the Department's investigation, both ADM and CPI will have the ability and incentive to compete to increase their sales at their rivals' expense. There is excess capacity throughout the corn wet milling industry, a condition that gives ADM, CPI, and their competitors the incentive to respond aggressively to any increase in price.

In summary, the Department found that ADM's acquisition of MCP, as originally structured, would have enhanced the prospects for coordination among the four remaining corn wet millers, likely raising domestic prices for corn syrup and HFCS above competitive levels. The Department has concluded that the restructuring of the acquisition as required by the proposed Final Judgment resolves these competitive concerns by preserving the pre-acquisition number of effective, competitive sellers of corn syrup and HFCS.

2. ADM's Ownership Interest in Tate & Lyle Does Not Threaten Competition

Professor Carstensen contends that ADM ''directly and indirectly'' has a 25% stake in Tate & Lyle, the corporate parent of Staley, which is one of the five corn wet milling operations in the United States. In Professor Carstensen's view, this stake in Staley threatens competition, and so it should have been discussed in the CIS. See Professor Carstensen's Comment at 5–7.

The Complaint and CIS appropriately focus on the potential anticompetitive effects of the acquisition being challenged, not pre-existing or prior transactions, such as ADM's acquisition of Tate & Lyle stock. The relevance of the ADM-Staley cross ownership to this case is limited to whether ADM's acquisition of MCP should be analyzed as reducing the number of competitors from five to four or from four to three. The Department's investigation revealed that ADM and Staley should be treated as independent competitors.

Professor Carstensen overstates ADM's equity interest in Tate & Lyle. His own citations reveal that ADM has a 41.5% interest in Compagnie Industrielle et Financiere des Produits Amylaces (''CIP''), a European firm with a 10% interest in Tate & Lyle.[5] ADM also has a direct 5.76% interest in Tate & Lyle. *See* Tate & Lyle, 2002 Annual Report 63 (2002). Thus, even assuming for purposes of analysis that ADM's 41.5% ownership of CIP gives ADM control of CIP's 10% interest in Tate & Lyle (and Staley), ADM's interest in Tate & Lyle is less than 16%, and its

[2] CPI and MCP were selling all of their corn syrup and HFCS products in the United States through the CPMCP joint venture, and so they effectively were competing as one firm.

[3] The Department uses the HHI to measure market concentration, and it is calculated by summing the squares of the individual shares of all firms in the market. *See* U.S. Department of Justice/Federal Trade Commission's *Horizontal Merger Guidelines* § 1.5 issued 1992, revised 1997, reprinted in 4 Trade Reg. Rep. (CCH) at ¶ 13,104, available at *http://www.atrnet.gov/policies/mergers.* A market is broadly characterized as being highly concentrated if its HHI is above 1800. *See id.*

[4] HHI statistics provide a useful framework, but they are only the starting point for merger analysis. See Horizontal Merger Guidelines at § 1.51(c). For the Court's information, however, the net effect of the acquisition and proposed relief is to decrease the relevant HHI in corn syrup by about 50 points, to increase the relevant HHI in HFCS 42 by about 300 points, and to increase the relevant HHI in HFCS 55 by about 100 points.

[5] *See* Archer-Daniels-Midland Co., 1998 Annual Report 5 (1998), *http://www.sec.gov/Archives/edgar/data/7084/0000007084–98–000029.txt*; Tate & Lyle, 2002 Annual Report 63 (2002), *http://www.tateandlyle.com/IR/financials/annual_reports/documents/2002_TL_AR_Full.pdf.*

share of Staley's profits is not quite 10% ((10% × 41.5%) + 5.76% = 9.91%).

Based on its investigation, the Department concluded that ADM's 16% stake in Tate & Lyle does not give ADM control or influence over Staley's business decisions, give ADM access to competitively sensitive information at Staley, or materially affect competition in more subtle ways; *e.g.*, by realigning incentives so that ADM is less inclined to compete aggressively against Staley because of its share of Staley's profits. Department staff thus determined that ADM's ownership interest in Tate & Lyle (and Staley) does not support treating ADM's acquisition of MCP as a four to three rather than a five to four situation, and so there was no reason to mention that interest in the CIS.

3. The Seventh Circuit's Decision in the High Fructose Corn Syrup Litigation Is Consistent With the Department's Complaint

Professor Carstensen contends that the Department's CIS should have discussed the Seventh Circuit's decision in *In re High Fructose Corn Syrup Litig.*, 295 F.3d 651, 653–54 (7th Cir. 2002), cert. denied, 71 U.S.L.W. 3352 (U.S. Feb. 24, 2003) (No. 02–692), 71 U.S.L.W. 3353 (U.S. Feb. 24, 2003) (No. 02–705), 71 U.S.L.W. 3367 (U.S. Feb. 24, 2003) (No. 02–736). *See, e.g.*, Professor Carstensen's Comment at 2. Professor Carstensen believes the decision is particularly relevant because it suggests to him that ADM should not be permitted to acquire MCP ''without any other change in the structure'' of the HFCS industry. *See id.* at 6–8.

Beyond what is said about how to decide summary judgment motions in antitrust cases, the HFCS decision suggests that the manufacturers of corn syrup and HFCS operate in concentrated markets under conditions that are conducive to coordinated interaction. The Department reached a similar conclusion and thus brought this case. That said, the Department had no reason, and certainly no obligation, to discuss the HFCS litigation in the CIS.

4. The Department Has Considered All Appropriate Forms of Relief

Professor Carstensen contends that the Department did not consider alternative remedies, including a remedy he proposes to dissolve the CPMCP joint venture, to divest ADM's interest in Tate & Lyle and to bar ADM's acquisition of MCP. Professor Carstensen would have the Department ''increase [ ] the number of separate firms from 5 to 6,'' *see* Professor Carstensen's Comment at 8, thereby increasing rather than preserving the existing competition. This remedy is inappropriate—the purpose of an antittrust remedy is to restore or protect competition, but not to enhance it. *See, e.g., Ford Motor Co.* v. *United States*, 405 U.S. 562, 573 (1972). Professor Carstensen's remedy is also inappropriate because it reaches beyond the Complaint. *See United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1459 (D.C. Cir. 1995). By proposing this remedy, Professor Carstensen improperly invites the Court to restructure an industry without legal basis and to intrude on the Department's prosecutorial role. *See id.*

The Department did consider the only appropriate relief raised by Professor Carstensen, barring the acquisition. See CIS at 8. However, that relief would have required a full trial on the merits against the defendants. The Department concluded that the proposed Final Judgment would preserve the existence of five independent competitors, while avoiding the time, expense, and uncertainty of trial. *Id.*

5. The Department Considered the Impact of the Acquisition in the Ethanol Market

Professor Carstensen also has asserted that ''this merger may create significant competitive issues'' and that there is ''a plausible basis for concern'' in the ethanol market. *See* Professor Carstensen's Comment at 10–11 (emphasis added). He goes on to construct his own hypothetical case, and now demands that the Court evaluate the proposed Final Judgment against that case. *Id.* at 8–15. Under the principles of Microsoft Corp., however, this demand is improper, for it too reaches far beyond the Complaint. *See* 56 F.3d at 1459. In any event, Department staff, in the course of its investigation, carefully considered the competitive implications of ADM's acquisition of MCP in the market for ethanol and found no evidence to support any credible theory of antitrust violation.

B. AAI's Comment

AAI's comment voices many of the same concerns expressed by Professor Carstensen, all of which were addressed supra.

C. C. LeRoy Deichman's Comment

C. LeRoy Deichman's principal concern appears to be the MCP manipulated the shareholder vote on ADM's acquisition of MCP. That concern, and Mr. Deichman's concern that MCP is being eliminated as a role model for other farmer cooperatives that might be interested in building their own ethanol producing facilities, do not raise antitrust issues, and it is inappropriate for the Department to respond to them in this memorandum. Mr. Deichman's concerns that the acquisition may lead to higher prices in ethanol and sweetener markets raise antitrust issues that we have already addressed. In short, consumers would be forced to pay ethanol and sweetener prices above competitive levels only if the acquisition enable makers of these products to behave in a noncompetitive manner, and it is highly unlikely that the acquisition will have that effect. See sections IV.A.1. and 5. Finally, Mr. Deichman's concern about farm prices (which we take to mean corn prices) is unwarranted. Having carefully reviewed the facts, the Department found no reason to believe that the acquisition would have an adverse impact on competition in markets other than the corn syrup and HFCS markets alleged in the Complaint. Indeed, in addition to the five corn wet millers preserved as a result of the proposed Final Judgment, there exist many other alternative buyers of corn to whom farmers can sell their crops. Therefore, the acquisition is highly unlikely to give corn wet millers monopsony power to depress the prices they pay farmers for corn.

Conclusion

The Competitive Impact Statement and this Response to Comments demonstrate that the proposed Final Judgment serves the public interest. Accordingly, after publication of the Response in the **Federal Register** pursuant to 15 U.S.C. 16(b), the United States will move this Court to enter the Final Judgment.

Dated this 1st day of April, 2003.

Michael P. Harmonis, Jessica K. Delbaum,
Attorneys; United States Department of Justice, Antitrust Division, 325 7th Street, NW., Suite 500, Washington, DC 20530. (202) 307–6371.

Certificate of Service

I hereby certify that on this 1st day of April, 2003, I have caused a copy of the foregoing Response of the United States to Public Comments on the Proposed Final Judgment and the attached Appendix to be served by first class mail, postage prepaid, and by facsimile on counsel for defendants in this manner:

David James Smith, Vice President, Secretary & General Counsel, Archer-Daniels-Midland Company, 4666 Faries Parkway, Decatur, IL 62526. Telephone: (217) 424–6183. Facsimile: (217) 424–6196. Counsel

for Defendant Archer-Daniels-Midland Company.

Paul B. Hewitt, Akin Gump Strauss Hauer & Feld L.L.P., 1333 New Hampshire Avenue, Northwest, Washington, DC 20036. Telephone: (202) 887–4000. Facsimile: (202) 887–4288. Counsel for Defendant Archer-Daniels-Midland Company.

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Jessica K. Delbaum,
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Appendix A

University of Wisconsin Law School, 975 Bascom Mall, Madison, Wisconsin 53706.

December 27, 2002.

Roger W. Fones,
Chief, Transportation, Energy & Agriculture Section Antitrust Division, United States Department of Justice, 325 Seventh Street, NW., Suite 500, Washington, DC 20530.

Re: Proposed Settlement of *United States* v. *Archer-Daniels-Midland Co and Minnesota Corn Processors, LLC.*

Dear Mr. Fones: Enclosed is a Tunney Act comment on the proposed settlement of the suit challenging ADM's acquisition of Minnesota Corn Processors. The goals motivating this comment are to contribute to the improvement of antitrust analysis and enforcement. My work was entirely pro bono and uncompensated.

I am honored that seven distinguished scholars of antitrust and economics have agreed to support this statement. Their names are listed therein. In addition, two major organizations, the National Farmers Union and the Organization for Competitive Markets also support this statement.

If you or any of your staff have any questions about this comment, please feel free to contact me at the above address or by phone (608/263–7416). I can also be reached by email at *pccarste@facstaff.wisc.edu.*

Yours truly

Peter C. Carstensen,
Young-Bascom Professor of Law.

Tunney Act Comments on the Proposed Settlement of *United States* v. *Archer-Daniels-Midland Co and Minnesota Corn Processors, LLC,* Federal District Court, District of Columbia, Civil Case No. 02–1768

Submitted by Professor Peter C. Carstensen on behalf of himself and The National Farmers Union, The Organization for Competitive Markets, Professor Paul Brietzke, Professor John Connor, Professor Thomas Greaney, Professor Neil E. Hari, Professor Delbert Robertson, Professor Stephen Ross, Professor Kyle Stiegert

At a time when the U.S. government and the American public are demanding that private enterprises provide full and complete disclosure of essential information to avoid repetition of the scandals that have destroyed Enron, Worldcom, and Arthur Anderson, it is incumbent on the Department of Justice to make the same kind of full and complete disclosure of information and analysis in connection with its obligations under the Tunney Act. Only then, can the court and the public in fact judge the appropriateness of the proposed settlement of this or any other major antitrust case. The court should not grant approval to this proposed consent decree until the requirements of the Tunney Act are fully satisfied.

I am joined in these comments by two important organizations, the National Farmers Union and the Organization for Competitive Markets, concerned with competition policy and its impact on the markets for agricultural products as well as a group of seven scholars in the fields of economics and antitrust law. Appendix A provides additional background information about both the organizations and individuals supporting these comments.

The government is proposing to settle its challenge to Archer-Daniels-Midland's (ADM) acquisition of Minnesota Corn Processors (MCP) by allowing the acquisition on condition that MCP withdraw from a joint marketing arrangement with Corn Products International (Corn Products) concerning high fructose corn syrup (HFCS). As demonstrated below, the disclosure contained in the Competitive Impact Statement filed in connection with the proposed settlement of the government's does not satisfy the basic requirements of the Tunney Act.

The Competitive Impact Statement fails to disclose essential facts about the impact of this acquisition on the directly affected markets and ADM's status and role in those markets. Further it does not explain how the proposed decree, in light of those facts and an apparent failure to consider relevant relief options as well as the Antitrust Division's own Merger Guidelines, can successfully protect the identified markets from increased risks of anticompetitive conduct. Finally, the Competitive Impact Statement omits entirely any discussion of the impact of allowing this combination in the related ethanol markets in which ADM is by many orders of magnitude the largest firm and MCP is the second largest.

It is our position that the government must file a revised Competitive Impact Statement that discloses all relevant information and analysis relating to the competitive implications of this settlement. Without such disclosure, the record will not disclose ''the competitive impact of such judgment'' nor its ''impact . . . upon the public generally. . . .'' Clayton Act, Section 5(e)(1) and (2); 15 USC sec. 16(e)(1) and (2).; As result, the District Court can not perform its obligation to ''determine that the entry of such judgment is in the public interest.'' Section 5(e); 15 USC sec. 16(e).

Summary

In order to determine whether the proposed settlement of this merger case will serve the public interest in preserving competition in all the markets in which the combining enterprises both compete, it is essential that all relevant facts be fully disclosed. This acquisition will cause a substantial change in the market structure of the corn syrup, HFCS and ethanol markets. In all of these markets the effect of this transaction will or may be to increase concentration.

The initial focus of concern should be the analysis of the corn syrup and HFCS markets. Yet, the Competitive Impact Statement fails to disclose certain essential facts about those markets, ADM's position in them, and the government's basis for believing that the remedy proposed would eliminate the anticompetitive risks posed by the disclosed as well as undisclosed facts about those markets. First, there is no disclosure of MCP's separate market share in corn syrup or either of the two HFCS markets that the complaint and Competitive Impact Statement focus on. Hence, it is not possible to tell what impact this acquisition will have on concentration in these already concentrated markets where entry of new competitors is unlikely. Second, the Competitive Impact Statement does not disclose or discuss ADM's ownership directly and indirectly of 25% of the stock of the corporate parent of one of its major, putative competitors in these markets. Third, the Competitive Impact Statement does not report the decision of the 7th Circuit that examined the risks of anticompetitive, interdependent conduct in the HFCS markets and found them to be real and substantial. Fourth, the Competitive Impact Statement discussion of alternative remedies implies that the government did not consider obvious additional relief that would have both allowed this merger and reduced the ownership linkages among ostensible competitors within both the HFCS and ethanol markets. Finally, and most seriously, the Competitive Impact Statement does not explain why, in light of the foregoing facts, the proposed remedy, separating MCP from Corn Products but allowing its combination with ADM, is likely to achieve the goal of preserving and enhancing competition in these markets. Because of these omissions of facts and explanations of essential analysis, it is not possible for a court, under even the most lax version of the government's self-serving standard for review, to approve this proposed decree.

In respect to the markets involving ethanol, the Competitive Impact Statement is totally silent. The facts are that ADM is the largest producer of ethanol with a very large market share, and MCP is the second largest producer. In addition, ADM is one of an apparently limited number of firms that have the resources to market and distribute ethanol to end users. Thus, this combination will substantially increase ADM's share of the ethanol production market and may further entrench its position in the marketing of ethanol. It is possible that there are good reasons why, despite these prima facie anticompetitive implications of this acquisition, it is unlikely to have such

effects. Given that the government has chosen to challenge the combination of these two firms, and their respective position in the ethanol market is well known, it is incumbent on the government to explain why this aspect of the combination does not raise any antitrust concerns. The government, as is evident from its statement of its interpretation of the standard for review, takes an unjustifiedly narrow view of its obligation to the court and the public in explaining its enforcement decisions. It is notable that the Antitrust Division in other contexts and the FTC in the context of announcing a decision not to challenge a merger have been able to make informative statements about the merits of their decisions.

I. The Facts in the Case

ADM is a very large diversified company with extensive activities in a variety of markets. Among its major activities are the production of corn syrup, HFCS and ethanol. In the corn syrup and HFCS markets, ADM is a major producer. According to the government's complaint, it has 10% of the relevant production capacity for corn syrup, 33% for HFCS 42 and 25% for HFCS 55, the two distinct types of HFCS. The markets for all three of these products are, according to the government, highly concentrated and not amenable to entry even if prices are increased substantially above cost.

ADM is also the leading producer of ethanol.[1] Various estimates of its productive capacity and production exist. Its present share of production is unlikely to be less than 30% of all domestic production and may exceed 50%. In addition it is one of a relatively few firms with the specialized skills, equipment and volume to engage in the distribution and marketing of ethanol. As will be discussed infra, this may involve substantially more economies of scale and scope than actual production of ethanol. It also appears to be the case that ADM like the handful of other major marketers acts as a marketing agent for a number of producers who lack the skill, volume and specialized equipment to market their own production.

MCP was originally a cooperative that operated two plants engaged in the ''wet'' milling of corn. From the wet milling process, it produced corn syrup, HFCS and ethanol. Its market share in the corn syrup and HFCS markets is not known. Prior to the conclusion of this merger, MCP sold its corn syrup and HFCS production through a joint venture with Corn Products. In combination, those two firms had productive capacity of 20% of corn syrup, 15% of HFCS 42 and 15% of HFCS 55. In production of ethanol, MCP was the second largest producer with 6% of total production capacity and one of only four firms, including ADM, with productive capacity exceeding 100 million gallons a year.[2]

The Antitrust Division's challenge to this acquisition focused only on the corn syrup and HFCS markets. The Division proposes to settle its suit against this merger by obtaining termination of MCP's joint venture with Corn Products concerning the marketing of HFCS and corn syrup. The settlement would then allow ADM to acquire MCP's two facilities.

Although for litigation purposes a focus primarily on the HFCS markets is sensible because those are the best markets in which to challenge this merger, once the government has decided to settle the HFCS element based on a partial divestiture of unrelated facilities, then it becomes essential to examine the impact of the merger not only in the HFCS markets but also in the other markets where MCP and ADM have substantial, competitive market positions.

II. The HFCS Market

The government's objection to this merger was based only on its impact on the HFCS market and the more general corn syrup market. HFCS comes in two varieties—HFCS 42 and HFCS 55 (signifying the percentage of fructose in each type). The government contends that each type has unique uses and no good substitutes, given current prices for alternative sweeteners. These markets are concentrated with a limited number of competitors. The government also contends that there are substantial barriers to entry into the production of corn syrup or either type of HFCS. Hence, normal market forces are unlikely to reverse any increase in concentration. For these reasons, a substantial merger within these markets creates significant risks of anticompetitive harms. Those risks are, first, the danger of tacit or explicit coordination among competitors to impose higher prices on buyers and, second, that a sufficiently dominant firm can engage in unilateral, anticompetitive acts that exclude new competition and/or exploit existing buyers.

Prior to this merger, there were 5 producers of HFCS, treating the MCP-Corn Products combination as a single firm because of the joint marketing arrangement. It appears from the Competitive Impact Statement and complaint that MCP has substantial corn syrup and HFCS production capacity. Neither the complaint nor the Competitive Impact Statement provides the breakdown in capacity between MCP and Corn Products.[3] As a direct result of that omission, neither the public nor the court can determine the impact of acquisition of MCP's facilities on the concentration levels in any of these markets.

Tate & Lyle, based in the U.K., is a processor of corn products operating on a global basis. Its American subsidiary, A.E. Staley, is among the five leaders in the HFCS market. Staley also has an ethanol plant in Tennessee with a capacity of 60 million gallons. ADM is the largest single shareholder in Tate & Lyle with 15.8% of its voting stock.[4] In addition, ADM owns 41% of Compagnie Industrielle et Financiere des Produits Amylaces SA (CIP) and refers to it as an ''affiliate'' in its most recent 10–K.[5] CIP in turn holds 10% of Tate & Lyle's stock.[6] Thus, directly and indirectly ADM has a 25% stake in its ostensible competitor. While neither its direct nor its total stake gives ADM and absolutely controlling position, a block this size confers substantial leverage. It is obvious that Tate & Lyle's management would be foolish indeed to initiate vigorous competition in the corn syrup, HFCS or ethanol markets with its largest shareholder.

Given the dissolution of the MCP-Corn Products deal, there will remain five separate producers in the corn syrup and HFCS markets, but one, ADM, will be larger and another, Corn Products, will be smaller. Unfortunately, the Competitive Impact Statement does not say how much larger ADM will be. Although current theories of merger enforcement emphasize the examination of the likely competitive effects of a merger, it is still the case that the initial, prima facie, case rests on a change in the HHI statistic. Where there is a partial transfer of market share, the resulting change in the HHI requires comparing the sum of the buyer's share and acquired share to the share retained by the seller (or former joint venturer). If the sum from the merger is greater than the retained share, the result will be an increase in the HHI; if the sum is less, then the HHI will decline. Thus to determine the likely HHI effect of the combination of MCP's position with ADM's given the reduction in Corn Products's share it is essential to know the relative shares of MCP and Corn Products.

Even without that information, some general conclusions exist. Concentration is well above the 1800 level, pre-merger, in all three markets. It is highest in the ''42'' market where the pre-merger HHI exceeds 3000; in corn syrup and HFCS 55, it is about 2600, pre-merger. In the syrup market, unless the capacity transferred exceeds 10% (*i.e.,* ADM's new position exceeds 20% in total) the HHI will remain the same or decline. In the case of the HFCS markets, the HHI is certain to increase because market share is moving from a smaller factor to a larger one. The only question in those markets is how much the HHI will increase. In the ''42'' market where concentration is higher and ADM's share is large, the transfer of 3% or more will result in a net increase of HHI by ore than 100 points. In the ''55'' market, a transfer of more than 4% would also yield an increase of 100 or more points. As MCP's share increases in the two HFCS markets, there would be an even greater increase in the HHI. Without capacity information on MCP, the net effect on the HHI in corn syrup

[1] The Renewable Fuels Association (RFA) web site lists ADM with total capacity of 950 million gallons. *www.ethanolrfa.org/eth_prod_fac.html* (visited on Oct. 9, 2002).

[2] The RFA site, see note 1 supra, reports that MCP has a capacity of 140 million gallons. Williams Bio-Energy (135 million) and Cargill (110 million) are the only other producers with a capacity over 100 million gallons according to this source.

[3] ADM and probably Corn Products act as agents for the sale of HFCS and corn syrup produced by smaller local plants including cooperatives. Presumably, given the contractual control over such output, it has been included in the market share totals that the government has identified for the major market participants. If such controlled production has not been included, it would increase the market share of ADM in particular and so only make the structural impact of this acquisition more significant.

[4] Tate & Lyle Annual Report, 2002, at page 63.

[5] The stock ownership in CIP is reported in ADM's 1998, 10–K at Item 1, page 5; Exhibit 13, of ADM's 10–K for 2002, describes CIP is an ''unconsolidated affiliate'' of ADM.

[6] Tate & Lyle Annual Report, 2002, at page 63.

or the extent of the increase in the HFCS markets is unknown. But it appears substantially likely that there will be a more than 100 point increase in the HHI in one or both of the HFCS markets. Further, if ADM has influence over A.E. Staley's competition in these markets because of ADM's stake in Tate & Lyle, the implications of resulting change in the HHI would be even more pronounced because the disparity between ADM/Staley/MCP and Corn Products will be even greater.

This merger will thus increase the level of concentration in both HFCS markets. Section 1.51(c) of the Merger Guidelines states that: ''Where the post-merger HHI exceeds 1800, it will be presumed that mergers producing an increase in the HHI of more than 100 points are likely to create or enhance market power or facilitate its exercise. The presumption may be overcome by a showing that factors set forth in sections 2–5 of the Guidelines make it unlikely that the merger will create or enhance market power or facilitate its exercise. . . .'' (Emphasis added.) Moreover, the HFCS markets are ones that, on objective criteria of the sort set forth in sections 2–5 of the Guidelines, are vulnerable to collective action by competitors. The products are homogeneous, the entry barriers are high, and there is excess capacity that can be used to discipline competitors who break ranks. While some buyers are very large, *e.g.,* Coke and Pepsi, the vast majority of sales are to smaller businesses with little bargaining power. A further reason for concern is that the key players, notably ADM, have a history of unlawful collusion in other comparable product markets. See, *e.g., U.S.* v. *Andreas,* 216 F3d 645 (7th Cir. 2000)(affirming conviction of ADM executives for pricing fixing of lysine). To allow ADM to increase its direct ownership of HFCS capacity while retaining its substantial stake in Tate & Lyle would seem to exacerbate the risks of tacit or express collusion.

Even more directly relevant, ADM and its ''competitors'' (A.E. Staley, Cargill, American Maize-Products, and Corn Products) have been charged in a buyer class action with overt price fixing in HFCS (Corn Products has actually settled with the plaintiffs already) from 1988 to 1995. Although the trial court dismissed the suit on summary judgment, the 7th Circuit in an opinion written by Chief Judge Posner in June of this year reversed. *In re* High Fructose Corn Syrup Antitrust Litigation, 295 F3d 651 (7th Cir. 2002). Judge Posner's analysis of industry structure and context is that this is an industry with characteristics and incentives to engage in collusive behavior. ''[D]efendants pretty much conceded that the structure of the HFCS market, far from being inimical to secret price fixing, is favorable to it.'' *Id.* at 656. The opinion pointed out a number of factors that demonstrated the capacity and incentive to engage in collusive conduct. However, the opinion focused on the claim that there was express agreement and not merely tacit, interdependent price setting. On that issue, it found that the HFCS markets are ones where ''the overall evidence of conspiracy . . . was abundant although not conclusive.'' *Id.* at 655. Despite the manifest relevance of this detailed analysis of the nature of the HFCS markets, pre-merger, to the likely effect of this acquisition on competition in those markets, the Competitive Impact Statement makes no reference whatsoever to it.

The anticompetitive conduct at issue in the 7th Circuit decision occurred in the context of five firm competition in these markets with a lower HHI than will exist after ADM acquires MCP. Thus, it would seem that allowing this acquisition without any other change in the structure, *e.g.,* terminating ADM's stake in Tate & Lyle, will continue and potentially make more likely interdependent conduct among the producers of HFCS.

The Competitive Impact Statement fails to reference or discuss MCP's share of the corn syrup, HFCS 42 or HFCS 55 markets; it makes no mention of ADM's continuing stake in Tate & Lyle or the option of requiring divestiture of this stake as an added element of remedy; it does not refer to the 7th Circuit decision; nor does it discuss the Guideline factors that make collective anticompetitive conduct likely. It focuses on the dissolution of the MCP-Corn Products joint venture and the obligation of ADM to compete independently of Corn Products. The essential national is that ''the decree will ensure that there are at least five independent (sic) competitors in the corn syrup and HFCS markets, and will preserve and encourage ongoing competition between ADM and Corn Products.'' (Emphasis added.)

The government's implicit contention is that because the number of legally distinct firms with separate marketing capacity will remain the same, competition will not be harmed. But it was that number of competitors that created the conditions for collusion. No basis is given for the optimistic assessment that ADM will not influence the competition of Tate & Lyle. Indeed, the statement provides no clue as to incentives or economically rational motivations that would bring about competition given the history of these specific markets and ADM. Hence, some additional rational should exist to justify continuing the present number of competitors and increasing the HHI.[7] In fact, it would seem that under the Guidelines, this merger remains presumptively illegal. *See,* Guidelines 1.51(C), *supra.* It is imaginable that the government's lawyers have some logical and plausible explanation for allowing this acquisition despite all these negative implications. But their duty under the Tunney Act is to make a public statement of those reasons so that the public and the court can determine whether those claims are in fact plausible.

On the other hand, given the 7th Circuit decision, it seems possible to argue that the Corn Products—MCP agreement together with ADM's stake in Tate & Lyle should have been the target of antitrust enforcement together with barring the acquisition of MCP by ADM. Such a strategy would have increased the number of separate firms from 5 to 6 and ensured that each was economically independent of all the others.

The discussion of alternative remedies in the Competitive Impact Statement implies by its silence that the government did not consider the foregoing alternative.[8] This raises a separate but very important issue in this case. It would seem to be a serious failure in basic enforcement if the government elected to settle a case involving markets with high concentration, serious risks of anticompetitive conduct, and cross ownership of stock among major competitors without considering whether a more comprehensive review of the relationship among industry participants was necessary and whether further separation of those ties would be appropriate.

In sum, the Competitive Impact Statement is so flawed that it does not provide the court or the public with a basis to determine whether the increase in concentration resulting from this merger is substantial (the MCP market shares must be given as must those of Corn Products to allow any kind of evaluation of the structural claims of the government) or why the acquisition will not increase the already significant risk of anticompetitive collaboration within the HFCS markets.[9] Before the public can effectively comment on the proposed decree, it is essential for the government to revise the Competitive Impact Statement to make full disclosure of necessary factual information and its reasoning. Similarly, it is impossible for a court to determine, based on this submission, whether or not the proposed judgment is in the public interest.

II. Ethanol

Neither the settlement nor the Competitive Impact Statement address the apparently high and increased concentration in ethanol production resulting from this combination. Even more troubling, there is no analysis of the impact of this acquisition on the marketing and distribution of ethanol. It is true, as the government emphasizes in its filing, that the D.C. Court of Appeals in U.S. v. Microsoft, 56 F3d 1448 (D.C. Cir. 1995), took the position that in reviewing a consent decree under the Tunney Act, a district could not consider alleged anticompetitive conduct not included in the complaint. In that case,

[7] It deserves emphasis here that the antitrust authorities moved to the use of the HHI index to measure market power because of the conclusion the firms with larger market shares present greater risks of anticompetitive conduct. Unlike simple concentration ratios, the HHI is sensitive to the allocation of market share among firms within a market.

[8] Section 5(e) calls for the court in reviewing the proposed decree to have the opportunity to consider 'alternative remedies actually considered'' by the government. In order to accomplish that goal, the government in section VI of the Competitive Impact Statement reported the only alternative that it actually ''considered'' consisted of taking this case to trial.

[9] It is undoubtedly the case that the firms engaged in the HFCS market have very good information about the market positions of their competitors. Hence, this information is not competitively sensitive nor is its disclosure going to threaten the business strategy of any firm in this market. The only real effect of concealing this information is to impose a significant handicap on the public in commenting on the proposed settlement. It ought to be axiomatic that the government must disclose the post-transaction HHI shares of any merger or acquisition which it proposes a court approve under the Tunney Act.

the additional issues that the district court wanted considered were not directly related to the specific competitive practices challenged in that case.[10] In the present case, in contrast, the ethanol production and distribution capacity of both firms is inextricably linked with their HFCS production capacity. Therefore, approving this decree allowing the acquisition of MCP necessarily affects directly this related market. Hence, in order to perform its obligation to ''determine that the entry of such judgment is in the public interest''. Section 5(e); 15 U.S.C. sec. 16(e), the court must be informed about the other competitive effects of the merger. This is necessary even if the court's ultimate standard may only be whether the ''settlement is within the reaches of the public interest.'' 56 F3d at 1460 (internal quatations omitted).

Prior to the acquisition, ADM was, by a very large margin, the leading producer of ethanol. Its share ranged from something over 30% to more than 50% depending on whether the base is capacity including that under construction or actual production. MCP had about 6% of current capacity. Thus the pre-merger HHI was at least mildly concentrated around the 1600 level, and this merger will increase that level by 350 to 600 points resulting in a post-merger concentration of 2000 to as much as 2300. This falls well into the highly concentrated level.[11]

It appears that ethanol is a distinct product both because it has distinct production technology and because it is an ingredient in gasoline intended to reduce its pollution effects.[12] There was another product, methy tertiary butyl ether (MTBE), that has recently been banned in California, one of the largest areas of consumption, because of its polluting effects on ground water. Thus, a firm able to control the production or marketing of all ethanol would have significant power over price. The geographic market seems to be national.

There are two methods of producing ethanol. The ''dry'' method involves grinding corn into a mash and fermenting it to create ethanol which must then be separated from the water and the residual solids. The ethanol is concentrated to achieve 100% purity and then ''denatured'' by the addition of some gasoline making it unfit for human consumption. The remaining solids are dried and sold as cattle feed (this is a high protein feed that appears to have significant commercial value). All new ethanol plants under construction apparently use the dry process.

The ''wet'' process involves a similar production of mash which is then treated to convert the carbohydrates to sugar from which various products are produced: corn syrup, high fructose syrup, and ethanol by subsequent fermentation of the sugar. Based on some comments on a couple of web sites, it appears that there is flexibility in the wet process to choose among the types of products that will be extracted. Most of MDM's facilities and MCP's two plants are wet.

In 2001, total American production of ethanol was about 1.77 billion gallons; it is expected to rise to 2 billion in 2002 and may exceed 5 billion within a few years especially if the Senate version of the energy bill is ultimately adopted because it strongly favors ethanol. Although this section of the Senate bill was adopted in conference, no final legislation emerged from Congress this session.

With respect to the production of ethanol, the barriers to new entry seem to be low. An efficient, modern plant with a capacity of 40 million gallons costs about $55 million to build and construction takes about a year and a half after regulatory and zoning approval. It seems easy to expand to 80 million gallons, but after that there can be serious input constraints caused by the need to buy very large volumes of corn. Also, the market for the cattle feed solids may be saturated in the immediate area. There are as many as ten or more plants under construction; most of these have a capacity of 40 million gallons, and a significant additional number are in the planning stage. This means that efficient entry can occur with a capacity that represents about 2% of present total production and less than 1% of expected production in the next few years. This suggests that adding a new plant will not disrupt the market and so entry should not be difficult. Hence, while ADM is and will remain for the foreseeable future, by a very substantial margin, the largest ethanol producer in the market, it does not appear that its acquisition of MCP will significantly alter its market power in the ethanol production market. Presumably this is the view of the government as well.

However, this merger may create significant competitive issues in the distribution and marketing of ethanol. Marketing involves both specialized equipment and skills that are subject to economies of scale and scope. Ethanol is shipped in railroad tanker cars, barges and tanker trucks from various places of production in the Midwest to California or the east coast, for example. Ethanol is often added to gasoline at the point when a tanker truck is picking up a load of gas for delivery to service stations. For this reason, access to terminal tank farms is very important in the marketing process. If a firm can not get space in the farm, the marketing of ethanol in this context is more costly (separate location means two stops and delay). A key issue can be getting such access. While the costs of specialized equipment including a dedicated tank may not be substantial, getting access in the first place may be difficult given limited space and the potential that established ethanol suppliers may have or obtain exclusionary rights in their contracts.

It appears, therefore, that there are significant economics of scale and scope in the marketing process. The high volume marketer can get discounts and preferred service from railroads. It can afford to operate or lease barges, develop terminal storage facilities to concentrate the quantity of product for its delivery to refiners or gasoline terminal locations. Finally a major trader can get access to terminal facilities when small dealers might be excluded and/or get access on more favorable terms.

ADM is undoubtedly the largest marketer of ethanol. ADM has volume, special equipment (barges and rail cars) as well as good access to terminals and pipelines. There are two other major integrated marketers: Cargill (number 4 in ethanol production) and Williams Companies (number 3 in production) a major pipeline operator and dealer in petroleum products. Cargill and Williams have overall marketing resources comparable to ADM because of their multiple lines of business and their substantial ethanol production capacity. All three of these companies use marketing agreements to obtain additional supplies of ethanol.[13] Although presumable the government's lawyers have examined these marketing agreements, they are not available to the public. The impression is that they usually entail exclusive dealing commitments involving a 5 year or longer obligation (early termination terms unknown) which may provide economically questionable compensation terms for the marketer in that the contracts do not provide appropriate incentives for effective and efficient marketing. Thus, such contracts are likely to confer substantial control over the marketing of ethanol on a limited group of firms.

There also appears to be a few unintegrated or less integrated firms offering distribution services as well. One such firm is Murex NA.[14] Another trader—Ethanol Products—is associated with Broin Engineering, an ethanol plant builder, that represents 10 production facilities with 300 million gallons of capacity and claims another 115 million in development. There may be one or two additional marketers, but no other web sites provided very much information.

There is a plausible basis for concern that the impact of this merger in the marketing and distribution of ethanol is likely to be anticompetitive: ADM has a record of conspiring to cartelize various markets;[15] Cargill the second or third largest marketer of ethanol is also in the group of defendants in the HFCS litigation; and the Williams Companies, the other large marketer of

[10] Subsequent history has in fact vindicated the district court's concerns. *U.S.* v. *Microsoft,* 253 F3d 34 (DC Cir. 2001) cert. den. _U.S._, 122 S. Ct. 350.

[11] It has been suggested that ADM might actually control 55% of existing production capacity. In that case, the level of concentration would be significantly higher (a 55% share is an HHI of 3025; and the post merger HHI would increase by 660 to 3685).

[12] The following market analysis is based on interviews, web materials and newspaper articles available to Professor Carstensen.

[13] Williams' web site claims that it markets for 14 production facilities. Cargill's cite did not provide specific information, but clearly it is seeking to act as a marketer.

[14] The brief Web site description of this company (*http://www.murexltd.com/Homel.htm*) suggests that it markets ethanol and other products. Its Web site reports that the company provides marketing, owns specialized railcars for transporting ethanol, and has storage facilities in key locations to hold supplies until they can be delivered. It claims to represent 60 million gallons of capacity currently but to have contracts covering 200 million gallons in place for production in 2003. This is about 10% of the 2002/3 national production capacity.

[15] A.E. Staley in whose parent ADM holds a 25% stake is another ethanol producer and coconspirator in the HFCS litigation.

ethanol has recently settled claims that it overcharged California energy customers with a payment of more than $400 million and a restructuring of its supply contracts that may save customers another 1$1 billion.[16] Thus, all three major marketers of ethanol have recent histories of anticompetitive conduct and exploitation of consumers. The acquisition of MCP will increase concentration of control over distribution which will make both tacit collusion among these leading marketers more likely and increase the potential for unilateral anticompetitive conduct by ADM which remains the overwhelming dominant marketer in this business.

To determine the seriousness of these risks, it is important to have a good estimate of the volume needed to achieve minimum efficient scale for marketing ethanol. Assuming Murex with a 200 million gallon share is an efficient competitor,[17] then additional entry into distribution may occur as the volume expands. Other middle-sized petroleum marketing organizations might exist that have substantial volumes of goods going to market through the same networks. Entry into ethanol marketing may not be difficult for such firms if they exist and can easily add ethanol sales to their existing marketing efforts. Key here is the minimum size needed to make effective use of dedicated facilities such as terminal tanks, railcars, etc., that must be used in an ethanol specific way. Thus, the question is what are the product specific economies of scale and scope.

Given the foregoing market information, it would be possible to determine whether ADM's control over the marketing of ethanol, including its own production, that of MCP, and that under contract to the resulting firm, together with the market shares of the other two major, integrated marketers, would have an adverse effect on entry or expansion by independents in the marketing arena. If it takes 200 million gallons of volume for product-specific economies, then the current set of 5 or 6 marketers may be all that can be accommodated given ADM's dominance. Even with substantial growth in the total volume,[18] it may be difficult to make entry into marketing because the increments of new plants—circa 40 to 80 million gallons—will be insufficient to warrant entry into marketing unless the entrant can get additional clients. But from the perspective of the owner of a new plant, the question will be whether to select an established marketer or affiliate with a new entrant that needs additional volume to be efficient.

If economies of scale with ethanol marketing are significant, entry is difficult, and a few firms control the majority of product being marketed, it becomes possible to withhold some product as the new energy requirements kick in and drive up price (compare Enron or El Paso in California electric markets). In addition, because both ADM and MCP use the wet process, it is possible to manipulate ethanol supplies by shifting plant output to other products, *e.g.,* HFCS. This means that as the dominant firm, ADM may be able to have unilateral, anticompetitive effect in the marketing of ethanol by manipulating supply. On the other hand, ethanol is a uniform product with growing demand. Moreover, that demand is unlikely to be very price elastic (10% of a gallon of gas is not going to effect the price at the pump very much).[19] So, assuming limits on effective entry in the marketing level, existing marketers may engage in interdependent price setting to the detriment of the competitive market. The history of ADM's conduct in comparable markets and the presence in ethanol of some of its co-conspirators from other cartelistic efforts, strongly reinforces the proposition that there is a risk of such conduct if it is economically feasible.

The Merger Guidelines speak to these risks. ''Where products are relatively undifferentiated and capacity primarily distinguishes firms . . . the merger firm may find it profitable unilaterally to raise price and suppress output. . . . Where the merging firms have a combined market share of at least thirty-five percent, the merged firms may find it profitable to raise price and reduce joint output. . . .'' Guidelines 2.21. While this statement creates no presumption, it identifies the unilateral effect that is a possible consequence of this acquisition in addition to the potential for collusive reductions in output based on control of the marketing-distribution process. Recent news reports, after the filing of the Competitive Impact Statement, indicate that traders believe that ADM has the capacity and incentive to withhold supplies and drive up prices.[20] This is exactly the anticompetitive risk that this market structure posses.

The Competitive Impact Statement filed by the government explaining its analysis of the ADM–MCP merger does not even advert to the fact of ADM's leading position in ethanol production and marketing or MCP's substantial market share. As a result, it is not possible to tell whether the government has examined both the marketing and production aspects of ethanol. While it is probable that the government lawyers have in fact investigated at least some of the ethanol aspects of this merger, there is no public record of what aspects they examined or what conclusions they reached. If the government had simply sued the merger, the ethanol issues would have been subsumed under the corn syrup and HFCS issues because of the unitary nature of the production process. Once the government has elected to settle the case by allowing the acquisition, the impact of the acquisition in the related market where the parties have such large market shares becomes a very important aspect of a public interest analysis: ''the court may consider . . . any other considerations bearing upon the adequacy of such judgment. . . .'' Clayton Act, sec. 5(e); 15 U.S.C. sec. 16(e).

The government's failure to report the conclusions of its investigation of the ethanol market is, therefore, another serious flaw in this case. Given ADM's market position and its history, the government ought to have explained why it did not believe that there was any serious anticompetitive risk in these markets given its willingness to allow ADM to acquire the second largest producer of ethanol.

It can be argued that disclosure concerning the ethanol market is inconsistent with the confidentiality requirements imposed on merger filings. As the DOJ's comments to the DOT in the Hawaiian airlines case demonstrates, it is possible for the DOJ to report not only its conclusions about competitive effects but also explain in some detail its reasoning on the public record even when it has ''confidential'' information. *See,* PUBLIC COMMENTS OF THE DEPARTMENT OF JUSTICE, Joint Application of ALOHA AIRLINES, INC. and HAWAIIAN AIRLINES, INC., DOT Docket No. OST–2002–13002, filed Aug. 30, 2002. Indeed, the FTC has recently demonstrated exactly such a responsible approach in connection with the cruise line merger investigation. *See*, Statement of the Federal Trade Commission, Concerning Royal Caribbean Cruises, Ltd./P&O Princess Cruises plc, FTC File No. 021 0041, October 4, 2002; Dissenting Statement of Commissioners Sheila F. Anthony and Mozelle W. Thompson, *id.*

The public information about the ethanol markets—both production and marketing—does not demonstrate the kind of obvious anticompetitive risks that are manifest in the case of HFCS and corn syrup. Nevertheless, this acquisition will work a very substantial change in those markets that will increase concentration and so will necessarily tend to reinforce any anticompetitive potentials that may exist. Thus, another serious deficiency in the present Competitive Impact Statement is that it totally ignores the impact of this acquisition on ethanol. If it were in fact that case the government has completely failed to consider the competitive implications of that aspect of this merger, then it would also be clear that the government had failed in the most basic obligations of its responsibility to analyze the competitive implications of the transaction. It seems more likely that the government has examined at least some of the ethanol related issues and satisfied itself that this acquisition will not result in a significant risk of a ''substantial[ ] lessen[ing] of competition'' of the sort prohibited by section 7 of the Clayton Act. But if that is so, it owes it to the court and the public to explain what markets it considered (did it review both the production and the marketing components of ethanol?) and what its conclusions were on the

[16] See David Barboza, *A big Victory by California in Energy Case,* New York Times, Nov. 12, 2002, at C1.

[17] Murex markets other petroleum products and so in terms of dealing with railroads, barges, terminals or pipeline has more relevant volume than just its ethanol.

[18] 200 million gallons is 10% of current volume estimates but only 4% of the projected 5 billion gallon volume of the future.

[19] The price of corn which is largely a function of broader demand considerations will influence the supply side of the market significantly as will the market price for animal feed products that ethanol production also yields.

[20] ''Ethanol prices have risen 20 percent in the past six months. . . . Todd Kruggel, a broker . . . [said:] ''ADM and the other big boys may be storing what they're making until California demand gears up some more.'' Bloomberg News Service, Price of gas additive ethanol keeps rising, Wisconsin State Journal (Madison, Wisconsin), Nov. 12, 2002 at C9.

questions of entry, economies of scale and scope in distribution, and the potential for either unilateral or collusive conduct in this important, developing market.

This is not a situation where the government has conducted an investigation and concluded that no action was required. Here it has elected to object to the acquisition and highlighted, for purposes of that litigation, the most troublesome aspects of the merger. But its settlement, by failing to block the acquisition, necessarily has an effect in other markets in which these firms compete. A complete Competitive Impact Statement must advise the court and the public of the implications of the settlement for competition in those other markets. Without such disclosure, the record will not disclose ''the competitive impact of such judgment'' nor its ''impact. . . upon the pulic generally . . .'' Clayton Act, section 5(e)(1) and (2); 15 U.S.C. 16(e)(1) and (2). As result, the District Court can not perform its obligation to ''determine that the entry of such judgment is in the public interest.'' section 5(e); 15 U.S.C. 16(e).

Conclusion

In Philadelphia Bank, the Court stated that ''. . . if concentration is already great, the importance of preventing even slight increases in concentration and so preserving the possibility of eventual deconcentration is correspondingly great.'' *U.S.* v. *Philadelphia National Bank,* 374 US 321, 365, n. 42 (1963). The HFCS markets are such markets, characterized by substantial risks of anticompetitive conduct. The ethanol market as it presently exists is also concentrated and the forces of deconcentration might well be frustrated if the leading firm can retain a dominant position in production and that reinforces and entrenches its dominance in marketing. It would appear that blocking this merger and critically reviewing the MCP-Corn Products marketing agreement in HFCS as well as ADM's links to Tate & Lyle would have been a much more appropriate enforcement strategy based on the observable facts.

The Antitrust Division may have more information that might possibly negate the apparent anticompetitive risks in both the HFCS and ethanol markets that this acquisition would seem to create. It is the duty of the government to explain and justify its actions under the Tunney Act. It has not done so. In the absence of such information, the District Court should not approve this settlement because it lacks the basis on which to make the essential public interest determination that Congress has required.

Peter C. Carstensen,
Young-Bascom Professor of Law, University of Wisconsin Law School, 975 Bascom Mall, Madison, WI 53706.
Ph. (608) 263–7416.

December 27, 2002.

Background information concerning the supporters of this information:

Organizations

The National Farmers Union

The National Farmers Union is Officially called the Farmers Educational and cooperative Union of America. It was founded in 1902 and is a general farm organization with membership of nearly 3000,000 farm and ranch families throughout the United States.

The Organization for Competitive Markets

The Organization for Competitive Markets is a multidisciplinary nonprofit group made up of farmers, ranchers, academics, attorneys, political leaders and business people. OCM provides research, information and advocacy towards a goal of increasing competition in the agricultural marketplace and protecting those markets from abuses of corporate power. OCM views the current consolidation of agriculture as market failure resulting in misallocation of resources and the destruction of rural economies and culture.

Scholars (faculty positions given for informational purposes only)

Peter C. Carstensen, Young Bascom Professor of Law, University of Wisconsin Law School
Paul Brietzke, Professor of Law, Valparaiso University School of Law
John Connor, Professor of Agricultural Economics, Purdue University
Thomas Greaney, Professor of Law, St. Louis University School of Law
Neil E. Harl, Charles E. Curtiss Distinguished Professor of Agriculture and Professor of Economics, Iowa State University
Delbert Robertson, Associate Professor of Law, Suffolk University School of Law
Stephen Ross, Professor of Law, University of Illinois, College of Law
Kyle Stiegert, Associate Professor of Agricultural and Applied Economics and Director, Food System Research Group, College of Agriculture, University of Wisconsin-Madison

The American Antitrust Institute

December 27, 2002.

Roger W. Fones, Chief,
Transportation, Energy & Agriculture Section Antitrust Division, United States Department of Justice, 325 Seventh Street, NW., Suite 500, Washington, DC 20530.

Re: Tunney Act Comments *re U.S.* v.*Archer-Daniels-Midland Co. and Minnesota Com Processors, LLC.* Civil Case No. 02–1768

Dear Mr. Fones: The American Antitrust Institute (''AAI'') is an independent non-profit education, research and advocacy organization, described in detail at www.antitrustinstitute.org. The mission of the AAI is to support the laws and institutions of antitrust. We write to endorse the thrust of the Tunney Act comments submitted by Professor Peter C. Carstensen of the University of Wisconsin Law School. Professor Carstensen, a member of the AAI Advisory Board, has shared with us his analysis of the Archer-Daniels-Midland (''ADM'') acquisition of Minnesota Com Processors (''MCP'') and his concern that the Justice Department's Competitive Impact Statement (''CIS'') does not provide an adequate explanation of the consent decree.

A substantial purpose of the Antitrust Penalties and Procedures Act, 15 U.S.C. section 16(b)–(h), commonly referred to as the Tunney Act, is to facilitate public comments and thereby to assist the Court in making its determination of whether a proposed decree is in the public interest. The Tunney Act requires the Department to make public a CIS, which, in this case is available at *http://www.usdoj.gov/atr/cases/indx 358.htm.* Section (b)(3) of the Act requires that the CIS recite:

(1) The nature and purpose of the proceeding;

(2) A description of the practices or events giving rise to the alleged violation of the antitrust laws;

(3) An explanation of the proposal for a consent judgment, including an explanation of any unusual circumstances giving rise to such proposal or any provision contained therein, relief to be obtained thereby, and the anticipated effects on competition of such relief; [and]

(6) A description and evaluation of alternatives to such proposal actually considered by the United States.

We recognize that it is difficult, if not impossible, for a member of the public to have the same facts before it that influenced the Department's investigation and its negotiated outcome. Professor Carstensen's efforts to learn about the ADM merger have nonetheless succeeded in raising what appear to be important questions about the possible competitive effects of the merger that are not considered in the CIS. He writes,

The Competitive Impact Statement fails to disclose essential facts about the impact of this acquisition on the directly affected markets and ADM's status and role in those markets. Further, it does not explain how the proposed decree, in light of those facts and an apparent failure to consider relevant relief options as well as the Antitrust Division's own Merger Guidelines, can successfully protect the identified markets from increased risks of anticompetitive conduct. Finally, the Competitive Impact Statement omits entirely any discussion of the impact of allowing this combination in the related ethanol markets in which ADM is by many orders of magnitude the largest firm and MCP is the second largest.

Even when the Tunney Act is interpreted rather narrowly, it is recognized that Congress intended to encourage public comment. As Judge Kollar-Kotelly noted in the recent *U.S.* v. *Microsoft Corp.,* Civ. Act. No. 98–1232, Memorandum Opinion at 20 (July 1, 2002):

The legislative history explains that the purpose of requiring the United States to provide this information is to ''encourage[e], and in some cases, solicit, additional information and public comment that will assist the court in deciding whether the relief should be granted.'' 119 Cong. Rec. at 24,600. The reports from both houses of Congress agree that the purpose of this portion of the Act, in conjunction with sections (c) and (d), is to encourage comment and response by providing more adequate notice to the public. S. Rep. 93–278, H.R. Rep. 93–298 at 5 (1973); H.R. Rept. 93–1463 at 7 (1974), reprinted in 1974 U.S.C.C.A.N. at 6538. According to the Senate Report on the bill, ''additional participation by interested parties in the

approval of consent decrees'' serves as a public means to counterbalance the ''great influence and economic power'' available to antitrust violators. Sen. Rept. No. 93–298, at 5 (1973).

The House Report echoes this concern:

Given the high rate of settlement in public antitrust cases, it is imperative that the integrity of and public confidence in procedures relating to settlements via consent decree procedures be assured. Your Committee agrees with S. Rept. No. 93–298, 'The bill seeks to encourage additional comment and response by providing more adequate notice to the public,' (p. 5) but stresses that effective and meaningful public comment is also a goal.'' H.R. Rept. No. 93–1463, at 6–7.

It is not possible for the public to play the role envisioned by the statute unless adequate information is presented in the CIS, with the result that the Court cannot fulfill its own role of determining whether the proposed decree will serve the public interest. 15 U.S.C. 16(e). With respect to the corn syrup and HFCS markets, the CIS fails to disclose essential facts necessary to an understanding of either the competitive problem or the selected remedy. With respect to the ethanol market, the CIS is totally silent, despite the apparent fact that ADM is the leading producer and MCP is the second leading producer. We recognize that the Department may have been aware of all the relevant facts and may have carried out a perfectly designed and perfectly executed investigation, reaching a perfectly understandable compromise. Nevertheless, neither the public nor the Court can evaluate whether the proposed decree is in the public interest because there is too little disclosure for an evaluation to be made.

The Department has traditionally been reluctant to say a great deal in its CIS disclosures, presumably because it risks disclosure of confidential information, adds to the staff's workload, and opens up the door to additional inquiry. We urge the Department to look to the example of the Federal Trade Commission in its handling of the recent cruise case, in which it permitted two possible mergers to go forward, without condition, but (without the requirements of a Tunney Act hanging over its head) provided a detailed explanation of its reasoning, accompanied by a minority statement.[1] After the Enron and related scandals, we operate in a new age where transparency of government regulation is of even greater importance. ADM is a company that has had more than its share of scandal and illegal activity.[2] In order to sustain the public's confidence in the antitrust settlement process, we urge the Department and the Court to give the Tunney Act the benefit of any doubt by revising the CIS so as to meet Professor Carstensen's objections.

Sincerely.

Albert A. Foer,
President.
433 Hager Drive, Gibson City, IL, 60936.
(217) 784–4425.

Send by Express Mail.

Mr. Roger W. Fones,
Chief, Transportation, Energy & Agriculture, Division, Antitrust, Justice Department, Suite 500, Washington, DC 20530.

Gentlemen (& women); I am thankful for this opportunity to offer my brief comment to you on the proposed ADM–MCP purchase transaction.

I will try not to duplicate the obvious facts and data that you no doubt have indicating the anticompetitive effect this transaction could have on:

(1) The market price the farmer receives (and *growth of same*)

(2) The ethanol and

(3) Sweetener industry market prices.

I will instead attempt to offer some of the not so obvious that you may not have but are never the less, just as important.

I am hopeful that you can provide evidence that this public comment opportunity *does have meaning* instead of [being 'cut & dried' or a 'done deal' that ADM has under control], the well grounded perception that most have expressed to me. This perception plus (1) the extended corn harvest in SW MN, (2) most stakeholders being unaware of this public comment forum and (3) many of us who are (aware of), being poor writers and cramped for time means relatively few comments from those who would otherwise do so, which is unfortunate. So I hope you can bear with us and receive what we (I) intended to convey on this very important issue. To provide *all* of the important details is beyond the scope of this comment writing, but please if u do want more detail, I'd be most honored to respond with the full impact & detail that you need (if I know it not redundant) to make your most important decisions and conveyance of same!

I have personal knowledge that many of the new coops that have formed & now producing ethanol did so with the knowledge that MCP was a positive role model. This transaction not only erases that positive role model but becomes a *very* negative factor. (MCP was the largest by a factor of 5X, the oldest & relied on by others in many respects) If you need I'd love to give details showing the 'chilling' net impact on new producer equity formation.

The superior third party acquisition proposal (p.pg 48) that was in the MCP office on August 31, could have & indeed perhaps should have been handled differently *i.e.,* at least let the board or voting members know of its existence. (The vote would've been different)

The implementation of that proposal offers to

(1) Retain the more competitive environment for corn markets, ethanol, sweeteners, etc.

(2) Retain each members freedom to sell or not to sell.

(3) ''The new CP MCP development opportunity.

(4) The producer (corngrower) processor opportunity, that was conceived in the mid '70's.

(5) Be less likely to be challenged, changed, *delayed* or terminated on grounds posed by the Antitrust Division of the US Justice Department (p, pg 43).

I'd sure love to give details on this if u need some.

Then I have many questions regarding how the information was A. Presented to the members at the 'information' meetings. In consideration our limited time at this point & hoping most of these questions have been submitted by others I'll bring up only one question I had as follows:

I asked specific questions about the probability of regulatory delays or indeed a Department of Justice complaint challenging the merger. The answer I receive was—*No way. ADM has that under control.* If the Department of Justice does anything it will be a mere formality of no consequence! Vote for this transaction & you'll have your money 'very soon' after the vote on Sept. 5. Clarification of 'very soon' was given as before the end of the month (September). Each of the questions (answers) were (superbly) handled in a similar tone.

And B. How the vote was handled.

(i) Was it true that the company (MCP) wouldn't allow one of the board members who voted No to look at the ballot talley?

Ref. Dean Buesing

(2) Was it true that one of the no votes cast early at the Marshall office couldn't be found when the member asked for it back before the final tally was to be tabulated?

Same referense.

Thanks,

C. LeRoy Deichman, CPAg.,
433 Hager Drive, Gibson City, IL 60936, (217) 784–4425.

P.S.

If every component of this transaction was legal (I'm not saying it wasn't)—then I'd like to meet with the people who make the laws.—To see that this injustice never happens again!

I wish my appraisal of the growth that could've occurred would be asked for by the decision makers.

I repeat, since I don't know which of what else I had to say would be redundant & other reasons listed herin I defer for now pending your request for more. (Including any resume in this field)

I *out of time!*

Thanking you again for this opportunity.

[FR Doc. 03–9290 Filed 4–15–03; 8:45 am]
BILLING CODE 4410–11–M

[1] *See http://www.ftc.gov/os/caselist/021004.htm.* Also *see* Warren Grimes, Norman Hawker, John Kwoka, Robert Lande, and Diana Moss, ''The FTC's Cruise Lines Decisions: Three Cheers for Transparency, *http//www.antitrustinstitute.org/recent2/217.cfm.*

[2] *See, e.g.,* James B. Lieber, Rats in the Grain, the Dirty Tricks and Trials of Archer Daniels Midland (200) and Kurt Eichenwald, The Informant (2000).

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Mico-Optio-Electro-Mechnical Systems

Notice is hereby given that, on January 31, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act)'',

Micro-Opto-Electro-Mechanical Systems (MOEMS) has filed written notifications siumulaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Corning Intellisense, Boston, MA has been added as a party to this venture. Also, Standard MEMS, Hauppauge, NY has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MOEMS intends to file additional written notification disclosing all changes in membership.

On December 29, 1998, MOEMS filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published in a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 19, 1999 (64 FR 13603).

The last notification was filed with the Department of August 3, 1999. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 21, 2000 (65 FR 15177).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–9292 Filed 4–15–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antritrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Water Heater Industry Joint Research and Development Consortium

Notice is hereby given that, on March 3, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Water Heater Industry Joint Research and Development Consortium (''the Consortium'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status and an extension of its term. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances Specifically, the membership of GSW Water Heating Company, a Division of GSW Inc., Fergus, Ontario, CANADA, has been transferred to GSW Water products Inc., a new wholly owned subsidiary of GSW Inc, Fergus, Ontario, CANADA. Also, the term of the Consortium has been changed as of February 20, 2003, from a term of eight years beginning February 27, 1995, to a period of nine years beginning February 27, 1995.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Consortium intends to file additional written notification disclosing all changes in membership.

On February 28, 1995, the Consortium filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 27, 1995 (60 FR 15789).

The last notification was filed with the Department on March 4, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on April 4, 2002 (67 FR 16125).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–9291 Filed 4–15–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–11146, *et al.*]

Proposed Exemptions; ACR Homes, Inc. Employee Stock Ownership Plan and Trust (the ESOP)

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: ''*moffittb@pwba.dol.gov*'', or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed

exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

ACR Homes, Inc. Employee Stock Ownership Plan and Trust (the ESOP) Located in Roseville, Minnesota

[Application No. D–11146]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the past sale on August 28, 2001 (the Stock Redemption), by the ESOP to the ACR Homes, Inc., the sponsoring employer (the Employer), of 3,600 shares of the Employer's class A common stock (the Shares) for $511,250 in cash; provided that the following conditions were satisfied:

(a) The Stock Redemption was a one-time cash transaction;

(b) The ESOP received the fair market value of the Shares as determined by an independent, qualified appraiser on the date of the Stock Redemption; and

(c) The ESOP paid no commissions or other expenses associated with the Stock Redemption.

EFFECTIVE DATE: If granted, this exemption will be effective as of August 28, 2001.

Summary of Facts and Representations

1. The ESOP was established by the Employer on January 1, 1995 for the benefit of its employees. Since 1995, the ESOP has been amended and restated from time to time to comply with the Act, the Code and the regulations thereunder. Specifically, the ESOP was amended and restated on January 1, 1998, to reflect the Employer's status as a subchapter ''S'' corporation, as elected under section 1361 of the Code. It is represented that the ESOP meets the requirements of sections 401(a), 409, and 4975(e)(7) of the Code, as well as the relevant requirements of the Act.[1]

As of November 25, 2002, the ESOP had approximately 350 participants and beneficiaries. James A. Nelson (Mr. Nelson) and Dorothy Nelson (Mrs. Nelson, collectively; the Nelsons) are trustees of the ESOP. After the Stock Redemption, Mr. Nelson and Mrs. Nelson respectively owned 30.5% and 29.5% of the issued and outstanding shares of the Employer's stock (the Stock). Mr. Nelson is the president of the Employer. Mrs. Nelson is a vice-president and secretary of the Employer.

The Employer is a Minnesota corporation that provides residential services for people with developmental disabilities. The Employer owns a subsidiary, ACR Mississippi, Inc., that provides similar services.

2. The Employer has only one class of shares of the Stock (a/k/a, the Class A Shares). As of December 31, 2000 (*i.e.*, before the Stock Redemption), there were 1,000,000 Class A Shares authorized and a total of 40,000 shares issued and outstanding with the following ownership:

Shareholder	Type	No. of shares	% Ownership
ESOP	Class A	19,600	49
James Nelson	Class A	10,400	26
Dorothy Nelson	Class A	10,400	25
Total		40,000	100

An appraisal for the Stock dated June 15, 2001 (the Appraisal), was prepared by the Hawthorne Company, an independent and qualified appraising firm in Minneapolis, Minnesota. The Appraisal stated that each Share of the Stock was worth $140, as of December 31, 2000. Therefore, as of December 31, 2000, the ESOP's ownership interest in the Stock (*i.e.*, 19,600 shares) was worth $2,744,000.

3. Under a Stock Redemption Agreement dated August 28, 2001 (the Agreement), the ESOP sold 3,600 shares of the Stock (*i.e.*, the Shares) to the Employer for a purchase price of $511,200 or $142 per Share. This purchase price was determined by an update of the Appraisal, as discussed more fully below. The Employer paid the entire purchase price in cash.

The applicant represents that the cash received by the ESOP in the Stock Redemption was immediately credited to the accounts of participants in proportion to the Shares that were sold from their accounts in the Stock Redemption.[2] The applicant represents that the Stock Redemption was in the best interest of the ESOP's participants and beneficiaries. The specific reasons are discussed more fully below.

The Employer financed its purchase of the Shares through two simultaneous sales of 1,800 of newly-issued shares of the Stock to Mr. Nelson and Mrs. Nelson, respectively, at the same price of $142 per Share (the Nelson Sale).[3]

The applicant represents that the Stock Redemption and the Nelson Sale decreased the ESOP's ownership of the total outstanding Stock of the Employer from 49% to 40%, and increased the Nelsons' combined ownership of the Stock from 51% to 60%.

Following the Stock Redemption on August 28, 2001, the total outstanding shares of the Stock were owned as follows:

[1] Section 407(d)(6) of the Act defines the term ''employee stock ownership plan'' as an individual account plan (A) which is a stock bonus plan which is qualified, or a stock bonus plan and money purchase plan both of which are qualified, under section 401 of the Code, and which is designed to invest primarily in qualifying employer securities, and (B) which meets such other requirements as the Secretary of the Treasury may prescribe by regulation.

The Department is providing no opinion herein as to whether such requirements have been met.

[2] For example, if a participant had 100 Shares allocated to her account and 18 had been redeemed, after the Stock Redemption, such account would have been allocated an additional $2,556 of cash (*i.e.*, $142 per share × 18 shares).

[3] The applicant represents that the Nelsons were advised, by a prior law firm (see discussion in Paragraph 7), to structure the Stock Redemption as a two-step transaction.

Shareholder	Type	Number of shares	% Ownership
ESOP	Class A	16,000	40
James Nelson	Class A	12,200	30.5
Dorothy Nelson	Class A	11,800	29.5
Total		40,000	100

4. As stated earlier, the Appraisal was prepared on June 15, 2001 by Hawthorne Company, an independent qualified appraisal firm (the Appraiser). The Appraisal considered three valuation approaches: (i) The market approach, (ii) the income approach, and (iii) the asset approach. In determining fair market value of the Shares, the Appraisal primarily relied on the income approach. The Appraisal utilized the single-period capitalization of cash flows method in the valuation of the Shares. Using this method, the Appraiser generated an estimate of the long-term sustainable ''free cash flow'' of the Employer, given its current operating status.[4]

The Appraiser represents that it utilized an 18% required annual rate of return in the past valuations of the Shares. Because the Appraiser did not believe the risk profile of the Employer had changed since the last valuation, it continued to utilize an 18% required annual rate of return in the Appraisal. By subtracting an estimate of long-term growth from the required rate of return, the Appraiser arrived at a capitalization rate of 9.5%. This capitalization rate of 9.5% was applied to the projected net cash flow figure. Under this methodology, the Appraisal established a fair market value of a minority interest in the Stock at $140 per Share as of December 31, 2000.

5. An update to the Appraisal was prepared on August 28, 2001 (the Update), which was the date of the Stock Redemption. The Update stated that the ESOP should sell 3,600 Shares to the Employer for the purchase price of $511,200, or $142 per Share.[5] In preparing the Update, the Appraiser reviewed the Employer's current annual financial statements; the Employer's operational status as of August 28, 2001; the Stock Redemption Agreement; the Employer's Board of Directors' minutes approving the Stock Redemption, and subscription agreements between the Employer and the Nelsons. In addition, the Appraiser held discussions with representatives of the Employer regarding the current operations, financial condition, future prospects, projected operations and performance of the Employer. Finally, the Appraiser considered any restrictions on transferability associated with the Shares.[6]

6. The Stock Redemption was a one-time cash transaction. The ESOP did not pay any commissions or other expenses associated with the sale. The applicant represents that the fair market value of the Shares was determined by an independent, qualified appraiser at the time of the transaction. In this regard, the Employer paid the ESOP $142 per Share, in accordance with the Appraiser's valuation of the Stock, as stated in the Update, at the time of the transaction. The applicant maintains that the sale was in the best interest and protective of the ESOP and its participants and beneficiaries at the time of the transaction. Among other things, the sale increased the liquidity and diversification of the ESOP's portfolio. The sale enabled the ESOP to realize a portion of the gains that had been earned on the investment, following its acquisition of the Stock in 1996. Specifically, the transaction allowed the ESOP's participants to realize a reasonable rate of return from the appreciation of the Stock over a 5-year period.

7. The applicant's current legal counsel states that at the time of the sale, the Employer was represented by another law firm. The applicant states that the prior law firm failed to advise the Employer that the Stock Redemption would be a prohibited transaction under the Act. In this regard, the applicant maintains that the prior law firm drafted the legal documents governing all aspects of the Stock Redemption and the subsequent sale to the Nelsons. The Employer represents that it understood, from the nature of the prior law firm's involvement in designing and documenting the transaction, that the law firm did not see any legal obstacles to completing the transaction. When the Employer's current legal counsel discovered the prohibited transaction, the applicant promptly applied to the Department to request a retroactive exemption.

8. In summary, the applicant represents that the transaction satisfied the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The Stock Redemption was a one-time cash transaction;

(b) The ESOP received the current fair market value for the Shares, as established by an independent, qualified appraiser;

(c) The ESOP paid no commissions or other expenses associated with the Stock Redemption; and

(d) The Stock Redemption provided the ESOP and its participants and beneficiaries with more liquidity, a reasonable rate of return on its investment in the Stock, and an opportunity to diversify the overall investment portfolio.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department at (202) 693–8540. (This is not a toll-free number.)

Lehman Brothers Holding Inc. (LBHI) and Lehman Brothers Inc. (LBI), et al. (Collectively, the Applicants) Located in New York, NY

[Application No. D–11164]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408 of the Act (or ERISA) and section 4975(c)(2) of the Code and in accordance with the procedures set

[4] The Appraiser defined ''free cash flow'' as all cash remaining after operating the business, repaying debt, and investing in fixed assets. Thus, ''free cash flow'' represents the theoretical dividend paying capacity of the Employer. The Appraiser then applied an appropriate capitalization multiple to that estimate of cash flows.

[5] The Update was actually characterized as a ''fairness opinion'' by the Appraiser. Under the Update, the Appraiser concluded that the ESOP would not be receiving less than fair market value for the Stock. In response to the Department's request for more specificity regarding the valuation, the Appraiser noted, by letter dated March 6, 2003, that they were of the opinion that on August 28, 2001, the fair market value of the Stock was approximately $141.00 per share.

[6] The appraiser further maintains that its method of valuation of the Shares follows the guidelines set forth by the IRS's Revenue Ruling 59–60, 1959–1 Cum. Bull. 237 [as modified by Rev. Rul 68–609 (1968–2 C.B. 327)] for the valuation of corporate securities. In addition, the Appraiser followed the guidelines of the Valuation Advisory Committee of the ESOP Association [incorporating the Department's Proposed Regulations Relating to the Definition of ''Adequate Consideration'' (see 53 FR 17632; May 17, 1988)], the Uniform Standards of Professional Appraisal Practice, the American Society of Appraisers, and the Institute of Business Appraisers.

forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990).[7]

Section I. Covered Transactions

If the exemption is granted, the restrictions of section 406 of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) of the Code, shall not apply April 16, 2003, to the purchase of any securities by LBHI and LBI and their affiliates, (collectively, the Asset Manager), on behalf of employee benefit plans (the Client Plans), including Client Plans investing in a pooled fund (the Pooled Fund), for which the Asset Manager acts as a fiduciary, from any person other than the Asset Manager or an affiliate thereof, during the existence of an underwriting or selling syndicate with respect to such securities, where LBI and its affiliates (collectively, the Affiliated Broker-Dealer) are a manager or member of such syndicate, provided that the following conditions are satisfied:

(a) The securities to be purchased are—

(1) Either:

(i) Part of an issue registered under the Securities Act of 1933 (the 1933 Act) (15 U.S.C. 77a et seq.) or, if exempt from such registration requirement, are (A) issued or guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States, (B) issued by a bank, (C) exempt from such registration requirement pursuant to a federal statute other than the 1933 Act, or (D) are the subject of a distribution and are of a class which is required to be registered under section 12 of the Securities Exchange Act of 1934 (the 1934 Act) (15 U.S.C. 781), and the issuer of which has been subject to the reporting requirements of section 13 of that Act (15 U.S.C. 78m) for a period of at least 90 days immediately preceding the sale of securities and has filed all reports required to be filed thereunder with the Securities and Exchange Commission (SEC) during the preceding 12 months; or

(ii) Part of an issue that is an ''Eligible Rule 144A Offering'' (the Eligible Rule 144A Offering), as defined in SEC Rule l0f-3 (17 CFR 270.10f–3(a)(4)). Where the Eligible Rule 144A Offering is of equity securities, the offering syndicate shall obtain a legal opinion regarding the adequacy of the disclosure in the offering memorandum;

(2) Purchased prior to the end of the first day on which any sales are made, at a price that is not more than the price paid by each other purchaser of securities in that offering or in any concurrent offering of the securities, except that—

(i) If such securities are offered for subscription upon exercise of rights, they may be purchased on or before the fourth day preceding the day on which the rights offering terminates; or

(ii) If such securities are debt securities, they may be purchased at a price that is not more than the price paid by each other purchaser of securities in that offering or in any concurrent offering of the securities and may be purchased on a day subsequent to the end of the first day on which any sales are made, provided that the interest rates on comparable debt securities offered to the public subsequent to the first day and prior to the purchase are less than the interest rate of the debt securities being purchased; and

(3) Offered pursuant to an underwriting or selling agreement under which the members of the syndicate are committed to purchase all of the securities being offered, except if—

(i) Such securities are purchased by others pursuant to a rights offering; or

(ii) Such securities are offered pursuant to an over-allotment option.

(b) The issuer of such securities has been in continuous operation for not less than three years, including the operation of any predecessors, unless—

(1) Such securities are non-convertible debt securities rated in one of the four highest rating categories by at least one nationally recognized statistical rating organization, *i.e.*, Standard & Poor's Rating Services, Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co., or Fitch IBCA, Inc., or their successors (collectively, the Rating Organizations); or

(2) Such securities are issued or fully guaranteed by a person described in paragraph (a)(1)(i)(A) of Section I of this exemption; or

(3) Such securities are fully guaranteed by a person who has issued securities described in paragraphs (a)(1)(i)(B), (C), or (D) of Section I, and who has been in continuous operation for not less than three years, including the operation of any predecessors.

(c) The amount of such securities to be purchased by the Asset Manager on behalf of a Client Plan does not exceed three percent of the total amount of the securities being offered. Notwithstanding the foregoing, the aggregate amount of any securities purchased with assets of all Client Plans managed by the Asset Manager (or with respect to which the Asset Manager renders investment advice within the meaning of 29 CFR 2510.3–21(c)) does not exceed:

(1) 10 percent of the total amount of any equity securities being offered;

(2) 35 percent of the total amount of any debt securities being offered that are rated in one of the four highest rating categories by at least one of the Rating Organizations; or

(3) 25 percent of the total amount of any debt securities being offered that are rated in the fifth or sixth highest rating categories by at least one of the Rating Organizations; and

(4) If purchased in an Eligible Rule 144A Offering, the total amount of the securities being offered for purposes of determining the percentages for (1)–(3) above is the total of:

(i) The principal amount of the offering of such class sold by underwriters or members of the selling syndicate to ''qualified institutional buyers'' (QIBs), as defined in SEC Rule 144A (17 CFR 230.144A(a)(1)); plus

(ii) The principal amount of the offering of such class in any concurrent public offering.

(d) The consideration to be paid by the Client Plan in purchasing such securities does not exceed three percent of the fair market value of the total net assets of the Client Plan, as of the last day of the most recent fiscal quarter of the Client Plan prior to such transaction.

(e) The transaction is not part of an agreement, arrangement, or understanding designed to benefit the Asset Manager or an affiliate.

(f) The Affiliated Broker-Dealer does not receive, either directly, indirectly, or through designation, any selling concession or other consideration that is based upon the amount of securities purchased by Client Plans pursuant to this exemption. In this regard, the Affiliated Broker-Dealer may not receive, either directly or indirectly, any compensation that is attributable to the fixed designations generated by purchases of securities by the Asset Manager on behalf of its Client Plans.

(g)(1) The amount the Affiliated Broker-Dealer receives in management, underwriting or other compensation is not increased through an agreement, arrangement, or understanding for the purpose of compensating the Affiliated Broker-Dealer for foregoing any selling concessions for those securities sold pursuant to this exemption. Except as described above, nothing in this paragraph shall be construed as precluding the Affiliated Broker-Dealer

[7] For purposes of this proposed exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of Title II of the Code.

from receiving management fees for serving as manager of the underwriting or selling syndicate, underwriting fees for assuming the responsibilities of an underwriter in the underwriting or selling syndicate, or other consideration that is not based upon the amount of securities purchased by the Asset Manager on behalf of Client Plans pursuant to this exemption; and

(2) The Affiliated Broker-Dealer shall provide to the Asset Manager a written certification, signed by an officer of the Affiliated Broker-Dealer, stating the amount that the Affiliated Broker-Dealer received in compensation during the past quarter, in connection with any offerings covered by this exemption, was not adjusted in a manner inconsistent with Section I(e), (f), or (g) of this exemption.

(h) In the case of a single Client Plan, the covered transaction is performed under a written authorization executed in advance by an independent fiduciary (Independent Fiduciary) of the Client Plan.

(i) Prior to the execution of the written authorization described in paragraph (h) above of this Section I, the following information and materials must be provided in hard copy or in electronic form by the Asset Manager to the Independent Fiduciary of each single Client Plan:

(1) A copy of the notice of proposed exemption and of the final exemption as published in the **Federal Register**; and

(2) Any other reasonably available information regarding the covered transactions that the Independent Fiduciary requests.

(j) Subsequent to an Independent Fiduciary's initial authorization permitting the Asset Manager to engage in the covered transactions on behalf of a single Client Plan, the Asset Manager will continue to be subject to the requirement to provide any reasonably available information regarding the covered transactions that the Independent Fiduciary requests.

(k) In the case of existing plan investors in a Pooled Fund, such Pooled Fund may not engage in any covered transactions pursuant to this exemption, unless the Asset Manager has provided the written information described below to the Independent Fiduciary of each plan participating in the Pooled Fund. The following information and materials shall be provided in hard copy or in electronic form not less than 45 days prior to the Asset Manager's engaging in the covered transactions on behalf of the Pooled Fund pursuant to the exemption:

(1) A notice of the Pooled Fund's intent to purchase securities pursuant to this exemption and a copy of the notice of proposed exemption and of the final exemption as published in the **Federal Register**;

(2) Any other reasonably available information regarding the covered transactions that the Independent Fiduciary requests; and

(3) A termination form expressly providing an election for the Independent Fiduciary to terminate the plan's investment in the Pooled Fund without penalty to the plan. Such form shall include instructions specifying how to use the form. Specifically, the instructions will explain that the plan has an opportunity to withdraw its assets from the Pooled Fund for a period at least 30 days after the plan's receipt of the initial notice described in paragraph (1) of this Section I(k) above and that the failure of the Independent Fiduciary to return the termination form by the specified date shall be deemed to be an approval by the plan of its participation in covered transactions as a Pooled Fund investor. Further, the instructions will identify the Asset Manager and its Affiliated Broker-Dealer and state that this exemption may be unavailable unless the Independent Fiduciary is, in fact, independent of those persons. Such fiduciary must advise the Asset Manager, in writing, if it is not an ''Independent Fiduciary,'' as that term is defined in Section II(g) of this exemption.

For purposes of this paragraph, the requirement that the authorizing fiduciary be independent of the Asset Manager shall not apply in the case of an in-house plan sponsored by the Applicants or an affiliate thereof. However, in-house plans must notify the Asset Manager, as provided above.

(l) In the case of a plan whose assets are proposed to be invested in a Pooled Fund subsequent to implementation of the procedures to engage in the covered transactions, the plan's investment in the Pooled Fund is subject to the prior written authorization of an Independent Fiduciary, following the receipt by the Independent Fiduciary of the materials described in Section I(k)(1) and (2). For purposes of this paragraph, the requirement that the authorizing fiduciary be independent of the Asset Manager shall not apply in the case of an in-house plan sponsored by the Applicants or an affiliate thereof.

(m) Subsequent to an Independent Fiduciary's initial authorization of a plan's investment in a Pooled Fund that engages in the covered transactions, the Asset Manager will continue to be subject to the requirement to provide any reasonably available information regarding the covered transactions that the Independent Fiduciary requests.

(n) At least once every three months, and not later than 45 days following the period to which such information relates, the Asset Manager shall:

(1) Furnish the Independent Fiduciary of each single Client Plan, and of each plan investing in a Pooled Fund, with a report (which may be provided electronically) disclosing all securities purchased on behalf of that Client Plan or Pooled Fund pursuant to this exemption during the period to which such report relates, and the terms of the transactions, including:

(i) The type of security (including the rating of any debt security);

(ii) The price at which the securities were purchased;

(iii) The first day on which any sale was made during this offering;

(iv) The size of the issue;

(v) The number of securities purchased by the Asset Manager for the specific Client Plan or Pooled Fund;

(vi) The identity of the underwriter from whom the securities were purchased;

(vii) The spread on the underwriting;

(viii) The price at which any such securities purchased during the period were sold; and

(ix) The market value at the end of such period of each security purchased during the period and not sold;

(2) Provide to the Independent Fiduciary in the quarterly report a representation that the Asset Manager has received a written certification signed by an officer of the Affiliated Broker-Dealer, as described in paragraph (g)(2) of this Section I, affirming that, as to each offering covered by this exemption during the past quarter, the Affiliated Broker-Dealer acted in compliance with Section I(e), (f), and (g) of this exemption, and that a copy of such certification will be provided to the Independent Fiduciary upon request;

(3) Disclose to the Independent Fiduciary that, upon request, any other reasonably available information regarding the covered transactions that the Independent Fiduciary requests will be provided, including, but not limited to:

(i) The date on which the securities were purchased on behalf of the plan;

(ii) The percentage of the offering purchased on behalf of all Client Plans and Pooled Funds; and

(iii) The identity of all members of the underwriting syndicate;

(4) Disclose to the Independent Fiduciary in the quarterly report, any instance during the past quarter where the Asset Manager was precluded for any period of time from selling a security purchased under this

exemption in that quarter because of its status as an affiliate of the Affiliated Broker-Dealer and the reason for this restriction;

(5) Provide explicit notification, prominently displayed in each quarterly report, to the Independent Fiduciary of a single Client Plan, that the authorization to engage in the covered transactions may be terminated, without penalty, by the Independent Fiduciary on no more than five days' notice by contacting an identified person; and

(6) Provide explicit notification, prominently displayed in each quarterly report, to the Independent Fiduciary of a plan investing in a Pooled Fund, that the Independent Fiduciary may terminate investment in the Pooled Fund, without penalty, by contacting an identified person.

(o) Each single Client Plan shall have total net assets with a value of at least $50 million. In addition, in the case of a transaction involving an Eligible Rule l44A Offering on behalf of a single Client Plan, each such Client Plan shall have at least $100 million in securities, as determined pursuant to SEC Rule 144A (17 CFR 230.144A). In the case of a Pooled Fund, the $50 million requirement will be met if 50 percent or more of the units of beneficial interest in such Pooled Fund are held by plans having total net assets with a value of at least $50 million. For purchases involving an Eligible Rule 144A Offering on behalf of a Pooled Fund, the $100 million requirement will be met if 50 percent or more of the units of beneficial interest in such Pooled Fund are held by plans having at least $100 million in assets and the Pooled Fund itself qualifies as a QIB, as determined pursuant to SEC Rule 144A (17 CFR 230.144A(a)(F)).

For purposes of the net asset tests described above, where a group of Client Plans is maintained by a single employer or controlled group of employers, as defined in section 407(d)(7) of the Act, the $50 million net asset requirement or the $100 million net asset requirement may be met by aggregating the assets of such Client Plans, if the assets are pooled for investment purposes in a single master trust.

(p) The Asset Manager qualifies as a ''qualified professional asset manager'' (QPAM), as that term is defined under Part V(a) of PTE 84–14 (49 FR 9494, 9506, March 13, 1984) and, in addition, has, as of the last day of its most recent fiscal year, total client assets under its management and control in excess of $5 billion and shareholders' or partners' equity in excess of $1 million.

(q) No more than 20 percent of the assets of a Pooled Fund, at the time of a covered transaction, is comprised of assets of employee benefit plans maintained by the Asset Manager, the Affiliated Broker-Dealer, or an affiliate for their own employees, for which the Asset Manager, the Affiliated Broker-Dealer, or an affiliate exercises investment discretion.

(r) The Asset Manager and the Affiliated Broker-Dealer maintain, or cause to be maintained, for a period of six years from the date of any covered transaction such records as are necessary to enable the persons described in Section I(s) of this exemption to determine whether the conditions of this exemption have been met, except that —

(1) No party in interest with respect to a Client Plan, other than the Asset Manager and the Affiliated Broker-Dealer, shall be subject to a civil penalty under section 502(i) of the Act or the sanctions imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required by Section I(s); and

(2) A prohibited transaction shall not be considered to have occurred if, due to circumstances beyond the control of the Asset Manager or the Affiliated Broker-Dealer, such records are lost or destroyed prior to the end of the six-year period.

(s)(1) Except as provided in subparagraph (2) of this Section I(s) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in Section I(r) are unconditionally available at their customary location for examination during normal business hours by —

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the SEC;

(ii) Any fiduciary of a Client Plan, or any duly authorized employee or representative of such fiduciary;

(iii) Any employer of participants and beneficiaries and any employee organization whose members are covered by a Client Plan, or any authorized employee or representative of these entities; or

(iv) Any participant or beneficiary of a Client Plan, or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in subparagraphs (s)(1)(ii)—(iv) of this Section I shall be authorized to examine trade secrets of the Asset Manager or the Affiliated Broker-Dealer, or commercial or financial information which is privileged or confidential; and

(3) Should the Asset Manager or the Affiliated Broker-Dealer refuse to disclose information on the basis that such information is exempt from disclosure pursuant to Section I (s)(2) above, the Asset Manager shall, by the close of the (thirtieth)(30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

Section II. Definitions

(a) The term ''Asset Manager'' means any asset management affiliate of any Applicant (as ''affiliate'' is defined in Section II(c)) that meets the requirements of this exemption.

(b) The term ''Affiliated Broker-Dealer'' means any broker-dealer affiliate of any Applicant (as ''affiliate'' is defined in paragraph (c) of this Section II) that meets the requirements of this exemption. Such Affiliated Broker-Dealer may participate in an underwriting or selling syndicate as a manager or member. The term ''manager'' means any member of an underwriting or selling syndicate who, either alone or together with other members of the syndicate, is authorized to act on behalf of the members of the syndicate in connection with the sale and distribution of the securities being offered, or who receives compensation from the members of the syndicate for its services as a manager of the syndicate.

(c) The term ''affiliate'' of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with such person;

(2) Any officer, director, partner, employee, or relative (as defined in section 3(15) of the Act) of such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(d) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(e) The term ''Client Plan'' means an employee benefit plan that is subject to the fiduciary responsibility provisions of the Act and whose assets are under the management of the Asset Manager, including a plan investing in a Pooled Fund (as ''Pooled Fund'' is defined in Section II(f) below).

(f) The term ''Pooled Fund'' means a common or collective trust fund or pooled investment fund maintained by the Asset Manager.

(g)(1) The term ''Independent Fiduciary'' means a fiduciary of a Client Plan who is unrelated to, and independent of, the Asset Manager and the Affiliated Broker-Dealer. For purposes of this exemption, a Client Plan fiduciary will be deemed to be unrelated to, and independent of, the Asset Manager and the Affiliated Broker-Dealer if such fiduciary represents that neither such fiduciary, nor any individual responsible for the decision to authorize or terminate authorization for transactions described in Section I, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Asset Manager or the Affiliated Broker-Dealer and represents that such fiduciary shall advise the Asset Manager if those facts change.

(2) Notwithstanding anything to the contrary in this Section II(g), a fiduciary is not independent if:

(i) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with the Asset Manager or the Affiliated Broker-Dealer;

(ii) Such fiduciary directly or indirectly receives any compensation or other consideration from the Asset Manager or the Affiliated Broker-Dealer for his or her own personal account in connection with any transaction described in this exemption;

(iii) Any officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Asset Manager, responsible for the transactions described in Section I, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Client Plan sponsor or of the fiduciary responsible for the decision to authorize or terminate authorization for transactions described in Section I. However, if such individual is a director of the Client Plan sponsor or of the responsible fiduciary, and if he or she abstains from participation in (A) the choice of the Plan's investment manager/adviser and (B) the decision to authorize or terminate authorization for transactions described in Section I, then this Section II(g)(2)(iii) shall not apply.

(3) The term ''officer'' means a president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), or any other officer who performs a policy-making function for the entity.

(4) In the case of existing Client Plans in a Pooled Fund, at the time the Asset Manager provides such Client Plans with initial notice pursuant to this exemption, the Asset Manager will notify the fiduciaries of such Client Plans that they must advise the Asset Manager, in writing, if they are not independent, within the meaning of this Section II(g).

(h) The term ''security'' shall have the same meaning as defined in section 2(36) of the Investment Company Act of 1940 (the 1940 Act), as amended (15 U.S.C. 80a–2(36)(l996)). For purposes of this exemption, mortgage-backed or other asset-backed securities rated by a Rating Organization will be treated as debt securities.

(i) The term ''Eligible Rule 144A Offering'' shall have the same meaning as defined in SEC Rule 10f–3(a)(4) (17 CFR 270.10f–3(a)(4)) under the 1940 Act.

(j) The term ''qualified institutional buyer'' or ''QIB'' shall have the same meaning as defined in SEC Rule 144A (SEC Rule 144A) (17 CFR 230.144A(a)(1)) under the Securities Act of 1933.

(k) The term ''Rating Organizations'' means Standard & Poor's Rating Services, Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co., or Fitch IBCA, Inc., or their successors.

EFFECTIVE DATE: If granted, this proposed exemption will be effective as of April 16, 2003.

Summary of Facts and Representations

The Applicants

1. LBHI, a Delaware corporation, is one of the leading global investment banks. LBHI and its numerous subsidiaries serve institutional, corporate, retirement plan, government and high net worth individual clients and customers. The businesses of LBHI and its subsidiaries include asset management;[8] capital raising for clients through securities underwriting and direct placements; corporate finance and strategic advisory services; merchant banking; securities sales and trading; research; and the trading of foreign exchange, derivative products and certain commodities. Hereinafter, LBHI, together with its affiliates including LBI shall be referred to as the ''Asset Manager'' when discussing their activities relating to investment advisory and/or investment management services. LBHI and its affiliates currently have approximately $21 billion in assets under management. LBI is a wholly owned direct subsidiary of LBHI and is a U.S. registered broker-dealer.

2. It is represented that the Applicants and their various affiliates are all regulated by other federal government agencies such as the SEC, as well as state government agencies, and industry self-regulatory organizations (*e.g.*, the New York Stock Exchange (NYSE) and the National Association of Securities Dealers).

Requested Exemption

3. The Applicants request a prohibited transaction exemption that would permit the purchase of securities by the Asset Manager for its ERISA-covered Client Plans, including any Pooled Funds, from underwriting or selling syndicates in which the Affiliated Broker-Dealer participates as a manager or member. Such purchase would be made by the Asset Manager for the Client Plans from an underwriter or broker-dealer, other than the Affiliated Broker-Dealer, and such Affiliated Broker-Dealer would receive no selling concessions in connection with the securities sold to the Client Plans. If granted, the proposed exemption would be effective as the date the proposed exemption is published in the **Federal Register**.

4. The Applicants represent that if the Affiliated Broker-Dealer is a member of an underwriting or selling syndicate, the Asset Manager may purchase underwritten securities for Client Plans in accordance with Part III of Class PTE 75–1, (40 FR 50845, October 31, 1975). Part III of this class exemption provides limited relief from the Act's prohibited transaction provisions for plan fiduciaries that purchase securities from an underwriting or selling syndicate of which the fiduciary or an affiliate is a member. However, such relief is not available if the Affiliated Broker-Dealer manages the underwriting or selling syndicate.

5. In addition, regardless of whether a fiduciary or its affiliate is a manager or merely a member of an underwriting or selling syndicate, PTE 75–1 does not provide exemptive relief for the purchase of unregistered securities. This includes those securities that are purchased by an underwriter for resale to a ''qualified institutional buyer'' (*i.e.*, a QIB) pursuant to the SEC's Rule 144A under the 1933 Act. Rule 144A is commonly utilized in connection with sales of securities issued by foreign corporations to U.S. investors that are QIBs. Notwithstanding the unregistered nature of such shares, syndicates selling Rule 144A Securities are the functional equivalent of those selling registered securities.

[8] It should be noted that Lincoln Capital Fixed Income Management Company, LLC, a subsidiary of LBHI, acquired the fixed income management business of Lincoln Capital Asset Management Company (Lincoln) as of the close of business on January 31, 2003. Currently, the fixed income management business of Lincoln has approximately $27.4 billion in assets under management.

6. The Applicants represent that the Affiliated Broker-Dealer regularly serves as manager of underwriting or selling syndicates for registered securities, and as a manager or a member of underwriting or selling syndicates for Rule 144A Securities. Accordingly, the Asset Manager is currently unable to purchase on behalf of the Client Plans Rule 144A Securities sold in such offerings, resulting in such Client Plans being unable to participate in significant investment opportunities.

7. Since 1975, there has been a significant amount of consolidation in the financial services industry in the United States. As a result, there are more situations in which a plan fiduciary may be affiliated with the manager of an underwriting syndicate.[9] Further, many plans have expanded investment portfolios in recent years to include securities issued by foreign corporations. As a result, the exemption provided in PTE 75–1, Part III, is often unavailable for purchase of domestic and foreign securities that may otherwise constitute appropriate plan investments.[10]

Client Plan Investments in Offered Securities

8. The Applicants represent that the Asset Manager makes its investment decisions on behalf of, or renders investment advice to, Client Plans pursuant to the governing document of the particular Client Plan or Pooled Fund and the investment guidelines and objectives set forth in the management or advisory agreement. Because the Client Plans are covered by Title I of the Act, such investment decisions are subject to the fiduciary responsibility provisions of the Act.

9. The Applicants state, therefore, that the decision to invest in a particular offering is made on the basis of price, value, and a Client Plan's investment criteria, not on whether the securities are currently being sold through an underwriting or selling syndicate. The Applicants further state that, because the Asset Manager's compensation for its services is generally based upon assets under management, the Asset Manager has little incentive to purchase securities in an offering in which the Affiliated Broker-Dealer is an underwriter unless such a purchase is in the interests of Client Plans. If the assets under management do not perform well, the Asset Manager will receive less compensation and could lose clients, costs which far outweigh any gains from the purchase of underwritten securities.[11]

10. The Applicants state that the Asset Manager generally purchase securities in large blocks because the same investments will be made across several accounts. If there is a new offering of an equity or fixed income security that the Asset Manager wishes to purchase, it may be able to purchase the security through the offering syndicate at a lower price than it would pay in the open market, without transaction costs and with reduced market impact if it is buying a relatively large quantity. This is because a large purchase in the open market can cause an increase in the market price and, consequently, in the cost of the securities. Purchasing from an offering syndicate can thus reduce the costs to the Client Plans.

11. However, absent an exemption, if the Affiliated Broker-Dealer is a manager of a syndicate that is underwriting a securities offering, the Asset Manager will be foreclosed from purchasing any securities on behalf of its Client Plans from that underwriting syndicate. This will force the Asset Manager to purchase the same securities in the secondary market. In such a circumstance, the Client Plans may incur greater costs both because the market price is often higher than the offering price, and because of transaction and market impact costs. In turn, this will cause the Asset Manager to forego other investment opportunities because the purchase price of the underwritten security in the secondary market exceeds the price that the Asset manager would have paid to the selling syndicate.

Underwriting of Securities Offerings

12. The Applicants represent that the Affiliated Broker-Dealer currently manages and participates in firm commitment underwriting syndicates for registered offerings of both equity and debt securities. While equity and debt underwritings may operate differently with regard to the actual sales process, the basic structures are the same. In a firm commitment underwriting, the underwriting syndicate acquires the securities from the issuer and then sells the securities to investors.

13. The Applicants represent that while, as a legal matter, a selling syndicate assumes the risk that the underwritten securities might not be fully sold, as a practical matter, this risk is reduced, in marketed deals, through ''building a book'' (*i.e.*, taking indications of interest from potential purchasers) prior to pricing the securities. Accordingly, there is no incentive for the underwriters to use their discretionary accounts (or the discretionary accounts of their affiliates) to buy up the securities as a way to avoid underwriting liabilities.

14. Each selling syndicate has a lead manager, who is the principal contact between the syndicate and the issuer and who is responsible for organizing and coordinating the syndicate. The syndicate may also have co-managers, who generally assist the lead manager in working with the issuer to prepare the registration statement to be filed with the SEC and in distributing the underwritten securities. While equity syndicates typically include additional members that are not managers, more recently, membership in many debt syndicates has been limited to lead and co-managers.

15. If more than one underwriter is involved in a selling syndicate, the lead manager, who has been selected by the issuer of the underwritten securities, contacts other underwriters, and the underwriters enter into an ''Agreement Among Underwriters.'' Most lead managers have a standing form of agreement. This document is then supplemented for the particular deal by sending an ''invitation telex'' or ''terms telex'' that sets forth particular terms to the other underwriters.

16. The arrangement between the syndicate and the issuer of the underwritten securities is embodied in an underwriting agreement, which is signed on behalf of the underwriters by one or more of the managers. In a firm commitment underwriting, the underwriting agreement provides, subject to certain closing conditions, that the underwriters are obligated to purchase the underwritten securities from the issuer in accordance with their respective commitments. This obligation is met by using the proceeds received from the buyers of the securities in the offering, although there is a risk that the underwriters will have

[9] For additional information, please see the studies submitted by the Morgan Guaranty Trust Company of New York and J.P. Morgan Investment Management Inc. in connection with the exemption application underlying PTE 2000–25.

[10] Pursuant to the Gramm-Leach-Bliley Act, signed into law in November 1999, certain provisions of the Glass-Steagall Act and the Bank Holding Company Act of 1956, as amended, were repealed. The effect of such law will likely be further consolidation in the industry. The law facilitates cross-ownership and control among bank holding companies and securities firms through the creation of ''financial holding companies'' that are permitted to engage in a broad range of financial and related activities, including underwriting and broker-dealer activities.

[11] In fact, under the terms of the proposed exemption set forth below, the Affiliated Broker-Dealer may receive no compensation or other consideration, direct or indirect, in connection with any transaction that would be permitted under the proposed exemption.

to pay for a portion of the securities in the event that not all of the securities are sold.

17. The Applicants represent that, generally, the risk that the securities will not be sold is small because the underwriting agreement is not executed until after the underwriters have obtained sufficient indications of interest to purchase the securities from a sufficient number of investors to assure that all the securities being offered will be acquired by investors. Once the underwriting agreement is executed, the underwriters immediately begin contacting the investors to confirm the sales, first orally and then by written confirmation, and sales are finalized within hours and sometimes minutes. In registered transactions, the underwriters are particularly anxious to complete the sales as soon as possible because until they ''break syndicate,'' they cannot enter the market. In many cases, the underwriters will act as market-makers for the security. A market-maker holds itself out as willing to buy or sell the security for its own account on a regular basis.

18. The Applicants represent that the process of ''building a book'' or soliciting indications of interest occurs as follows: In a registered equity offering, after a registration statement is filed with the SEC and, while it is under review by the SEC staff, representatives of the issuer of the securities and the selling syndicate managers conduct meetings with potential investors, who learn about the company and the underwritten securities. Potential investors also receive a preliminary prospectus. The underwriters cannot make any firm sales until the registration statement is declared effective by the SEC. Prior to the effective date, while the investors cannot become legally obligated to make a purchase, they indicate whether they have an interest in buying, and the managers compile a ''book'' of investors who are willing to ''circle'' a particular portion of the issue. These indications of interest are sometimes referred to as a ''soft circle'' because investors cannot be legally bound to buy the securities until the registration statement is effective. However, the Applicants represent that investors generally follow through on their indications of interest, and would be expected to do so, barring any sudden adverse developments (in which case it is likely that the offering would be withdrawn or the price range modified and the process restarted), because, if the investors that gave an indication of interest do not follow through, the underwriters may be reluctant to include them in future offerings.

19. Assuming that the marketing efforts have produced sufficient indications of interest, the Applicants represent that the issuer of the securities and the selling syndicate managers together will set the price of the securities and ask the SEC to declare the registration effective. After the registration statement becomes effective and the underwriting agreement is executed, the underwriters contact those investors that have indicated an interest in purchasing securities in the offering to execute the sales. The Applicants represent that offerings are often oversubscribed, and many have an over-allotment option that the underwriters can exercise to acquire additional shares from the issuer. Where an offering is oversubscribed, the underwriters decide how to allocate the securities among the potential purchasers. However, if an issue is a ''hot issue,'' (*i.e.*, it is selling in the market at a premium above its offering price) the underwriters may not hold this hot issue in their own accounts, nor sell it to their employees, officers and directors. Subject to certain exceptions, a hot issue may also not be sold to the personal accounts of those responsible for investing for others, such as officers of banks, insurance companies, mutual funds, and investment advisers. (NASD Manual & Notices to Members, IM–2110–1)

20. The Applicants represent that debt offerings may be ''negotiated'' offerings, ''competitive bid'' offerings, or ''bought deals.'' ''Negotiated'' offerings, which often involve non-investment grade securities, are conducted in the same manner as an equity offering with regard to when the underwriting agreement is executed and how the securities are offered. ''Competitive bid'' offerings, in which the issuer determines the price for the securities through competitive bidding rather than negotiating the price with the underwriting syndicate, are performed under ''shelf'' registration statements pursuant to the SEC's Rule 415 under the 1933 Act (17 CFR 230.415).[12]

21. In a competitive bid offering, prospective lead underwriters will bid against one another to purchase debt securities, based upon their determinations of the degree of investor interest in the securities. Depending on the level of investor interest and the size of the offering, a bidding lead underwriter may bring in co-managers to assist in the sales process. Most of the securities are frequently sold within hours, or sometimes even less than an hour, after the securities are made available for purchase.

22. Because of market forces and the requirements of Rule 415, the competitive bid process is generally available only to issuers of investment-grade securities who have been subject to the reporting requirements of the 1934 Act for at least one (1) year.

23. Occasionally, in highly-rated debt issues, underwriters ''buy'' the entire deal off of a ''shelf registration'' before obtaining indications of interest. These ''bought'' deals involve issuers whose securities enjoy a deep and liquid secondary market, such that an underwriter has confidence without pre-marketing that it can identify purchasers for the bonds.

Structure of Diversified Financial Services Firms

24. The Applicants represent that there are internal policies in place that restrict contact and the flow of information between investment management personnel and non-investment management personnel in the same or affiliated financial service firms. These policies are designed to protect against ''insider trading,'' *i.e.*, trading on information not available to the general public that may affect the market price of the securities. Diversified financial services firms must be concerned about insider trading problems because one part of the firm—*e.g.*, the mergers and acquisitions group—could come into possession of non-public information regarding an upcoming transaction involving a particular issuer, while another part of the firm—*e.g.*, the investment management group—could be trading in the securities of that issuer for its clients.[13]

25. The Applicants represent that their business separation policies and procedures are also structured to restrict the flow of any information to or from the Asset Manager that could limit its flexibility in managing client assets, and of information obtained or developed by the Asset Manager that could be used by other parts of the organization, to the

[12] Rule 415 permits an issuer to sell debt as well as equity securities under an effective registration statement previously filed with the SEC by filing a post-effective amendment or supplemental prospectus.

[13] The Insider Trading and Securities Fraud Enforcement Act of 1988 required broker-dealers to maintain and enforce written policies and procedures that are ''reasonably designed . . . to prevent misuse in violation of [the federal securities laws] . . . of material, nonpublic information by such broker or dealer or any person associated with such broker or dealer.'' (Section 15(f) of the 1934 Act (15 U.S.C. 780(f)); see also, Rules 342 and 351 of the NYSE and SEC Regulation M (17 CFR 242.100(b)(3)).

detriment of the Asset Manager's clients.

26. The Applicants represent that major clients of the Affiliated Broker-Dealer include investment management firms that are competitors of the Asset Manager. Similarly, the Asset Manager deals on a regular basis with broker-dealers that compete with the Affiliated Broker-Dealer. If special consideration were shown to an affiliate, such conduct would likely have an adverse effect on the relationships of the Affiliated Broker-Dealer and of the Asset Manager with firms that compete with such affiliate. Therefore, a goal of the Applicants' business separation policies is to avoid any possible perception of improper flows of information between the Affiliated Broker-Dealer and the Asset Manager, in order to prevent any adverse impact on client and business relationships.

Underwriting Compensation

27. The Applicants represent that the underwriters are compensated through the ''spread,'' or difference, between the price at which the underwriters purchase the securities from the issuer and the price at which the securities are sold to the public. The spread is divided into three components.

28. The first component includes the management fee, which generally represents an agreed upon percentage of the overall spread and is allocated among the lead manager and co-managers. Where there is more than one managing underwriter, the way the management fee will be allocated among the managers is generally agreed upon between the managers and the issuer prior to soliciting indications of interest. Thus, the allocation of the management fee is not reflective of the amount of securities that a particular manager sells in an offering.

29. The second component is the underwriting fee, which represents compensation to the underwriters (including the non-managers, if any) for the risks they assume in connection with the offering and for the use of their capital. This component of the spread is also used to cover the expenses of the underwriting that are not otherwise reimbursed by the issuer of the securities.

30. The first and second components of the ''spread'' are received without regard to how the underwritten securities are allocated for sales purposes or to whom the securities are sold. The third component of the spread is the selling concession, which generally constitutes 60 percent or more of the spread. The selling concession compensates the underwriters for their actual selling efforts. The allocation of selling concessions among the underwriters generally follows the allocation of the securities for sales purposes. However, a buyer of the underwritten securities may designate other broker-dealers (who may be other underwriters, as well as broker-dealers outside the syndicate) to receive the selling concessions arising from the securities they purchase.

31. Securities are allocated for sales purposes into two categories. The first and larger category is the ''institutional pot,'' which is the pot of securities from which sales are made to institutional investors. Selling concessions for securities sold from the institutional pot are generally designated by the purchaser to go to particular underwriters or other broker-dealers. If securities are sold from the institutional pot, the selling syndicate managers sometimes receive a portion of the selling concessions, referred to as a ''fixed designation,'' [14] attributable to securities sold in this category, without regard to who sold the securities or to whom they were sold. For securities covered by this proposed exemption, however, the Affiliated Broker-Dealer may not receive, either directly or indirectly, any compensation that is attributable to the fixed designation generated by purchases of securities by the Asset Manager on behalf of its Client Plans.

32. The second category of allocated securities is ''retail,'' which are the securities retained by the underwriters for sale to their retail customers. The underwriters receive the selling concessions from their respective retail retention allocations. Securities may be shifted between the two categories based upon whether either category is oversold or undersold during the course of the offering.

33. The Applicants assert that the Affiliated Broker-Dealer's inability to receive any selling concessions, or any compensation attributable to the fixed designations generated by purchases of securities by the Asset Manager's Client Plans, removes the primary economic incentive for the Asset Manager to make purchases that are not in the interests of its Client Plans from offerings for which the Affiliated Broker-Dealer is an underwriter. The reason is that the Affiliated Broker-Dealer will not receive any additional fees as a result of such purchases by the Asset Manager.

[14] A fixed designation is sometimes referred to as an ''auto pot split.''

Rule 144A Securities

34. The Applicants represent that a number of the offerings of Rule 144A Securities in which the Affiliated Broker-Dealer participates represent good investment opportunities for the Asset Manager's Client Plans. Particularly with respect to foreign securities, a Rule 144A offering may provide the least expensive and most accessible means for obtaining these securities. However, PTE 75–1, part III, does not cover Rule 144A Securities. Therefore, absent an exemption, the Asset Manager is foreclosed from purchasing such securities for its Client Plans in offerings in which the Affiliated Broker-Dealer participates.

35. The Applicants state that Rule 144A acts as a ''safe harbor'' exemption from the registration provisions of the 1933 Act for sales of certain types of securities to QIBs. QIBs include several types of institutional entities, such as employee benefit plans and commingled trust funds holding assets of such plans, which own and invest on a discretionary basis at least $100 million in securities of unaffiliated issuers.

36. Any securities may be sold pursuant to Rule 144A except for those of the same class or similar to a class that is publicly traded in the United States, or certain types of investment company securities. This limitation is designed to prevent side-by-side public and private markets developing for the same class of securities as is the reason that Rule 144A transactions are generally limited to debt securities.

37. Buyers of Rule 144A Securities must be able to obtain, upon request, basic information concerning the business of the issuer and the issuer's financial statements, much of the same information as would be furnished if the offering were registered. This condition does not apply, however, to an issuer filing reports with the SEC under the 1934 Act, for which reports are publicly available. The condition also does not apply to a ''foreign private issuer'' for whom reports are furnished to the SEC under Rule 12g3–2(b) of the 1934 Act (17 CFR 240.12g3–2(b)), or to issuers who are foreign governments or political subdivisions thereof and are eligible to use Schedule B under the 1933 Act (which describes the information and documents required to be contained in a registration statement filed by such issuers).

38. Sales under Rule 144A, like sales in a registered offering, remain subject to the protections of the anti-fraud rules of federal and state securities laws. These rules include section 10(b) of the 1934 Act and Rule 10b–5) thereunder

(17 CFR 240.10b–5 and section 17(a) of the 1933 Act (15 USA 77a). Through these and other provisions, the SEC may use its full range of enforcement powers to exercise its regulatory authority over the market for Rule 144A Securities, in the event that it detects improper practices.

39. The Applicants represent that this potential liability for fraud provides a considerable incentive to the issuer of the securities and the members of the selling syndicate to insure that the information contained in a Rule 144A offering memorandum is complete and accurate in all material respects. Among other things, the lead manager typically obtains an opinion from a law firm, commonly referred to as a ''10b–5'' opinion, stating that the law firm has no reason to believe that the offering memorandum contains any untrue statement of material fact or omits to state a material fact necessary in order to make sure the statements made, in light of the circumstances under which they were made, are not misleading.

40. The Applicants represent that Rule 144A offerings generally are structured in the same manner as underwritten registered offerings. The major difference is that a Rule 144A offering uses an offering memorandum rather than a prospectus that is filed with the SEC. The marketing process is the same in most respects, except that the selling efforts are limited to contacting QIBs and there are no general solicitations for buyers (*e.g.* no general advertising). In addition, the Affiliated Broker-Dealer's role in these offerings is typically that of a lead or co-manager. Generally, there are no non-manager members in a Rule 144A selling syndicate. However, the Applicants request that the proposed exemption extend to authorization for situations where the Affiliated Broker-Dealer acts only as a syndicate member, not as a manager.

41. According to the Applicant, one of the policy objectives of Rule 144A was to attract more foreign issuers to the United States, and Rule 144A has been achieving this objective—from April 1990 through December 1993, the first three years of Rule 144A, over $25.6 billion in foreign securities was sold under Rule 144A placements. See SEC Staff Report on Rule 144A (August 18, 1994), [1994–95 Transfer Binder] Fed. Sec. L. Rep. ¶85,428 (Question 1). This figure continued to hold in 1998, at 30.4 percent, so that foreign issuer Rule 144A offerings have kept pace with the rapid growth of Rule 144A offerings overall. (Securities Data Company, Inc.)

Summary

41. In summary, the Applicants represent that the subject transactions have satisfied or will satisfy the statutory criteria for an exemption set forth under section 408(a) of the Act because:

(a) The Client Plans have gained or will gain access to desirable investment opportunities;

(b) In each offering, the Asset Manager has purchased or will purchase the securities for its Client Plans from an underwriter or broker-dealer other than the Affiliated Broker-Dealer;

(c) Conditions similar to those of PTE 75–1, part III, have restricted or will restrict the types of securities that may be purchased, the types of underwriting or selling syndicates and issuers involved, and the price and timing of the purchases;

(d) The amount of securities that the Asset Manager may purchase on behalf of Client Plans has been subject to or will be subject to percentage limitations;

(e) The Affiliated Broker-Dealer has not permitted and will not be permitted to receive, either directly, indirectly or through designation, any selling concession with respect to the securities sold to the Asset Manager for the account of a Client Plan;

(f) Prior to any purchase of securities, the Asset Manager has made or will make the required disclosures to an Independent Fiduciary of each Client Plan and obtain written authorization;

(g) The Asset Manager has provided or will provide regular reporting to an Independent Fiduciary of each Client Plan with respect to all securities purchased pursuant to the exemption, if granted;

(h) Each Client Plan has been subject or will be subject to a minimum size requirement of at least $50 million ($100 million for Eligible Rule 144A offerings),[15] with certain exceptions for Pooled Funds; and

(i) The Asset Manager is required or will be required to have total assets under management in excess of $5 billion and shareholders' or partners' equity in excess of $1 million.

Discussion of Proposed Exemption

1. The exemptive relief for underwritings proposed herein is similar to that provided in PTE 75–1, Part III. Under PTE 75–1, exemptive relief is subject to a number of conditions and limitations, including the following: (1) The plan fiduciary or its affiliate may not be a manager of the underwriting or selling syndicate; (2) the purchase must be from a person other than the plan fiduciary or its affiliate; (3) the types of securities that may be purchased and the price and timing of the purchases are circumscribed; (4) the amount of securities purchased on behalf of each plan may not exceed three percent of the offering; and (5) the consideration paid may not exceed three percent of the plan's total net assets (one percent, if the consideration involved exceeds $1 million).

2. The exemptive relief proposed herein differs from that provided by PTE 75–1 in the following respects: (1) The proposed exemption covers transactions where the plan fiduciary is affiliated with a manager, as well as a member, of the underwriting or selling syndicate;[16] (2) the proposed exemption covers purchases of Rule 144A Securities;[17] (3) percentage limitations on the amount of securities that may be purchased have been modified to provide an aggregate limitation on a fiduciary's purchases for all Client Plans from a particular offering; and (4) the proposed exemption provides additional conditions, including the following: (a) The transaction is not part of an agreement, arrangement, or understanding designed to benefit the plan fiduciary or its affiliate; (b) neither a manager nor a member of the underwriting or selling syndicate may

[15] SEC Rule 10f–3(a)(4) (17 CFR 270.10f–3(a)(4)) states that the term ''Eligible Rule 144A Offering'' means an offering of securities that meets the following conditions:

(i) The securities are offered or sold in transactions exempt from registration under section 4(2) of the Securities Act of 1933 (15 U.S.C. 77d(2)), Rule 144A thereunder, or Rules 501–508 thereunder;

(ii) The securities are sold to persons that the seller and any person acting on behalf of the seller reasonably believe to include QIBs, as defined in Rule 144A; and

(iii) The seller and any person acting on behalf of the seller reasonably believe that the securities are eligible for resale to other QIBs pursuant to Rule 144A.

[16] In restricting the scope of PTE 75–1, Part III, to exclude transactions where the plan fiduciary is affiliated with the syndicate manager, the Department was concerned that the syndicate manager, as distinguished from a mere member of a syndicate, has a greater interest in the success of the sale of the new securities. If an affiliate of the managing underwriter is an investment manager for plans, those plans could provide a potential market for the less attractive offerings of underwritten securities. This proposed exemption contains certain safeguards and conditions that are designed to address these potential conflict of interest situations.

[17] The Department notes that the provisions of the Act do not preclude plans from investing in any securities sold by an underwriting or offering syndicate, including those securities sold pursuant to Rule 144A. The exemptive relief provided by PTE 75–1, Part III, and the additional relief sought here are required because of the affiliation between the plan fiduciary and a member of the underwriting or selling syndicate.

receive any selling concessions with respect to the securities purchased for Client Plans by its affiliate; (c) prior to any purchase of securities on behalf of a Client Plan, certain disclosures are provided to an Independent Fiduciary of each such Client Plan and written authorization is obtained; (d) periodic reporting regarding the covered transactions is provided to an Independent Fiduciary of each Client Plan; and (e) investing plans and their investment managers must meet certain minimum size requirements.

Types of Securities and Offerings

3. In Section I, paragraphs (a) and (b) of the proposed exemption are derived from PTE 75–1, Part III, and provide the following: (1) The securities [18] are part of an issue registered under the 1933 Act, or if exempt from registration under such Act, fall within specified categories: (a) Issued or guaranteed by the United States; (b) issued by a bank; (c) exempt from registration under a federal statute other than the 1933 Act; (d) registered under the 1934 Act; or (e) are part of an ''Eligible Rule 144A Offering;[19] (2) the securities are purchased for not more than the offering price within a specific time period,[20] subject to certain specified exceptions for rights offerings and debt offerings;[21] (3) the securities are sold pursuant to a firm-commitment offering, in which the syndicate members are committed to purchasing all the securities being offered, subject to certain exceptions for rights offerings and over-allotment options; and (4) the issuer of the securities has been in continuous operation for not less than three years (including the operation of any predecessors), with certain exceptions.

Percentage Limitations on the Amount of Purchased Securities

4. In Section I, paragraphs (c) and (d) of the proposed exemption contain percentage limitations applicable to the amount of purchased securities. The first percentage test in paragraph (c) provides that the amount of securities to be purchased by the Asset Manager on behalf of a particular Client Plan may not exceed three percent of the total amount of securities being offered. Paragraph (c) further provides percentage limitations on the aggregate amount of securities that the Asset Manager may purchase for all its Client Plans, including Pooled Funds, from the total amount of securities being offered: (1) 10 percent for equity securities; (2) 35 percent for debt securities rated in one of the four highest rating categories by at least one nationally recognized statistical rating organization, *i.e.*, Standard & Poor's Rating Services, Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co., or Fitch IBCA, Inc., or their successors (collectively, the Rating Organizations); and (3) 25 percent for debt securities rated in the fifth or sixth highest rating categories by at least one of the Rating Organizations.[22]

5. Paragraph (d) of Section I provides that the consideration to be paid by the Client Plan in purchasing the offered securities may not exceed three percent of the fair market value of such Client Plan's total net assets. However, paragraph (d) eliminates the requirement contained in PTE 75–1, Part III, that, if the consideration involved exceeds $1 million, it may not exceed one percent of the fair market value of the plan's total assets. This modification by the Department parallels the amendment in 1997 of the SEC Rule 10f–3.

Underwriting Compensation

6. The proposed exemption requires in paragraph (e) of Section I that any purchase of securities by the Asset Manager pursuant to the exemption may not be part of an agreement, arrangement, or understanding designed to benefit the Asset Manager or an affiliate.[23] Paragraph (f) of Section I further provides that the Affiliated Broker-Dealer may not receive, either directly, indirectly, or through designation, any selling concession or other consideration that is based upon the amount of securities purchased by the Asset Manager's Client Plans pursuant to the proposed exemption. The Affiliated Broker-Dealer may also not receive, either directly or indirectly, that portion of the fixed designation that is attributable to securities purchased pursuant to the exemption. The Affiliated Broker-Dealer is not precluded from receiving management fees, underwriting fees, or other consideration that is not based upon the amount of securities actually sold to the Asset Manager's Client Plans.

7. Paragraph (g) of section I provides that the amount the Affiliated Broker-Dealer receives in management fees, underwriting fees, or other compensation may not be increased for the purpose of offsetting the reduction of the Affiliated Broker-Dealer's compensation from selling concessions. Further, the Affiliated Broker-Dealer must provide the Asset Manager with a written certification, signed by an officer of the Affiliated Broker-Dealer, that the Affiliated Broker-Dealer complied with the underwriting compensation requirements found in paragraphs (e), (f), and (g) of section I of

[18] With respect to any purchase of asset-backed securities by a Client Plan, the Department notes that this proposed exemption provides relief only for the transactions described herein and does not cover any additional prohibited transactions that may occur as a result of a purchase of such securities. For example, additional prohibited transactions may occur by operation of the ''look-through rule'' contained in the Department's regulation defining ''plan assets'' for purposes of plan investments (see 29 CFR 2510.3–101). Such additional prohibited transactions may be covered by one of the Department's existing individual exemptions for asset-backed securities. A listing of such exemptions is provided in the text of the operative language of PTE 2002–41 (67 FR 54487, August 22, 2002), which granted an amendment to these exemptions.

Further, the Department has noted that, under the Department's plan asset regulation, if a plan invests in a publicly-offered security, the plan's assets will not include, solely by reason of such investment, any of the underlying assets of the entity issuing the security (*i.e.*, the ''look-through rule'' will not apply and the operations of the entity will not be subject to scrutiny under the prohibited transaction provisions of the Act). The regulation defines a ''publicly-offered'' security as one that is freely transferable, widely-held, and registered under the federal securities laws. For this purpose, a class of securities is considered ''widely held'' if it is owned by 100 or more investors who are independent of the issuer and of one another (see 29 CFR 2510.3–101(b)(3)).

[19] In Section I, paragraph (a)(1)(ii) of the proposed exemption requires that if the securities are equity securities in an Eligible Rule 144A Offering, the offering syndicate shall obtain a legal opinion regarding the adequacy of the disclosure in the offering memorandum. This condition may be satisfied by the type of ''10b–5'' opinion customarily obtained in connection with such offerings. The Department believes that requiring such review by a law firm will help insure that the offering memorandum meets federal securities law standards. The Department notes that in Section I, paragraph (c) of the proposed exemption requires debt securities to be rated by at least one independent nationally recognized statistical rating organization, thus insuring that sufficient information about those securities and their issuer will be available to investors.

[20] The language regarding the timing of the purchase differs slightly from PTE 75–1, Part III. This language is based upon Rule 10f–3 (17 CFR 270.10f–3).

[21] In Section I, paragraph (a)(2)(ii) of the proposed exemption permits certain purchases of debt after the first day of the offering. Should the debt be downgraded after the offering commences and prior to being purchased for a Client Plan, the Department expects that the Asset Manager would consider whether, prior to purchase, the price was adjusted to reflect the downgrade.

[22] In Section I, paragraph (c)(4) of the proposed exemption requires that when calculating the percentages of securities purchased in an Eligible Rule 144A Offering, one must consider any concurrent public offering. The Department notes than any concurrent offering will necessarily be in a foreign securities market, since Rule 144A is unavailable where there is a concurrent domestic offering.

[23] The Department notes that the intent of the condition in paragraph (e) of Section I of the proposed exemption is not to deny direct benefits to other parties to a transaction but, rather, to exclude relief for transactions that are part of a broader overall agreement, arrangement, or understanding designed to benefit parties in interest.

the proposed exemption, in any offering where the Asset Manager purchased securities for its Client Plans.[24]

Disclosures

8. The proposed exemption requires in paragraphs (h) and (l) of section I that the Asset Manager obtain written authorization from an Independent Fiduciary of each Client Plan, including each fiduciary of a plan that invests in a Pooled Fund, before engaging in the covered transactions.[25] Prior to, and subsequent to, execution of the written authorization, the Asset Manager must provide certain disclosures described in Section I (i), (j), (k), and (m) to an Independent Fiduciary of each Client Plan.

Periodic Reporting

9. In Section I, paragraph (n) of the proposed exemption requires that at least on a quarterly basis, the Asset Manager provide a report to an Independent Fiduciary of each Client Plan and of each plan investing in a Pooled Fund containing information about the Covered Securities purchased during the previous quarter. The Department modeled paragraph (n), in part, on the reporting provisions of Rule 10f–3 (17 CFR 270.10f–3).[26]

10. Because the transactions covered by this proposed exemption are similar in nature to those covered by Rule 10f–3, the Department has determined that it is appropriate to adopt similar reporting requirements as in that rule. However, in addition to the items required to be reported by investment companies under Rule 10f–3, the proposed exemption requires that the Asset Manager report to the Independent Fiduciary the price at which any securities purchased during the reporting period were sold and the market value at the end of the reporting period of each security purchased during such period.[27]

11. The additional information should help the Independent Fiduciary monitor compliance with the exemption, if granted. The Independent Fiduciaries of the Client Plans would play a similar role to that of the Board of Directors of an investment company, *i.e.*, they have a fiduciary duty to monitor the activities of the Asset Manager. In monitoring compliance, the Independent Fiduciary should bear in mind that the Asset Manager's subsequent decision to hold or sell a security purchased pursuant to the exemption, would not be covered by the exemption, if granted.[28]

12. Further, the Asset Manager must report any instance during the past quarter where the Asset Manager was precluded from selling any security purchased under the exemption for any period of time because of its status as an affiliate of the Affiliated Broker-Dealer. Such a situation could arise where a security was purchased by the Asset Manager pursuant to this proposed exemption on the first day of the offering and the rest of the offering was not selling well. In this situation, SEC Regulation M,[29] or the general anti-fraud or anti-manipulation provisions of the securities laws,[30] may limit the Asset Manager's ability to subsequently trade in that security, although these restrictions will generally not apply to the Asset Manager if the proper business separations are in place between the Affiliated Broker-Dealer and the Asset Manager. (see, *e.g.*, Regulation M, 17 CFR 242.100(b)(3)). Should the Asset Manager's ability to trade a security purchased on behalf of a Client Plan be restricted, this information may be relevant to the decision whether or not to continue to permit purchases under the exemption.

Minimum Size Requirements

13. The proposed exemption applies only to Client Plans with total net assets of at least $50 million, as provided in paragraph (o) of Section I. In the case of a Pooled Fund, however, the $50 million requirement will be met if 50 percent or more of the units of beneficial interest in such Pooled Fund are held by plans having total net assets of at least $50 million. In the case of an Eligible Rule 144A Offering, each Client Plan must have at least $100 million in securities. For a Pooled Fund, the $100 million requirement will be met if 50 percent or more of the units of

[24] The certification required in paragraph (g)(2) of Section I of the proposed exemption is necessary because the Asset Manager and its Client Plans must monitor compliance with all the conditions of the exemption, if granted. However, the Asset Manager would not normally have access to the Affiliated Broker-Dealer's records detailing each underwriter's share of the compensation from a particular underwriting, as those records are considered confidential. Such records are required to be maintained pursuant to SEC and NASD rules and would, of course, be made available to the Department pursuant to the terms of the exemption, if granted.

[25] In this regard, the Department notes that the fiduciary responsibility provisions of the Act apply to the decision of an Independent Fiduciary to authorize the Asset Manager to invest in securities covered by this proposed exemption (the Covered Securities) and to the decision to continue such authorization. Section 404(a)(1) of the Act requires, among other things, that a fiduciary of a plan must act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries. Accordingly, the Independent Fiduciary must act ''prudently'' with respect to the decision to authorize investment in these Covered Securities and the decision to continue such authorization.

The Department wishes to emphasize that it expects that the Independent Fiduciary, prior to authorizing investment in these Covered Securities, will fully understand the potential risks and rewards associated with investing in the initial offering of a security, following disclosure by the Asset Manager of all relevant information pertaining to the proposed transactions. Such consideration must necessarily include the fact that the Asset Manager's affiliate may be the managing underwriter. In addition, the Independent Fiduciary must be capable of periodically monitoring the actions taken by the Asset Manager in the performance of its duties. Thus, in considering whether to enter into transactions of the kind described herein, the Independent Fiduciary should take into account its ability to provide adequate oversight of the Asset Manager.

The Department further notes that, under section 405(a) of the Act, any plan fiduciary (including an investment manager) will have co-fiduciary liability for any breach of fiduciary responsibility of another plan fiduciary: (1) if he knowingly participates in or conceals such breach; (2) if, by his failure to comply with section 404(a)(1) of the Act, he enables another fiduciary to commit such a breach; or (3) if he has knowledge of the breach of another fiduciary and he fails to make a reasonable effort, under the circumstances, to remedy the breach.Finally, the granting of the exemption proposed herein should not be viewed as an endorsement by the Department of any plans' participation in the covered transactions.

[26] PTE 75–1, Part III, was based, in part, on a prior version of Rule 10f–3.

[27] See Section I(n) of the proposed exemption, below.

[28] The Department notes that this proposed exemption would provide relief from the self-dealing and conflict of interest provisions of Part 4 of Title I of the Act for purchases of securities by the Asset Manager from an underwriting or selling syndicate in which an affiliate of the Asset Manager participates as a manager or member of such syndicate. It would not provide relief from any acts of self-dealing not directly arising from a purchase of the Covered Securities. Thus, no relief would be available for any violation of section 406(b) of the Act that may arise after the purchase. For example, because it is well-documented that securities purchased in IPOs may not perform well in the long term, a violation of the Act could occur if the Asset Manager's decision regarding the holding or sale of the Covered Securities by the Client Plan was influenced by the interests of the Affiliated Broker-Dealer.

The Affiliated Broker-Dealer's interest in the security may extend beyond the sale of the security. As the SEC noted in its preamble to Regulation M, addressing Regulation M's protections against price manipulation: ''[I]mmediately following an offering * * * underwriters now engage in substantial syndicate-related market activity, and enforce penalty bids in order to reduce volatility in the market for the offering security'' (62 FR 519, 521, January 3, 1997). The SEC defines penalty bid as ''an arrangement that permits the managing underwriter to reclaim a selling concession from a syndicate member in connection with an offering when the securities originally sold by the syndicate member are purchased in syndicate covering transactions.'' SEC Regulation M (17 CFR 242.100(b)).

[29] A security might be put on a restricted list, for example, if the offering was not completely sold before the security begins trading in the market. In this instance, the restricted period for purposes of Regulation M (17 CFR 242.101(a))) continues until all of the securities are sold.

[30] These rules include section 17(a) of the 1933 Act (15 U.S.C. 77q(a)) and sections 9, 10(b), and 15(c) of the 1934 Act (15 U.S.C. 78i, 78j(b) and 78o(c)).

beneficial interest in such Pooled Fund are held by plans having at least $100 million in assets and the Pooled Fund itself qualifies as a QIB, as determined pursuant to Rule 144A (17 CFR 230.144A(a)(F)). The Department believes that these minimum size requirements are necessary to insure an appropriate level of plan investor sophistication for the covered transactions.

14. Further, the proposed exemption applies only if the Asset Manager is a ''qualified professional asset manager'' (QPAM), as defined under Part V(a) of PTE 84–14 (49 FR 9494, 9506, March 13, 1984),[31] subject to the following modifications: The Asset Manager has as of the last day of its most recent fiscal year, total client assets under its management and control in excess of $5 billion and shareholders' or partners' equity in excess of $1 million.

FOR FURTHER INFORMATION CONTACT: Ms. Silvia Quezada of the Department at (202) 693–8553. (This is not a toll-free number.)

Goldman, Sachs & Co. and Its Affiliates Located in New York, New York

[Application No. D–11169]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32847, August 10, 1990).

Section I—Transactions

If the exemption is granted, the restrictions of sections 406(a)(1)(A) through (D) of the Act and the sanctions resulting from application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to any purchase or sale of securities, in the context of a portfolio liquidation or restructuring, between (i) Goldman, Sachs & Co. (Goldman) and its current and future affiliates, including certain foreign broker-dealers or banks (the Foreign Affiliates, as defined in Section III below), (collectively, the Applicant) and (ii) employee benefit plans (the Plans) with respect to which the Applicant is a party in interest, provided that the conditions set forth in Section II are satisfied.

[31] PTE 84–14 provides a class exemption, under certain conditions, for transactions between a party in interest with respect to an employee benefit plan and an investment fund (including a single customer or pooled separate account) in which the plan has an interest and which is managed by a QPAM.

Section II—Conditions

A. The Applicant customarily purchases and sells securities for its own account in the ordinary course of its business as a broker-dealer or bank;

B. The Applicant (including an affiliate) does not have discretionary authority or control with respect to the investment of the Plan assets involved in the transaction, nor renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

Notwithstanding the foregoing, the Applicant may be a directed trustee (as defined in Section III below) with respect to the Plan assets involved in the transaction.

In addition, although the Applicant does not have discretionary authority or control over such Plan assets at the time of the transaction and has not used its discretion to appoint the transition broker-dealer, it may act as a fiduciary with respect to the Plan assets involved in the transaction, solely as: (i) The investment manager of such assets to be managed as an Index or Model-Driven Fund; or (ii) the investment manager of such assets who supplies a list of securities or other investments to be purchased, which list is prepared without regard to the identity of the broker-dealer and without reference to the portfolio being liquidated or restructured, and is substantially the same list that would be provided to other similarly situated investors with substantially similar investment guidelines and objectives, or is substantially similar to the investments in existing portfolios managed in the same style.

Lastly, a transaction will not fail to meet the requirements of this section if the Applicant is being terminated as a manager of the Plan assets involved in the transaction, its investment discretion is terminated prior to the commencement of the portfolio liquidation or restructuring, and the Applicant has not used its discretion to appoint the transition broker-dealer;

C. The transaction is a purchase or sale, for no consideration other than cash;

D. The terms of any transaction are at least as favorable to the Plan as those obtainable in a comparable arm's length transaction with an unrelated party;

E. An Independent Fiduciary has given prior approval that the transaction may be effectuated as a principal transaction and at a price that—

(1) For an equity security, is specified in advance by the Independent Fiduciary and is a stated dollar amount, or is based on an objective measure (as of a specified date or dates), including, but not limited to, the closing price, the opening price, or the volume-weighted average price; or

(2) For a fixed income security, is a stated dollar amount, or is within the bid and asked spread, as of the close of the relevant market (or another predetermined time on a specified date or dates), as reported by an independent third party reporting service or a publicly available electronic exchange or trading system;

F. In the case where the price for any transaction is not based on an objective measure, the Independent Fiduciary has given prior approval for the transaction, specifying whether the transaction is to be agency or principal, either on a security-by-security basis, or based on the whole portfolio or an identifiable part of the portfolio (such as all debt securities, all equity securities, all domestic securities, or the like);

G. All purchases and sales executed on a principal basis are effected within two days following the Independent Fiduciary's direction to purchase or sell a given security—except that, with the approval of the Independent Fiduciary, the Applicant may extend such initial period for a time not exceeding two additional days, on the same terms;

H. The Independent Fiduciary is furnished with confirmations including the relevant information required under Rule 10b–10 of the Securities Exchange Act of 1934 (the 1934 Act), to the extent required under Rule 10b–10, as well as a report, within five business days after the transaction is completed, containing the following information with respect to each security:

(1) The identity of the security;

(2) The date on which the transaction occurred;

(3) The quantity and price of the securities involved; and

(4) Whether the transaction was executed with the Applicant as principal or agent;

I. Each Plan shall have total net assets with a value of at least $100 million. For purposes of the net assets test, where a group of Plans is maintained by a single employer or controlled group of employers, as defined in section 407(d)(7) of the Act, the $100 million net assets requirement may be met by aggregating the assets of such Plans, if the assets are pooled for investment purposes in a single master trust;

J. The Applicant complies with all applicable securities or banking laws relating to the transaction;

K. Any Foreign Affiliate is a registered broker-dealer or bank subject to regulation by a governmental agency, as described in Section III, B, and is in

compliance with all applicable rules and regulations thereof in connection with any transaction covered by the proposed exemption;

L. Any Foreign Affiliate, in connection with any transaction covered by the proposed exemption, is in compliance with the requirements of Rule 15a–6 (17 CFR 240.15a–6) of the 1934 Act, and Securities and Exchange Commission (SEC) interpretations thereof, providing for foreign affiliates a limited exemption from U.S. broker-dealer registration requirements;

M. Prior to any transaction, the Foreign Affiliate enters into a written agreement with the Plan in which the Foreign Affiliate consents to the jurisdiction of the courts of the United States for any civil action or proceeding brought in respect of the subject transactions. In this regard, the Foreign Affiliate must (i) agree to submit to the jurisdiction of the United States; (ii) agree to appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent); and (iii) consent to service of process on the Process Agent;

N. The Applicant maintains, or causes to be maintained, within the United States for a period of six years from the date of any transaction, such records as are necessary to enable the persons described in Paragraph O, below, to determine whether the conditions of the exemption have been met, except that—

(1) A party in interest with respect to a Plan, other than the Applicant, shall not be subject to a civil penalty under section 502(i) of the Act, or the taxes imposed by section 4975 (a) and (b) of the Code, if such records are not maintained, or not available for examination, as required by Paragraph O; and

(2) This record-keeping condition shall not be violated if, due to circumstances beyond the Applicant's control, such records are lost or destroyed prior to the end of the six year period; and

O. Notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the Applicant makes the records referred to in Paragraph N, above, unconditionally available within the United States during normal business hours at their customary location to the following persons or a duly authorized representative thereof: (1) The Department, the Internal Revenue Service, or the SEC; (2) any fiduciary of a Plan; (3) any contributing employer to a Plan; (4) any employee organization any of whose members are covered by a Plan; and (5) any participant or beneficiary of a Plan. However, none of the persons described in Items (2) through (5) of this subsection is authorized to examine the trade secrets of the Applicant, or commercial or financial information which is privileged or confidential.

Section III—Definitions

A. The term ''Goldman'' means Goldman, Sachs & Co. and its current and future affiliates, including the Foreign Affiliates (as defined in Paragraph C, below); each domestic affiliate must be one of the following: (i) A broker-dealer registered under the 1934 Act; (ii) a reporting dealer who makes primary markets in securities of the United States Government or of any agency of the United States Government (''Government securities'') and reports daily to the Federal Reserve Bank of New York its positions with respect to Government securities and borrowings thereon; or (iii) a bank supervised by the United States or a State. Goldman, including its current and future affiliates, including the Foreign Affiliates, are collectively referred to herein as ''the Applicant.''

B. The term ''affiliate'' shall include: (1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such person; (2) any officer, director, or partner, employee or relative (as defined in section 3(15) of the Act) of such person; and (3) any corporation or partnership of which such person is an officer, director or partner. For purposes of this definition, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

C. The term ''Foreign Affiliate'' means an affiliate of Goldman that is subject to regulation as a broker-dealer or bank by: (1) The Securities and Futures Authority or the Financial Services Authority in the United Kingdom, (2) the Federal Authority for Financial Services Supervision, *i.e.*, der Bundesanstalt fuer Finanzdienstleistungsaufsicht (the BAFin) in Germany, (3) the Ministry of Finance and/or the Tokyo Stock Exchange in Japan, (4) the Ontario Securities Commission and/or the Investment Dealers Association, or the Office of the Superintendent of Financial Institutions, in Canada, (5) the Swiss Federal Banking Commission in Switzerland, or (6) the Australian Prudential Regulation Authority or the Australian Securities & Investments Commission, and/or the Australian Stock Exchange Limited, in Australia, or any governmental regulatory authority that is a successor in interest to any such regulator.

D. The term ''security'' shall include equities, fixed income securities, options on equity or fixed income securities, government obligations, and any other instrument that constitutes a security under U.S. securities laws. The term ''security'' does not include swap agreements or other notional principal contracts.

E. The term ''index'' means a securities index that represents the investment performance of a specific segment of the public market for equity or debt securities in the United States and/or foreign countries, but only if—

(1) The organization creating and maintaining the index is—

(i) Engaged in the business of providing financial information, evaluation, advice, or securities brokerage services to institutional clients,

(ii) A publisher of financial news or information, or

(iii) A public securities exchange or association of securities dealers;

(2) The index is created and maintained by an organization independent of the Applicant; and

(3) The index is a generally accepted standardized index of securities that is not specifically tailored for the use of the Applicant.

F. The term ''Index Fund'' means any investment fund, account, or portfolio trusteed or managed by the Applicant, in which one or more investors invest, and—

(1) Which is designed to track the rate of return, risk profile, and other characteristics of an independently maintained securities index (as ''index'' is defined in Paragraph E, above) by either (i) replicating the same combination of securities that compose such index, or (ii) sampling the securities that compose such index based on objective criteria and data;

(2) For which the Applicant does not use its discretion, or data within its control, to affect the identity or amount of securities to be purchased or sold;

(3) That contains ''plan assets'' subject to the Act, pursuant to the Department's regulations (see 29 CFR 2510.3–101, Definition of ''plan assets''—plan investments); and

(4) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund that is intended to benefit the Applicant or any party in which the Applicant may have an interest.

G. The term ''Model-Driven Fund'' means any investment fund, account, or portfolio trusteed or managed by the Applicant, in which one or more investors invest, and—

(1) Which is composed of securities, the identity of which and the amount of which, are selected by a computer model that is based on prescribed objective criteria using independent third party data, not within the control of the Manager, to transform an Index (as defined in Paragraph E, above);

(2) Which contains ''plan assets'' subject to the Act, pursuant to the Department's regulations (see 29 CFR 2510.3–101, Definition of ''plan assets''—plan investments); and

(3) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund, or the utilization of any specific objective criteria, that is intended to benefit the Applicant or any party in which the Applicant may have an interest.

H. The term ''Plan'' means an employee benefit plan that is subject to the fiduciary responsibility provisions of the Act.

I. The term ''Independent Fiduciary'' means a fiduciary of a Plan who is unrelated to, and independent of, the Applicant. For purposes of the proposed exemption, a Plan fiduciary will be deemed to be unrelated to, and independent of, the Applicant if such fiduciary represents that neither such fiduciary, nor any individual responsible for the decision to authorize or terminate authorization for transactions described in Section I, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Applicant and represents that such fiduciary shall advise the Applicant if those facts change.

(1) Notwithstanding anything to the contrary in this Section III, I, a fiduciary is not independent if:

(i) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with the Applicant;

(ii) Such fiduciary directly or indirectly receives any compensation or other consideration from the Applicant for his or her own personal account in connection with any transaction described in the proposed exemption;

(iii) Any officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Applicant, responsible for the transactions described in Section I, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Plan sponsor or the fiduciary responsible for the decision to authorize or terminate authorization for transactions described in Section I. However, if such individual is a director of the Plan sponsor or the responsible fiduciary, and if he or she abstains from participation in (A) the choice of the Plan's broker-dealer or bank executing the transactions covered herein, and (B) the decision to authorize or terminate authorization for transactions described in Section I, then Section III, I(1)(iii) shall not apply.

(2) The term ''officer'' means a president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), or any other officer who performs a policy-making function for the entity.

J. The term ''directed trustee'' means a Plan trustee whose powers and duties with respect to any assets of the Plan involved in the portfolio liquidation or restructuring are limited to (i) the provision of nondiscretionary trust services to the Plan, and (ii) duties imposed on the trustee by any provision or provisions of the Act or the Code. The term ''nondiscretionary trust services'' means custodial services and services ancillary to custodial services, none of which services is discretionary. For purposes of the proposed exemption, a person who is otherwise a directed trustee will not fail to be a directed trustee solely by reason of having been delegated, by the sponsor of a master or prototype Plan, the power to amend such Plan.

Effective Date: This proposed exemption, if granted, will be effective as of February 6, 2003.

Summary of Facts and Representations

1. The Goldman, Sachs entities (the GS Entities) collectively form a leading global investment banking, securities and investment management firm that provide a wide range of services worldwide to a substantial and diversified client base that includes corporations, financial institutions, governments, and high-net-worth individuals. The Goldman, Sachs Group, Inc. is a financial holding company incorporated under Delaware law in May 1999 and headquartered in New York, New York, and is the parent company of Goldman, Sachs & Co. (*i.e.*, Goldman) and other principal subsidiaries. As of May 31, 2002, the GS Entities collectively had approximately $327.2 billion in assets, and approximately $18.86 billion in shareholders' equity.

2. Goldman's Foreign Affiliates that are covered by the proposed exemption are subject to regulation as a broker-dealer or bank by the following: (i) The Securities and Futures Authority or the Financial Services Authority in the United Kingdom, (ii) the Federal Authority for Financial Services Supervision, *i.e.*, the BAFin in Germany, (iii) the Ministry of Finance and/or the Tokyo Stock Exchange in Japan, (iv) the Ontario Securities Commission and/or the Investment Dealers Association, or the Office of the Superintendent of Financial Institutions, in Canada, (v) the Swiss Federal Banking Commission in Switzerland, or (vi) the Australian Prudential Regulation Authority or the Australian Securities & Investments Commission, and/or the Australian Stock Exchange Limited, in Australia, or any governmental regulatory authority that is a successor in interest to any such regulator.

The Applicant requests an individual exemption for Goldman and its current and future affiliates, including the Foreign Affiliates identified above, which would permit principal transactions with employee benefit plans (*i.e.*, the Plans), as described herein.

The Applicant represents that the Foreign Affiliates are subject to regulation by a governmental agency in the foreign country in which they are located. The Applicant states that registration of a foreign broker-dealer or bank with the governmental agency in these cases addresses regulatory concerns similar to those addressed by registration of a broker-dealer with the SEC under the 1934 Act. The rules and regulations set forth by the above-referenced agencies and the SEC share a common objective: the protection of the investor by the regulation of securities markets. The foreign regulatory regimes have been described in detail in numerous other exemptions previously granted by the Department [see, *e.g.*, Prohibited Transaction Exemption (PTE) 2000–57 (65 FR 56341, September 18, 2000), granted to Goldman, Sachs & Co.].

Further, the Applicant represents that, in connection with the transactions covered by the proposed exemption, the Foreign Affiliates' compliance with any applicable requirements of Rule 15a–6 (17 CFR 240.15a–6) of the 1934 Act (as discussed further in Item 9, below), and SEC interpretations thereof, providing for foreign affiliates a limited exemption from U.S. registration requirements, will offer additional protections to the Plans.

3. The Applicant represents that it customarily purchases and sells securities for its own account in the ordinary course of its business as a broker-dealer or bank. Such trades are referred to as principal transactions. In the subject principal transactions with Plans, occurring in the context of a portfolio liquidation or restructuring,

the Applicant may be a party in interest with respect to such Plans.

The Applicant believes that the principal transactions at issue may fall outside the scope of relief provided by PTE 75–1 (40 FR 50845, October 31, 1975), Part II,[32] because that class exemption is unavailable where the broker-dealer's affiliate is the trustee of a Plan, even if only a directed trustee. In addition, because PTE 75–1 provides an exemption only for U.S. registered broker-dealers and U.S. banks, it is unavailable for the Applicant's Foreign Affiliates.[33] Thus, the Applicant seeks an individual exemption permitting it to execute principal transactions with Plans in the situations described above.

As a condition of the proposed exemption, the Applicant (including an affiliate) may not have discretionary authority or control with respect to the investment of the Plan assets involved in the transaction, nor render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets. However, the Applicant may be a directed trustee of the Plan (as discussed further in Item 5, below).

In addition, this condition will be deemed met if the Applicant is the ''legacy manager'' whose appointment as a manager of plan assets has been terminated prior to the commencement of the portfolio liquidation or restructuring, since the legacy manager would not have been involved in the selection of the ''transition broker-dealer'' and would no longer be acting as a fiduciary with respect to the assets involved in the liquidation or restructuring.

This condition will also be met if the Applicant is the ''destination manager,'' who was not involved in the selection of the transition broker-dealer but provides such broker-dealer with a list of securities to be purchased for the Plan with the proceeds of the securities being liquidated, so long as the list represents those securities in an Index or Model-Driven Fund.

Similarly, this condition will be met if the destination manager prepares for the Plan sponsor (*i.e.*, the Independent Fiduciary) a list of securities to be purchased for the Plan with the proceeds of the securities being liquidated, so long as that list is prepared without regard to the identity of the transition broker-dealer and without reference to the portfolio being liquidated or restructured, and is substantially the same list that would be provided to other similarly situated investors with substantially similar investment guidelines and objectives, or is substantially similar to the investments in existing portfolios managed in the same style.

Thus, the Applicant may be retained as an investment manager for the Plan with respect to some or all of the portfolio resulting from the liquidation or restructuring (as discussed further in Item 6, below), provided that an Independent Fiduciary has given prior approval for the principal transactions, as part of the liquidation or restructuring, and the other conditions set forth herein are met.[34]

4. The Applicant represents that when sponsors of Plans terminate an investment manager, it is customary to hire a broker-dealer to liquidate the portfolio of the terminated manager and/or create the portfolio of the newly hired manager. An Independent Fiduciary, generally the Plan sponsor, hires a broker-dealer to perform these so-called ''transition services.'' The Independent Fiduciary instructs the broker-dealer to purchase or sell a list of securities within a specified period. The list of securities to be sold is from the portfolio held by the Plan at the time the manager is terminated. The list of securities to be purchased is from a list prepared by the new manager (who may or may not be affiliated with the Applicant). Generally, the transition broker-dealer takes both the legacy portfolios and the destination portfolios, matches any securities that appear in both, and allocates such securities to the appropriate destination managers ratably. Then the remaining legacy securities are sold, the cash proceeds placed in the appropriate custody account, and the destination securities are purchased.

The Applicant represents that, while the Independent Fiduciary may specify that the transactions are to be executed by the broker-dealer as agent in markets where such transactions are typical,[35] it is often the case that the markets involved require principal transactions, such as is the case for NASDAQ National Market securities or fixed income securities.

The Applicant represents that often the Independent Fiduciary and the transition broker-dealer will agree that certain principal transactions will be effected at a price determined by an objective reference outside the control of the transition broker-dealer, including, but not limited to, the opening or closing price of the security for the day on the principal exchange on which the security is traded, the volume-weighted average price[36] for the day, or the price as reported by an independent reporting service for that particular day. In such case, the Applicant represents that the price at which the principal transaction will occur will be determined by market forces and not by the broker-dealer.

Prior to any transaction that is not based on an objective reference for pricing, as in the case of a security that is not publicly traded, the Independent Fiduciary shall specify whether the transaction is to be agency or principal, either on a security-by-security basis, or based on the whole portfolio or an identifiable part of the portfolio (such as all debt securities, all equity securities, all domestic securities, or the like). According to the Applicant, the Independent Fiduciary can assess the fairness of pricing for a non-publicly-traded security by one of the following means: (i) Review the value at which the security is being carried by the Plan; (ii) review the price that other dealers are quoting and the prices at which the

[32] PTE 75–1, Part II, provides a class exemption, subject to certain conditions, from section 406(a) of the Act and section 4975(c)(1)(A) through (D) of the Code, for principal transactions between employee benefit plans and U.S. registered broker-dealers or U.S. banks that are parties in interest with respect to such plans. PTE 75–1, Part II(d) states, among other things, that ''such broker-dealer, reporting dealer or bank is not a fiduciary with respect to the plan, and such broker-dealer, reporting dealer or bank is a party in interest or disqualified person with respect to the plan solely by reason of section 3(14)(B) of the Act or section 4975(e)(2)(B) of the Code, or by reason of a relationship to a person described in such sections.''

[33] Goldman, and certain foreign affiliates thereof, obtained an individual exemption PTE 2000–57 (65 FR 56341, September 18, 2000) from the Department to engage in principal transactions, among other things, with employee benefit plans, effective April 15, 1999. In this regard, the Department notes that the relief provided by PTE 2000–57 may not cover the principal transactions described in this proposed exemption.

[34] The Department notes that the proposed exemption is unavailable for any principal transaction occurring upon or after the Applicant's assumption of responsibility as an investment manager for the Plan assets that would be involved in such transaction (notwithstanding the transactions described herein). Once the transition has been completed and the purchases and sales have been consummated, the destination manager will then assume fiduciary responsibility for the portfolio, and the proposed exemption will not apply to any subsequent principal transactions with an affiliate, as described herein, unless the manager is terminated (*i.e.*, a ''legacy'' investment manager).

[35] The Applicant represents that where securities are to be purchased or sold on an agency basis, the Applicant will comply with the safe harbor provided by 29 CFR 2510.3–21(d) for the execution of a securities transaction.

Further, the Department notes that PTE 86–128 (51 FR 41686, November 18, 1986) provides a class exemption permitting, among other things, persons who serve as fiduciaries for employee benefit plans to effect or execute securities transactions as an agent for the plan, provided the conditions set forth therein are met.

[36] For purposes of the proposed exemption, the term volume-weighted average price means the weighted average of the price of each trade that was reported for the security on a given day.

security has been trading in the recent past; or (iii) canvass other holders of the security regarding an appropriate trading price.

Regardless of the type of investment, any principal transaction will be for cash, and the terms at least as favorable to the Plan as those obtainable in a comparable arm's length transaction with an unrelated party.

5. The Applicant represents that purchases and sales of securities effected as part of transition services will take place as follows. The Independent Fiduciary of a Plan, after such due diligence as it deems appropriate under the circumstances, selects a broker-dealer to purchase or sell a specified portfolio of securities. Where the broker-dealer selected is the Applicant and an affiliate of the Applicant is the directed trustee of the Plan, such affiliate must be a fiduciary that has no discretionary authority or control with respect to the investment of the Plan assets involved in the transaction (including determining the broker-dealer to be hired to provide transition services for the Plan), nor renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

The Applicant asserts that permitting it to engage in principal transactions where one of its affiliates is a directed trustee of a Plan will provide Plans with additional expert broker-dealers experienced at transition services from which Plans may choose to implement changes in investment managers or investment strategies.

In such situations, the Applicant believes it may not be able to rely on the Department's class exemptions providing relief for principal transactions. For example, the Applicant believes that the Independent Fiduciary for the subject transactions is unlikely to be a ''qualified professional asset manager'' (QPAM), as defined in PTE 84–14, (49 FR 9494, 9506, March 13, 1984),[37] or an ''in-house asset manager'' (INHAM), as defined in PTE 96–23 (61 FR 15975, April 10, 1996).[38]

6. Although the Applicant may not have discretionary authority or control over the Plan assets involved at the time of the transaction, this condition is not violated and the proposed exemption provides relief for purchases and sales of securities where the Applicant's affiliate will serve as the new investment manager for such assets, where such manager has provided a list of securities to be purchased for the Plan to the transition broker-dealer, as described below.

Where the destination manager will be managing the assets in an Index Fund (as defined in Section III, F) or a Model-Driven Fund (as defined in Section III, G), the list of securities to be purchased is the optimum portfolio that has been identified by the manager's computer model, or is a slice of the underlying index, or a slice of the Fund (taking into account round lots and other conventions).

Where the destination manager of an actively managed portfolio supplies a list of securities that it would purchase if it were to receive cash, the transition broker-dealer uses that list to assemble the desired portfolio prior to the date that the destination manager assumes responsibility for the portfolio. That list is prepared without reference to the identity of the transition broker-dealer, without reference to the portfolio being liquidated, and without reference to the securities held in inventory by the transition broker-dealer. The Applicant asserts that compliance with condition II.B(ii) can be demonstrated by comparison with a list that was provided on the same day to other similarly situated investors with substantially similar investment guidelines and objectives or by comparison with the holdings in existing investment portfolios managed in the same style.

According to the Applicant, the choice of a destination manager of an actively managed portfolio generally precedes and is separate from any decision regarding the transition broker-dealer. The Independent Fiduciary has selected the destination manager on the basis of its investment style and performance, and the Plan's asset allocation requirements. The destination manager may introduce the transition broker-dealer to the Independent Fiduciary but is not responsible for choosing the transition broker-dealer, nor for giving advice on which the Independent Fiduciary intends to rely as a primary basis for such choice. When the transition broker-dealer is selected, the Independent Fiduciary requests that the destination manager provide the list of securities to be purchased, which is the same list that the destination manager would provide to any new client with the same investment style choices, as described above. The Applicant further represents that the situation should not present an opportunity for self-dealing on the part of the transition broker-dealer or destination manager, since the destination manager would not be acting as a fiduciary with respect to the buy portfolio until after the portfolio is purchased.[39]

7. Generally, the time period for the transition program is specified in advance by the Independent Fiduciary as of a date certain, to be completed by a date certain. The Applicant represents that this time period may vary, based on the size of the portfolio, but, generally, does not exceed four business days. As a condition of the proposed exemption, all purchases and sales executed on a principal basis must be effected within two days following an Independent Fiduciary's direction to purchase or sell a given security—except that, with the approval of the Independent Fiduciary, the Applicant may extend such initial period for an additional two days, on the same terms.

8. As previously described in Item 4, above, the Applicant represents that the Independent Fiduciary often specifies an objective method or reference for pricing, such as the closing price, opening price, or the volume-weighted average price for the security on a particular day. In the fixed income markets, it is generally customary for an Independent Fiduciary to specify that the price be within the bid-asked spread, as of the close of the relevant market (or another predetermined time on a specified date or dates). Such benchmarks provide an Independent Fiduciary with a basis for measuring the performance of the broker-dealer and satisfying itself that the Plan obtained best execution.

The Applicant represents that it will provide the Independent Fiduciary with confirmations that include the relevant information required under Rule 10b–10 of the 1934 Act, to the extent required under Rule 10b–10, as well as a report, within five business days after any principal transaction, which specifies the security, the date of the transaction,

[37] PTE 84–14 provides a class exemption, subject to certain conditions, for transactions between a party in interest with respect to an employee benefit plan and an investment fund (including a single customer or pooled separate account) in which the plan has an interest and which is managed by a QPAM.

[38] PTE 96–23 provides a class exemption, subject to certain conditions, for transactions between a party in interest with respect to an employee benefit plan and an investment fund (including a single customer or pooled separate account) in which the plan has an interest and which is managed by an INHAM.

[39] The Department notes, and the Applicant concurs, that no relief would be provided under the proposed exemption for any violation of section 406(b) of the Act by the destination manager or transition broker-dealer. In this regard, section 406(b) of the Act prohibits, among other things, a fiduciary for a plan from dealing with the assets of the plan in his own interest or for his own account or acting, in his individual or in any other capacity, in a transaction involving the plan on behalf of a party (or representing a party) whose interests are adverse to the interests of the plan or the interest of its participants or beneficiaries.

the quantity and price paid or received by the Plan, and the manner of execution (agency or principal). The Applicant states that such disclosure is meaningful because it can be verified against objective prices obtainable through independent pricing services available to the public.

Only Plans with total assets in excess of $100 million are covered by the proposed exemption. However, for purposes of the net assets test, where a group of Plans is maintained by a single employer or controlled group of employers, as defined in section 407(d)(7) of the Act, the $100 million net assets requirement may be met by aggregating the assets of such Plans, if the assets are pooled for investment purposes in a single master trust.

9. Finally, the Applicant notes that many Plans have expanded their investment portfolios in recent years to include foreign securities. With respect to the Foreign Affiliates covered by the proposed exemption, the Applicant represents that Rule 15a–6 of the 1934 Act provides an exemption from U.S. registration requirements for a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security (including over-the-counter equity and debt options) by a ''U.S. institutional investor'' or a ''major U.S. institutional investor,'' provided that the foreign broker-dealer, among other things, enters into these principal transactions through a U.S. registered broker or dealer intermediary.

The term ''U.S. institutional investor,'' as defined in Rule 15a–6(b)(7), includes an employee benefit plan within the meaning of the Act if:

(a) The investment decision is made by a plan fiduciary, as defined in section 3(21) of the Act, which is either a bank, savings and loan association, insurance company or registered investment adviser, or

(b) The employee benefit plan has total assets in excess of $5 million, or

(c) The employee benefit plan is a self-directed plan with investment decisions made solely by persons that are ''accredited investors,'' as defined in Rule 501(a)(1) of Regulation D of the Securities Act of 1933, as amended.

The term ''major U.S. institutional investor,'' as defined in Rule 15a–6(b)(4), includes a U.S. institutional investor that has total assets in excess of $100 million.[40] The Applicant represents that the intermediation of the U.S. registered broker or dealer imposes upon the foreign broker-dealer the requirement that the securities transaction be effected in accordance with a number of U.S. securities laws and regulations applicable to U.S. registered broker-dealers.

The Applicant represents that under Rule 15a–6, a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security by a U.S. institutional or major U.S. institutional investor in accordance with Rule 15a–6 must, among other things:

(a) Provide written consent to service of process for any civil action brought by or proceeding before the SEC or a self-regulatory organization;

(b) Provide the SEC with any information or documents within its possession, custody or control, any testimony of foreign associated persons, and any assistance in taking the evidence of other persons, wherever located, that the SEC requests and that relates to transactions effected pursuant to the Rule;

(c) Rely on the U.S. registered broker or dealer through which the principal transactions with the U.S. institutional and major U.S. institutional investors are effected, among other things, for:

(1) Effecting the transactions, other than negotiating their terms;

(2) Issuing all required confirmations and statements;

(3) As between the foreign broker-dealer and the U.S. registered broker or dealer, extending or arranging for the extension of any credit in connection with the transactions;

(4) Maintaining required books and records relating to the transactions, including those required by Rules 17a–3 (Records to be Made by Certain Exchange Members) and 17a–4 (Records to be Preserved by Certain Exchange Members, Brokers and Dealers) of the 1934 Act;[41]

(5) Receiving, delivering, and safeguarding funds and securities in connection with the transactions on behalf of the U.S. institutional investor or major U.S. institutional investor in compliance with Rule 15c3–3 (Customer Protection—Reserves and Custody of Securities) of the 1934 Act;[42] and

(6) Participating in all oral communications (*e.g.*, telephone calls) between the foreign associated person and the U.S. institutional investor, other than a major U.S. institutional investor. Under certain circumstances, the foreign associated person may have direct communications and contact with the U.S. institutional investor. (See April 9, 1997 No-Action Letter.)

10. Prior to any transaction, the Foreign Affiliate will enter into a written agreement with the Plan in which the Foreign Affiliate consents to the jurisdiction of the courts of the United States for any civil action or proceeding brought in respect of the subject transactions. In this regard, the Foreign Affiliate must (i) agree to submit to the jurisdiction of the United States; (ii) agree to appoint a Process Agent for service of process in the United States; and (iii) consent to service of process on the Process Agent.

11. In summary, the Applicant represents that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act for the following reasons:

(a) Permitting the Applicant to engage in principal transactions where its affiliate is the directed trustee of a Plan will provide Plans with additional expert broker-dealers experienced at transition services from which Plans may choose as service providers;

(b) Permitting the Applicant to engage in principal transactions, as described herein, will provide Plans with more predictable and verifiable pricing and enable transitions to occur in dealer markets in a timely and efficient manner, by transferring to the broker-dealer the risk of adverse execution;

(c) An Independent Fiduciary will give prior approval for the principal transactions and will monitor the prices received by the Plan through independent, verifiable means; and

(d) An Independent Fiduciary will ensure that securities assembled for either an Index or Model-Driven Fund or actively managed portfolio by a transition broker-dealer affiliated with the destination manager are consistent with the Plan's investment guidelines and objectives.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

[40] The Department notes that the categories of entities that qualify as ''major U.S. institutional investors'' has been expanded by an SEC No-Action letter. See No-Action Letter issued to Cleary, Gottlieb, Steen & Hamilton on April 9, 1997 (the April 9, 1997 No-Action Letter).

[41] The Applicant represents that all such requirements relating to record-keeping of principal transactions would be applicable for any Foreign Affiliate in a transaction that would be covered by the proposed exemption.

[42] Under certain circumstances described in the April 9, 1997 No-Action Letter (*e.g.*, clearance and settlement transactions), there may be direct transfers of funds and securities between a Plan and a Foreign Affiliate. Please note that in such situations (as in the other situations covered by Rule 15a–6), the U.S. broker-dealer will not be acting as a principal with respect to any duties it is required to undertake pursuant to Rule 15a–6.

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 11th day of April, 2003.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 03–9352 Filed 4–15–03; 8:45 am]

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2003–05; Exemption Application No. D–11061]

Grant of Individual Exemptions; John Hancock Life Insurance Company

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This document contains an exemption issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

John Hancock Life Insurance Company, Located in Boston, MA (Prohibited Transaction Exemption 2003–05, Application No. D–11061)

Exemption

Section I: Transactions

The restrictions of sections 406(a)(1)(A) and 406(a)(1)(D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(A) and 4975(c)(1)(D) of the Code shall not apply to: [1]

(a) The purchase of a timber asset (Timber Asset(s)), as defined in section III(f), below, from International Paper Company or any affiliate, as defined in section III(a), below, (collectively, International Paper) by a certain insurance company separate account (ForesTree IP), as defined in section III(d), below, maintained and managed by Hancock, as defined in section III(e), below, for the investment of the assets of one or more employee pension benefit plans sponsored by International Paper (the IP Plan or IP Plans); provided that the following conditions are satisfied:

(1) The fair market value of the Timber Asset sold to ForesTree IP is determined by an independent, qualified appraiser, as defined in section III(h), below, as of the date of the transaction,

(2) The fair market value of the Timber Asset sold to ForesTree IP must be documented by an appraisal report in writing issued, as of the date of the transaction, by the independent, qualified appraiser;

(3) The price paid by ForesTree IP for the Timber Asset does not exceed the fair market value of such asset, as determined by an independent, qualified appraiser, as of the date of the transaction, but can be at a price that is less than the fair market value of such asset, as of the date of the transaction; and

(4) The general conditions set forth in section II, below, are satisfied.

(b) The sale of a timber product (Timber Product(s)), as defined in section III(g), below, to International Paper by ForesTree IP; provided that the following conditions are satisfied:

[1] For purposes of this exemption, references to specific provisions of title I of the Act, unless otherwise specified, refer to the corresponding provisions of the Code.

(1) Prior to soliciting bids for the sale of a Timber Product, Hancock (or its designee) establishes a minimum bid (the Minimum Bid) based on its assessment of the fair market value of the Timber Product offered for sale;

(2) Hancock (or its designee) solicits from each party on the buyers list (the Buyer's List), as defined in section III(c), below, for the relevant geographic area in which the Timber Product is located, a written bid for the purchase of the Timber Product offered for sale;

(3) The highest price bid for the Timber Product offered for sale must meet or exceed the Minimum Bid established by Hancock (or its designee) and must not be less than the fair market value of such Timber Product at the time the contract for sale is legally binding on the parties involved;

(4) Where International Paper is the highest price bidder for the Timber Product offered for sale, the transaction may not go forward, unless Hancock (or its designee) has received bids on such Timber Product from at least two (2) other bidders, in addition to International Paper, provided that each such bidder satisfies the definition of a *bona fide* bidder, as set forth in section III(i), below; and provided further that neither Hancock's general account nor any other account managed by Hancock is either of the two other bidders; and

(5) The general conditions set forth in section II, below, are satisfied.

Section II: General Conditions

(a) Any IP Plan that invests in ForesTree IP has total assets in excess of $100 million;

(b) Hancock acts as a discretionary investment manager for ForesTree IP;

(c) Hancock (or its designee) negotiates on behalf of ForesTree IP the terms and conditions of any purchase of a Timber Asset by ForesTree IP from International Paper and the terms and conditions of any sale of a Timber Product by ForesTree IP to International Paper;

(d) Prior to ForestTree IP entering into any purchase of a Timber Asset or any sale of a Timber Product, Hancock determines on behalf of such account that each such transaction is feasible, in the interest of the account based on the investment policy and objectives of the account, and protective of the participants in the account;

(e) The terms and conditions of each transaction involving the sale of a Timber Asset by International Paper to ForesTree IP or the purchase of a Timber Product by International Paper from ForesTree IP are at least as favorable to ForesTree IP as the terms obtainable by ForesTree IP in a similar transaction negotiated at arm's length with an unrelated third party;

(f) The transactions subject to this exemption are not part of an agreement, arrangement, or understanding designed to benefit a party in interest;

(g) Each transaction subject to this exemption is exclusively a cash transaction;

(h) The investment of plan assets by any IP Plan in ForesTree IP does not exceed 20 percent (20%) of the total assets of such plan;

(i) The total amount of contributions received by Hancock from International Paper on behalf of the IP Plans and allocated to ForesTree IP must not in the aggregate exceed $100 million; and

(j) Hancock maintains, or causes to be maintained, within the United States for a period of six (6) years from the date of each transaction which is subject to this exemption, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described, below in paragraph (k)(1), to determine whether the conditions of the exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Hancock, the records are lost or destroyed prior to the end of the six (6) year period; and

(2) No party in interest other than Hancock shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required below by paragraph (k)(1).

(k)(1) Except as provided in subparagraph (2) of this paragraph (k) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (j), above, are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department, or the Internal Revenue Service;

(ii) Any fiduciary of an IP Plan or any duly authorized representative of such fiduciary;

(iii) Any contributing employer to an IP Plan or any duly authorized employee representative of such employer; and

(iv) Any participant or beneficiary of an IP Plan, or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described above in subparagraphs (k)(1)(ii)–(iv) are authorized to examine the trade secrets of Hancock or its affiliates or commercial or financial information which is privileged or confidential.

Section III: Definitions

(a) The term, ''affiliate'' or ''affiliates,'' of a person means:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative of, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(b) The term, ''control,'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term, ''Buyer's List,'' means a comprehensive and current list of the names of the active forest products companies and prospective buyers of Timber Products in the geographic area in which such Timber Products are located, which is compiled and maintained by Hancock (or its designee) for each such geographic area for the purpose of selling Timber Products in such area on behalf of any of the timber accounts managed by Hancock, provided that, with respect to the Buyer's List utilized by ForesTree IP:

(1) International Paper's name may not be added to the Buyer's List for a geographic area solely for the purpose of a sale by ForesTree IP of Timber Products in such area; and

(2) The name of a prospective buyer of Timber Products in a geographic area may not be removed by Hancock from the Buyer's List for such geographic area, unless such buyer:

(A) Has failed to perform satisfactorily in a previous transaction;

(B) Is no longer in business;

(C) Requests, orally or in writing, to be removed from such list; or

(D) Has failed to respond for a period of two (2) years to previous solicitations by ForesTree IP to bid on Timber Products offered for sale in the geographic area;

(d) The term, ''ForesTree IP,'' refers to the non-pooled insurance company separate account maintained and managed by Hancock for the investment of assets of one or more of the IP Plans, as well as to any partnership, limited liability company, or corporation in which ForesTree IP invests. The term, ''ForesTree IP,'' does not include the other ForesTree Separate Accounts managed by Hancock.

(e) The term, ''Hancock,'' means John Hancock Financial Services (Financial Services); John Hancock Life Insurance Company (JHLIC); John Hancock Variable Life Insurance Company (Variable Life); Hancock Natural Resource Group (Resource Group); John Hancock Timber Resource Group (Timber Resource); or other affiliates of JHLIC, as defined in section III(a), above, as well as the employees of Resource Group and Timber Resource.

(f) The term, ''Timber Asset(s),'' means a fee simple in timberland (and appurtenant rights),[2] or a timber lease, or a timber deed, provided that, with respect to any timber lease, or timber deed:

(1) The underlying fee simple is owned by a person other than International Paper, Hancock, or any other account managed by Hancock at the time of the sale; and

(2) The entire deed or lease held by International Paper is purchased by ForesTree IP.

(g) The term, ''Timber Product(s),'' means standing timber or timber in the form of logs.

(h) The term, ''independent, qualified appraiser,'' means an individual or firm which is qualified to serve in the capacity as an appraiser; is independent of the parties in interest engaging in the transaction and their affiliates; and satisfies the following conditions:

(1) Other than serving as the independent, qualified appraiser for a transaction which is subject to this exemption, the individual or firm has no current employment relationship with Hancock or with International Paper;

(2) No individual or firm may serve as an independent, qualified appraiser during any year in which the gross receipts such individual or firm received from business with Hancock exceeds 5 percent (5%) of such individual's or firm's gross receipts from all sources for the prior year, and from business with International Paper for that year exceeds 5 percent (5%) of such individual's or firm's gross receipts from all sources for the prior year;

(3) If an individual is selected to serve as the independent, qualified appraiser, then such individual must:

(A) Have a forestry degree; and

(B) Have a minimum of five (5) years of experience as a timberland appraiser; or

(C) Otherwise demonstrate proficiency in timberland appraisal work which is equivalent to the level of expertise demonstrated by the requirements, as set forth in section III(h)(3)(A) and (B), above;

(4) If a firm is selected to serve as the independent, qualified appraiser, then such firm must have:

(A) A minimum of five (5) years of experience as a timberland appraiser; or

(B) Otherwise demonstrate proficiency in timberland appraisal work; and

(5) The individual or the firm that serves as the independent, qualified appraiser for transactions covered by this exemption must have the ability to access appropriate timberland sales comparison data.

(i) The term, ''*bona fide* bidder,'' means a bidder on a Timber Product offered for sale by ForesTree IP, only if

(1) The bidder has made an offer to purchase the Timber Product, in accordance with the terms of the bid solicitation;

(2) The bidder's name appears on the Buyer's List at the time of bid solicitation and at the time of the bid;

(3) Hancock neither knows or should know of any impediment to the bidder's consummation of the purchase of the Timber Product offered for sale upon which the bidder has bid; and

(4) Hancock has no reason to believe that the bid was not made in good faith by the bidder with the present intent of procuring the Timber Product offered for sale by ForesTree IP.

Written Comments

In the notice of proposed exemption (the notice), the Department of Labor (the Department) invited all interested persons to submit written comments and requests for a hearing on the proposed exemption within 45 days of the date of the publication of the notice in the **Federal Register** on January 22, 2003. All comments and requests for a hearing were due by March 14, 2003.

During the comment period, the Department received no requests for a hearing. However, the Department did receive comment letters from four (4) commentators. At the close of the comment period, the Department forwarded a copy of each of these comment letters to the applicant and requested that the applicant respond in writing to the issues raised by the commentators. The concerns expressed by the commentators and the applicant's response thereto are summarized in the numbered paragraphs below.

1. One commentator objected to the proposed exemption because he views the proposed transactions as Enron-like deceptive transactions between two International Paper entities. The commentator suggested that the Timber Assets should remain with International Paper as a long term investment, and that International Paper would suffer if it does not.

In response, the applicant notes that the commentator appears to believe that the proposed transactions would constitute a ''repurchase'' by International Paper of assets it already owns— a ''scheme'' for transferring assets among International Paper entities. In this regard, the IP Plan and ForesTree IP are independent of International Paper and a transfer to the IP Plan from International Paper is in no way a ''repurchase'' of the assets by International Paper.

Further, the applicant maintains that there is no ''scheme'' here. The filing of this exemption was initiated by Hancock to obtain relief from the prohibited transaction provisions of the Act. Hancock is a professional timber manager unaffiliated with International Paper. Hancock, and not International Paper, sought the exemption so that if the investment attributes of the Timber Assets International Paper offered for sale were consistent with the investment objectives of ForesTree, the account would have an opportunity to acquire those Timber Assets.

In addition, the applicant points out that the commentator seems more concerned with the fact that International Paper is selling the Timber Assets than with the fact that Hancock will be permitted to bid on those assets that International Paper offers for sale. In this regard, it is the applicants understanding that the sale of International Paper timberlands is part of its strategic plan to monetize non-strategic timberland following its merger with Champion International.

Hancock, and not International Paper, will decide whether ForesTree IP will engage in a transaction with International Paper, and Hancock is subject to the fiduciary duties of the Act. It is represented that Hancock will cause ForesTree IP to engage in a transaction only if the transaction is in the interest of ForesTree IP (that is, the IP Plan). It is further represented that Hancock's acquisition sourcing will in no way take the interests of International Paper into account in considering the merits of each such transaction.

The commentator also indicated a lack of confidence in the third party appraisal that Hancock is required to obtain, pursuant to a condition of this exemption, citing the ''sample intensity.'' In this context, the applicant understands ''sample intensity'' to refer to the extent of the samples of timber

[2] It is represented that certain property rights, including mineral rights, easements, and recreational leases, are appurtenant to a fee simple and are brought and sold, and appraised along with the fee simple.

inventory used by an appraiser (or prospective buyer) to assess the value of that inventory. The commentator's concern regarding sample intensity is addressed by Hancock's due diligence process, including the timber inventory verification described below, and the appraisal methodology that uses multiple valuation approaches to independently establish market value.

In this regard, the applicant notes that the purchase price of Timber Assets is established through Hancock's intensive due diligence process, that includes, among other things, timber inventory verification through an actual on-the-ground survey of the timber, using a statistically sound sampling methodology. Hancock uses the timber inventory analysis together with information regarding timber markets, timber price forecast, forest management expenses, timber growth models, and harvesting plans among other things to develop a discount cash flow analysis, projected total return and purchase price given the relative riskiness of the market area. The purchase price established through this process is the starting basis for prices offered by Hancock in competitive bids or negotiated sale transactions. A third-party appraisal verifies that the purchase price, established through the process noted above, is not more than fair market value.

In doing so, the third-party appraiser will typically use multiple valuation methodologies to estimate the market value of Timber Assets. These include the cost approach, the sales comparison approach, and the income approach (discount cash flow analysis). The different approaches help to establish the most probable value range based on the differences between buyers and sellers in the marketplace. The appraiser then, based on the data presented, determines a value in the range that represents the most probable price assuming the property were offered for sale.

2. One commentator noted his opposition to the proposed exemption on the grounds that International Paper's domination of the relevant timber markets could make the fair market value, and thus the price, obtained by Hancock for Timber Products artificially low.

In response the applicant notes that this comment does not appear to be a criticism of the sale by the IP Plan of Timber Products to International Paper, so much as a criticism of the IP Plan's allocation to timber in the first place. In this regard, the applicant maintains that whether or not the IP Plan invests in timber is not the subject of this exemption. Rather, this exemption is designed to ensure that ForesTree IP has access to all market outlets in a competitive manner.

In the opinion of the applicant, participation by International Paper in the bid process increases, not decreases, the chances of ForesTree IP of obtaining a favorable price, because it expands the universe of potential timber purchasers. One of Hancock's objectives in seeking this exemption is to increase the potential buyers, and thus the price, of ForesTree IP's Timber Products. It is the applicant's view that the mergers to which the commentator refers would make it even more important to include International Paper in the Timber Products bidding process so as to have as many potential bidders as possible.

The commentator also asserts that the proposed exemption would permit ''incestuous dealings'' between the IP Plan and International Paper. The applicant maintains that there is no conflict of interest in this case, because the IP Plan is represented by an independent investment manager. In this regard, Hancock manages the entire ForesTree IP account in its sole discretion and will determine if, and when, it is in the interest of ForesTree IP to enter into a transaction with International Paper, pursuant to the procedures established as part of this exemption. Furthermore, Hancock will be fully responsible and liable for that decision.

3. One commentator objected to the proposed exemption because, in his view, International Paper does not provide sufficient pension benefits to IP Plan participants and beneficiaries.

In response the applicant, points out that the IP Plan is a defined benefit plan, and Hancock has no control over the plan of benefits provided to plan participants under the IP Plan. Rather, Hancock is charged with investing the assets of the IP Plan allocated to timber as effectively as it can. In the view of the applicant, the commentator's complaint is with the design of the IP Plan and not the manner in which it is invested.

4. One commentator believes that the fact that Hancock must seek an exemption for the proposed transactions indicates that the transactions are ''ill-advised.''

In response the applicant points out that the drafters of the Act recognized that exemptions to prohibited transaction provisions would certainly be required and, in fact, incorporated more than ten such statutory exemptions into the Act. More importantly, Congress authorized the Department to issue individual exemptions where an individual plan's interest could be adequately protected. In the applicant's view, the fact that Hancock has applied for this exemption indicates only that it seeks to obtain the best return possible for ForesTree IP by expanding the account's potential pool of counterparties.

The commentator also objected to the proposal on the grounds that recent corporate scandals have cast doubt upon the ''investment schemes'' of ''corporate financial officers.''

In this regard, the applicant points out that Hancock, and not the financial officers of International Paper, is responsible for deciding whether or not ForesTree IP enters into transactions with International Paper. In addition, the applicant maintains that the subject transactions will be effected, if at all, in a straightforward and transparent manner. In this regard, the exemption requires that specified conditions be met and that records of the transactions and conditions be maintained.

Lastly, the applicant notes that the commentator provided no support for his assertion that the subject transactions (routine types of transactions under a professionally managed timber program) constitute a ''speculation venture of unknown risk.'' The commentator objected to the fact the IP Plan invests in timber at all, which, as the applicant noted above, is the result of a reasonable asset allocation decision on the part of the plan fiduciaries. Moreover, there is nothing to suggest that timber is a speculative investment. The applicant maintains that Hancock and its affiliates are in the business of prudently managing the risks associated with timber investments. As discussed above, Hancock's due diligence process is thorough and is designed to assess risk.

5. During the comment period, the Department also received a comment from the applicant. In this regard, in a letter dated March 14, 2003, the applicant requested certain amendments to the operant language of the exemption and changes to the representations which were set forth in the Summary of Facts and Representations (the SFR) published in the notice. A discussion of the applicant's comments and the Department's responses, thereto are also set forth in the subparagraphs, below.

A. For the sake of consistency with the language in section I(a)(1) and (2) of the exemption, the applicant proposes a revision of section I(a)(3), as set forth in the notice, on page 3040, column 3, line 26–27, to replace the phrase, ''at the time of purchase,'' with the phrase, ''as of the date of the transaction.''

The Department concurs and in the final exemption has amended the language of section I(a)(3), accordingly.

B. Section I(a)(1) requires that the price paid by ForesTree IP for the Timber Asset be determined by an independent, qualified appraiser, as defined in section III(h), below, as of the date of the transaction. Section I(a)(2) provides that the fair market value of the Timber Assets sold to ForesTree IP must be documented in a written appraisal report by an independent, qualified appraiser, as of the date of the transaction. Section I(a)(3) provides that the price paid by ForesTree IP for the Timber Asset may not exceed the fair market value of such asset at the time of the purchase.

It is the applicant's view that, given the conditions in sections I(a)(2) and (3) of the exemption, it is not necessary to require that the Timber Asset price be determined by the independent, qualified appraiser. In this regard, the applicant maintains that the other conditions make it impossible for ForesTree IP to purchase a Timber Asset for more than fair market value and that the condition in section I(a)(1) does not provide any additional protection to the IP Plans and their participants and beneficiaries. Moreover, the applicant believes that section I(a)(1) would interfere with Hancock's duty to negotiate the best price for ForesTree IP, including a price that is less than the appraised value of the Timber Asset. Accordingly, the applicant requests that section I(a)(1), as set forth in the notice, on page 3040, column 3, lines 13–17, be deleted and that the remaining three (3) subparagraphs in section I(a) be renumbered.

In the view of the Department, a determination by an independent, qualified appraiser of the fair market value of a Timber Asset at the time of the transaction provides a safeguard which insures that the IP Plan through ForesTree IP does not pay to much for such asset. Accordingly, the Department has decided not to delete section I(a)(1) of the exemption and has decided not to renumber section I(a)(2), section I(a)(3), or section I(a)(4).

However, the Department does not intend that compliance with the language of section (I)(a)(1)would preclude Hancock from negotiating on behalf of ForesTree IP a price for a Timber Asset which is less than the fair market value of such asset at the time of the transaction. Accordingly, the Department has determined in the final exemption to amend the language of section I(a)(1), as set forth in the notice, on page 3040, column 3, lines 13–17, to delete the bracketed words and add the italicized words as follows:

The [price paid by ForesTree IP for] *fair market value of the* Timber Asset *sold to ForesTree IP* is determined by an independent, qualified appraiser, as defined in section III(h), below, as of the date of the transaction.

Further the Department has determined in the final exemption to amend the language of section I(a)(3), as set forth in the notice, on page 3040, column 3, lines 24–27, to delete the bracketed phrase and add the italicized phrases as follows:

The price paid by ForesTree IP for the Timber Asset does not exceed the fair market value of such asset, [at the time of the purchase] *as determined by an independent, qualified appraiser as of the date of the transaction, but can be at a price that is less than the fair market value of such asset, as of the date of the transaction.*

C. Because Hancock utilizes affiliated and unaffiliated timber managers in managing ForesTree IP, the applicant believes that it would be more accurate to reference Hancock's ''designees,'' as is currently reflected in section I(b)(2). Accordingly, the applicant requests that the phrase, ''(or its designee),'' be inserted after the word, ''Hancock,'' in the following sections of the final exemption, section I(b)(1), section I(b)(3), section I(b)(4), section II(c), and section III(c).

The Department concurs and has amended the language, as set forth in the notice, to insert the parenthetical phrase, ''(or its designee),'' after the word, ''Hancock,'' in the following locations:

(1) In section I(b)(1)on page 3040, column 3, line 36;

(2) In section I(b)(3)on page 3040, column 3, line 51;

(3) In section I(b)(4)on page 3040, column 3, line 59;

(4) In section II(c)on page 3041, column 1, line 9; and

(5) In section III(c)on page 3041, column 2, line 68.

D. The applicant has suggested that the Department delete section II(h), as set forth in the notice, on page 3041, column 1, lines 42–46. Section II(h) precludes ForesTree IP from purchasing Timber Assets from or selling Timber Products to Hancock's general account or any other account managed by Hancock. In this regard, the applicant expressed concern that section II(h)suggests that ForesTree IP could not use Prohibited Transaction Exemption 98–61 (PTE 98–61), in an appropriate case, for transactions between ForesTree IP and other Hancock separate accounts. In this regard, PTE 98–61 provides relief from section 406(b)(2) of the Act, for purchases and sales of Timber Assets between certain separate accounts, as defined in PTE 98–61, that are managed by Resource Group and Timber Resource or other affiliates of JHLIC. In support of the request that section II(h) be deleted, the applicant notes that: (1) The exemption provides relief only for transactions between ForesTree IP and International Paper; (2) Hancock is not seeking relief for transactions between ForesTree IP and the general account or other Hancock separate accounts; and (3) section I(b)(4) of the exemption already provides that neither Hancock's general account nor any other account managed by Hancock may be counted as one of the two *bona fide* bidders required where International Paper is the highest price bidder for the Timber Products offered for sale by ForesTree IP.

The Department concurs with the applicant's request, and accordingly, has deleted section II(h) from the final exemption. As a result of the deletion of section II(h)from the final exemption, subsections (i), (j), (k), and (l) of section II have, accordingly, been reordered as subsections (h), (i), (j), and (k) of section II. Conforming changes have also been made to cross references within these subsections.

Further, the Department wishes to note that for transactions between ForesTree IP and other Hancock separate accounts, ForesTree IP may rely on PTE 98–61 only for transactions, as described therein, and only if the conditions, as set forth in PTE 98–61 are satisfied.

E. The applicant notes that section II(k), as set forth in the notice, makes reference on page 3041, column 1, line 64, to paragraph (1)(1) (the numeral ''one'' followed by the numeral ''one''). The applicant requests that the reference be changed so as to refer to paragraph(l)(1) (the letter ''l'' and then the numeral ''one''). The applicant also notes that, if the Department accepts the proposed deletion of section II(h), as discussed above, this reference will actually become paragraph(k)(1).

The Department concurs with the applicant's request. As the Department did decide to delete section II(h) from the final exemption, the reference to paragraph (1)(1), as set forth in the notice, on page 3041, column 1, line 64, had been changed to paragraph (k)(1) in the final exemption.

F. The applicant requests a revision to the language of section III(e), as set forth in the notice, on page 3041, column 3, lines 38–48. Section II(e), states:

The term, ''Hancock,'' means John Hancock Financial Services (Financial Services); John

Hancock Life Insurance Company (JHLIC); John Hancock Variable Life Insurance Company (Variable Life); Hancock Natural Resources Group (Resources Group); John Hancock Timber Resource Corporation (Timber Resource); or other affiliates of JHLIC, as defined in section III(a), above.

Pursuant to section III(a), the term, ''affiliate'' or ''affiliates,'' of a person includes ''any officer, director, employee, relative of, or partner in any such person.'' The applicant is concerned that the combination of these two definitions omits from the term, ''Hancock,'' (and perhaps from relief) employees of Hancock affiliated entities, other than JHLIC. In this regard, the applicant seeks to ensure that the exemption provides relief for the individual employees of those entities making decisions with respect to ForesTree IP. Accordingly, the applicant suggested a revision to section III(e) to add the phrase, ''as well as the employees of such entities,'' to the language of section III(e) in the final exemption. Subsequently, in an e-mail to the Department, dated April 2, 2003, the applicant clarified that in addition to employees of JHLIC, incorporated into the definition of affiliate, as set forth in section III(a)(2), the term, ''Hancock'' should include employees of Resource Group, and Timber Resource.

The Department concurs with the applicant's request. Accordingly, the language of section III(e), as set forth in the Notice, on page 3041, column 3, line 48, has been amended to add the phrase, ''as well as the employees of Resource Group and Timber Resource,'' after the word, ''above.''

The applicant also suggested a few corrections to the names of the entities listed in the definition of the term, ''Hancock,'' as set forth in section III(e) in the Notice, on page 3041, column 3, lines 43–46. In this regard, ''Hancock Natural Resources Group'' should be ''Hancock Natural Resource Group,'' and ''(Resources Group)'' should become ''(Resource Group).'' In the same paragraph, ''John Hancock Timber Resource Corporation'' should be changed to ''John Hancock Timber Resource Group.''

The Department concurs and in the final exemption has amended the language of section III(e), accordingly.

G. Section III(h)(2), as set forth in the Notice, on page 3042, column 1, lines 18–27, requires that:

> No individual or firm may serve as an independent, qualified appraiser during any year in which the gross receipts such individual or firm received from business with Hancock and from business with International Paper for that year exceeds 5 percent (5%) of such individual's or firm's gross receipts from all sources for the prior year.

The applicant seeks confirmation that the ''5 percent gross receipt test'' in section III(h)(2) applies separately with respect to Hancock and to International Paper. In this regard, it is the applicant's understanding that an individual appraiser may not have gross receipts from Hancock in excess of 5 percent (5%) or from International Paper in excess of 5 percent (5%).

The Department confirms the applicant's understanding of section III(h)(2). In addition, the Department has decided to amend the language of section III(h)(2), as set forth in the notice, on page 3042, column 1, line 22, to insert the phrase, ''exceeds 5 percent (5%) of such individual's or firm's gross receipts from all sources for the prior year,'' after the word, ''Hancock.''

H. The applicant has requested and the Department concurs with the following modifications, corrections, or updates to the information that appeared in the SFR of the notice:

(1) References to ''Resources Group'' that appeared in the SFR throughout representations 2, 4, 5 and 6 should have been references to ''Resource Group;''

(2) A reference to ''.5 million'' that appeared in the second paragraph of representation 2 in the SFR should have been a reference to ''0.5 million;''

(3) The reference to Olympic Resource Management that appeared in the fifth paragraph of representations 4 in the SFR should be revised. In this regard, the applicant has informed the Department that Resource Group recently chose not to renew its contract with Olympic Resource Management. It is represented that Hancock Forest Management, Inc., a recently formed affiliate of Resource Group, has taken over the duties of Olympic Resource Management with respect to the western United States and Canada;

(4) The eighth sentence in the first paragraph of representation 5 of the SFR, should be revised to delete the bracketed words and add the italicized words as follows:

> John Hancock [expects that] *allocated* the remaining $15 million [will be allocated before] *for investment near* the end of the year 2002;

(5) The reference to ''$1 million to $2 million'' that appeared in the second sentence of representation 6 in the SFR should have been a reference to ''$1 billion to $2 billion;''

(6) The second sentence in representation 6 of the SFR should be further revised to delete the bracketed words and add the italicized words as follows:

> In this regard, John Hancock, *at the time of its application, originally anticipated* [anticipates] that $1 billion to $2 billion worth of Timber Assets [will] *would* be marketed by International Paper for sale over the next two (2) years, as a result of the May 2000 merger of International Paper and Champion International;

(7) After the second sentence in representation 6 of the SFR, the applicant has requested the addition of the following sentence:

> Since the filing of the exemption application, John Hancock has learned that International Paper's business strategy with respect to these assets may have changed, but John Hancock does not yet know what the new divestment strategy will be; and

(8) The reference to ''section III (i) below'' that appeared in representation 10(f) should have been a reference to ''section III (i)'' as that section actually comes before representation 10(f) in the SFR.

After giving full consideration to the entire record, including the written comments from the commentators and the applicant's response to such comments and the comment from the applicant, the Department has decided to grant the exemption, as described and amended, above. In this regard, the comment letters, the applicant's response thereto, and the applicant's comment letter submitted to the Department have been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice published on January 22, 2003, at 68 FR 3040.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary

responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed in Washington, DC, this 11th day of April, 2003.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 03–9353 Filed 4–15–03; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2003–06; Exemption Application No. D–11059]

Grant of Individual Exemption To Replace Prohibited Transaction Exemptions (PTEs) 81–56, 85–19 and 89–5, Involving the Truman Arnold Companies Retirement Plan and Trust (the Plan) Located in Texarkana, TX

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Grant of individual exemption to replace PTEs 81–56, 85–19 and 89–5.

SUMMARY: This document contains a final exemption before the Department of Labor (the Department) which will replace PTEs 81–56 (46 FR 36273, July 17, 1981), 85–19 (50 FR 3045, January 23, 1985) and 89–5 (54 FR 4348, January 30, 1989). These are individual exemptions (the Prior Exemptions) that were previously issued by the Department to the Truman Arnold Companies, a party in interest with respect to the Plan. Each of the Prior Exemptions permitted the Employer to contribute and/or lease from the Plan certain improved real property under the provisions of three distinct written leases.

The final exemption incorporates many of the facts and representations contained in the Prior Exemptions and updates information to the extent there have been changes. Because it appears that PTE 81–56 expired on September 30, 1999 and the parties have not been covered by an administrative exemption since that time, the final exemption provides retroactive exemptive relief from October 1, 1999 until September 30, 2002. In addition, to resolve uncertainty regarding the expiration dates of the leases described in PTE 81–56 and PTE 85–19, the exemption merges the leases, along with the lease described in PTE 89–5, under a new master lease (the Master Lease) and provides retroactive exemptive relief, effective October 1, 2002, with respect to such past and continued lease arrangements.

Further, the final exemption permits the replacement of AmSouth Bank, the Plan's former independent fiduciary, with Regions Bank, the Plan's current trustee. Thus, the exemption affects participants and beneficiaries of the Plan, as well as Plan fiduciaries.

EFFECTIVE DATE: This exemption is effective from October 1, 1999 until September 30, 2002 with respect to the leasing arrangement described in PTE 81–56. In addition, this exemption applies retroactively from October 1, 2002 with respect to the consolidation of the properties described in the Prior Exemptions under the Master Lease.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693–8556. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On February 6, 2003, the Department published a notice of proposed exemption in the **Federal Register** at 68 FR 6205. The proposed exemption would replace PTEs 81–56, 85–19 and 89–5. The Prior Exemptions provided exemptive relief from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code).

The proposed exemption was requested in an application filed on behalf of the Plan pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this exemption is being issued solely by the Department.

The proposed exemption gave interested persons an opportunity to comment and to request a hearing. In this regard, all interested persons were invited to submit written comments or requests for a hearing on the pending exemption on or before March 24, 2003. All comments were to be made a part of the record. During the comment period, the Department received no written comments or requests for a public hearing.

For further information regarding the exemption application or other matters discussed therein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–11059) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department are made available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, after giving full consideration to the entire record, the Department has decided to grant the exemption.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of

the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) In accordance with section 408(a) of the Act, section 4975(c)(2) of the Code, and the procedures set forth in 29 CFR 2570, subpart B (55 FR 32836, August 10, 1990), the Department finds that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(4) The exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(5) This exemption is subject to the express condition that the facts and representations set forth in the notices of proposed exemption relating to PTEs 81–56, 85–19, 89–5 and this notice, accurately describe, where relevant, the material terms of the Master Lease transaction consummated pursuant to this exemption.

Exemption

Under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990), the Department hereby amends and replaces PTEs 81–56, 85–19 and 89–5. Accordingly, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply (1) effective October 1, 1999 until September 30, 2002, to the leasing by the Plan of a parcel of real property and the improvements thereon (the New Facilities Property), as described in Prohibited Transaction Exemption (PTE) 81–56 (46 FR 36273, July 17, 1981), to the Truman Arnold Companies, Inc. (the Employer), a party in interest with respect to the Plan; and (2) effective October 1, 2002, to the leasing, by the Plan to the Employer, under the provisions of a master lease (the Master Lease) of the New Facilities Property, another parcel of real property and the improvements comprising the Employer's headquarters (the Home Site Property), as described in PTE 85–19 (50 FR 3045, January 23, 1985), and two buildings (the Buildings) constructed on the Home Site Property and described in PTE 89–5 (54 FR 4348, January 30, 1989). (The New Facilities Property, the Home Site Property and the Buildings are collectively referred to herein as the ''Properties.'')

This exemption is subject to the following conditions:

(a) The terms of the Master Lease remain at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party.

(b) The Employer is obligated under the terms of the Master Lease for expenses incurred by the Properties, including taxes and assessments, maintenance, insurance and utilities.

(c) The interests of the Plan with regard to the Master Lease are, at all times, represented by an independent fiduciary. Such independent fiduciary—

(i) Represents the interests of the Plan for the remaining duration of the Master Lease;

(ii) Monitors the terms and conditions of the Master Lease on behalf of the Plan;

(iii) Enforces compliance with all conditions of the Master Lease;

(iv) Ensures that the Master Lease remains in the best interest of the Plan and protective of the Plan's participants and beneficiaries;

(v) Following review and evaluation of the Master Lease, determines that the retention of the Properties by the Plan and the continued leasing of such Properties to the Employer are in the best interest of the Plan and its participants and beneficiaries;

(vi) Adjusts the rental rate under the Master Lease every third year such lease is in effect based upon independent appraisals of the Properties and ensures that the rentals equal the greater of 14 percent of the fair market value of the Properties or the prior rental amounts paid; and

(vii) Takes all actions that are necessary and proper to enforce and protect the rights of the Plan and its participants and beneficiaries.

(d) The rental rate under the Master Lease, during its initial term and each renewal term remains at 14 percent of the fair market value of the Properties, which amount is not less than the current fair market value of such Properties;

(e) The aggregate fair market value of the Properties that are subject to the Master Lease, at no time, exceeds 25 percent of the Plan's assets.

For a more complete statement of the facts and representations supporting the Department's decision to grant the Prior Exemptions and this final exemption, refer to the proposed exemptions and their respective grant notices which are cited above.

Signed at Washington, DC, this 11th day of April, 2003.

Ivan L. Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 03–9354 Filed 4–15–03; 8:45 am]

BILLING CODE 4510–29–M

MEDICARE PAYMENT ADVISORY COMMISSION

Commission Meeting

AGENCY: Medicare Payment Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday, April 24, 2003, and Friday, April 25, 2003, at the Ronald Reagan Building, International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC. The meeting is tentatively scheduled to begin at 10 a.m. on April 24, and at 9 a.m. on April 25.

Topics for discussion include: Medicare payment for outpatient drugs under part B; volume of physician services and related physician payment issues; hospital financial performance; incentives to improve quality; use of market competition in fee-for-service Medicare; geographic variation; implications for beneficiaries and policy reform of market variation; long-term care hospital patient characteristics; examining differences between hospital-based and free-standing skilled nursing facilities; dialysis quality and cost; comments on CMS's social health maintenance organization demonstration report; and the impact of the GME cap on geriatricians.

Agendas will be e-mailed on April 16, 2003. The final agenda will be available on the Commission's Web site (*www.MedPAC.gov*).

ADDRESSES: MedPAC's address is: 601 New Jersey Avenue, NW., Suite 9000, Washington, DC 20001. The telephone number is (202) 220–3700.

FOR FURTHER INFORMATION CONTACT: Diane Ellison, Office Manager, (202) 220–3700.

Mark E. Miller,

Executive Director.

[FR Doc. 03–9293 Filed 4–15–03; 8:45 am]

BILLING CODE 6820–BW–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[03—042]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Office of Management and Budget; Room 10236; New Executive Office Building; Washington, DC, 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: BOREAS Data User Satisfaction Survey.

OMB Number: 2700–.

Type of review: New collection.

Need and Uses: NASA will utilize the information collected to improve the data, documentation, ordering processes, and services provided to users of the Boreal Ecosystem-Atmosphere Study (BOREAS) data.

Affected Public: Not-for-profit institutions; business or other for-profit; Federal government; State, local or tribal government.

Number of Respondents: 50.

Responses Per Respondent: 1.

Annual Responses: 50.

Hours Per Request: 30 min.

Annual Burden Hours: 25.

Frequency of Report: On occasion.

Patricia Dunnington,

Chief Information Officer, Office of the Administrator.

[FR Doc. 03–9362 Filed 4–15–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Fellowships Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Fellowships Advisory Panel (American Jazz Masters category) to the National Council on the Arts will be held from 1 p.m. to 4:30 p.m. on April 30, 2003, in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting, from 1 p.m. to 2:45 p.m., will be open to the public for policy discussion. The open session will include opening remarks by Dana Gioia, Chairman of the National Endowment for the Arts; a presentation by A. B. Spellman, Deputy Chairman for Guidelines, Panel & Council Operations: NEA American Jazz Masters—A New Look/Different Opportunities; and Changing the BEAT: A Study of the Work Life of Jazz Musicians, a presentation by Research Officer Tom Bradshaw. The remaining portion of this meeting, from 3 p.m. to 4:30 p.m., will be closed.

The closed portions of these meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 2, 2002, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: April 8, 2003.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 03–9295 Filed 4–15–03; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–390]

Tennessee Valley Authority; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–90, issued to Tennessee Valley authority (TVA the licensee), for operation of the Watts Bar Nuclear Plant (WBN), Unit 1, located in Rhea County, Tennessee.

The proposed amendment would revise, for one time only, a portion of Surveillance Requirement (SR) 3.5.2.3 of the Watts Bar Technical Specifications (TS) for the emergency core cooling system (ECCS). The revision would extend, until the refueling outage in the fall of 2003, the verification that the ECCS safety injection hot leg injection lines are full of water. SR 3.5.2.3 currently requires a verification frequency of 31 days.

The reason for the exigency is due to an emergent issue that occurred when recent ultrasonic testing of the safety injection system hot leg injection piping identified a quantity of gas at the piping high points. TVA stated that it could not have reasonably avoided this exigency. Until questions were raised on the way this SR was performed, TVA had no indication that the safety injection system hot leg injection lines had accumulated gas.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6), for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed

amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The design function of the emergency core cooling system (ECCS) is to provide core cooling and reactivity control for various design bases accidents. With gas potentially entrained in the safety injection system hot leg injection piping, the primary considerations would be maintenance of adequate core cooling and prevention of water hammer resulting from initiation of flow to the reactor core for mitigation of a design basis event. In the event of a postulated large break loss of coolant accident (LBLOCA), the reactor coolant system (RCS) will de-pressurize rapidly, ECCS injection from the refueling water storage tank (RWST) will occur, followed by cold leg recirculation, and then hot leg recirculation. No flow will exist in the hot leg injection piping until hot leg recirculation is initiated.

TVA reviewed the Nuclear Steam Supply System (NSSS) vendor's previous bounding evaluation performed on the effects of injecting the nitrogen gas contained in the four safety injection system accumulators into the RCS following a LOCA. The mass of nitrogen for the accumulators assumed to be injected into the RCS is significantly greater than the mass of gas that could reasonably be expected to exist in the safety injection hot leg injection lines. Therefore, the injection of the postulated gas in the hot leg injection lines would have an insignificant effect on the cooldown of the RCS in the hot leg recirculation mode.

If a layer of gas existed, it would flow to the core by mixing with the water in the line. If a solid bubble were conservatively assumed with the RCS depressurized, the pressure from the pump would push any entrained gas to the RCS hot legs as the hot leg injection valves opened and the safety injection pump came up to operating speed. The two separated water volumes would travel to the RCS hot legs at near the same velocity and would not impact one another. No significant water hammer would occur.

For the design basis small break LOCA (SBLOCA) and the SBLOCA that is smaller than the design basis 4-inch pipe size break, the hot leg swapover is the same, although delayed, for the SBLOCA scenario as for the LBLOCA. No significant water hammer would occur.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed change to the WBN TS and its associated bases do not introduce any new accident initiator mechanisms. The exclusion of hot leg injection piping from the ECCS water inventory surveillance does not cause the initiation of any accident nor create any new credible limiting single failure. Further, the change does not result in any event previously deemed incredible being made credible since, as discussed above, there are no new adverse impacts associated with the introduction of gas into the reactor core from those previously evaluated. Further, there is no adverse impact created by a potential water hammer situation.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety.

No. The exclusion of safety injection system hot leg injection piping from the ECCS water inventory surveillance does not result in a condition where the design, material, and construction standards that were acceptable prior to this change are altered. The potential to introduce gas from the hot leg injection piping into the reactor core during postulated large and small break LOCA accidents does not adversely affect design assumptions for emergency core cooling or reactivity control. Since adverse water hammer events are not postulated, the proposed changes to TS and its associated Bases will have no affect on the availability, operability, or performance of the WBN ECCS systems. Therefore, the subject change does not involve a significant reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 16, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and available electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons

why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated April 8, 2003, which is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated in Rockville, Maryland, this 10th day of April, 2003.

For the Nuclear Regulatory Commission.

Kahtan N. Jabbour,

Senior Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–9315 Filed 4–15–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–483]

Union Electric Co.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–30 issued to Union Electric Company (the licensee) for operation of the Callaway Plant, Unit 1 located in Callaway County, Missouri.

The proposed amendment would allow the use of generic personnel titles in place of plant-specific personnel titles and require either the operations manager or the assistant operations manager to hold a senior reactor operator (SRO) license.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under

the Commission's regulations in title 10 of the Code of Federal Regulations (10 CFR), § 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not affect accident initiators or assumptions. The radiological consequences of an accident previously evaluated remain unchanged. These changes involve administrative changes concerning the use of personnel titles and do not affect responsibilities or qualifications of plant personnel.

Allowing the ''operations manager or assistant operations manager'' to hold an SRO license is also an administrative change. At [the] Callaway plant[,] the Superintendent, Operations is assisted by an Assistant Superintendent, Operations who is required to meet the same minimum qualifications and to assist with the same responsibilities, duties, and authorities.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes are administrative in nature. As such, there are no hardware changes nor are there any changes in the method by which any safety-related plant system performs its safety function. This amendment will not affect the normal method of plant operation or change any operating parameters. No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of this amendment. There will be no adverse effects or challenges imposed on any safety-related system as a result of this amendment.

Therefore, the proposed changes do not create a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protective functions. The use of generic personnel titles will not reduce any margin of safety. [These changes involve administrative changes concerning the use of personnel titles and do not affect responsibilities or qualifications of plant personnel.]

Allowing the ''operations manager or assistant operations manager'' to hold an SRO license is also an administrative change. At [the] Callaway plant[,] the Superintendent, Operations is assisted by an Assistant Superintendent, Operations who is required to meet the same minimum qualifications and to assist with the same responsibilities, duties, and authorities.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 16, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If there are problems in accessing the document, contact the Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first

prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of the continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov.* A copy of the petition for leave to intervene and request for hearing should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to John O'Neill, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 21, 2003, which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated in Rockville, Maryland, this 9th day of April, 2003.

For the Nuclear Regulatory Commission.

Stephen Dembek,

Chief, Section 2, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–9316 Filed 4–15–03; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

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 (RRB) 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 collecton of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection

Request for Medicare Payment; OMB 3220–0131

Under section 7(d) of the Railroad Retirement Act, the RRB administers the Medicare program for persons covered by the railroad retirement system. The collection obtains the information needed by Palmetto GBA, the Medicare carrier for railroad retirement beneficiaries, to pay claims for payments under part B of the Medicare program. Authority for collecting the information is prescribed in 42 CFR 424.32.

The RRB currently utilizes Forms G–740S and CMS 1500 to secure the information necessary to pay Part B Medicare Claims. One reponse is completed for each claim. Completion is required to obtain a benefit. No changes are proposed to RRB Form G–740S or CMS Form 1500. The RRB estimates annual respondent burden associated with RRB Form G–740s as follows:

Estimated number of responses: 100.

Estimated completion time per response: 15 minutes.

Estimated annual of burden hours: 25.
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. Bush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,
Clearance Officer.
[FR Doc. 03–9266 Filed 4–15–03; 8:45 am]
BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47651; File No. SR–CBOE–2003–03]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to the Withdrawal of Approval for Securities Underlying Options Traded on the Exchange

April 8, 2003.

On January 27, 2003, the Chicago Board Options Exchange, Inc. (''CBOE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and rule 19b–4 thereunder,[2] a proposed rule change to amend CBOE rule 5.4, which governs the withdrawal of approval for securities underlying options traded on the Exchange.

The Exchange proposed to add new Interpretation and Policy .11 to CBOE rule 5.4 to clarify the manner in which the Exchange determines whether the so-called ''float'' of the underlying security was fewer than 6.3 million shares (''float'' requirement) or the number of ''holders'' of the underlying security was fewer than 1,600 (''holders'' requirement). Specifically, the Exchange proposed to expressly state that in determining whether any of the events specified in Interpretation and Policy .01(a) or (b) to CBOE rule 5.4 have occurred, the Exchange would monitor on a daily basis news sources for information of corporate actions, including stock splits, mergers and acquisitions, distribution of special cash dividends, recapitalizations, and stock buy backs. If a corporate action indicates that an underlying security no longer meets the Exchange's requirements for continued approval under Interpretation and Policy .01(a) or (b) to CBOE rule 5.4, the Exchange would not open additional series of option contracts of the class covering the underlying security. If, however, information of a corporate action does not indicate that any of the events specified in Interpretation and Policy .01(a) or (b) to CBOE rule 5.4 have occurred, the Exchange shall consider the requirements set forth in Interpretation and Policy .01(a) and (b) to have been satisfied.[3]

The proposed rule change was published for comment in the **Federal Register** on March 4, 2003.[4] The Commission received no comments on the proposal.

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[5] and, in particular, the requirements of section 6 of the Act[6] and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[7] because it clarifies how the Exchange determines whether the ''float'' and ''holder'' requirements set forth in Interpretation and Policy .01(a) and (b) to CBOE rule 5.4 respectively are satisfied. Specifically, the Commission believes it is reasonable to permit the Exchange to monitor on a daily basis news sources for information of corporate actions indicating whether the events specified in Interpretation and Policy .01(a) and (b) to CBOE rule 5.4 have occurred to establish whether an underlying security of a class of options no longer meets the Exchange's requirements for continued approval.

It is therefore ordered, pursuant to section 19(b)(2) of the Act[8], that the proposed rule change (File No. SR–CBOE–2003–03) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 03–9318 Filed 4–15–03; 8:45 am]
BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47657; File No. SR–PHLX–2002–86]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Automatic Execution of Booked Customer Limit Orders

April 10, 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 December 20, 2002, the Philadelphia Stock Exchange, Inc. (''PHLX'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. On February 27, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On March 28, 2003, the Exchange filed Amendment No. 2 to the proposed rule change.[4] On April 9, 2003, the Exchange filed Amendment No. 3 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] The Exchange represents that existing Interpretation and Policy .03 to CBOE rule 5.4 would continue to apply when the Exchange considers whether any of the events specified in Interpretation and Policy .01 have occurred with respect to an underlying security. Specifically, Interpretation and Policy .03 to CBOE rule 5.4 provides that the Exchange shall ordinarily rely on information made publicly available by the issuer and/or markets in which such security is traded. Telephone conversation between Patrick Sexton, CBOE, and Frank N. Genco, Attorney, Division of Market Regulation, Commission, on February 11, 2003.
[4] *See* Securities Exchange Act Release No. 47400 (February 25, 2003), 68 FR 10286.
[5] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).
[6] 15 U.S.C. 78f.
[7] 15 U.S.C. 78f(b)(5).
[8] 15 U.S.C. 78s(b)(2).
[9] 17 CFR 200.30–3(a)(12).
[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx to Deborah Lassman Flynn, Assistant Director, Division of Market Regulation (''Division''), Commission, dated February 26, 2003 (''Amendment No. 1''). In Amendment No. 1, the Phlx replaces in its entirety the original proposed rule change.
[4] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx to Deborah Lassman Flynn, Assistant Director, Division, Commission, dated March 27, 2003 (''Amendment No. 2''). In Amendment No. 2, the Phlx replaces in its entirety Amendment No. 1.
[5] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx to Deborah Lassman Flynn, Assistant Director, Division, Commission, dated April 9, 2003 (''Amendment No. 3''). In Amendment No. 3, the Phlx incorporates changes to the text of the Exchange rule 1080 that have been made in separate proposed rule change filings since the time the current proposed rule change was submitted.

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 amend PHLX rule 1080, Philadelphia Stock Exchange Automated Options Market (''AUTOM'') and Automatic Execution System (''AUTO–X''),[6] to provide for the automatic execution of eligible inbound customer and off-floor broker-dealer limit orders[7] against booked customer limit orders at the Exchange's disseminated price. Specifically, the Exchange is proposing to amend PHLX rule 1080(g) to reflect that the contra-side of an eligible inbound customer or off-floor broker-dealer limit order executed via AUTO–X may be a booked customer limit order. The text of the proposed rule change is set forth below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X)

Rule 1080. (a) No change

(b) (i)(A)—(B) No change.

(C) Off-floor broker-dealer limit orders, up to the minimum number of contracts permitted by the Exchange, subject to the restrictions on order entry set forth in Commentary .05 of this rule. Generally, orders up to 1,000 contracts, depending on the option, are eligible for AUTOM order delivery on an issue-by-issue basis, subject to the approval of the Options Committee. The Options Committee may determine to increase the eligible order delivery size to an amount greater than 1,000 contracts, on an issue-by-issue basis. The following types of broker-dealer limit orders are eligible for AUTOM: day, GTC, Immediate or Cancel (''IOC''), simple cancel, simple cancel to reduce size (cancel leaves), cancel to change price, cancel with replacement order. *For purposes of this rule 1080, the term ''off-floor broker-dealer'' means either: (1) A broker-dealer that delivers orders from off the floor of the Exchange for the proprietary account(s) of such broker-dealer; or (2) a market maker located on an exchange or trading floor other than the Exchange's trading floor who elects to deliver orders via AUTOM for the proprietary account(s) of such market maker.*

(ii) The Exchange's Options Committee may determine to accept additional types of orders as well as to discontinue accepting certain types of orders.

(A) In accordance with this sub-paragraph (ii), the Options Committee has determined to allow a customer limit order to be submitted in conjunction with a proprietary contra-side order via AUTOM; these orders must be labeled with a ''K'' (for the customer limit order) and ''L'' (for the proprietary order which is an immediate-or-cancel order that is not eligible for automatic execution) indicator, respectively. The customer limit order labeled ''K'' may be executed by the specialist or crowd, except that it may not be executed against the proprietary order labeled ''L'' until the customer limit order labeled ''K'' has been exposed to the trading crowd for not less than 30 seconds.

(iii) 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, 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 *(except with respect to orders eligible for ''Book Match'' as described in rule 1080(g)(ii) below)*, 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

[6] 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 Phlx rule 1080.

[7] In April of 2002, the Commission approved, on a six-month pilot basis, the Exchange's proposal to allow off-floor broker-dealers to submit proprietary limit orders directly onto the limit order book via AUTOM (the ''pilot''). *See* Securities Exchange Act Release No. 45758 (April 15, 2002), 67 FR 19610 (April 22, 2002) (SR–Phlx–2001–40). In the pilot, the Exchange defined ''off-floor broker-dealer'' as (a) a broker-dealer that delivers orders from ''upstairs'' for the proprietary account(s) of such broker-dealer, or (b) a market maker located on an exchange or trading floor other than the Exchange's trading floor who elects to deliver orders via AUTOM for the proprietary account(s) of such broker-dealer. The Commission approved the pilot on a permanent basis in October 2002. *See* Securities Exchange Act Release No. 46660 (October 15, 2002), 67 FR 64951 (October 22, 2002) (SR–Phlx–2002–50).

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.

(c)(i)–(iii) No change.

(iv) (A)–(D) No change.

(E) when the specialist posts a bid or offer that is better than the specialist's own bid or offer *(except with respect to orders eligible for ''Book Match'' as described in rule 1080(g)(ii) below)*;

(F)–(I) No change.

(v) No change.

(d)–(f) No change.

(g) [The Wheel-]AUTO–X Contra-Party Participation—*The contra-side to automatically executed orders may be: (i) a Wheel Participant; or (ii) a booked customer limit order.*

(i) The Wheel—Contra-party participation for AUTO–X automatic execution shall rotate among Wheel Participants (which are specialists and ROTs signed-up on the Wheel for that listed option) in each option in accordance with procedures established by the Exchange. The Wheel will be activated each trading day within three minutes following the completion of the opening rotation for that listed option. An ROT must be present in his Wheel assignment area to participate in Wheel executions. Specialists on the Options Floor are required to participate on the Wheel in assigned issues.

No two associated or dually affiliated ROTs may be on the Wheel for the same option at the same time. Regardless of an ROT's total assigned issues, and ROT may only sign-on the Wheel in one assignment area at any given time. In order to be placed on the Wheel for an entire trade day, the respective ROT must sign-on, in person on the trading floor for that listed option.

AUTO–X participation shall be assigned to Wheel Participants on a routine basis, beginning at a random place on the rotational Wheel each day, from those participants signed-on in that listed option. The Wheel shall rotate and assign contracts in accordance with procedures established by the Exchange.

(ii) Book Match—For purposes of this sub-paragraph, the contra-side to automatically executed inbound eligible customer and off-floor broker-dealer orders shall be a customer limit order on the book where: (A) The Exchange's disseminated size includes a customer limit order on the book; and (B) the disseminated price is the National Best Bid or Offer. This feature is called Book Match. The inbound eligible order shall not be automatically executed prior to the expiration of a 10-second timer; the specialist may execute such order prior to the expiration of 10 seconds.

(h)–(j) No change.

Commentary:

.01–.05. 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 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 purpose of the proposal is to increase automated options order handling by enabling the Exchange to automatically execute eligible inbound customer and off-floor broker-dealer limit orders delivered via AUTOM against customer limit orders on the specialist's limit order book.[8] The proposal represents the first phase (''Phase I'') of the Exchange's ''Book Match'' system, which the Exchange anticipates will eventually automatically match all eligible inbound order types against orders resting on the limit order book (''booked limit orders'').[9]

Currently, the Exchange's AUTOM System and its automatic execution feature, AUTO–X, do not automatically execute otherwise eligible inbound orders if all or part of the Exchange's disseminated size at the disseminated price consists of a booked limit order. In that situation, inbound orders that would otherwise be eligible for automatic execution are matched manually by the specialist.[10]

The Exchange proposes, pursuant to PHLX rule 1080(g)(ii), that when the Exchange's disseminated price is equal to the National Best Bid or Offer (''NBBO''), and all or part of the Exchange's disseminated size at the NBBO disseminated price includes a customer limit order on the book, eligible inbound customer and off-floor broker-dealer limit orders would be automatically executed against booked customer limit orders at the NBBO, up to the size of the booked customer limit orders at the NBBO.[11] If the inbound customer or off-floor broker-dealer limit order is for a greater size than the Exchange's disseminated size, the remaining portion of the order would be executed manually or placed on the limit order book by the specialist.

The proposal would further provide that inbound eligible customer or off-floor broker-dealer limit orders would be subject to a 10-second timer before execution. The specialist may, however, determine that the booked customer limit order was in the process of being

[8] The electronic ''limit order book'' is the Exchange's automated specialist limit order book, which automatically routes all unexecuted AUTOM orders to the book and displays orders real-time in order of price-time priority. Orders not delivered through AUTOM may also be entered onto the limit order book. *See* Phlx rule 1080, Commentary .02.

[9] The Exchange notes that it was required by the Commission to commit to the automatic execution of eligible inbound orders against specialist and Registered Options Trader (''ROT'') limit orders entered onto the limit order book through an electronic interface system known as ''ROT Access'' under the *Order Instituting Public Administrative Proceedings Pursuant to section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions. See* Securities Exchange Act Release No. 43268 (September 11, 2000), Administrative Proceeding File 3–10282 (the ''Order''). *See* also Securities Exchange Act Release No. 46763 (November 1, 2002), 67 FR 68898 (November 13, 2002) (SR–Phlx–2002–04). The Exchange has committed to roll out the system for the automatic execution of orders placed on the limit order book through ROT Access beginning in January 2004. The instant proposal represents the first phase in the eventual rollout of that system.

[10] Phlx rule 1080(c)(iv) sets forth the various situations in which orders otherwise eligible for automatic execution via AUTO-X are handled manually by the specialist, including this situation, where there is a booked limit order. *See* Securities Exchange Act Release No. 45927 (May 15, 2002), 67 FR 36289 (May 23, 2002) (SR–Phlx–2001–24).

[11] The disseminated price consisting of a booked limit order at which the eligible inbound order would be executed must be the NBBO. For instance, if the Phlx bid is the National Best Bid, but the Phlx offer is not the National Best Offer, an inbound buy order would not be subject to Book Match, but would instead be handled manually.

traded and may execute the inbound order prior to the expiration of the 10-second timer. The Exchange states that the purpose of the timer is to enable the specialist to ascertain whether a member of the trading crowd is in the process of executing the booked customer limit order (thus providing the opportunity for the booked customer limit order to be executed at a better price). In that situation, if the specialist determines that the booked customer limit order is in the process of being executed in the crowd, the specialist would be able to execute the inbound order.[12] Today, because the inbound order is not eligible for automatic execution against a booked limit order and is handled manually by the specialist, there is an opportunity to ascertain this. Under the proposal, if the specialist determines that the booked customer limit order is not in the process of being executed in the crowd, the inbound order would be matched with the booked customer limit order and automatically executed after 10 seconds.

Another purpose of the timer is to allow the specialist to seek price improvement on behalf of the booked customer limit order, both in the crowd and on away markets. Once a customer limit order is booked, a fiduciary responsibility devolves upon the specialist to execute such an order at the best price available, subject to the customer's limit price, when the order becomes marketable. In order to enable the specialist to carry out that fiduciary responsibility, the Exchange believes the specialist should be given a period of time (*i.e.,* 10 seconds) to determine whether there is a better price available at which to execute the booked customer limit order.

a. *Off-Floor Broker-Dealer Limit Orders Delivered by the Same Broker-Dealer that Delivered the Customer Limit Order on the Book*

The Exchange believes that the Book Match proposal could create an opportunity for off-floor member organizations to internalize orders (*i.e.,* submit a proprietary order as contra-side to their customers' limit orders on the book) without providing the specialist and trading crowd with a sufficient time period to determine to execute the customer limit order.

In order to address this potential issue, the Exchange proposes to establish by rule that member organizations that seek to submit a related proprietary contra-side order (*i.e.*, their own order or that of an affiliate) via AUTOM in conjunction with a customer limit order they deliver to the limit order book, would be required to designate such orders with a special indicator (''K'' for the customer limit order, and ''L'' for the proprietary order). Such orders would not be eligible for AUTO–X or Book Match, and the customer limit order labeled ''K'' must be exposed to the crowd for a period of 30 seconds before it is eligible to be executed against the proprietary order labeled ''L.'' The proposal would provide that the customer limit order on the book may be executed by the specialist or crowd prior to the expiration of 30 seconds.

The Exchange believes that these new order types, to be delivered via AUTOM in the unique situation where a broker-dealer submits a customer limit order onto the book with an accompanying proprietary contra-side order, combined with the 30-second crowd exposure requirement for the customer limit order, should provide the specialist and trading crowd with a sufficient time frame within which to determine to execute the customer limit order on the book, thus maintaining fairness and orderliness in the Exchange's markets.

b. *Linkage Orders*

The Exchange further believes that the Book Match function will enable the Exchange to promptly execute orders delivered to the Exchange pursuant to the Plan for the Purpose of Creating and Operating an Intermarket Options Linkage (the ''Plan'')[13] and PHLX rules 1083–1087 adopted to implement the Plan,[14] by matching eligible inbound linkage orders in a timely fashion. The Exchange represents that its systems are capable of recognizing inbound Linkage Principal Acting as Agent Orders (''P/A Orders'')[15] and Principal Orders (''P Orders''),[16] and that Book Match would execute eligible linkage orders at the Firm Customer Quote Size[17] in the case of P/A Orders, and at the Firm Principal Quote Size[18] in the case of P Orders.

c. *Yielding Requirements*

The Exchange is proposing to match both inbound marketable customer and off-floor broker-dealer limit orders with customer limit orders on the book at the NBBO. In the case of inbound non-marketable limit orders, the Exchange's rules concerning the establishment of a bid or offer, and yielding requirements in parity situations would apply. Currently, PHLX rule 1080, Commentary .05(ii) provides that off-floor broker-dealer limit orders entered via AUTOM establishing a bid or offer may establish priority, and the specialist and crowd may match such a bid or offer and be at parity, subject to the yield provisions set forth in PHLX rule 1014, which require ''controlled accounts''[19] to yield priority to customer orders when bidding or offering at the same price for the same series.

Orders of controlled accounts must yield priority to customer orders (except that PHLX ROTs closing in-person are not currently required to yield priority to orders of customer accounts). Off-floor broker-dealer accounts, a subset of ''controlled accounts,'' must yield priority to customer orders at the same

[12] *See* rule 11Ac1–1(c)(3)(ii)(B) under the Act provides that no responsible broker or dealer shall be obligated to execute a transaction for any subject security if, at the time the order sought to be executed is presented, such responsible broker or dealer is in the process of effecting a transaction in such subject security, and, immediately after the completion of such transaction, such responsible broker or dealer communicates to its exchange or association pursuant to paragraph (c)(1) of this section, a revised bid or offer; provided, however, that such responsible broker or dealer shall nonetheless be obligated to execute any such order in such subject security as provided in paragraph (c)(2) of this section at its revised bid or offer in any amount up to its published quotation size or revised quotation size.

[13] *See* Securities Exchange Act Release Nos. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001); 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000) (Notice of Phlx Joining the Plan); and 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) (Approval of the Plan).

[14] *See* Securities Exchange Act Release No. 47296 (January 31, 2003), 68 FR 6528 (February 7, 2003) (SR–Phlx–2002–67).

[15] Phlx rule 1083(j)(i) defines a ''P/A Order'' as an order for the principal account of a specialist (or equivalent entity on another exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent.

[16] Phlx rule 1083(j)(ii) defines a ''P Order'' as an order for the principal account of an eligible market maker and is not a P/A Order.

[17] ''Firm Customer Quote Size'' with respect to a P/A Order means the lesser of (a) the number of option contracts that the exchange sending a P/A Order guarantees it will automatically execute at its disseminated price in a series of an eligible option class for public customer orders entered directly for execution in that market; or (b) the number of option contracts that the exchange receiving a P/A Order guarantees it will automatically execute at its disseminated price in a series of an eligible option class for public customer orders entered directly for execution in that market. This number shall be at least 10. *See* Phlx rule 1083(g).

[18] ''Firm Principal Quote Size'' means the number of options contracts that an exchange guarantees it will execute at its disseminated price for incoming Principal Orders in an eligible option class. This number shall be at least 10. *See* Phlx rule 1083(h).

[19] Phlx rule 1014(g)(i)(A) provides that an account type is either a controlled account or a customer account. A controlled account includes any account controlled by or under common control with a broker-dealer (specialist accounts of Phlx option specialists, however, are not subject to yielding requirements placed upon controlled accounts by this rule). Customer accounts are all other accounts.

price. Therefore, if an off-floor broker-dealer limit order is placed on the limit order book, followed by a customer limit order placed on the limit order book at the same price, the off-floor broker-dealer limit order must yield priority to the customer limit order, even though the customer limit order was placed on the limit order book after the off-floor broker-dealer order.

Orders of controlled accounts currently are not required to yield priority to other controlled account orders, except that when both an order of a PHLX ROT closing in-person and some other order of a controlled account are established in the crowd at the same price, and then a customer order is established at that price, the order of the controlled account must yield to the customer order while the order of the PHLX ROT closing in-person does not have to so yield.[20]

2. Statutory Basis

For these reasons, the Exchange believes that its proposal is consistent with section 6(b) of the Act[21] in general, and section 6(b)(5)[22] in particular in that 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 providing a system that should result in a greater number of automatic executions for customer and broker-dealer orders on the Exchange, and by providing the specialist with the opportunity to determine if a booked customer limit order has already traded, and to seek the best price available for the customer, at the time an eligible inbound order is received.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, 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–2002–86 and should be submitted by May 7, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[23]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9317 Filed 4–15–03; 8:45 am]

BILLING CODE 8010–01–P

[20] The Exchange notes that it has filed proposed amendments to its rules, including proposed new rules concerning the allocation of trades on the Exchange's Options Floor, pursuant to an order issued by the Commission in relation to settling *In the Matter of Certain Activities of Options Exchanges,* which requires the Exchange (as well as other options exchanges) to implement certain undertakings. *See* the ''Order,'' supra note 9. One such undertaking is to adopt new, or amend existing, rules to include any practice or procedure, not currently authorized by rule, whereby market makers determine by agreement the spreads or option prices at which they will trade any option, or the allocation of orders in that option. Specifically, the Order required that by March 12, 2001, draft proposed rules must be filed and the Exchange must take all reasonable steps to promptly stop any such practice or procedure that has not been filed or is not already authorized by rule. *See* section IV.B.j. of the Order. Among the proposed amendments are the elimination of the exception to the yielding requirements for specialist accounts of option specialists, and the elimination of the exception to the yielding requirement for ROTs closing in person. Therefore, under that proposal, controlled accounts would be required to yield priority to customer accounts without exception. *See* Securities Exchange Act Release No. 47499 (March 13, 2003), 68 FR 14459 (March 25, 2003) (SR–Phlx–2001–39).

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

[23] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Region IV Regulatory Fairness Board; Public Federal Regulatory Enforcement Fairness Roundtable

The Small Business Administration Region IV Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a Public Roundtable on Thursday, May 1, 2003, at 12:30 p.m. at the Sheraton Music City, 777 McGavock Park, Nashville, TN 37214, to provide small business owners and representatives of trade associations with an opportunity to share information concerning the Federal regulatory enforcement and compliance environment.

Anyone wishing to attend or to make a presentation must contact W. Clinton Smith in writing or by fax, in order to be put on the agenda. W. Clinton Smith, U.S. Small Business Administration, Tennessee District Office, 50 Vantage Way, Suite 201, Nashville, TN 37228, phone (615) 736–5039, fax (615) 736-7232, e-mail: *w.smith@sba.gov.*

For more information, see our Web site at *www.sba.gov/ombudsman.*

Dated: April 9, 2003.

Michael L. Barrera,

National Ombudsman.

[FR Doc. 03–9297 Filed 4–15–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Military Reservist Economic Injury Disaster Loans, Interest Rates for Third Quarter FY 2003

In accordance with the Code of Federal Regulations 13—Business Credit and Assistance § 123.512, the following interest rate is effective for Military Reservist Economic Injury Disaster Loans approved on or after April 14, 2003.

Military Reservist Loan Program—2.953%

Dated: April 10, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–9296 Filed 4–15–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 4337]

Amendment of the Restriction on the Use of United States Passports for Travel To, In or Through Iraq

On February 1, 1991, pursuant to the authority of 22 U.S.C. 211a and Executive Order 11295 (31 FR 10603), and in accordance with 22 CFR 51.73(a)(2) and (a)(3), all United States passports, with certain exceptions, were declared invalid for travel to, in, or through Iraq unless specifically validated for such travel. The restriction was originally imposed on the grounds that (1) armed hostilities then were taking place in Iraq and Kuwait and (2) there was an imminent danger to the safety of United States travelers to Iraq. American citizens then residing in Iraq and American professional reporters and journalists on assignment there were exempted from the restriction on the grounds that such exemptions were in the national interest. The restriction has been extended for additional one-year periods since then, and was last extended through February 25, 2004 by Public Notice 4283 of February 25, 2003. (68 FR 8791).

The armed hostilities now taking place in Iraq have increased the danger faced by U.S. citizens in Iraq, and current conditions in Iraq are extremely hazardous for Americans. Nevertheless, in light of U.S. national interests in facilitating the provision of humanitarian and other critical services in support of the Iraqi people, and pursuant to the authorities set forth in 22 U.S.C. 211a, Executive Order 11295, and 22 CFR 51.73, I have decided to amend the restriction on the use of U.S. passports for travel to, in, or through Iraq to exempt from its coverage certain persons providing humanitarian and other critical services in support of the Iraqi people.

Accordingly, Public Notice 4283, published on February 25, 2003 (68 FR 8791) is hereby amended by deleting the penultimate paragraph (beginning with ''Accordingly'') and replacing it with the following:

''Accordingly, United States passports shall continue to be invalid for travel to, in, or through Iraq unless specifically validated for such travel under the authority of the Secretary of State. This restriction on the validity of U.S. passports for travel to, in or through Iraq shall not apply to U.S. passports held by (1) persons resident in Iraq since February 1, 1991; (2) professional reporters and journalists on assignment there; (3) persons conducting humanitarian activities, as defined in 31 CFR Section 575.330, through nongovernmental organizations registered with the U.S. Department of the Treasury Office of Foreign Assets Control (OFAC) pursuant to 31 CFR Section 575.527(a); (4) persons conducting humanitarian activities subject to a specific license issued by OFAC; (5) persons conducting humanitarian activities funded by the U.S. Government; (6) personnel of the United Nations and its agencies; or (7) U.S. States Government personnel and contractors on official U.S. Government assignment in Iraq.''

This Public Notice amending Public Notice Number 4283 shall be effective from the date it is published in the **Federal Register** and shall expire at midnight on February 25, 2004, unless sooner extended or revoked by Public Notice.

Dated: April 11, 2003.

Colin L. Powell,

Secretary of State, Department of State.

[FR Doc. 03–9498 Filed 4–15–03; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Navigation and Spectrum Policy 2003 Federal Radionavigation Plan

AGENCY: Office of Secretary of Transportation.

ACTION: Notice and request for public comment.

SUMMARY: Under the authority of the National Defense Authorization Act of FY 1998, the Department of Transportation, in conjunction with the Department of Defense, is required to publish a Federal Radionavigation Plan (FRP) not less than every two years. The FRP represents the official United States government policy and plan for common-use (*i.e.* civil and military) radionavigation systems. The FRP was last published in 2001 by the Department of Defense and the Department of Transportation. The next publication of the document is planned for 2003. When it is signed, a notice will be published in the **Federal Register** announcing its availability.

Due to the many advances in technology, radionavigation services are now widely used by public, industry, and government sectors alike. Improved services, lowered costs of user equipment, and new benefits have increased the overall user base of radionavigation services. As such, a key goal of the Office of Navigation and Spectrum Policy is to solicit input from all user communities on the desired policy and plan for federally operated common-use radionavigation services. The Department of Transportation encourages all users of radionavigation systems and users of the FRP to submit their comments and inputs for updating the content of the 2001 FRP to reflect the current policy and plan for the 2003 FRP edition.

DATES: Comments must be filed by July 1, 2003. Late-filed comments will be considered to the extent possible.

ADDRESSES: Written comments on the content, format, or scope of the FRP document should be emailed to: *FRPinputs@ost.dot.gov* Copies of the 2001 FRP can be downloaded free of charge at: *http://www.navcen.uscg.gov/pubs/frp2001/default.htm.*

FOR FURTHER INFORMATION CONTACT: The Office of the Secretary, Navigation and Spectrum Policy at (202) 366–0353.

Dated: April 7, 2003.

Michael E. Shaw,

Director, Navigation and Spectrum Policy.

[FR Doc. 03–9084 Filed 4–15–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Marine Transportation System National Advisory Council

ACTION: National Advisory Council public meeting.

SUMMARY: The Maritime Administration announces that the Marine Transportation System National Advisory Council (MTSNAC) will hold a meeting to discuss the Council's Team reports, its SEA–21 proposal, short sea shipping, shipbuilding, MTS infrastructure needs and other issues. A public comment period is scheduled for 9 a.m. to 10 a.m. on Tuesday, May 13, 2003. To provide time for as many people to speak as possible, speaking time for each individual will be limited to three minutes. Members of the public who would like to speak are asked to contact Raymond Barberesi by May 5, 2003. Commenters will be placed on the agenda in the order in which notifications are received. If time allows, additional comments will be permitted. Copies of oral comments must be submitted in writing at the meeting. Additional written comments are welcome and must be filed by May 20, 2003.

DATES: The meeting will be held on Monday, May 12, 2003, from 10 a.m. to 5:30 p.m. and Tuesday, May 13, 2003, from 8 a.m. to 12 p.m.

ADDRESSES: The meeting will be held in the Hotel Monaco, 700 F Street, NW., Washington, DC 20001. The hotel's phone number is (202) 628–7177.

FOR FURTHER INFORMATION CONTACT: Raymond Barberesi, (202) 366–4357; Maritime Administration, MAR 830, Room 7201, 400 Seventh St., SW, Washington, DC 20590; *Raymond.Barberesi@marad.dot.gov.*

(Authority: 5 U.S.C. App 2, Sec. 9(a)(2); 41 CFR 101–6. 1005; DOT Order 1120.3B)

Dated: April 10, 2003.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–9289 Filed 4–15–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** notice with a 60-day comment period was published on 10–16–02.

DATES: Comments must be submitted on or before May 16, 2003.

FOR FURTHER INFORMATION CONTACT: Ronald Filbert at the National Highway Traffic Safety Administration, Office of Injury Control Operations & Resources, (NTI–200), 202–366–2701. 400 Seventh Street, SW., 5119E, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: 23 CFR Part 1313 Certificate Requirements for State Grants for Drunk Driving Prevention Programs.

OMB Number: 2127–0501.

Type of Request: Extension of a currently approved collection.

Abstract: Title 23 of the U.S. Code established a Federal alcohol incentive grant program designed to encourage States to enact strong, effective anti-drunk driving legislation and improve the enforcement of these laws.

Affected Public: State, local, and tribal government.

Estimated Total Annual Burden: 1,360.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on April 10, 2003.

Marilena Amoni,

Acting Associate Administrator for Office of Injury Control Operations & Resources.

[FR Doc. 03–9355 Filed 4–15–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** notice with a 60-day comment period was published on October 1, 2002 (67 FR 61722–61723).

DATES: Comments must be submitted on or before May 16, 2003.

FOR FURTHER INFORMATION CONTACT: Luke Loy, National Highway Traffic Safety Administration, Office of Enforcement, 202–366–5308. 400 Seventh Street, SW., Room 6111, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Motor Vehicle Importation.

OMB Number: 2127–0002.

Type of Request: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Abstract: The National Highway Traffic Safety Administration's (NHTSA's) statute at 49 U.S.C. subchapter III *Importing Noncomplying Motor Vehicles and Equipment* (49 U.S.C. section 30141 *et seq.*) requires that a motor vehicle which does not conform to applicable Federal Motor vehicle Safety Standards (FMVSS) be refused admission into the United States. NHTSA may authorize importation of nonconforming vehicles upon specified terms and conditions to insure that any such vehicle or equipment will be brought into conformity with all applicable FMVSS or will be exported out of or abandoned to the United States at no cost.

Estimated Burden Hours: 72,500.

Number of Respondents: 838,000.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on April 10, 2003.

Delmas Maxwell Johnson,

Associate Administrator for Administration.

[FR Doc. 03–9356 Filed 4–15–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** notice with a 60-day comment period was published on August 19, 2002 (67 FR 53839–53840, or U.S. DOT Docket Number NHTSA–2002–12908).

DATES: Comments must be submitted on or before May 16, 2003.

FOR FURTHER INFORMATION CONTACT: Johanna Lowrie at the National Highway Traffic Safety Administration, Office of Crashworthiness Standards (NVS–111) (202) 366–5269. 400 Seventh Street, SW., 5311, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Vehicle Information for the General Public.

OMB Number: 2127 New.

Type of Request: Regular.

Abstract: NHTSA currently collects vehicle information through the Office of Vehicle Safety Compliance (OVSC). This information collection is mandatory and is specific to Compliance requirements of certain Federal Motor Vehicle Safety Standards (FMVSS). The information collected by OVSC has been useful to the New Car Assessment Program (NCAP) in selecting vehicles for it's crash testing programs, but more information is needed. At the same time, the public's interest in vehicle information continues to grow. The public is interested not only in crash test results and other vehicle ratings, but is also interested in information on the benefit and availability of safety features. NHTSA also needs safety feature information when it attempts to analyze petitions for rulemaking asking the agency to mandate certain safety features.

An example of the type of information we propose to collect includes: Specific advanced frontal air bags information that would include the number of air bag deployment stages; technologies air bag deployment is dependent upon; air bag on/off switch information; child restraint anchorages system information; seat belt information that would include pretensioner, load limiters or other energy management systems for the seat belt, seat belt extenders and adjustable upper belt anchorages; dynamic head restraints; side air bag information that would include where the side air bag is mounted, what type of side bag is mounted and whether the side air bags meet the requirements of the recommendations of the Technical Working Group on Out of Position Occupants (TWG); Automatic Door Lock (ADL) information; crash avoidance information, anti-theft devices, and Static Stability Rating (SSF) information.

NHTSA will use this information on the NHTSA Web site, in the ''Buying a Safer Car'' and ''Buying a Safer Car for Child Passengers'' brochures, other consumer publications, as well as internally for benefit analysis. NHTSA plans on making this burden easier by sending out electronic files with the original letter requesting information. In the future, NHTSA plans on developing a process for the manufacturers to submit the information on a secure website.

Affected Public: Manufacturers that sell motor vehicles in the United States under 10,000 lbs.

Estimated Total Annual Burden: 880 hours.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on April 10, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–9357 Filed 4–15–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34322]

Canadian National Railway Company—Trackage Rights Exemption—CSX Transportation, Inc. and New York Central Lines, LLC

New York Central Lines, LLC (NYC) and CSX Transportation, Inc. (CSXT) have agreed to grant overhead trackage rights to Canadian National Railway Company (CN) over segments of the following rail lines owned by NYC and operated by CSXT: (1) NYC's Niagara Branch at CP–7 (generally between milepost 7.1+/− and milepost 7.2+/−), between the connection with CN at the easterly end of CN's International Bridge and the connection with NYC's Belt Line Branch at Buffalo (Black Rock), NY; (2) NYC's Belt Line Branch between the connection with NYC's Niagara Branch at CP–7 (milepost 7.2+/−) at Buffalo (Black Rock), NY, and NYC's Chicago Line at CP–437 (milepost 0.0+/−) at Buffalo, NY; and (3)(a) NYC's Chicago Line, between the connection with NYC's Belt Line Branch and NYC's connection with PRR's Howard Street Running Track at CP–437 at Buffalo, NY; and (b) between CP–437 at Buffalo, NY, and the connection between NYC and the South Buffalo Railway Company (SBRR) at the west end of NYC's Seneca Yard near milepost 5.0+/− of NYC's Chicago Line, via either (i)(a) Chicago Line between CP–437 and CP–2, or (b) Compromise Branch between CP–437 and CP–2, and (ii) NYC's designated Seneca Yard trackage between CP–2 and CP–5, a total of approximately 12.8 miles, depending on the route, including such NYC Seneca Yard trackage as CN shall require to reasonably interchange or conduct interchange with SBRR or Buffalo & Pittsburgh Railroad Inc. (BPRR).

The transaction was scheduled to be consummated on April 3, 2003 (7 days after the notice was filed).

The purpose of this transaction is to amend the trackage rights granted to CN in *Canadian National Railway Company—Trackage Rights Exemption—New York Central Lines LLC,* STB Finance Docket 33769 (STB served June 29, 1999); and *Canadian National Railway Company—Trackage*

Rights Exemption—New York Central Lines LLC, STB Finance Docket No. 33798 (STB served Sept. 17, 1999).

The amended trackage rights will facilitate CN's interchange with BPRR and CN's interchange with the Norfolk Southern Railway Company. In addition, the amended trackage rights will allow CN to easily access its already existing trackage rights and lessen traffic on segments of the NYC's Compromise Branch Line and NYC's Chicago Line.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). 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. 34322, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Michael J. Barron, Jr., Canadian National Railway Company, 455 North Cityfront Plaza Drive, Chicago, IL 60611–5317.

Board decisions and notices are available on our Web site at ''*www.stb.dot.gov.*''

Decided: April 8, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–9328 Filed 4–15–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

Notice of Call for Redemption: 8⅜ Percent Treasury Bonds of 2003–08

1. Public notice is hereby given that all outstanding 8⅜ percent Treasury Bonds of 2003–08 (CUSIP No. 912810 CC 0) dated August 15, 1978, due August 15, 2008, are hereby called for redemption at par on August 15, 2003, on which date interest on such bonds will cease.

2. Full information regarding the presentation and surrender of such bonds held in coupon and registered form for redemption under this call will be found in Department of the Treasury Circular No. 300 dated March 4, 1973, as amended (31 CFR part 306), and from the Definitives Section of the Bureau of the Public Debt (telephone (304) 480–7936), and on the Bureau of the Public Debt's Web site, *http//www.publicdebt.treas.gov.*

3. Redemption payments for such bonds held in book-entry form, whether on the books of the Federal Reserve Banks or in Treasury-Direct accounts, will be made automatically on August 15, 2003.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 03–9171 Filed 4–15–03; 8:45 am]

BILLING CODE 4810–40–M

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Community Development Financial Institutions Fund (the ''Fund'') within the Department of the Treasury is soliciting comments concerning the Community Development Financial Institutions (''CDFI'') Program; Financial Assistance Component Application.

DATES: Written comments should be received on or before June 16, 2003, to be assured of consideration.

ADDRESSES: Direct all comments to Linda G. Davenport, Acting Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, Facsimile Number (202) 622–7754.

FOR FURTHER INFORMATION CONTACT: The Financial Assistance Component application may be obtained from the Fund's Web site at *http://www.cdfifund.gov.* Requests for additional information should be directed to Linda G. Davenport, Acting Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, or call (202) 622–8662.

SUPPLEMENTARY INFORMATION:

Title: The Community Development Financial Institutions Program—Financial Assistance Component Application.

OMB Number: 1559–0006.

Abstract: The purpose of the CDFI Program is to promote economic revitalization and community development through investment in and assistance to certified CDFIs. Through the Financial Assistance Component of the CDFI Program, the Fund makes financial investments in and may provide technical assistance grants to CDFIs that have comprehensive business plans for creating demonstrable community development impact through the deployment of capital within their respective target markets for community development finance purposes.

Type of review: Extension.

Affected Public: Not-for-profit institutions, businesses or other for-profit institutions and tribal entities.

Estimated Number of Respondents: 200.

Estimated Annual Time Per Respondent: 100 hours.

Estimated Total Annual Burden Hours: 20,000 hours.

Requests for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Fund, including whether the information shall have practical utility; (b) the accuracy of the Fund's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Authority: 12 U.S.C. 4703, 4703 note, 4704, 4706, 4707, 4717; 12 CFR part 1805.

Dated: April 8, 2003.

Tony T. Brown,

Director, Community Development Financial Institutions Fund.

[FR Doc. 03–9294 Filed 4–15–03; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request—Release of Non-Public Information

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before May 16, 2003.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, or e-mail to *Joseph_F._Lackey_Jr@omb.eop.gov;* and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the submission to OMB, contact Marilyn K. Burton at *marilyn.burton@ots.treas.gov,* (202) 906–6467, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Release of Non-Public Information.

OMB Number: 1550–0081.

Form Number: N/A.

Regulation requirement: 12 CFR 510.5.

Description: This information collection provides an orderly mechanism for expeditious processing of requests from the public (including litigants in lawsuits where OTS is not a party) for non-public or confidential OTS information (documents and testimony), while preserving OTS's need to maintain the confidentiality of such information.

Type of Review: Renewal.

Affected Public: Savings Associations.

Estimated Number of Respondents: 36.

Estimated Frequency of Response: On occasion.

Estimated Burden Hours per Response: 5 hours.

Estimated Total Burden: 180 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Dated: April 10, 2003.

Deborah Dakin,

Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. 03–9288 Filed 4–15–03; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0074]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine eligibility for continued educational assistance for veterans, individuals on active duty, and reservists who change their programs of education or places of training.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 16, 2003.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0074'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for Change of Program or Place of Training for Veterans, Servicepersons, and Members of the Selected Reserve, VA Form 22–1995.

OMB Control Number: 2900–0074.

Type of Review: Extension of a currently approved collection.

Abstract: VA pays educational benefits to eligible veterans and persons on active duty, and to persons in the Selected Reserve. Each veteran, person on active duty, or person in the Selected

Reserve must be pursuing an approved program of training to be eligible for benefits. The eligible student must complete VA Form 22–1995 to identify and request approval for a supplementary educational objective or place of training. VA uses the information to determine continued eligibility for educational benefits, and to monitor the number of times a veteran, person on active duty, or person in the Selected Reserve has changed his or her educational objectives.

Affected Public: Individuals or households.

Estimated Annual Burden: 16,000 hours.

Estimated Average Burden Per Respondent: 12 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 80,000.

Dated: April 3, 2003.

By direction of the Secretary.

Martin L. Hill,

Acting Director, Records Management Service.

[FR Doc. 03–9360 Filed 4–15–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0319]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to establish a legal contract between VA and a Federal fiduciary.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 16, 2003.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0319'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Fiduciary Agreement, VA Form 21–4703.

OMB Control Number: 2900–0319.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 21–4703 is used to maintain supervision of the distribution and use of VA benefits paid to a fiduciary on behalf of a beneficiary who is determine to be incompetent. The form is used as a legal binding contract between VA and Federally appointed fiduciaries. It outlines a fiduciary's responsibilities with respect to the use of funds received on behalf of incompetent beneficiaries.

Affected Public: Individuals or households, business or other for-profit, not for profit institutions, and State, local or tribal government.

Estimated Annual Burden: 1,467 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 17,600.

Dated: April 2, 2003.

By direction of the Secretary.

Loise Russell,

Acting Director, Records Management Service.

[FR Doc. 03–9361 Filed 4–15–03; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Wednesday,
April 16, 2003

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0088, FRL–7462–6]

RIN 2060–AG68

National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for new and existing refractory products manufacturing facilities and implements section 112(d) of the Clean Air Act (CAA) by requiring all major sources to meet HAP emission standards reflecting the application of maximum achievable control technology (MACT). The final rule will protect air quality and promote the public health by reducing emissions of several of the HAP listed in section 112(b)(1) of the CAA, including ethylene glycol, formaldehyde, hydrogen fluoride (HF), hydrochloric acid (HCl), methanol, phenol, and polycyclic organic matter (POM). Exposure to these substances has been demonstrated to cause adverse health effects such as irritation of the lung, skin, and mucous membranes, effects on the central nervous system, and damage to the liver, kidneys, and skeleton. The EPA has classified the HAP formaldehyde and POM as probable human carcinogens. The final rule will reduce nationwide emissions of HAP from these facilities by an estimated 124 megagrams per year (Mg/yr) (137 tons per year (tpy)).

EFFECTIVE DATE: April 16, 2003.

ADDRESSES: Docket No. OAR–2002–0088 contains supporting information used in developing the final rule. The docket is located at the Air and Radiation Docket and Information Center in the EPA Docket Center, (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW, Washington, DC 20460, telephone (202) 566–1744.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Fairchild, U.S. EPA, Office of Air Quality Planning and Standards, Emission Standards Division, Minerals and Inorganic Chemicals Group, (C504–05), Research Triangle Park, NC 27711, telephone number (919) 541–5167, electronic mail address *fairchild.susan@epa.gov*.

SUPPLEMENTARY INFORMATION:

Regulated Entities. Categories and entities potentially regulated by this action include those listed in the following table:

Category	NAICS	Examples of regulated entities
Industrial	327124	Clay refractories manufacturing plants.
Industrial	327125	Nonclay refractories manufacturing plants.

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 § 63.9782 of today's 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.

Electronic Docket (E-Docket). The EPA has established an official public docket for this action under Docket ID No. OAR–2002–0088. The official public docket is the collection of materials that is available for public viewing in the Refractory Products Manufacturing NESHAP Docket at the Air and Radiation Docket and Information Center in the EPA Docket Center, (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC 20460. The Docket Center is open from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

Electronic Access. 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 of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, select ''search'' and key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as confidential business information and other information whose disclosure is restricted by statute, which are 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.

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

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of the final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by June 16, 2003. Under section 307(d)(7)(B) of the CAA, only an objection to the final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by the final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

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

I. Background and Public Participation
A. What Is the Source of Authority for Development of NESHAP?
B. What Criteria Are Used in the Development of NESHAP?
C. How Was the Rule Developed?
II. Summary of the Final Rule
A. What Source Category Is Affected by the Final Rule?
B. What Are the Affected Sources?
C. What Are the Emission Limits?
D. What Are the Operating Limits?
E. What Are the Work Practice Standards?
F. What Are the Testing and Initial Compliance Requirements for Sources Subject to Emission Limits?

G. What Are the Initial Compliance Requirements for Sources Subject to a Work Practice Standard?
H. What Are the Continuous Compliance Requirements for Sources Subject to Emission Limits?
I. What Are the Continuous Compliance Requirements for Sources Subject to a Work Practice Standard?
J. What Are the Notification, Recordkeeping, and Reporting Requirements?
K. What Are the Compliance Deadlines?
III. Summary of Major Changes Since Proposal
A. Emission Limits and Work Practice Standards
B. Compliance Testing
C. Control Device Monitoring and Operation
D. Definitions
IV. Summary of Responses to Major Comments
A. MACT Floors
B. Emission Limits
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V. Summary of Impacts
A. What Are the Health Impacts?
B. What Are the Air Emission Reduction Impacts?
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D. What Are the Economic Impacts?
E. What Are the Non-Air Quality Environmental and Energy Impacts?
VI. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Congressional Review Act

I. Background and Public Participation

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. Major sources of HAP are those that have the potential to emit greater than 10 tpy of any one HAP or 25 tpy of any combination of HAP. The category of major sources covered by the final rule was listed as Chromium Refractories Production on July 16, 1992 (57 FR 31576).

Section 112(c) of the CAA allows EPA to revise the source category list at any time. After obtaining information from chromium refractories manufacturing plants that indicated that some facilities were major sources due to HAP emissions from the manufacturing of nonchromium refractories, we decided to expand the scope of the source category to include most manufacturers of refractory products. On November 18, 1999, we revised the source category name from Chromium Refractories Production to Refractories Manufacturing (64 FR 63025) to reflect the broadened scope of the source category. At proposal (67 FR 42108, June 20, 2002), we changed the source category name from Refractories Manufacturing to Refractory Products Manufacturing to further clarify the source category.

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 control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the 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 the consideration of the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements.

C. How Was the Rule Developed?

We proposed the standards for refractory products manufacturing on June 20, 2002 (67 FR 42108). The public comment period lasted from June 20, 2002 to August 19, 2002. Industry representatives, regulatory agencies, environmental groups, and the general public were given the opportunity to comment on the proposed rule and to provide additional information during the public comment period. We offered at proposal the opportunity for oral presentation of data, views, or arguments concerning the proposed rule at a public hearing. One organization requested a public hearing, but it later withdrew the request, and a hearing was not held.

We received a total of eight public comments on the proposed rule. Comments were submitted by three industry trade associations, two refractory products manufacturing companies, and two other companies. One trade association submitted two sets of comments. The final rule reflects our full consideration of all of the comments received. Major public comments on the proposed rule, along with our responses to those comments, are summarized in this preamble.

II. Summary of the Final Rule

A. What Source Category Is Affected by the Final Rule?

Today's final rule applies to the Refractory Products Manufacturing source category. This source category includes, but is not limited to, any facility that manufactures refractory bricks and shapes that are produced using an organic HAP compound, pitch-impregnated refractory products, fired chromium refractory products, and fired clay refractory products. Fired refractory products are those that have undergone thermal processing in a kiln.

B. What Are the Affected Sources?

Today's final rule establishes emission limitations (emission limits and operating limits) and work practice standards for several types of refractory products manufacturing sources. Table 1 of this preamble lists the affected sources that will be subject to today's final rule.

TABLE 1.—AFFECTED SOURCES FOR THE REFRACTORY PRODUCTS MANUFACTURING RULE

Refractory product type	Affected sources
Sources subject to emission limits:	
Resin-bonded	Existing and new curing ovens and kilns.
Pitch-bonded ..	Existing and new curing ovens and kilns.

TABLE 1.—AFFECTED SOURCES FOR THE REFRACTORY PRODUCTS MANUFACTURING RULE—Continued

Refractory product type	Affected sources
Pitch-impregnated.	Existing and new defumers and coking ovens, and new shape preheaters.
Other formed products that use organic additives.	Existing and new shape dryers and kilns used to process refractory shapes that are made using an organic HAP compound.
Clay	New kilns.
Sources subject to work practice standards:	
Pitch-impregnated.	Existing shape preheaters and existing and new pitch working tanks.
Chromium	Existing and new kilns.
Clay	Existing kilns.

C. What Are the Emission Limits?

Today's final rule specifies separate emission limits for existing and new thermal process sources that emit organic HAP and new clay refractory products kilns. Facilities that operate thermal process sources that emit organic HAP have the option of meeting a total hydrocarbon (THC) concentration limit of 20 parts per million by volume, dry basis (ppmvd), corrected to 18 percent oxygen, or reducing THC mass emissions by at least 95 percent. The sources that will be subject to these organic HAP emission limits include new and existing shape dryers, curing ovens, kilns, coking ovens, and defumers. In addition, new shape preheaters will be subject to these same emission limits. For continuous process sources of organic HAP, the format of the emission limits is a 3-hour block average. For batch process sources, the format of the standard is the average of the 3-hour peak THC emissions periods for two test runs.

For affected new clay refractory products kilns, the final rule includes separate emission limits for HF and HCl. For affected continuous kilns, you will have to meet an HF emission limit of 0.019 kilograms per megagram (kg/Mg) (0.038 pounds per ton (lb/ton)) of uncalcined clay processed or reduce HF mass emissions by at least 90 percent. You will also be required to meet an HCl emission limit of 0.091 kg/Mg (0.18 lb/ton) of product or reduce uncontrolled HCl emissions by at least 30 percent. If you own or operate a new affected periodic (batch process) clay refractory products kiln, you will be required to reduce HF emissions by at least 90 percent and HCl emissions by at least 30 percent.

D. What Are the Operating Limits?

Operating limits are limits on operating parameters of process equipment or control devices. Today's final rule specifies process and control device operating limits for thermal process sources that emit organic HAP and for clay refractory kilns. For each of these operating limits, you will be required to measure the appropriate operating parameters during the performance test and establish limits on the operating parameters based on those measurements. Following the performance test, you will be required to monitor those parameters and ensure that the established limits are not exceeded.

For affected thermal process sources that emit organic HAP, we are requiring operating limits on the organic HAP processing rate and the operating temperatures of your control devices. The operating limit on the organic HAP processing rate requires you to maintain the rate at which organic HAP are processed in an affected process unit at or below the rate measured during the most recent performance test. For sources that are controlled with a thermal oxidizer, you will be required to establish the operating limit for the combustion chamber temperature. For affected sources that are controlled with a catalytic oxidizer, you will be required to establish the operating limit for the temperature at the inlet of the catalyst bed. Also, you must check the activity level of the catalyst at least every 12 months.

If you have a new clay refractory products kiln that is controlled with a dry limestone adsorber (DLA), you will be required to monitor continuously the pressure drop across the DLA and check the limestone feed hopper and feeder setting at least daily to ensure that the limestone is free flowing. You will also be required to document the source of the limestone used during the most recent performance test and maintain records that demonstrate that the source of limestone has not changed.

If you own or operate a new clay refractory products kiln that is controlled with dry lime injection fabric filters (DIFF) or dry lime scrubber/fabric filters (DLS/FF), you will be required to install a bag leak detection system, initiate corrective action within 1 hour of a bag leak detection system alarm, and complete corrective actions according to your operation, maintenance, and monitoring (OM&M) plan. You will also be required to verify at least once every 8 hours that lime is free flowing and record the lime feeder setting daily to confirm that the feeder setting is at or above the level established during the most recent performance test. If you use a wet scrubber, you will be required to establish operating limits for the pressure drop across the scrubber, liquid pH, liquid flow rate, and chemical feed rate (if applicable).

If you use a control device or technique listed in today's final rule, you may establish operating limits for alternative operating parameters subject to prior written approval by the Administrator on a case-by-case basis. You will be required to submit the application for approval of alternative operating parameters no later than the notification of the performance test. You will have to install, operate, and maintain the alternative parameter monitoring systems in accordance with the application approved by the Administrator.

E. What Are the Work Practice Standards?

Today's final rule establishes work practice standards for existing shape preheaters that are used to produce pitch-impregnated refractory products, existing and new pitch working tanks that are used to produce pitch-impregnated refractory products, existing and new chromium refractory products kilns, and existing clay refractory products kilns.

If you operate an affected existing shape preheater, you will be required to control emissions of POM from the shape preheater by cleaning the residual pitch from the surfaces of the baskets or containers that are used for holding refractory shapes in a shape preheater and autoclave at least every ten impregnation cycles, or by ducting the exhaust from the shape preheater to a control device that meets the applicable emission limits for thermal process sources of organic HAP. If you choose to clean the basket surfaces, you may remove residual pitch by abrasive blasting or subject the baskets to a thermal process cycle that matches or exceeds the temperature and cycle time of the affected shape preheater and is ducted to a thermal or catalytic oxidizer that is comparable to the control device for your defumer or coking oven. If you choose to duct shape preheater emissions to a control device, you may duct the emissions to the coking oven control device, defumer control device, or to another thermal or catalytic oxidizer that is comparable to the coking oven or defumer controls and meets the applicable emission limits for thermal process sources of organic HAP.

If you have an affected existing or new pitch working tank, you must duct the exhaust from the tank to either the coking oven control device, the defumer control device, or an equivalent thermal or catalytic oxidizer.

If you have an affected existing or new chromium refractory products kiln or an affected existing clay refractory products kiln, you must use natural gas, or an equivalent fuel, as the kiln fuel at all times except during periods of natural gas curtailment or other periods when natural gas is not available.

F. What Are the Testing and Initial Compliance Requirements for Sources Subject to Emission Limits?

Under today's final rule, you must conduct an initial performance test on each affected source to demonstrate initial compliance with the emission limits. In accordance with 40 CFR 63.7(a)(2), you are required to conduct the test within 180 days after the compliance date using specified test methods.

If you have an affected existing or new shape dryer, curing oven, kiln, coking oven, or defumer, or a new shape preheater, and you choose to comply with the THC concentration limit of 20 ppmvd corrected to 18 percent oxygen, you must measure emissions of THC in stack gases exhausted to the atmosphere using EPA Method 25A of 40 CFR part 60, appendix A, Determination of Total Gaseous Organic Concentration Using a Flame Ionization Analyzer. You must also measure the oxygen concentration of the stack gas using EPA Method 3A of 40 CFR part 60, appendix A, Determination of Oxygen and Carbon Dioxide Concentrations in Emissions From Stationary Sources (Instrumental Analyzer Procedure). If you decide to comply with the 95 percent THC reduction limit, you must measure THC mass emissions at the inlet and outlet of the control device using EPA Method 25A.

For continuous process sources, you must conduct a minimum of three 1-hour test runs. For batch process sources, you must conduct at least two test runs. Each batch process test run must be conducted over a separate batch cycle, unless you manufacture the product associated with the maximum organic HAP processing rate infrequently and it will disrupt production to perform the compliance test over multiple process cycles. In such cases, you may conduct both runs of the performance test simultaneously over a single batch process cycle using paired sampling trains.

Today's final rule requires affected batch process sources to be tested throughout two complete batch cycles unless you develop an emissions profile or meet certain conditions for terminating a performance test run before the completion of the batch cycle. If you choose to develop an emissions profile, you must sample THC emissions throughout a complete batch cycle, determine the average THC mass emissions rate for each hour of the batch cycle, and identify the 3-hour period of peak THC emissions. During any subsequent test runs, you are not required to sample emissions outside that 3-hour period of peak THC emissions. During subsequent performance tests, you will have to complete at least two test runs, but you will only have to test during the 3-hour peak emissions period for each run.

If you choose not to develop an emissions profile, you may terminate testing before the completion of a batch cycle if you meet certain conditions. For each of two test runs, you will have to begin testing at the start of the batch cycle and continue testing for at least 3 hours beyond the precise time when the process reaches peak operating temperature. You may stop the test run at that time if you can show that the following conditions are met: (1) THC concentrations are not increasing over the 3-hour period since the process peak temperature was reached; (2) at least 1 hour has passed since any reduction in the operating temperature of the control device (thermal or catalytic oxidizer); and (3) either the average THC concentration at the inlet to the control device for the previous hour has not exceeded 20 ppmvd, corrected to 18 percent oxygen, or your source met the applicable emission limit at the control device outlet during each of the previous 3 hours after the process reached peak temperature.

For both continuous process and batch process performance tests, you must conduct performance tests on affected thermal process sources under the conditions that will result in the highest levels of organic HAP emissions expected to occur for that affected source. You determine these ''worst-case'' conditions by taking into account the organic HAP processing rate, the process operating temperatures, and the processing times. The organic HAP processing rate is the rate at which the mass of organic HAP materials contained in refractory shapes are processed in an affected thermal process source.

If you decide to start production of a refractory product that is likely to have an organic HAP processing rate that is more than 10 percent greater than the rate established during the most recent performance test, you will be required to conduct a new performance test for that product and establish a new operating limit for the organic HAP processing rate. You will also have to conduct a new performance test on an affected uncontrolled kiln following any process changes that are likely to increase kiln emissions of organic HAP.

If the source is a batch process source and is controlled with a thermal or catalytic oxidizer, you may reduce the operating temperature of the control device or shut the control device off if you satisfy all of the following conditions: (1) You do not use an emissions profile and limit testing to the 3-hour peak emissions period; (2) at least 3 hours have passed since the process unit reached its maximum temperature; (3) the applicable emission limit (THC concentration or THC percentage reduction) has been met during each of the three 1-hour periods since the process reached peak temperature; (4) mass emissions of THC have not increased during the 3-hour period since maximum process temperature was reached; and (5) either the average THC concentration at the inlet to the oxidizer has not exceeded 20 ppmvd, corrected to 18 percent oxygen, for at least 1 hour, or the applicable emission limit has been met during each of the four 15-minute periods immediately following the oxidizer temperature reduction. If you elect to shut off or reduce the temperature of a thermal or catalytic oxidizer by satisfying these conditions, you may use the results from the performance test to establish the time at which the oxidizer for that specific source can be shut off (or temperature reduced) during the production of other refractory products that use organic HAP. For any such product, you must operate the oxidizer at a temperature at least as high as that established during the performance test, minus 16°C (25°F), from the start of the batch cycle until 3 hours have passed since the process reached its peak temperature. You will have to maintain that oxidizer temperature for the same length of time beyond the process peak temperature as during the performance test.

For each new kiln that manufactures clay refractory products, you must measure emissions of HF and HCl using one of three methods: (1) EPA Method 26A of 40 CFR part 60, appendix A, Determination of Hydrogen Halide and Halogen Emissions from Stationary Sources—Isokinetic Method; (2) EPA Method 26 of 40 CFR part 60, appendix A, Determination of Hydrogen Halide and Halogen Emissions from Stationary Sources—Non-isokinetic Method; or (3)

EPA Method 320 of 40 CFR part 63, appendix A, Measurement of Vapor Phase Organic and Inorganic Emissions by Extractive Fourier Transfer Infrared (FTIR) Spectroscopy. You can use Method 26 only if the gas stream does not contain HF or HCl in the solid phase (*e.g.,* HF as PM or HCl as PM). You must conduct the tests for HF and HCl while the affected kiln is operating at the maximum production level likely to occur. Each test run must last at least 1 hour in duration.

If you have an affected continuous clay refractory products kiln, you must determine initial compliance with the production-based mass emission limits for HF and HCl by calculating the mass emissions per unit of production for each test run using the mass emission rates of HF and HCl and the rate at which uncalcined clay is processed (on a fired-product basis), as measured during your performance test. To determine initial compliance with any of the percentage reduction emission limits, you must measure mass emissions of the specific HAP (HF or HCl) at the inlet and outlet of the control device for each test run.

If you have an affected batch process clay refractory kiln, you must comply with the percentage reduction limit. You will be required to test throughout two complete batch cycles unless you develop an emissions profile. If you choose to develop an emissions profile, you must sample HF and HCl emissions throughout one complete batch cycle. For both continuous and batch process kilns, you must measure and record the average uncalcined clay processing rate for each test run.

If you own or operate an affected new clay refractory products kiln that is controlled with a DLA, and you decide to change the source of limestone, you must repeat the performance test on the kiln within 60 days of the date when you begin using limestone from the new limestone source.

In addition to the procedures previously described, you will be required to follow the procedures specified in EPA Methods 1 to 4 of appendix A of 40 CFR part 60, where applicable. You must perform EPA Method 1, Sample and Velocity Traverses for Stationary Sources, (or Method 1A) to select the locations of sampling points and the number of traverse points. You must perform EPA Method 2, Determination of Stack Gas Velocity and Volumetric Flow Rate (Type S Pitot Tube), (or Method 2A, 2C, 2D, 2F, or 2G) to determine gas velocity and volumetric flow rate. You must perform EPA Method 3, Gas Analysis for the Determination of Dry Molecular Weight, (or Method 3A or 3B) to determine the exhaust gas molecular weight. You must perform EPA Method 4, Determination of Moisture Content in Stack Gases, to measure the moisture content of the exhaust gas.

Prior to the initial performance test, you must install any continuous parameter monitoring systems (CPMS) that are required for demonstrating continuous compliance. During the performance test, you must use those CPMS to establish the applicable operating limits (*e.g.,* minimum thermal oxidizer combustion chamber temperature).

G. What Are the Initial Compliance Requirements for Sources Subject to a Work Practice Standard?

If you own or operate an affected existing shape preheater, an existing pitch working tank, or a new pitch working tank, you must select a method for complying with the applicable work practice standard and provide a description of that method as part of your initial notification, as required by 40 CFR 63.9(b)(2). For affected shape preheaters, if you choose to comply with the work practice standard by cleaning pitch from basket or container surfaces, you must describe in your initial notification the cleaning method. If you choose to comply by capturing and ducting emissions from the shape preheater to a control device, you must describe the design (*e.g.,* thermal oxidizer combustion chamber temperature and residence time) and operation of that control device.

For affected existing or new pitch working tanks, you must describe, in your initial notification, the design and operation of the control device to which the emissions from the working tank are exhausted. You also must verify that the performance of the control device is the same as, or is equivalent to, the control device that is used to control organic HAP emissions from an affected defumer or coking oven.

For affected new or existing chromium refractory products kilns and for existing clay refractory products kilns, you must indicate, in your initial notification, the type of fuel used in those kilns.

H. What Are the Continuous Compliance Requirements for Sources Subject to Emission Limits?

Today's final rule requires owners and operators of affected sources to demonstrate continuous compliance with each emission limitation. You must follow the requirements in your OM&M plan and in your startup, shutdown, and malfunction plan (SSMP) and document conformance with both plans. For each affected source equipped with an add-on air pollution control device (APCD), you must inspect each system at least once each calendar year and record the results of each inspection. You must install, operate, and maintain each required CPMS to monitor the operating parameters established during your initial performance test. You must collect all data while the process is operational. You will have to operate the CPMS at all times when the process is operating. You must also conduct proper maintenance of the CPMS, including inspections, calibrations, and validation checks. You must repeat any required performance tests at least every 5 years.

For each affected source, you must monitor and maintain the organic HAP processing rate below the level established during the most recent performance test. You must also record the process operating temperature hourly. For batch process sources, you must record the cycle time for each batch cycle. If you decide to start production of a refractory product that is likely to have an organic HAP processing rate that is more than 10 percent greater than the maximum organic HAP processing rate established during the most recent performance test, you will have to conduct a new performance test for that product and establish a new operating limit for the maximum organic HAP processing rate.

For affected continuous sources that are controlled with a thermal oxidizer, you must maintain the 3-hour block average combustion chamber temperature at or above the combustion chamber temperature operating limit established during the most recent performance test. For affected continuous sources that are controlled with a catalytic oxidizer, you must maintain the 3-hour block average temperature at the inlet of the catalyst bed at or above the corresponding temperature operating limit established during the most recent performance test. For affected batch process sources that are controlled with a thermal oxidizer, you must maintain the average hourly combustion chamber temperature at or above the combustion chamber temperature operating limit established during the most recent performance test.

To document compliance with these operating limits for thermal or catalytic oxidizers, you must measure and record the specified average hourly temperatures. You must also report any average hourly control device operating temperature below the operating limit

established during the most recent performance test.

If you control emissions from an affected source using process modifications or an add-on control device other than a thermal or catalytic oxidizer, you must demonstrate continuous compliance by operating a THC continuous emission monitoring system (CEMS) in accordance with Procedure 1 of 40 CFR part 60, appendix F.

For new clay refractory kilns that are controlled with a DLA, you must monitor continuously the pressure drop across the DLA. You also must check the limestone feed hopper and limestone feeder setting daily to ensure that there is limestone in the hopper, the limestone is free flowing, and the feed rate has not changed. In addition, you must continue using the same source of limestone as was used during the most recent performance test and maintain records that demonstrate that the source of limestone has not changed.

For new clay refractory kilns that are controlled with a DIFF or DLS/FF, you must maintain free-flowing lime in the feed hopper or silo at all times. You also must maintain the lime feeder setting at or above the level established during the most recent performance test and record the feeder setting once each day. You must initiate corrective action within 1 hour of a bag leak detection system alarm and complete corrective actions according to your OM&M plan.

For kilns that are controlled with a wet scrubber, you must continuously maintain the 3-hour block average scrubber pressure drop, scrubber liquid pH, scrubber liquid flow rate, and chemical addition rate (if applicable) at or above the corresponding operating limits established during the most recent performance test. Finally, you must record the uncalcined clay processing rate for all affected kilns.

If you operate an affected continuous kiln, you may bypass the control device and continue operating the kiln during periods of scheduled maintenance on the kiln control device, upon approval of the permitting authority. However, you must request prior approval from the permitting authority before taking the control device offline. You must minimize HAP emissions during the period when the control device is offline. You must also minimize the time period when the control device is offline. Unlike scheduled maintenance, a malfunction of a control device must be addressed in your SSMP. As specified in 40 CFR 63.6(f)(1) and (h)(1), emission standards do not apply during periods of startup, shutdown, or malfunction.

I. What Are the Continuous Compliance Requirements for Sources Subject to a Work Practice Standard?

If you have an affected existing shape preheater, an existing pitch working tank, or a new pitch working tank, you must perform the appropriate work practice, and you must document in your Notification of Compliance Status that you have complied with the work practice standard, as required by 40 CFR 63.9.

For affected new or existing chromium refractory products kilns and for existing clay refractory products kilns, you must use natural gas, or its equivalent, as the kiln fuel, and document the type of fuel used. During periods of natural gas curtailment or other periods when natural gas is unavailable, you are allowed to use an alternative fuel. However, you must meet the notification requirements specified in 40 CFR 63.9812(f) and the reporting requirements specified in 40 CFR 63.9814(g). You must also incorporate procedures for using alternative fuels in your OM&M Plan.

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

If you have an affected refractory products manufacturing source, you must submit initial notifications, notifications of performance tests, and notifications of compliance status by the specified dates in the final rule, which may vary depending on whether the affected source is new or existing. In addition to the information specified in 40 CFR 63.9(h)(2)(i), you must also include the following in your Notification of Compliance Status: (1) The operating limit parameter values established for each affected source and a description of the procedures used to establish the values; (2) design information and analysis demonstrating conformance with requirements for capture and collection systems; (3) your OM&M plan, as specified in 40 CFR 63.9794; (4) your SSMP; and (5) descriptions of the methods you use to comply with any applicable work practice standards. You must submit semiannual compliance reports containing statements and information concerning emission limitation deviations, out of control CPMS, and periods of startup, shutdown, or malfunction when actions consistent with the approved SSMP were taken in accordance with 40 CFR 63.6(e)(3).

If you operate an affected clay or chromium refractory products kiln and you must use an alternative fuel due to a natural gas curtailment or other interruption of natural gas supply, you must submit a notification of alternative fuel use that includes the information specified in 40 CFR 63.9812(f). You must submit a report of alternative fuel use within 10 working days after terminating the use of the alternative fuel. The report must include the information specified in 40 CFR 63.9814(g).

If you operate a continuous kiln that is an affected thermal process source of organic HAP or is a new clay refractory products kiln, and you must take the control device offline for scheduled maintenance, you must request prior approval from the permitting authority, as specified in 40 CFR 63.9792(e). In addition, you must maintain records of all maintenance activities and the time intervals when the control device is offline. Finally, you must incorporate into your OM&M plan the procedures for minimizing HAP emissions when the control device is out of service.

For all affected sources, you must maintain records for at least 5 years from the date on which the data are recorded. You must keep the records onsite for at least the first 2 years, but you can store the records offsite for the remaining 3 years.

K. What Are the Compliance Deadlines?

Existing sources must comply within 3 years of the date of publication of today's final rule. New or reconstructed sources must comply at startup or upon the date of publication of today's final rule, depending on their startup date.

III. Summary of Major Changes Since Proposal

A. Emission Limits and Work Practice Standards

For thermal process sources of organic HAP, we replaced the proposed combustion efficiency limit with a 95 percent THC reduction limit. We believe that the 95 percent THC reduction limit will result in organic HAP emissions reductions that are comparable to the reductions that would have been achieved through the proposed 99.8 percent combustion efficiency limit. Furthermore, percentage reduction provides a better measure of the performance of a control device in reducing organic emissions than does combustion efficiency, because percentage reduction is a direct measure of reductions in THC emissions across the control device. In addition, the combination of the proposed THC concentration and the percentage reduction limits allows considerable flexibility in how owners and operators

choose to comply with today's final rule.

The available emission data for the refractory products manufacturing industry indicate that sources that are controlled to levels above the MACT floor (i.e., more stringent than the MACT floor control level) achieve THC emissions reductions of at least 95 percent, and sources that are controlled to levels below the MACT floor achieve THC emissions reductions that are less than 95 percent. Based on our analysis of the data, we concluded that a 95 percent THC reduction represents the level of emissions control that is achieved by a thermal process source of organic HAP that is controlled to the MACT floor level. Additional information on our analysis of the available THC emission reduction data is provided in Docket No. OAR–2002–0088.

We did not propose a percentage THC reduction because we believed that testing the inlets of the control devices used on thermal process sources of organic HAP was not feasible for most sources. However, based on the public comments received on the proposed rule, we believe that refractory products manufacturers can measure THC at the inlets and outlets of most affected sources. Furthermore, those facilities that cannot obtain inlet and outlet measurements still have the option of complying with the 20 ppmvd THC emission limit.

For the proposed rule, we developed HF and HCl emission limits based on the emission levels that could be achieved by the best-controlled kiln in the brick and structural clay products industry. Since proposal, we have obtained additional information on the types of emission controls used in the brick and structural clay products industry to reduce emissions of HF and HCl from kilns. Based on that information, we have concluded that the best-controlled similar source for clay refractory products kilns is a small brick kiln that is controlled with a DLA. A small brick kiln is a kiln with a production capacity of less than 9.1 Mg per hour (Mg/hr) (10 tons per hour (tons/hr)). The data indicate that a DLA can achieve HF emissions reductions of 90 percent and HCl emissions reductions of 30 percent. We used those emissions reductions to develop the HF and HCl emission limits specified in the final rule. The revised emission limits for HF are a 90 percent reduction or 0.019 kg/Mg (0.038 lb/ton) of uncalcined clay processed. For HCl, the revised emission limits are a 30 percent reduction or 0.091 kg/Mg (0.18 lb/ton) of uncalcined clay processed.

For proposal, we based the HF and HCl emission limits for new clay refractory products kilns on emission data for a brick kiln that was controlled with a DLS/FF. When we developed those proposed emission limits, we made no distinction between kiln size and control options. However, a review of the emission data for controlled brick kilns indicates that kiln size must be considered when determining feasible control options for reducing emissions of HF and HCl. For brick kilns with production capacities of 9.1 Mg/hr (10 tons/hr) or greater (i.e., large kilns), several control devices have been demonstrated to be highly effective in reducing HF and HCl emissions. Those controls include DLS/FF, DIFF, and wet scrubbers. However, for brick kilns that are designed with production capacities below 9.1 Mg/hr (10 tons/hr), only the DLA has been demonstrated to be a feasible control option for HF and HCl. With DLS/FF, DIFF, and wet scrubbers, it is necessary to maintain minimum exhaust gas flow rates for effective HF and HCl removal, and those minimum exhaust flow rates are significantly greater than the flow rates characteristic of small brick kilns. On the other hand, the performance of the DLA is unaffected by exhaust gas flow rates through the system, and DLA have been used on small brick kilns. Consequently, we have concluded that the best-controlled small brick kiln is equipped with a DLA. We have also concluded that clay refractory products kilns are similar to small brick kilns because 90 percent of the clay refractory products tunnel kilns currently in use were designed to operate at 4.5 Mg/hr (5 tons/hr) or less, and there are no clay refractory products kilns that operate with production rates greater than 8.2 Mg/hr (9 tons/hr).

For existing clay and chromium refractory products kilns, we are still requiring limits on the types of fuels that can be used in affected kilns. However, we have also included a provision for the affected facilities to use alternative fuels during specified times of natural gas curtailment and during other times when natural gas is unavailable. To comply with this provision, owners or operators of affected kilns must notify the permitting authority within 48 hours following the declaration of such an emergency or the interruption of the natural gas supply. In addition, within 10 working days after the facility terminates the use of the alternative fuel, the final rule requires submittal of a report that details the dates of alternative fuel usage and the amount of alternative fuel used.

B. Compliance Testing

For batch process sources, we have reduced the minimum number of compliance test runs from three to two. We believe that two test runs are adequate for characterizing emissions from batch process sources. Although we are still requiring a minimum of three 1-hour test runs for continuous sources, we believe that it is unnecessary to test batch process sources for three runs. Under the final rule, each test run on a batch process source will last at least 3 hours, and in most cases a test run will last considerably longer (*i.e.*, in excess of 10 hours). Thus, even with the reduced number of test runs, an emission test on a batch process source will still require a much longer test period than a test on a continuous process source. Because of the extensive duration of each test run, we believe that a second test run is adequate for corroborating the results of the initial test run, and a third test run is unnecessary. Many batch process refractory products are specialty items that are produced infrequently. Because we are requiring each test run to be conducted over a separate batch process cycle, it may not be practical, and it may disrupt production of other products, to require testing over separate cycles. In some cases, conducting the compliance test over multiple process cycles could require a testing period of weeks or months, thereby preventing the use of the batch process source for manufacturing other refractory products. For this same reason, we have included in today's final rule a provision for allowing owners and operators to conduct both test runs simultaneously over a single batch process cycle using paired sampling trains, under certain conditions. Rather than basing compliance on a rolling 3-hour average, today's final rule requires compliance for batch process sources to be based on emissions over the 3-hour peak emissions period.

For situations in which a facility begins production of a new product that constitutes a slight increase in the maximum organic HAP processing rate, we are no longer requiring a repeat performance test. Specifically, if the organic HAP processing rate for the new product is no more than 10 percent greater than the organic HAP processing rate established during the most recent compliance test, a repeat performance test is not required. We believe this change is appropriate for several reasons. The HAP content of some raw materials used in refractory products manufacturing can vary slightly from shipment to shipment, and those

variations may be beyond the control of the user. The net increase in controlled emissions from a source that uses a material with a slightly higher HAP content would most likely be within the measurement error of the test method. On the other hand, if the organic HAP processing rate for the new product is more than 10 percent greater than the operating limit for the maximum organic HAP processing rate, a new compliance test must be performed.

C. Control Device Monitoring and Operation

In the final rule, we have added the requirement that owners or operators of affected sources that are controlled with a catalytic oxidizer must have the catalyst activity level checked at least every 12 months and take any necessary corrective action, such as replacing the catalyst, to ensure that the catalyst is performing as designed. We continue to require catalyst bed inlet temperature monitoring. However, we believe this additional requirement is needed because, unlike thermal oxidizers, catalytic oxidizer performance cannot be ensured simply by monitoring the operating temperature. Catalyst beds can become poisoned and rendered ineffective without any apparent change in operation. Requiring an annual check of catalyst activity will help to identify catalyst poisoning and other potential performance problems before they become serious. An activity level check can consist of passing an organic compound of known concentration through a sample of the catalyst, measuring the percentage reduction of the compound across the catalyst sample, and comparing that percentage reduction to the percentage reduction for a fresh sample of the same type of catalyst.

We have made several changes to the monitoring requirements for new clay refractory products kilns. We have added monitoring requirements for kilns controlled with a DLA. Specifically, owners or operators of affected kilns are required to monitor continuously the pressure drop across the DLA, check the limestone feed hopper daily to ensure that limestone is free flowing, check the limestone feeder setting daily, use the same source of limestone as was used during the most recent performance test, and maintain records that demonstrate that the source of limestone has not changed. We have eliminated the requirement to monitor the fabric filter inlet temperature for affected clay refractory kilns that are controlled with a DIFF or a DLS/FF. Finally, we have eliminated the requirement to monitor the water injection rate for kilns that are controlled with a DLS/FF.

We have also included in the final rule a provision to allow owners and operators of affected continuous process kilns to bypass the control device and continue operating the kilns during periods when the control device is offline for scheduled maintenance. However, the owner or operator must request approval from the permitting authority before taking the control device out of service. The owner or operator must minimize the time periods during which the control device is offline and must also minimize HAP emissions from the affected sources during these periods. The owner or operator must also maintain records of all maintenance activities and the time when the control device was offline. In addition, procedures for minimizing HAP emissions during periods when the control device is offline must be incorporated into the OM&M plan for the kiln.

D. Definitions

We have modified the definitions of *refractory product* and *research and development process unit,* and have added definitions for *dry limestone adsorber, period of natural gas curtailment or supply interruption, resin-bonded refractory products, pitch-bonded refractory products,* and *redundant sensor.* We also deleted the incorporation by reference of the publication ''Industrial Ventilation: A Manual of Recommended Practice.''

IV. Summary of Responses to Major Comments

A. MACT Floors

Comment: One commenter pointed out that more than 30 refractory products manufacturing plants have closed permanently over the past 3 years. The commenter stated that the MACT floors used to develop the proposed rule are based on data that no longer reflect the current status of the industry. The commenter believes that it is improper for us to use the old data while the industry is in the process of realignment. In response to a request by us, the same commenter provided a list of 35 plants that have closed recently.

Response: We have reviewed the list of 35 recently closed plants provided by the commenter and among those plants, we considered only one, the North American Refractories plant in Womelsdorf, PA, to be a major or synthetic area source of organic HAP. However, we were aware of the impending closure of that particular facility before we determined the MACT floors for the proposed rule, and we did not include affected sources at that plant in our MACT floor analyses. Because we based our determination of the MACT floors for sources of organic HAP emissions only on major and synthetic area sources and none of those plants has closed, the closing of the 35 plants has no impact on the MACT floor analyses used to develop the proposed or final NESHAP.

B. Emission Limits

Comment: One commenter stated that the proposed combustion efficiency limit has no relationship to the MACT floors for thermal process sources of organic HAP. He believes that the proposed combustion efficiency limit is an arbitrary limit based on theoretical calculations and is not supported by the data. The commenter also stated that we cannot identify any plants that have met a 99.8 percent combustion efficiency. He believes that the proposed combustion efficiency limit cannot be met by existing sources; consequently, the stringency of the 99.8 percent combustion efficiency limit will force all affected facilities to meet the alternative proposed limit on THC. The same commenter stated that he has been informed by control device vendors that sources would have to operate well above the MACT floor level of control to meet a 99.8 percent combustion efficiency limit. Another commenter agreed that the combustion efficiency limit will force the industry to meet the alternative THC limit. Both commenters also stated that most of the thermal oxidizers currently used in the refractory products manufacturing industry would not be able to meet the outlet exhaust gas limitation of 3 percent carbon dioxide that is a prerequisite for choosing the combustion efficiency limit compliance option. One commenter added that sources controlled with catalytic oxidizers would be unable to meet the 99.8 percent combustion efficiency limit.

The same two commenters also commented on the appropriateness of a combustion efficiency limit. One of the commenters stated that he contacted thermal oxidizer vendors and a trade association that represents control device manufacturers and vendors, all of whom stated that they were unfamiliar with combustion efficiency. They indicated that thermal oxidizer performance guarantees invariably are written in terms of destruction and removal efficiency (DRE). The other commenter concurred that vendors offer performance guarantees in terms of DRE and not in terms of combustion

efficiency. The commenter stated that he believes that there is no known correlation between combustion efficiency and DRE, and he noted that we also have made that point on several occasions. Finally, the same commenter stated that the Pennsylvania Department of Environmental Resources informed him that they do not incorporate emission limits for combustion efficiency in their operating permits.

Response: After reviewing these comments, we have decided not to include the combustion efficiency limit in the final rule. Although we still maintain that the proposed combustion efficiency limit could be achieved by refractory products manufacturing sources that are controlled to the MACT floor level, we acknowledge that refractory products manufacturing industry personnel, vendors, emission testing contractors, and permitting agency personnel may not be familiar with the concept of using combustion efficiency as a measure of the control of organic pollutants. In addition, combustion efficiency is essentially an indicator of control device performance rather than a direct measure of emissions reductions or control. There are alternatives to a combustion efficiency limit that provide reliable measures of control device performance and emissions reductions, and we have included one such alternative, a percentage THC reduction, in the final rule. We believe that a THC percentage reduction is a more appropriate format for an emission limit than is combustion efficiency because percentage reduction is a measure of emissions reductions and can be related directly to the MACT floor for thermal process sources of organic HAP.

Comment: Two commenters recommended that we consider a limit on DRE instead of a combustion efficiency limit. One of the commenters stated that control device vendors typically offer performance guarantees in terms of a DRE limit, coupled with an outlet concentration limit for low-emitting sources. The other commenter stated that an alternative limit of 95 percent DRE for THC would be appropriate for the refractory products manufacturing industry. One of the commenters evaluated two catalytic oxidizers used at his facility. He concluded that the oxidizers would be unable to meet a 99.8 percent combustion efficiency limit or the proposed THC limit of 20 ppmvd, corrected to 18 percent oxygen. However, he believes that both of the catalytic oxidizers he evaluated could achieve a DRE of approximately 95 percent. The same commenter also disagreed with our statement that a DRE limit would be problematic due to the lack of access to control device inlets for emission testing on most affected sources. He stated that facilities can retrofit existing sources to allow for control device inlet testing.

Response: We agree with the commenters that a DRE limit, which generally is referred to as a percentage reduction limit in NESHAP, would be appropriate for the refractory products manufacturing industry. Consequently, we have decided to incorporate an emission limit of 95 percent THC reduction in today's final rule as an alternative to the THC emission concentration limit. We believe that percentage reduction provides the best measure of the performance of a control device in reducing organic emissions. Because percentage reduction is a direct measure of emissions reductions, we also believe it is more consistent with the MACT floor concept than is the proposed combustion efficiency limit. Unlike combustion efficiency, we have THC percentage reduction data for several refractory products manufacturing sources. By comparing those data to the MACT floor levels established by today's rule (see Docket No. OAR–2002–0088), we were able to conclude that the 95 percent THC reduction limit that we have incorporated into the final rule is representative of the emissions reductions that sources controlled to the MACT floor level should be able to achieve on a consistent basis.

Comment: One commenter commented on the fact that the same combustion efficiency limit was proposed for several different types of thermal process sources, such as periodic kilns, tunnel kilns, dryers, and coking ovens. He believes that differences in the operation of these various types of sources warrant different emission limits.

Response: We considered establishing separate emission limits for each type of thermal process source of organic HAP. However, the MACT floors for both existing and new sources are based on thermal oxidizer control, and the MACT floor level thermal oxidizer operating temperatures and residence times are similar for the various types of thermal process sources. These thermal oxidizers represent relatively high levels of control, and based on their design and operating parameters, we would not expect there to be significant differences in performance levels among them. Furthermore, when the theoretical performance levels of these thermal oxidizers are compared, the Arrhenius equation predicts that all of them would achieve essentially complete control of organic emissions. The available valid emission test data on organic emissions from controlled thermal process sources of organic HAP also do not support making such distinctions in emission limits. Consequently, we decided to establish the same emission limits for all types of thermal process sources of organic HAP subject to today's final rule.

Comment: Two commenters stated that the available emission data do not support the proposed THC limit of 20 ppmvd. The commenters believe that the data support an emission limit of 30 ppmvd THC, based on the average THC emission concentration for the available test data on controlled kilns.

Response: To determine the MACT floors and the corresponding emission limits for existing sources, we first must consider the number of sources in operation at major and synthetic area source facilities. In the case of kilns that are used to fire refractory products that contain organic HAP, there are fewer than 30 kilns that can be considered in establishing the MACT floor. Under section 112(d)(3) of the CAA, we must select the average or median of the best-performing five sources. In this case, the MACT floor for kilns corresponds to the third-best performing kiln.

To rank kilns in terms of their performance in controlling organic HAP emissions, we needed emissions data for each of the best-performing kilns. However, we did not have data on emissions of organic HAP (or THC as a surrogate for organic HAP) for any of the best-controlled kilns. The specific kilns referenced by the commenters are not among the best-performing kilns in operation at major or synthetic area source facilities, so it would be contrary to the requirements of the CAA to average emission data for those kilns, as the commenters suggest, because such an average would include data from sources that are clearly not among the top five best-performing kilns located at major or synthetic area source facilities.

An alternative approach to determining MACT floors by ranking sources according to demonstrated emissions reductions is to rank the sources based on the likely performance level of the control devices in place. We used this alternative approach to determine the MACT floors for organic HAP emissions from thermal process sources. Using the Arrhenius equation, we ranked all of the controlled kilns located at major or synthetic area source facilities and selected the third-best kiln as the MACT floor. However, to develop the 20 ppmvd THC emission limit, we did consider all of the available data,

including the kiln emission data referenced by the commenters. After considering the design of the control devices for those kilns and the likely variations in emission data, we concluded that the available data support a 20 ppmvd THC emission limit.

Comment: One commenter stated that Congress intended MACT standards to be industry-specific, and he objected to the use of data for the brick and structural clay products industry to establish emission limits for HF and HCl from clay refractory products kilns. The commenter stated that it is inappropriate to use data from another industry to develop emission limits for the refractory products manufacturing industry.

Response: Section 112(d) of the CAA requires us to establish emission limits for new sources based on the performance of the best-controlled similar source. The CAA does not specify that the similar source must be within the same source category. To the contrary, our interpretation of section 112(d) is that we are obligated to consider similar sources from other source categories in determining the best-controlled similar source for establishing MACT for new sources.

For clay refractory products kilns, we concluded that the best-controlled similar sources are found in the brick and structural clay products industry. We believe that brick kilns are similar to clay refractory products kilns for several reasons: (1) Most clay refractory products are fired in tunnel kilns, as is the case for brick manufacturing; (2) in both industries, tunnel kilns are designed to have three temperature zones, a preheating or drying zone, a firing zone, and a cooling zone; (3) in both industries, unfired shapes (bricks or refractories) are loaded onto rail cars and transported through each successive temperature zone through a series of timed pushes; (4) both clay refractory kilns and brick kilns typically operate at peak temperatures of approximately 2000°F; (5) firing times in clay refractory and brick kilns are similar; (6) the raw materials used in producing bricks (primarily common clay and shale, but also fire clay) and clay refractories (primarily fire clay) are similar; and (7) at least one refractory products manufacturer fires both clay refractory products and brick and structural clay products in the same kilns.

The HF and HCl controls currently used in the brick and structural clay products industry are a function of kiln size (*i.e.*, production rate). Kilns with production capacities of less than 9.1 Mg/hr (10 tons/hr) are classified as small kilns, and those with production capacities of at least 9.1 Mg/hr (10 tons/hr) are classified as large kilns. For small brick kilns, the best-performing source is a kiln controlled with a DLA. For large kilns, the best-performing sources are those controlled with either a DIFF, DLS/FF, or wet scrubber. Although DIFF, DLS/FF, and wet scrubbers generally are more effective than DLA in reducing emissions of HF and HCl, large kiln controls require minimum exhaust gas flow rates that are significantly higher than the flow rates characteristic of small kilns. Consequently, the DLA is the only device that has been demonstrated to be feasible for controlling HF and HCl emissions from small brick kilns. Using the same size classification system, the clay refractory products kilns currently in operation would all be classified as small kilns. All operate at less than 9.1 Mg/hr (10 tons/hr), and 90 percent operate at no more than 4.5 Mg/hr (5 tons/hr). Because of the similarities in design and operation discussed in the previous paragraph, and taking into account kiln size, we have concluded that small brick kilns and clay refractory products kilns are similar sources. In the final rule, we are incorporating HF and HCl emission limits based on the performance of DLA-controlled brick kilns.

Comment: One commenter expressed concern with how we used data for the brick and structural clay products industry to develop emission limits for new clay refractory products kilns. He stated that we used the same data to propose more stringent HF and HCl limits for new clay refractory products kilns than were proposed for new brick and structural clay products kilns under the proposed Brick and Structural Clay Products NESHAP (67 FR 47894, July 22, 2002). The proposed HF emission limit for new brick and structural clay products kilns is 0.014 kg/Mg (0.027 lb/ton), whereas the proposed HF limit for new clay refractory products kilns is 0.001 kg/Mg (0.002 lb/ton). In addition, the proposed HCl emission limit for new brick and structural clay products kilns is 0.019 kg/Mg (0.037 lb/ton), whereas the proposed HCl limit for new clay refractory products kilns is 0.0025 kg/Mg (0.005 lb/ton).

Response: In selecting the proposed HF and HCl emission limits for new clay refractory products kilns, we reviewed the available emission data from the brick and structural clay products industry and selected the single best-performing similar source, which was an individual brick kiln controlled with a DLS/FF. To select the HF and HCl emission limits for brick kilns in the proposed Brick and Structural Clay Products NESHAP, we used a different approach based on the overall performance of the available control technologies. We reviewed the available data and concluded that the three best-performing control technologies (DLS/FF, DIFF, and wet scrubbers) are essentially comparable in terms of reducing HF and HCl emissions. We also considered the variability in the data and selected the percentage reductions that we believe all three technologies can achieve on a continuous basis according to the available test data. We used those percentage reductions, which were 95 percent for HF and 90 percent for HCl, to derive the proposed production-based emission limits from the emission factors for uncontrolled HF and HCl from brick kilns. Those production-based emission limits were 0.014 kg/Mg (0.027 lb/ton) for HF and 0.019 kg/Mg (0.037 lb/ton) for HCl. After reconsidering both approaches for selecting emission limits, we have concluded that the technology-based approach that we used to develop the emission limits for the proposed Brick and Structural Clay Products NESHAP is the appropriate method for establishing HF and HCl emission limits for new clay refractory products kilns.

In the proposed Brick and Structural Clay Products NESHAP, we also subcategorized according to kiln size by differentiating between large kilns (*i.e.*, those with production capacities of 9.1 Mg/hr (10 tons/hr) or greater) and small kilns (*i.e.*, those with production capacities that are less than 9.1 Mg/hr (10 tons/hr)). For today's final rule, we have incorporated this same size classification system into our determination of the emission limits for new clay refractory products kilns. We have concluded that small brick kilns are similar to clay refractory products kilns and that the best-controlled similar source for clay refractory products kilns is a small brick kiln controlled with a DLA. Although there are other technologies that perform well in controlling HF and HCl emissions from brick kilns (*i.e.*, DLS/FF, DIFF, and wet scrubbers), those control devices have been used only on large brick kilns. On the other hand, DLA are currently in use on both large and small brick kilns. The available data indicates that a DLA can achieve emissions reductions of 90 percent HF and 30 percent HCl on a consistent basis. We have applied these emissions reductions to HF and HCl data from uncontrolled clay refractory products kilns and are incorporating into today's final rule the

revised emission limits for new clay refractory products kilns. The resulting emission limits for HF are a 90 percent reduction or 0.019 kg/Mg (0.038 lb/ton) of uncalcined clay processed. For HCl, the limits are a 30 percent reduction or 0.091 kg/Mg (0.18 lb/ton) of uncalcined clay processed.

Comment: One commenter questioned the need to establish emission limits for chromium refractory products kilns. He stated that chromium compounds should be treated no differently than any of the other listed HAP. He noted that the use of chromium for refractory products manufacturing has decreased significantly in recent years, and that our own estimates indicate that total chromium compound emissions in 1996 were less than 10 tpy for the entire industry. He also pointed out that the large chromium refractory products facility referenced in the proposal has been shut down.

Response: As noted by the commenter, chromium compounds are one of the listed HAP in section 112(b) of the CAA. Chromium, in the form of chromite or chromium oxide, is a principal ingredient in the formulation of many refractory products and is emitted from kilns that fire chromium refractory products. Some of the chromium is emitted in the hexavalent form, which is a known human carcinogen. Under section 112(d) of the CAA, we are required to establish emission standards that are at least as stringent as the MACT floor for all listed HAP that are emitted from major sources. Consequently, regardless of the trend in chromium refractory production, we are required to establish emission limits based on the MACT floor level of control, which for chromium refractory products kilns is the work practice of firing kilns with natural gas or the equivalent.

Comment: One commenter opposed the provision in the proposed rule that limits the types of fuels used to fire clay and chromium refractory products kilns. He stated that many refractory products manufacturing industry kilns are designed to use fuels other than natural gas, such as fuel oil, propane, and pulverized coal. The need to use these alternative fuels is of particular importance during natural gas shortages or price increases. He pointed out that during natural gas shortages, residential users receive priority over industrial users of natural gas. He believes that prohibiting the use of these alternative fuels could adversely impact the viability of some refractory products manufacturing operations.

Response: We agree with the commenter that the Refractory Products Manufacturing NESHAP should include appropriate provisions for the use of alternative fuels during specified times of natural gas curtailment and other situations when natural gas is unavailable. We consider such situations analogous to malfunctions, which are addressed in 40 CFR 63.6. Just as an exceedance of emission limits during a malfunction is not considered a violation, as indicated in 40 CFR 63.6(f)(1) and (h)(1), we believe that using other fuels during periods when natural gas is unavailable should also not be considered a violation of the work practice standard for clay and chromium refractory products kilns. We also note that operating permits for existing refractory products manufacturing facilities generally allow the use of fuel oil and other substitutes for natural gas in some situations. Thus, the MACT floor for existing clay and chromium refractory products kilns is the use of natural gas or equivalent fuel except during periods when natural gas is unavailable.

In the final rule, we are allowing owners and operators of affected chromium and clay refractory products kilns to use alternative fuels during periods when natural gas in unavailable due to a supply curtailment or other factors. However, we do not believe that natural gas price increases constitute such a situation, and the final rule makes it clear that natural gas prices cannot be considered the basis for a MACT floor that requires using an alternative fuel. The final rule also requires owners or operators to notify the regulatory authority within 48 hours after the declaration of natural gas curtailment or the interruption of natural gas supply. In addition, the owner or operator must submit a report that details the dates of alternative fuel usage and the amount of alternative fuel used within 10 working days after the facility terminates the use of the alternative fuel.

C. Compliance Testing and Monitoring

Comment: One commenter stated that the requirement to test batch process sources during three separate process cycles is redundant, unnecessary, and burdensome. He believes that it would be adequate to test one process cycle. He pointed out that there are significant variations in product mixes and raw materials from cycle to cycle, and that while it could be argued that testing one cycle is adequate, it could also be argued that testing ten cycles is inadequate for characterizing emissions. He noted that testing during cool-down periods, in particular, is unnecessary.

Response: We agree with the commenter that testing batch process sources for three cycles of a ''worst-case'' batch may be unnecessary to characterize emissions and control device performance. Under the final rule, we are requiring owners and operators of affected batch process sources to perform at least two test runs on each of two separate process cycles. We believe that a second test run is necessary to corroborate the results of the initial test run. However, we also note that each test run on a batch process source must be a minimum of 3 hours in duration, and for many batch process sources, the minimum test run duration is likely to be in excess of 10 hours. Thus, even requiring only two test runs will necessitate at least 20 hours of testing for such sources, and we consider a test of that duration to be adequate for demonstrating compliance with emission limits. We also note that other NESHAP, such as subparts U, JJJ, OOO, and UUUU to 40 CFR part 63, do not require batch process sources to be tested for three test runs.

We are also including in the final rule a separate batch process testing provision for refractory products that are produced infrequently. In such cases, we are allowing owners and operators of affected batch process sources to test a single batch process cycle using two separate sampling trains simultaneously, rather than requiring them to conduct test runs over two separate batch cycles. Many refractory products that are produced in batch process sources are specialty items that may only be manufactured a few times per year. When such products represent the ''worst-case'' in terms of organic HAP emissions, requiring multiple test runs over separate process cycles could extend the test period over several weeks or months. Production of other refractory products could inadvertently be disrupted while the facility attempts to complete its compliance demonstration. We also point out that requiring performance tests on batch process sources to be conducted over no more than a single process cycle is not without precedent; at least four other NESHAP (subparts U, JJJ, OOO, and UUUU to 40 CFR part 63) require batch process sources to be tested over only a single process cycle. To satisfy this provision of today's final rule, owners or operators will be required to include in the Notification of Performance Test an explanation for why testing two separate batch cycles is impractical.

Comment: Two commenters expressed concern with the requirement that the compliance test on an affected source would have to be repeated before

the facility began manufacturing a new product that represents the ''worst-case'' in terms of organic HAP emissions (*i.e.*, the organic HAP processing rate for the new product would exceed the maximum organic HAP processing rate established during the most recent performance test). One commenter stated that this requirement would be costly, time-consuming, and could result in disruptions in production. Another commenter further elaborated that production delays could result while the facility tries to schedule a performance test. Both commenters requested that we specify a level for the allowable changes in the HAP content of raw materials and not require a new compliance test when the changes in HAP content are below that level. One of the commenters stated that a level of 10 percent would be appropriate.

Response: We agree with the commenters that a new compliance test should not be required when a facility begins producing a new product that constitutes a slight increase in the maximum organic HAP processing rate established during the most recent performance test. We have written this provision in the final rule to allow increases in the maximum organic HAP processing rate up to 10 percent without triggering a new performance test. We believe this is appropriate for two reasons. The HAP content of some raw materials (*e.g.*, resins or binders) used in refractory products manufacturing can vary slightly from shipment to shipment, and those variations may be beyond the control of the user. Even if the HAP content of the resin or binder is 10 percent more than the HAP content of the same material that was processed during the compliance test, the net increase in controlled emissions would most likely be within the measurement error of the test method. Therefore, we believe it is reasonable to allow increases of up to 10 percent in the organic HAP processing rate without requiring a new compliance test.

Comment: Two commenters questioned the requirement for monitoring catalytic oxidizer temperatures at the inlet to the catalyst bed. Both commenters stated that monitoring the catalyst bed outlet temperatures would be a much better indicator of performance.

Response: We disagree with the commenters that monitoring catalyst bed outlet temperatures would provide a better indication of catalyst oxidizer performance than monitoring catalyst bed inlet temperatures. Monitoring catalyst bed inlet temperatures ensures that the inlet gas stream is heated to the minimum temperature at which catalytic oxidation will occur. Above this minimum temperature, as temperature increases through catalytic oxidization, control (destruction) efficiency increases. We also note that the monitoring of inlet temperature must be performed at the inlet to the catalyst bed and not at the inlet to the oxidizer itself. After passing through the inlet to the oxidizer, the waste gases pass through a preheat zone, which raises the temperature to the minimum required for catalytic oxidization. Monitoring must take place between this preheat zone and the inlet to the catalyst bed. We do not believe that monitoring catalyst bed outlet temperatures would be appropriate for two reasons: (1) Catalyst bed outlet temperature is more of an indicator of the concentration of organics in the inlet gas stream; the higher the organic concentration at the inlet, the higher the bed outlet temperature; and (2) some catalytic oxidizers are equipped with heat recovery units that are located at the outlet of the catalyst bed and can interfere with bed outlet temperature monitoring. Consequently, we have concluded that monitoring the bed inlet temperature is a better indicator of the performance of catalytic oxidizers than bed outlet temperature monitoring. We continue to require catalyst bed inlet temperature monitoring in the final rule. In addition, we are requiring owners or operators of affected sources that are controlled with catalytic oxidizers to measure the activity of the catalyst bed at least every 12 months and take whatever corrective action is needed, such as replacing the catalyst, to ensure that the catalyst is performing as designed.

D. Economic and Environmental Impacts

Comment: Two commenters disagreed with our estimates of the annual increase in energy costs that would be associated with the proposed NESHAP. One of the commenters stated that, based on our estimated annual energy costs of $569,800 and estimated annual natural gas consumption of 644 million cubic feet (644×10^6 ft^3), the unit price for natural gas would be $0.89 per thousand standard cubic feet (scf) ($/1,000 scf) without accounting for electricity costs. If the cost of electricity is considered, the resulting unit price for natural gas would be even lower. He pointed out that current unit prices for natural gas are considerably higher. The average natural gas unit prices in four States (Kentucky, Missouri, Indiana, and Pennsylvania) for the years 2000 to 2002 ranged from $6.34 to $6.97/1,000 scf and averaged $6.37/1,000 scf for the four States. Based on data from the Department of Energy's Energy Information Administration (DOE-EIA), one of the commenters stated that the average unit price for natural gas in 2001 was $4.56/1,000 scf. The commenter believes that, regardless of which of these current unit prices are used, the estimated annual energy costs should have been several times greater.

Response: After reviewing our estimated annual energy costs, we discovered an error in our estimate that an additional 644×10^6 ft^3 of natural gas would be consumed annually under the proposed NESHAP. That estimate was based on the inclusion of several sources that would not have been subject to the final rule. However, we did not use that figure (644×10^6 ft^3) to estimate annual energy costs. Our estimated annual energy costs were based on the assumption that annual natural gas consumption would increase by 158×10^6 ft^3. That figure was derived from the models used to estimate annual control costs, and we believe that figure is accurate. Using a consumption of 158×10^6 ft^3 of natural gas per year and a natural gas unit price of $3.30/1,000 scf, we estimated the cost of natural gas to be $520,200/yr. The difference between this cost and the total energy costs presented in the preamble to the proposed rule ($569,800) is the cost of electricity, which we estimated to be approximately $49,600/yr.

We agree with the commenters that current natural gas unit prices are considerably higher than the unit price ($3.30/1,000 scf) that we used to estimate energy costs for the proposed rule. However, according to DOE–EIA, natural gas prices are projected to drop back to their pre-1999 levels within a year and remain below $4.00/1,000 scf until the year 2020. Natural gas unit prices are projected to average $3.45/1,000 scf for the years 2006 to 2009, which represent the first 3 years in which facilities will be required to comply with the Refractory Products Manufacturing NESHAP. This average unit price is only slightly higher than the unit price of $3.30/1,000 scf that we used to estimate energy costs for the proposed rule. Furthermore, electricity prices are projected by DOE-EIA to average $0.043 per kilowatt-hour (kw-hr) for the same 3-year period, whereas our estimated energy costs were based on electricity unit prices of $0.059/kw-hr. Using those projected unit prices for natural gas and electricity, our energy costs for the proposed rule would have been $580,000, as compared to the figure of $569,800 reported in the preamble to the proposed rule. (*See*

Docket No. OAR–2002–0088 for additional information).

Comment: Two commenters stated that the proposed Refractory Products Manufacturing NESHAP does not account for the current economic status of the refractory products manufacturing industry. One of the commenters noted that approximately 40 percent of the domestic steel industry is in bankruptcy, and the steel industry accounts for about 60 percent of the domestic refractory products market. He also pointed out that three major refractory products manufacturing companies are in bankruptcy, more than 30 plants have permanently closed in recent years, and pressure from foreign competition in the refractory products market is increasing. The other commenter reiterated the statements of the first commenter regarding bankruptcies among major domestic refractory producers and the increase in foreign competition.

Response: During the early stages of regulatory development, we issued an information collection request (ICR) to the refractory products manufacturing industry. Our economic impact analysis (EIA) makes use of detailed facility-level data on production for the year 1997 obtained from the industry's responses to the ICR. This information, along with publically available data (*i.e.*, U.S. Census Bureau), was used at proposal to construct a model of the markets for refractory products that is consistent with market, facility, and company conditions in 1997. Because the ICR provided data only for 1997, we are limited in our ability to update the model completely to reflect conditions in later years. However, for the final rule we have, to the extent practicable, updated the economic model to reflect current market conditions, including: (1) The exclusion of refractory manufacturing facilities known to have closed since the base year of 1997; (2) the assumption that producers will absorb the full cost of the rule; with only six out of 147 producers affected by the rule and the financial stress on the industry, we assume producers will be unable to increase market prices to recover some of their increase in production costs; and (3) the incorporation of parameters from a recent update of an iron and steel model to inform the estimated demand for refractories (*i.e.*, the demand elasticity, or the sensitivity of demand from the steel market based on market conditions in the iron and steel industry). The iron and steel model was specifically revised to address current conditions in the steel industry.

We also acknowledged in the EIA at proposal that both steel and refractory manufacturing companies are currently under financial stress. In the EIA, we discussed several trends that have placed considerable pressure on refractory manufacturers, including reduced production by integrated domestic steelmakers, improved quality of refractories (thus requiring less frequent replacement), and increased imports of refractory products.

We note that the vast majority of facilities in the industry (both foreign and domestic producers) are unaffected by the rule. The regulatory costs of the rule are approximately $2 million per year, which represents a small share of total industry production costs of approximately $2,300 million per year. In the model for the final rule, prices are not predicted to change, and the quantities of refractories produced are projected to decrease by 3,792 tons. It is assumed that the loss in domestic production will be absorbed by foreign imports. Our analysis concludes these six facilities incurring regulatory costs will absorb the majority of the costs and burden of the rule, with one facility projected to close as a result of the rule. At the parent company level, the costs uniformly are less than 1 percent of baseline corporate sales. Overall, we have adjusted the economic model to address the issues raised by the commenters, and we believe that the final rule will have a limited impact on the refractory products manufacturing industry.

E. Definitions

Comment: Two commenters commented on how the term *refractory product* is defined in the proposed rule. Both commenters stated that, based on this definition, some graphite manufacturing sources could be confused with certain refractory products manufacturing sources that would be affected by the final rule. It is their understanding that we intend to develop a separate NESHAP for the graphite manufacturing industry, and graphite manufacturing sources, although similar to some refractory products manufacturing sources, would not be subject to the Refractory Products Manufacturing NESHAP. The commenters suggested adding the phrase, ''. . . containing less than 50 percent carbon'' to the definition of *refractory product.*

Response: We agree with the commenters that the definition of *refractory product* in the proposed rule could inadvertently affect certain graphite manufacturing sources. Consequently, we have written the definition as requested by the commenters. In addition, we are including a definition for pitch-bonded refractory products in the final rule. We believe that definition will help to preclude graphite baking ovens, which are not subject to today's final rule, from being classified as pitch-bonded curing ovens, which are regulated under today's final rule.

Comment: One commenter commented on how the term *research and development process unit* is defined in the proposed rule. The commenter stated that the proposed definition is inconsistent with the definition of research and development facilities specified in section 112(c)(7) of the CAA, 40 CFR 63.41, and several other NESHAP published in 40 CFR part 63. The difference between those definitions and the proposed definition specified in the Refractory Products Manufacturing NESHAP is the exclusion of the phrase ''in a de minimis manner'' from the proposed rule.

Response: We agree with the commenter that the definition of *research and development process unit* in the Refractory Products Manufacturing NESHAP should be consistent with the definition of research facilities in the CAA and in other rules. We have written the definition of *research and development process unit* as suggested by the commenter.

V. Summary of Impacts

A. What Are the Health Impacts?

The HAP that will be controlled by today's final rule are associated with a variety of adverse health effects. These adverse health effects include chronic health disorders (*e.g.*, irritation of the lung, skin, and mucous membranes, gastrointestinal effects, and damage to the kidneys and liver) and acute health disorders (*e.g.*, respiratory irritation and central nervous system effects such as drowsiness, headache, and nausea). The EPA has classified two of the HAP (formaldehyde and POM) as probable human carcinogens.

The EPA does 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, EPA does 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.

Following is a discussion of the health effects of seven HAP: ethylene glycol, formaldehyde, HF, HCl, methanol, phenol, and POM. Although today's rule will reduce emissions of HF and HCl from any new clay refractory product kilns that emit these HAP, it will not reduce emissions of these HAP from existing kilns. We estimate that emissions of methanol from affected existing thermal process sources of organic HAP (*i.e.*, shape dryers, curing ovens, and kilns) also will not be reduced by today's final rule. However, methanol is a constituent of some resins used in resin-bonded refractory production, and today's final rule will regulate methanol emissions from any affected source that produces refractory products made with resins that contain methanol.

Ethylene Glycol

Acute (short-term) exposure of humans to ethylene glycol by ingesting large quantities causes central nervous system depression (including drowsiness and respiratory failure), gastrointestinal upset, cardiopulmonary effects, and renal damage. The only effects noted in the one available study of humans acutely exposed to low levels of ethylene glycol by inhalation were throat and upper respiratory tract irritation. Rats and mice exposed chronically (long-term) to ethylene glycol in their diet exhibited signs of kidney toxicity and liver effects. No information is available on the reproductive or developmental effects of ethylene glycol in humans, but several studies of rodents have shown ethylene glycol to be fetotoxic. The EPA has not classified ethylene glycol for carcinogenicity.

Formaldehyde

Both acute and chronic exposure to formaldehyde irritates the eyes, nose, and throat, and may cause coughing, chest pains, and bronchitis. Reproductive effects, such as menstrual disorders and pregnancy problems, have been reported in female workers exposed to formaldehyde. Limited human studies have reported an association between formaldehyde exposure and lung and nasopharyngeal cancer. Animal inhalation studies have reported an increased incidence of nasal squamous cell cancer. The EPA considers formaldehyde a probable human carcinogen (Group B2).

Hydrogen Fluoride

Acute inhalation exposure to gaseous HF can cause severe respiratory damage in humans, including severe irritation and pulmonary edema. Chronic exposure to fluoride at low levels has a beneficial effect of dental cavity prevention and may also be useful for the treatment of osteoporosis. Exposure to higher levels of fluoride may cause dental fluorosis or mottling, while very high exposures through drinking water or air can result in crippling skeletal fluorosis. One study reported menstrual irregularities in women occupationally exposed to fluoride. The EPA has not classified HF for carcinogenicity.

Hydrogen Chloride

Hydrogen chloride, also called hydrochloric acid, is corrosive to the eyes, skin, and mucous membranes. Acute inhalation exposure may cause eye, nose, and respiratory tract irritation and inflammation and pulmonary edema in humans. Chronic occupational exposure to HCl has been reported to cause gastritis, bronchitis, and dermatitis in workers. Prolonged exposure to low concentrations may also cause dental discoloration and erosion. No information is available on the reproductive or developmental effects of HCl in humans. In rats exposed to HCl by inhalation, altered estrus cycles have been reported in females, and increased fetal mortality and decreased fetal weight have been reported in offspring. The EPA has not classified HCl for carcinogenicity.

Methanol

Acute or chronic exposure of humans to methanol by inhalation or ingestion may result in blurred vision, headache, dizziness, and nausea. No information is available on the reproductive, developmental, or carcinogenic effects of methanol in humans. Birth defects have been observed in the offspring of rats and mice exposed to methanol by inhalation. A methanol inhalation study using rhesus monkeys reported a decrease in the length of pregnancy and limited evidence of impaired learning ability in offspring. The EPA has not classified methanol with respect to carcinogenicity.

Phenol

Acute inhalation and dermal exposure to phenol is highly irritating to the skin, eyes, and mucous membranes in humans. Oral exposure to small amounts of phenol may cause irregular breathing, muscular weakness and tremors, coma, and respiratory arrest at lethal concentrations. Anorexia, progressive weight loss, diarrhea, vertigo, salivation, and a dark coloration of the urine have been reported in chronically exposed humans. Gastrointestinal irritation and blood and liver effects have also been reported. No studies of developmental or reproductive effects of phenol in humans are available, but animal studies have reported reduced fetal body weights, growth retardation, and abnormal development in the offspring of animals exposed to phenol by the oral route. The EPA has classified phenol in Group D, not classifiable as to human carcinogenicity.

Polycyclic Organic Matter

The term polycyclic organic matter defines a broad class of compounds that includes the polycyclic aromatic hydrocarbon (PAH) compounds, of which benzo[a]pyrene is a member. Dermal exposures to mixtures of PAH cause skin disorders in humans and animals. No information is available on the reproductive or developmental effects of POM in humans, but animal studies have reported that oral exposure to benzo[a]pyrene causes reproductive and developmental effects. Human studies have reported an increase in lung cancer in humans exposed to POM-bearing mixtures including coke oven emissions, roofing tar emissions, and cigarette smoke. Animal studies have reported respiratory tract tumors from inhalation exposure to benzo[a]pyrene and forestomach tumors, leukemia, and lung tumors from oral exposure to benzo[a]pyrene. The EPA has classified seven PAH compounds (benzo[a]pyrene, benz[a]anthracene, chrysene, benzo[b]fluoranthene, benzo[k]fluoranthene, dibenz[a,h]anthracene, and indeno[1,2,3-cd]pyrene) as Group B2, probable human carcinogens.

B. What Are the Air Emission Reduction Impacts?

At the current level of control and 1996 production levels, we estimate nationwide emissions of HAP from the refractory products manufacturing industry to be about 246 Mg/yr (271 tpy). For the eight refractory products facilities that we estimate to be major sources, baseline annual HAP emissions are about 153 Mg/yr (169 tpy). We estimate that today's final rule will reduce nationwide HAP emissions by about 124 Mg/yr (137 tpy).

Among the major sources, POM emissions account for approximately 60 percent of the total annual HAP emissions. Phenol, HF, HCl, and ethylene glycol account for 13 percent, 10 percent, 7 percent, and 7 percent of total annual HAP emissions,

respectively. Formaldehyde and chromium compounds each account for less than 1 percent of total baseline annual HAP emissions. Today's final rule will reduce annual POM emissions by as much as 90 Mg/yr (99 tpy). Emissions of phenol and ethylene glycol will be reduced by approximately 19 Mg/yr (21 tons/year) and 11 Mg/yr (12 tpy), respectively. Implementing today's rule will also reduce volatile organic compound (VOC) and carbon monoxide (CO) emissions by 166 Mg/yr (182 tpy) and 71 Mg/yr (78 tpy), respectively. The final rule will result in an increase in annual nitrogen oxides (NO_X) emissions of about 79 Mg/yr (87 tpy) due to the operation of additional thermal oxidizers to control organic HAP emissions.

Indirect or secondary air impacts of today's final rule result from increased electricity usage associated with operation of control devices required by the rule. Assuming that affected plants will purchase electricity from a power plant, we estimate that the final rule will result in increases of secondary emissions of criteria pollutants, including particulate matter less than 10 micrometers in aerodynamic diameter (PM–10), sulfur dioxide (SO_2), NO_X, and CO from power plants. Under today's final rule, secondary PM–10 emissions will increase by 0.22 Mg/yr (0.24 tpy); secondary SO_2 emissions will increase by about 8.9 Mg/yr (9.8 tpy); secondary NO_X emissions will increase about 4.5 Mg/yr (4.9 tpy); and secondary CO emissions will increase by about 0.15 Mg/yr (0.16 tpy).

We estimate that there will be no new sources within the refractory products manufacturing industry within the next 3 years. Therefore, we are not projecting air impacts for new sources under today's final rule.

C. What Are the Cost Impacts?

The estimated total capital costs of today's final rule are $4.6 million. These capital costs apply to existing sources and include the costs to purchase and install thermal oxidizers on affected sources that are not currently controlled. The estimated annualized cost of today's final rule is $2.3 million. The annualized costs account for the annualized capital costs of the control and monitoring equipment, operation and maintenance expenses, performance testing, and recordkeeping and reporting costs.

D. What Are the Economic Impacts?

Given the estimated costs to comply with the regulation, we prepared an economic analysis to evaluate how these costs would impact producers and consumers of refractories, and society as a whole. The refractory products manufacturing industry currently consists of 147 establishments. There are eight major sources in the industry affected by the rule, six of which will incur costs to reduce emissions and report compliance, and two of which only incur minor recordkeeping and reporting costs. In recent years, the industry has experienced substantial financial stress that coincides with the decline in the steel industry, which is a major consumer of refractory products. Since our analysis at proposal, the number of facilities in operation has decreased by 14 due to bankruptcies or closures.

The industry consists of three market sectors, including: bricks and shapes, monolithics, and RCF. In 1997, the industry produced about two million tons of bricks and shapes, 870,000 tons of monolithics, and about 34,000 tons of RCF for a total market value of approximately two billion dollars.

The total annualized regulatory compliance cost of the rule is $2.3 million (in 1998 dollars), which represents 0.001 percent of total market value. Because foreign competition currently has a strong influence on this industry, and only six out of 147 producers are affected by the rule, our analysis of the final rule assumes that producers of bricks and shapes will not be able to increase prices to recover a portion of the compliance costs. Thus, these producers are assumed to absorb the full cost of the regulation, which represents the maximum potential impact on producers. If prices happen to rise as a result of the regulation, impacts on producers will be lower than reported here.

Our analysis predicts that domestic production of bricks and shapes will decrease by approximately 4,000 tons (or 2/10ths of one percent). Foreign imports are assumed to absorb this loss in domestic production, which represents approximately two percent of total foreign imports. The monolithics and RCF sectors of the market are not subject to the rule and thus no price or production level changes are predicted. After accounting for the changes in the market for refractories and the increase in foreign imports, the total cost of the regulation on society as a whole is approximately $2 million.

Of the eight plants affected by the rule, one facility may close due to regulatory costs. The estimated regulatory cost to this facility assumes the use of add-on controls, which would exceed the total revenues of this facility, hence our model estimates that it would close. However, we recognize that this facility, as well as the other affected facilities, have several options to change input materials, or attributes of their production process such that they could substantially reduce the cost associated with add-on control technology. Without explicit knowledge of decisions to be made by this and other facilities in response to the regulation, our analysis assumes that only add-on control technology will be installed.

E. What Are the Non-Air Quality Environmental and Energy Impacts?

To comply with today's final rule, we expect that affected facilities will control organic HAP emissions by installing and operating thermal oxidizers. Therefore, we project that today's rule will have no water or solid waste impacts.

Energy impacts consist of the electricity and fuel needed to operate control devices and other equipment that are required under the final rule. Assuming that affected facilities comply with the final rule by installing and operating thermal oxidizers, we project that today's final rule will increase overall energy demand (*i.e.*, electricity and natural gas) by about 280 thousand gigajoules per year (265 billion British thermal units per year). Electricity requirements are expected to increase by about 1,570 megawatt-hours per year under today's rule. Natural gas requirements are expected to increase by about 7 million cubic meters per year (250 million cubic feet per year) under today's final rule.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees,

or loan programs, or the rights and obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a ''significant regulatory action'' because none of the listed criteria applies to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Paperwork Reduction Act

The information collection requirements in the final rule will be submitted for approval to OMB under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The EPA has prepared an Information Collection Request (ICR) document (ICR No. 2040.01), and a copy may be obtained from Susan Auby by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (MD–2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; by e-mail at *auby.susan@epa.gov*; or by calling (202) 566–1672. You may also download a copy 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 national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to EPA's policies set forth in 40 CFR part 2, subpart B.

With two exceptions, the final rule will not require any notifications, reports, or recordkeeping beyond those required by the NESHAP General Provisions. The first exception applies to facilities that operate sources that are subject to limits on the type of fuel used. In such cases, the owner or operator may use an alternative fuel under certain conditions but must submit a notification before using the alternative fuel, must report on alternative fuel use after terminating use of the alternative fuel, and must maintain records of alternative fuel use. The second exception pertains to continuous kilns; the final rule requires reporting and recordkeeping whenever the control device used on a continuous kiln is taken offline for scheduled maintenance.

The annual monitoring, reporting, and recordkeeping burden for this collection of information (averaged over the first 3 years after the effective date of the rule) is estimated to be 726 labor hours per year at a total annual cost of $31,460. This burden estimate includes time for acquisition, installation, and use of monitoring technology and systems; preparation and a one-time submission of an SSMP, with immediate reports for any event when the procedures in the plan were not followed; preparation of an OM&M plan; one-time notifications; semiannual compliance reports; and recordkeeping. Total annualized capital/startup costs associated with the monitoring requirements (*e.g.*, costs for hiring performance test contractors and purchase of monitoring and file storage equipment) over the 3-year period of the ICR are estimated at $45,390, with operation and maintenance costs of $910/yr.

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 current valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act (RFA)

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 rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impact of today's rule on small entities, small entities are defined as: (1) A small business whose parent company has fewer than 500 employees, according to Small Business Administration size standards established under the NAICS for the industries affected by today's rule; (2) a small governmental jurisdiction that is a government or a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that 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 of the six facilities affected by the rule, there is one facility owned by a small company that will experience an impact of less than one-half of one percent (<0.50 percent) of company sales.

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 rule on small entities. However, we were unable to identify any specific requirements of the final rule that we could relax to reduce the burden of today's rule on small entities. If the final rule had established emission limits more stringent than the MACT floor, we could have reduced the stringency of the emission limits for small entities. However, the emission limits established by today's rule are based on the MACT floor, which is the minimum level of stringency allowed under section 112 of the CAA. Today's rule does provide two options for owners and operators of affected thermal process sources of organic HAP. Thus, the one small entity that is affected by today's rule can choose to comply with either of two organic HAP emission limits. Having the choice between compliance options will provide small business with some measure of flexibility in how it chooses to comply with the final rule.

Today's rule requires continuous parameter monitoring rather than continuous emission monitoring. We believe that the parameter monitoring requirements we have incorporated in the final rule satisfy the requirements of section 114(a)(3) of the CAA for enhanced monitoring without the additional expense that would have been associated with continuous emission monitoring. Finally, the reporting and recordkeeping requirements of today's rule are consistent with the requirements of the General Provisions to 40 CFR part 63. For these reasons, we believe that today's rule satisfies the requirements of

the CAA without imposing any unnecessary burden on small businesses or any other affected entity.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law No. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that today's final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The maximum total annual cost of today's final rule for any year has been estimated to be approximately $2.3 million. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's 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'' 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 is owned or operated by State governments, and the rule requirements will not supercede State regulations that are more stringent. Thus, Executive Order 13132 does not apply to the rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The final rule does not have tribal implications, 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, as specified in Executive Order 13175. No tribal governments own or operate refractory products manufacturing facilities. Thus, Executive Order 13175 does not apply to the final rule.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned rule is preferable to other potentially effective and reasonably feasible alternatives that EPA considered.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. Today's final rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. Furthermore, the final rule has been determined not to be ''economically significant'' as defined under Executive Order 12866.

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

Today's final rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 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 the OMB, with explanations when an agency does not

use available and applicable voluntary consensus standards.

Today's final rule involves technical standards. The EPA cites the following standards: EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 25A, 26, 26A, 311, and 320. Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA method/performance specifications. No applicable voluntary consensus standards were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, and 311. The search and review results have been documented and can be found in Docket No. OAR–2002–0088.

The voluntary consensus standard ASME PTC 19–10–1981–Part 10, ''Flue and Exhaust Gas Analyses,'' is cited in the rule for its manual methods for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas. This part of ASME PTC 19–10–1981–Part 10 is an acceptable alternative to Method 3B.

Also, 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.

In addition to the voluntary consensus standards EPA cites in the rule, the search for emissions measurement procedures identified 13 other voluntary consensus standards. The EPA determined that ten of the 13 standards identified for measuring emissions of the HAP or surrogates subject to emission standards in the rule were impractical alternatives to EPA test methods for the purposes of the rule. Therefore, EPA does not intend to adopt these standards for this purpose. The reasons for this determination for the ten methods are discussed in the docket.

Two of the 12 voluntary consensus standards identified in this search were not available at the time the review was conducted for the purposes of the rule because they are under development by a voluntary consensus body: ASME/BSR MFC 13M, ''Flow Measurement by Velocity Traverse,'' for EPA Method 2 (and possibly 1); and ASME/BSR MFC 12M, ''Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters,'' for EPA Method 2.

The voluntary consensus standard ASTM D6348–98, ''Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform (FTIR) Spectroscopy,'' has been reviewed by the EPA as a potential alternative to EPA Method 320. Suggested revisions to ASTM D6348–98 were sent to ASTM by the EPA that would allow the EPA to accept ASTM D6348–98 as an acceptable alternative. The ASTM Subcommittee D22–03 is currently undertaking a revision of ASTM D6348–98. Because of this, we are not citing this standard as a acceptable alternative for EPA Method 320 in the rule today. However, upon successful ASTM balloting and demonstration of technical equivalency with the EPA FTIR methods, the revised ASTM standard could be incorporated by reference for EPA regulatory applicability. In the interim, facilities have the option to request ASTM D6348–98 as an alternative test method under 40 CFR 63.7(f) and 63.8(f) on a case-by-case basis.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until June 16, 2003. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, 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 SSSSS to read as follows:

Subpart SSSSS—National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing

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Table 10 to Subpart SSSSS of Part 63—Requirements for Reports
Table 11 to Subpart SSSSS of Part 63—Applicability of General Provisions to Subpart SSSSS

What This Subpart Covers

§ 63.9780 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for refractory products manufacturing facilities. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations.

§ 63.9782 Am I subject to this subpart?

You are subject to this subpart if you own or operate a refractory products manufacturing facility that is, is located at, or is part of, a major source of hazardous air pollutant (HAP) emissions according to the criteria in paragraphs (a) and (b) of this section.

(a) A refractory products manufacturing facility is a plant site that manufactures refractory products (refractory bricks, refractory shapes, monolithics, kiln furniture, crucibles, and other materials used for lining furnaces and other high temperature process units), as defined in § 63.9824. Refractory products manufacturing facilities typically process raw material by crushing, grinding, and screening; mixing the processed raw materials with binders and other additives; forming the refractory mix into shapes; and drying and firing the shapes.

(b) A major source of HAP is a plant site that emits or has the potential to emit any single HAP at a rate of 9.07 megagrams (10 tons) or more per year or any combination of HAP at a rate of 22.68 megagrams (25 tons) or more per year.

§ 63.9784 What parts of my plant does this subpart cover?

(a) This subpart applies to each new, reconstructed, or existing affected source at a refractory products manufacturing facility.

(b) The existing affected sources are shape dryers, curing ovens, and kilns that are used to manufacture refractory products that use organic HAP; shape preheaters, pitch working tanks, defumers, and coking ovens that are used to produce pitch-impregnated refractory products; kilns that are used to manufacture chromium refractory products; and kilns that are used to manufacture clay refractory products.

(c) The new or reconstructed affected sources are shape dryers, curing ovens, and kilns that are used to manufacture refractory products that use organic HAP; shape preheaters, pitch working tanks, defumers, and coking ovens used to produce pitch-impregnated refractory products; kilns that are used to manufacture chromium refractory products; and kilns that are used to manufacture clay refractory products.

(d) Shape dryers, curing ovens, kilns, coking ovens, defumers, shape preheaters, and pitch working tanks that are research and development (R&D) process units are not subject to the requirements of this subpart. (See definition of *research and development process unit* in § 63.9824).

(e) A source is a new affected source if you began construction of the affected source after June 20, 2002, and you met the applicability criteria at the time you began construction.

(f) An affected source is reconstructed if you meet the criteria as defined in § 63.2.

(g) An affected source is existing if it is not new or reconstructed.

§ 63.9786 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 the initial startup of your affected source is before April 16, 2003, then you must comply with the emission limitations for new and reconstructed sources in this subpart no later than April 16, 2003.

(2) If the initial startup of your affected source is after April 16, 2003, then you must comply with the emission limitations for new and reconstructed sources in this subpart upon initial startup of your affected source.

(b) If you have an existing affected source, you must comply with the emission limitations for existing sources no later than April 17, 2006.

(c) You must be in compliance with this subpart when you conduct a performance test on an affected source.

(d) If you have an existing area source that increases its emissions or its potential to emit such that it becomes a major source of HAP, you must be in compliance with this subpart according to paragraphs (d)(1) and (2) of this section.

(1) Any portion of the existing facility that is a new affected source or a new reconstructed source must be in compliance with this subpart upon startup.

(2) All other parts of the existing facility must be in compliance with this subpart by 3 years after the date the area source becomes a major source.

(e) If you have a new area source (*i.e.*, an area source for which construction or reconstruction was commenced after June 20, 2002) that increases its emissions or its potential to emit such that it becomes a major source of HAP, you must be in compliance with this subpart upon initial startup of your affected source as a major source.

(f) You must meet the notification requirements in § 63.9812 according to the schedule in § 63.9812 and in 40 CFR part 63, subpart A. Some of the notifications must be submitted before you are required to comply with the emission limitations in this subpart.

Emission Limitations and Work Practice Standards

§ 63.9788 What emission limits, operating limits, and work practice standards 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.

(c) You must meet each work practice standard in Table 3 to this subpart that applies to you.

§ 63.9790 What are my options for meeting the emission limits?

To meet the emission limits in Table 1 to this subpart, you must use one or both of the options listed in paragraphs (a) and (b) of this section.

(a) *Emissions control system.* Use an emissions capture and collection system and an add-on air pollution control device (APCD) and demonstrate that the resulting emissions or emissions reductions meet the applicable emission limits in Table 1 to this subpart, and demonstrate that the capture and collection system and APCD meet the applicable operating limits in Table 2 to this subpart.

(b) *Process changes.* Use raw materials that have little or no potential to emit HAP during the refractory products manufacturing process or implement manufacturing process changes and demonstrate that the resulting emissions or emissions reductions meet the applicable emission

limits in Table 1 to this subpart without an add-on APCD.

General Compliance Requirements

§ 63.9792 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations (including operating limits and work practice standards) in this subpart at all times, except during periods specified in paragraphs (a)(1) and (2) of this section.

(1) Periods of startup, shutdown, and malfunction.

(2) Periods of scheduled maintenance on a control device that is used on an affected continuous kiln, as specified in paragraph (e) of this section.

(b) Except as specified in paragraph (e) of this section, 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). During the period between the compliance date specified for your affected source in § 63.9786 and the date upon which continuous monitoring systems have been installed and validated and any applicable operating limits have been established, 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 (SSMP) according to the provisions in § 63.6(e)(3).

(d) You must prepare and implement a written operation, maintenance, and monitoring (OM&M) plan according to the requirements in § 63.9794.

(e) If you own or operate an affected continuous kiln and must perform scheduled maintenance on the control device for that kiln, you may bypass the kiln control device and continue operating the kiln upon approval by the Administrator, provided you satisfy the conditions listed in paragraphs (e)(1) through (3) of this section.

(1) You must request approval from the Administrator to bypass the control device while the scheduled maintenance is performed. You must submit a separate request each time you plan to bypass the control device, and your request must include the information specified in paragraphs (e)(1)(i) through (vi) of this section.

(i) Reason for the scheduled maintenance.

(ii) Explanation for why the maintenance cannot be performed when the kiln is shut down.

(iii) Detailed description of the maintenance activities.

(iv) Time required to complete the maintenance.

(v) How you will minimize HAP emissions from the kiln during the period when the control device is out of service.

(vi) How you will minimize the time when the kiln is operating and the control device is out of service for scheduled maintenance.

(2) You must minimize HAP emissions during the period when the kiln is operating and the control device is out of service.

(3) You must minimize the time period during which the kiln is operating and the control device is out of service.

(f) You must be in compliance with the provisions of subpart A of this part, except as noted in Table 11 to this subpart.

§ 63.9794 What do I need to know about operation, maintenance, and monitoring plans?

(a) For each continuous parameter monitoring system (CPMS) required by this subpart, you must develop, implement, make available for inspection, and revise, as necessary, an OM&M plan that includes the information in paragraphs (a)(1) through (13) of this section.

(1) A list and identification of each process and add-on APCD that is required by this subpart to be monitored, the type of monitoring device that will be used, and the operating parameters that will be monitored.

(2) Specifications for the sensor, signal analyzer, and data collection system.

(3) A monitoring schedule that specifies the frequency that the parameter values will be determined and recorded.

(4) The operating limits for each parameter that represent continuous compliance with the emission limitations in § 63.9788, based on values of the monitored parameters recorded during performance tests.

(5) Procedures for installing the CPMS at a measurement location relative to each process unit or APCD such that measurement is representative of control of emissions.

(6) Procedures for the proper operation and routine and long-term maintenance of each process unit and APCD, including a maintenance and inspection schedule that is consistent with the manufacturer's recommendations.

(7) Procedures for the proper operation and maintenance of monitoring equipment consistent with the requirements in §§ 63.8(c)(1), (3), (4)(ii), (7), and (8), and 63.9804.

(8) Ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d).

(9) Procedures for evaluating the performance of each CPMS.

(10) Procedures for responding to operating parameter deviations, including the procedures in paragraphs (a)(10)(i) through (iii) of this section:

(i) Procedures for determining the cause of the operating parameter deviation.

(ii) Actions for correcting the deviation and returning the operating parameters to the allowable limits.

(iii) Procedures for recording the times that the deviation began and ended, and when corrective actions were initiated and completed.

(11) Procedures for keeping records to document compliance and reporting in accordance with the requirements of § 63.10(c), (e)(1), and (e)(2)(i).

(12) If you operate a kiln that is subject to the limits on the type of fuel used, as specified in items 3 and 4 of Table 3 to subpart SSSSS, procedures for using alternative fuels.

(13) If you operate an affected continuous kiln and you plan to take the kiln control device out of service for scheduled maintenance, as specified in § 63.9792(e), the procedures specified in paragraphs (a)(13)(i) and (ii) of this section.

(i) Procedures for minimizing HAP emissions from the kiln during periods of scheduled maintenance of the kiln control device when the kiln is operating and the control device is out of service.

(ii) Procedures for minimizing any period of scheduled maintenance on the kiln control device when the kiln is operating and the control device is out of service.

(b) Changes to the operating limits in your OM&M plan require a new performance test. If you are revising an operating limit parameter value, you must meet the requirements in paragraphs (b)(1) and (2) of this section.

(1) Submit a Notification of Performance Test to the Administrator as specified in § 63.7(b).

(2) After completing the performance tests to demonstrate that compliance with the emission limits can be achieved at the revised operating limit parameter value, you must submit the performance test results and the revised operating limits as part of the Notification of Compliance Status required under § 63.9(h).

(c) If you are revising the inspection and maintenance procedures in your

OM&M plan, you do not need to conduct a new performance test.

Testing and Initial Compliance Requirements

§ 63.9796 By what date must I conduct performance tests?

You must conduct performance tests within 180 calendar days after the compliance date that is specified for your source in § 63.9786 and according to the provisions in § 63.7(a)(2).

§ 63.9798 When must I conduct subsequent performance tests?

(a) You must conduct a performance test every 5 years following the initial performance test, as part of renewing your 40 CFR part 70 or 40 CFR part 71 operating permit.

(b) You must conduct a performance test when you want to change the parameter value for any operating limit specified in your OM&M plan.

(c) If you own or operate a source that is subject to the emission limits specified in items 2 through 9 of Table 1 to this subpart, you must conduct a performance test on the source(s) listed in paragraphs (c)(1) and (2) of this section before you start production of any refractory product for which the organic HAP processing rate is likely to exceed by more than 10 percent the maximum organic HAP processing rate established during the most recent performance test on that same source.

(1) Each affected shape dryer or curing oven that is used to process the refractory product with the higher organic HAP processing rate.

(2) Each affected kiln that follows an affected shape dryer or curing oven and is used to process the refractory product with the higher organic HAP processing rate.

(d) If you own or operate a kiln that is subject to the emission limits specified in item 5 or 9 of Table 1 to this subpart, you must conduct a performance test on the affected kiln following any process changes that are likely to increase organic HAP emissions from the kiln (*e.g.*, a decrease in the curing cycle time for a curing oven that precedes the affected kiln in the process line).

(e) If you own or operate a clay refractory products kiln that is subject to the emission limits specified in item 10 or 11 of Table 1 to this subpart and is controlled with a dry limestone adsorber (DLA), you must conduct a performance test on the affected kiln following any change in the source of limestone used in the DLA.

§ 63.9800 How do I conduct performance tests and establish operating limits?

(a) You must conduct each performance test in Table 4 to this subpart that applies to you.

(b) Before conducting the performance test, you must install and validate all monitoring equipment.

(c) Each performance test must be conducted according to the requirements in § 63.7 and under the specific conditions in Table 4 to this subpart.

(d) You may not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 63.7(e)(1).

(e) You must conduct separate test runs for at least the duration specified for each performance test required in this section, as specified in § 63.7(e)(3) and Table 4 to this subpart.

(f) For batch process sources, you must satisfy the requirements specified in paragraphs (f)(1) through (5) of this section.

(1) You must conduct at least two test runs.

(2) Each test run must last an entire batch cycle unless you develop an emissions profile, as specified in items 8(a)(i)(4) and 17(b)(i)(4) of Table 4 to this subpart, or you satisfy the conditions for terminating a test run prior to the completion of a batch cycle as specified in item 8(a)(i)(5) of Table 4 to this subpart.

(3) Each test run must be performed over a separate batch cycle unless you satisfy the conditions for conducting both test runs over a single batch cycle, as described in paragraphs (f)(3)(i) and (ii) of this section.

(i) You do not produce the product that corresponds to the maximum organic HAP processing rate for that batch process source in consecutive batch cycles.

(ii) To produce that product in two consecutive batch cycles would disrupt production of other refractory products.

(4) If you want to conduct a performance test over a single batch cycle, you must include in your Notification of Performance Test the rationale for testing over a single batch cycle.

(5) If you are granted approval to conduct a performance test over a single batch cycle, you must use paired sampling trains and collect two sets of emissions data. Each set of data can be considered a separate test run.

(g) You must use the data gathered during the performance test and the equations in paragraphs (g)(1) through (3) of this section to determine compliance with the emission limitations.

(1) To determine compliance with the total hydrocarbon (THC) emission concentration limit listed in Table 1 to this subpart, you must calculate your emission concentration corrected to 18 percent oxygen for each test run using Equation 1 of this section:

$$C_{THC-C} = \frac{2.9 \times C_{THC}}{\left(20.9 - C_{O_2}\right)} \qquad \text{(Eq. 1)}$$

Where:

C_{THC-C}=THC concentration, corrected to 18 percent oxygen, parts per million by volume, dry basis (ppmvd)

C_{THC}=THC concentration (uncorrected), ppmvd

C_{O2}=oxygen concentration, percent.

(2) To determine compliance with any of the emission limits based on percentage reduction across an emissions control system specified in Table 1 to this subpart, you must calculate the percentage reduction for each test run using Equation 2 of this section:

$$PR = \frac{ER_i - ER_o}{ER_i} \times 100 \qquad \text{(Eq. 2)}$$

Where:

PR=percentage reduction, percent

ER_i=mass emissions rate of specific HAP or pollutant (THC, HF, or HCl) entering the control device, kilograms (pounds) per hour

ER_o=mass emissions rate of specific HAP or pollutant (THC, HF, or HCl) exiting the control device, kilograms (pounds) per hour.

(3) To determine compliance with production-based hydrogen fluoride (HF) and hydrogen chloride (HCl) emission limits in Table 1 to this subpart, you must calculate your mass emissions per unit of uncalcined clay processed for each test run using Equation 3 of this section:

$$MP = \frac{ER}{P} \qquad \text{(Eq. 3)}$$

Where:

MP=mass per unit of production, kilograms of pollutant per megagram (pounds per ton) of uncalcined clay processed

ER=mass emissions rate of specific HAP (HF or HCl) during each performance test run, kilograms (pounds) per hour

P=average uncalcined clay processing rate for the performance test, megagrams (tons) of uncalcined clay processed per hour.

(h) You must establish each site-specific operating limit in Table 2 to

this subpart that applies to you, as specified in Table 4 to this subpart.

(i) For each affected source that is equipped with an add-on APCD that is not addressed in Table 2 to this subpart or that is using process changes as a means of meeting the emission limits in Table 1 to this subpart, you must meet the requirements in § 63.8(f) and paragraphs (i)(1) through (3) of this section.

(1) For sources subject to the THC concentration limit specified in item 3 or 7 of Table 1 to this subpart, you must satisfy the requirements specified in paragraphs (i)(1)(i) through (iii) of this section.

(i) You must install a THC continuous emissions monitoring system (CEMS) at the outlet of the control device or in the stack of the affected source.

(ii) You must meet the requirements specified in Performance Specification (PS) 8 of 40 CFR part 60, appendix B.

(iii) You must meet the requirements specified in Procedure 1 of 40 CFR part 60, appendix F.

(2) For sources subject to the emission limits specified in item 3, 4, 7, or 8 of Table 1 to this subpart, you must submit a request for approval of alternative monitoring methods to the Administrator no later than the submittal date for the Notification of Performance Test, as specified in § 63.9812(d). The request must contain the information specified in paragraphs (i)(2)(i) through (v) of this section.

(i) Description of the alternative add-on APCD or process changes.

(ii) Type of monitoring device or method that will be used, including the sensor type, location, inspection procedures, quality assurance and quality control measures, and data recording device.

(iii) Operating parameters that will be monitored.

(iv) Frequency that the operating parameter values will be determined and recorded to establish continuous compliance with the operating limits.

(v) Averaging time.

(3) You must establish site-specific operating limits during the performance test based on the information included in the approved alternative monitoring methods request and, as applicable, as specified in Table 4 to this subpart.

§ 63.9802 How do I develop an emissions profile?

If you decide to develop an emissions profile for an affected batch process source; as indicated in item 8(a)(i)(4) or 17(b)(i)(4) of Table 4 to this subpart, you must measure and record mass emissions of the applicable pollutant throughout a complete batch cycle of the affected batch process source according to the procedures described in paragraph (a) or (b) of this section.

(a) If your affected batch process source is subject to the THC concentration limit specified in item 6(a), 7(a), 8, or 9 of Table 1 to this subpart or the THC percentage reduction limit specified in item 6(b) or 7(b) of Table 1 to this subpart, you must measure and record the THC mass emissions rate at the inlet to the control device using the test methods, averaging periods, and procedures specified in items 10(a) and (b) of Table 4 to this subpart for each complete hour of the batch process cycle.

(b) If your affected batch process source is subject to the HF and HCl percentage reduction emission limits in item 11 of Table 1 to this subpart, you must measure and record the HF mass emissions rate at the inlet to the control device through a series of 1-hour test runs according to the test method specified in item 14(a) of Table 4 to this subpart for each complete hour of the batch process cycle.

§ 63.9804 What are my monitoring system installation, operation, and maintenance requirements?

(a) You must install, operate, and maintain each CPMS required by this subpart according to your OM&M plan and the requirements in paragraphs (a)(1) through (15) of this section.

(1) You must satisfy all applicable requirements of performance specifications for CPMS specified in 40 CFR part 60, appendix B, upon promulgation of such performance specifications.

(2) You must satisfy all applicable requirements of quality assurance (QA) procedures for CPMS specified in 40 CFR part 60, appendix F, upon promulgation of such QA procedures.

(3) You must install each sensor of your CPMS in a location that provides representative measurement of the appropriate parameter over all operating conditions, taking into account the manufacturer's guidelines.

(4) You must use a CPMS that is capable of measuring the appropriate parameter over a range that extends from a value of at least 20 percent less than the lowest value that you expect your CPMS to measure, to a value of at least 20 percent greater than the highest value that you expect your CPMS to measure.

(5) You must use a data acquisition and recording system that is capable of recording values over the entire range specified in paragraph (a)(4) of this section.

(6) You must use a signal conditioner, wiring, power supply, and data acquisition and recording system that are compatible with the output signal of the sensors used in your CPMS.

(7) You must perform an initial calibration of your CPMS based on the procedures specified in the manufacturer's owner's manual.

(8) You must use a CPMS that is designed to complete a minimum of one cycle of operation for each successive 15-minute period. To have a valid hour of data, you must have at least three of four equally-spaced data values (or at least 75 percent of the total number of values if you collect more than four data values per hour) for that hour (not including startup, shutdown, malfunction, or out-of-control periods).

(9) You must record valid data from at least 90 percent of the hours during which the affected source or process operates.

(10) You must determine and record the 15-minute block averages of all measurements, calculated after every 15 minutes of operation as the average of the previous 15 operating minutes (not including periods of startup, shutdown, or malfunction).

(11) You must determine and record the 3-hour block averages of all 15-minute recorded measurements, calculated after every 3 hours of operation as the average of the previous 3 operating hours (not including periods of startup, shutdown, or malfunction).

(12) You must record the results of each inspection, calibration, initial validation, and accuracy audit.

(13) At all times, you must maintain your CPMS including, but not limited to, maintaining necessary parts for routine repairs of the CPMS.

(14) You must perform an initial validation of your CPMS under the conditions specified in paragraphs (14)(i) and (ii) of this section.

(i) Prior to the initial performance test on the affected source for which the CPMS is required.

(ii) Within 180 days of your replacing or relocating one or more of the sensors of your CPMS.

(15) Except for redundant sensors, as defined in § 63.9824, any device that you use to conduct an initial validation or accuracy audit of your CPMS must meet the accuracy requirements specified in paragraphs (15)(i) and (ii) of this section.

(i) The device must have an accuracy that is traceable to National Institute of Standards and Technology (NIST) standards.

(ii) The device must be at least three times as accurate as the required accuracy for the CPMS.

(b) For each temperature CPMS that is used to monitor the combustion chamber temperature of a thermal oxidizer or the catalyst bed inlet temperature of a catalytic oxidizer, you must meet the requirements in paragraphs (a) and (b)(1) through (6) of this section.

(1) Use a temperature CPMS with a minimum accuracy of ±1.0 percent of the temperature value or 2.8 degrees Celsius (°C) (5 degrees Fahrenheit (°F)), whichever is greater.

(2) Use a data recording system with a minimum resolution of one-half or better of the required CPMS accuracy specified in paragraph (b)(1) of this section.

(3) Perform an initial validation of your CPMS according to the requirements in paragraph (3)(i) or (ii) of this section.

(i) Place the sensor of a calibrated temperature measurement device adjacent to the sensor of your temperature CPMS in a location that is subject to the same environment as the sensor of your temperature CPMS. The calibrated temperature measurement device must satisfy the accuracy requirements of paragraph (a)(15) of this section. While the process and control device that is monitored by your CPMS are operating normally, record concurrently and compare the temperatures measured by your temperature CPMS and the calibrated temperature measurement device. Using the calibrated temperature measurement device as the reference, the temperature measured by your CPMS must be within the accuracy specified in paragraph (b)(1) of this section.

(ii) Perform any of the initial validation methods for temperature CPMS specified in performance specifications for CPMS established in 40 CFR part 60, appendix B.

(4) Perform an accuracy audit of your temperature CPMS at least quarterly, according to the requirements in paragraph (b)(4)(i), (ii), or (iii) of this section.

(i) If your temperature CPMS includes a redundant temperature sensor, record three pairs of concurrent temperature measurements within a 24-hour period. Each pair of concurrent measurements must consist of a temperature measurement by each of the two temperature sensors. The minimum time interval between any two such pairs of consecutive temperature measurements is 1 hour. The measurements must be taken during periods when the process and control device that is monitored by your temperature CPMS are operating normally. Calculate the mean of the three values for each temperature sensor. The mean values must agree within the required overall accuracy of the CPMS, as specified in paragraph (b)(1) of this section.

(ii) If your temperature CPMS does not include a redundant temperature sensor, place the sensor of a calibrated temperature measurement device adjacent to the sensor of your temperature CPMS in a location that is subject to the same environment as the sensor of your temperature CPMS. The calibrated temperature measurement device must satisfy the accuracy requirements of paragraph (a)(15) of this section. While the process and control device that is monitored by your temperature CPMS are operating normally, record concurrently and compare the temperatures measured by your CPMS and the calibrated temperature measurement device. Using the calibrated temperature measurement device as the reference, the temperature measured by your CPMS must be within the accuracy specified in paragraph (b)(1) of this section.

(iii) Perform any of the accuracy audit methods for temperature CPMS specified in QA procedures for CPMS established in 40 CFR part 60, appendix F.

(5) Conduct an accuracy audit of your CPMS following any 24-hour period throughout which the temperature measured by your CPMS exceeds the manufacturer's specified maximum operating temperature range, or install a new temperature sensor.

(6) If your CPMS is not equipped with a redundant temperature sensor, perform at least quarterly a visual inspection of all components of the CPMS for integrity, oxidation, and galvanic corrosion.

(c) For each pressure CPMS that is used to monitor the pressure drop across a DLA or wet scrubber, you must meet the requirements in paragraphs (a) and (c)(1) through (7) of this section.

(1) Use a pressure CPMS with a minimum accuracy of ±5.0 percent or 0.12 kilopascals (kPa) (0.5 inches of water column (in. w.c.)), whichever is greater.

(2) Use a data recording system with a minimum resolution of one-half the required CPMS accuracy specified in paragraph (c)(1) of this section, or better.

(3) Perform an initial validation of your pressure CPMS according to the requirements in paragraph (c)(3)(i) or (ii) of this section.

(i) Place the sensor of a calibrated pressure measurement device adjacent to the sensor of your pressure CPMS in a location that is subject to the same environment as the sensor of your pressure CPMS. The calibrated pressure measurement device must satisfy the accuracy requirements of paragraph (a)(15) of this section. While the process and control device that is monitored by your CPMS are operating normally, record concurrently and compare the pressure measured by your CPMS and the calibrated pressure measurement device. Using the calibrated pressure measurement device as the reference, the pressure measured by your CPMS must be within the accuracy specified in paragraph (c)(1) of this section.

(ii) Perform any of the initial validation methods for pressure CPMS specified in performance specifications for CPMS established in 40 CFR part 60, appendix B.

(4) Perform an accuracy audit of your pressure CPMS at least quarterly, according to the requirements in paragraph (c)(4)(i), (ii), or (iii) of this section.

(i) If your pressure CPMS includes a redundant pressure sensor, record three pairs of concurrent pressure measurements within a 24-hour period. Each pair of concurrent measurements must consist of a pressure measurement by each of the two pressure sensors. The minimum time interval between any two such pairs of consecutive pressure measurements is 1 hour. The measurements must be taken during periods when the process and control device that is monitored by your CPMS are operating normally. Calculate the mean of the three pressure measurement values for each pressure sensor. The mean values must agree within the required overall accuracy of the CPMS, as specified in paragraph (c)(1) of this section.

(ii) If your pressure CPMS does not include a redundant pressure sensor, place the sensor of a calibrated pressure measurement device adjacent to the sensor of your pressure CPMS in a location that is subject to the same environment as the sensor of your pressure CPMS. The calibrated pressure measurement device must satisfy the accuracy requirements of paragraph (a)(15) of this section. While the process and control device that is monitored by your CPMS are operating normally, record concurrently and compare the pressure measured by your CPMS and the calibrated pressure measurement device. Using the calibrated pressure measurement device as the reference, the pressure measured by your CPMS must be within the accuracy specified in paragraph (c)(1) of this section.

(iii) Perform any of the accuracy audit methods for pressure CPMS specified in

QA procedures for CPMS established in 40 CFR part 60, appendix F.

(5) Conduct an accuracy audit of your CPMS following any 24-hour period throughout which the pressure measured by your CPMS exceeds the manufacturer's specified maximum operating pressure range, or install a new pressure sensor.

(6) At least monthly, check all mechanical connections on your CPMS for leakage.

(7) If your CPMS is not equipped with a redundant pressure sensor, perform at least quarterly a visual inspection of all components of the CPMS for integrity, oxidation, and galvanic corrosion.

(d) For each liquid flow rate CPMS that is used to monitor the liquid flow rate in a wet scrubber, you must meet the requirements in paragraphs (a) and (d)(1) through (7) of this section.

(1) Use a flow rate CPMS with a minimum accuracy of ±5.0 percent or 1.9 liters per minute (L/min) (0.5 gallons per minute (gal/min)), whichever is greater.

(2) Use a data recording system with a minimum resolution of one-half the required CPMS accuracy specified in paragraph (d)(1) of this section, or better.

(3) Perform an initial validation of your CPMS according to the requirements in paragraph (3)(i) or (ii) of this section.

(i) Use a calibrated flow rate measurement system to measure the liquid flow rate in a location that is adjacent to the measurement location for your flow rate CPMS and is subject to the same environment as your flow rate CPMS. The calibrated flow rate measurement device must satisfy the accuracy requirements of paragraph (a)(15) of this section. While the process and control device that is monitored by your flow rate CPMS are operating normally, record concurrently and compare the flow rates measured by your flow rate CPMS and the calibrated flow rate measurement device. Using the calibrated flow rate measurement device as the reference, the flow rate measured by your CPMS must be within the accuracy specified in paragraph (d)(1) of this section.

(ii) Perform any of the initial validation methods for liquid flow rate CPMS specified in performance specifications for CPMS established in 40 CFR part 60, appendix B.

(4) Perform an accuracy audit of your flow rate CPMS at least quarterly, according to the requirements in paragraph (d)(4)(i), (ii), or (iii) of this section.

(i) If your flow rate CPMS includes a redundant sensor, record three pairs of concurrent flow rate measurements within a 24-hour period. Each pair of concurrent measurements must consist of a flow rate measurement by each of the two flow rate sensors. The minimum time interval between any two such pairs of consecutive flow rate measurements is 1 hour. The measurements must be taken during periods when the process and control device that is monitored by your flow rate CPMS are operating normally. Calculate the mean of the three flow rate measurement values for each flow rate sensor. The mean values must agree within the required overall accuracy of the CPMS, as specified in paragraph (d)(1) of this section.

(ii) If your flow rate CPMS does not include a redundant flow rate sensor, place the sensor of a calibrated flow rate measurement device adjacent to the sensor of your flow rate CPMS in a location that is subject to the same environment as the sensor of your flow rate CPMS. The calibrated flow rate measurement device must satisfy the accuracy requirements of paragraph (a)(15) of this section. While the process and control device that is monitored by your flow rate CPMS are operating normally, record concurrently and compare the flow rate measured by your pressure CPMS and the calibrated flow rate measurement device. Using the calibrated flow rate measurement device as the reference, the flow rate measured by your CPMS must be within the accuracy specified in paragraph (d)(1) of this section.

(iii) Perform any of the accuracy audit methods for liquid flow rate CPMS specified in QA procedures for CPMS established in 40 CFR part 60, appendix F.

(5) Conduct an accuracy audit of your flow rate CPMS following any 24-hour period throughout which the flow rate measured by your CPMS exceeds the manufacturer's specified maximum operating range, or install a new flow rate sensor.

(6) At least monthly, check all mechanical connections on your CPMS for leakage.

(7) If your CPMS is not equipped with a redundant flow rate sensor, perform at least quarterly a visual inspection of all components of the CPMS for integrity, oxidation, and galvanic corrosion.

(e) For each pH CPMS that is used to monitor the pH of a wet scrubber liquid, you must meet the requirements in paragraphs (a) and (e)(1) through (5) of this section.

(1) Use a pH CPMS with a minium accuracy of ±0.2 pH units.

(2) Use a data recording system with a minimum resolution of 0.1 pH units, or better.

(3) Perform an initial validation of your pH CPMS according to the requirements in paragraph (e)(3)(i) or (ii) of this section.

(i) Perform a single-point calibration using an NIST-certified buffer solution that is accurate to within ±0.02 pH units at 25°C (77°F). If the expected pH of the liquid that is monitored lies in the acidic range (less than 7 pH), use a buffer solution with a pH value of 4.00. If the expected pH of the liquid that is monitored is neutral or lies in the basic range (equal to or greater than 7 pH), use a buffer solution with a pH value of 10.00. Place the electrode of your pH CPMS in the container of buffer solution. Record the pH measured by your CPMS. Using the certified buffer solution as the reference, the pH measured by your CPMS must be within the accuracy specified in paragraph (e)(1) of this section.

(ii) Perform any of the initial validation methods for pH CPMS specified in performance specifications for CPMS established in 40 CFR part 60, appendix B.

(4) Perform an accuracy audit of your pH CPMS at least weekly, according to the requirements in paragraph (e)(4)(i), (ii), or (iii) of this section.

(i) If your pH CPMS includes a redundant pH sensor, record the pH measured by each of the two pH sensors. The measurements must be taken during periods when the process and control device that is monitored by your pH CPMS are operating normally. The two pH values must agree within the required overall accuracy of the CPMS, as specified in paragraph (e)(1) of this section.

(ii) If your pH CPMS does not include a redundant pH sensor, perform a single point calibration using an NIST-certified buffer solution that is accurate to within ±0.02 pH units at 25°C (77°F). If the expected pH of the liquid that is monitored lies in the acidic range (less than 7 pH), use a buffer solution with a pH value of 4.00. If the expected pH of the liquid that is monitored is neutral or lies in the basic range (equal to or greater than 7 pH), use a buffer solution with a pH value of 10.00. Place the electrode of the pH CPMS in the container of buffer solution. Record the pH measured by your CPMS. Using the certified buffer solution as the reference, the pH measured by your CPMS must be within the accuracy specified in paragraph (e)(1) of this section.

(iii) Perform any of the accuracy audit methods for pH CPMS specified in QA

procedures for CPMS established in 40 CFR part 60, appendix F.

(5) If your CPMS is not equipped with a redundant pH sensor, perform at least monthly a visual inspection of all components of the CPMS for integrity, oxidation, and galvanic corrosion.

(f) For each bag leak detection system, you must meet the requirements in paragraphs (f)(1) through (11) of this section.

(1) Each triboelectric bag leak detection system must be installed, calibrated, operated, and maintained according to the ''Fabric Filter Bag Leak Detection Guidance'' (EPA–454/R–98–015, September 1997). That document is available from the U.S. EPA; Office of Air Quality Planning and Standards; Emissions, Monitoring and Analysis Division; Emission Measurement Center (D205–02), Research Triangle Park, NC 27711. It is also available on the Technology Transfer Network (TTN) at the following address: *http://www.epa.gov/ttn/emc/cem.html*. Other types of bag leak detection systems must be installed, operated, calibrated, and maintained in a manner consistent with the manufacturer's written specifications and recommendations.

(2) The bag leak detection system must be certified by the manufacturer to be capable of detecting particulate matter (PM) emissions at concentrations of 10 milligrams per actual cubic meter (0.0044 grains per actual cubic foot) or less.

(3) The bag leak detection system sensor must provide an output of relative PM loadings.

(4) The bag leak detection system must be equipped with a device to continuously record the output signal from the sensor.

(5) The bag leak detection system must be equipped with an alarm system that will be engaged automatically when an increase in relative PM emissions over a preset level is detected. The alarm must be located where it is easily recognized by plant operating personnel.

(6) For positive pressure fabric filter systems, a bag leak detector must be installed in each baghouse compartment or cell.

(7) For negative pressure or induced air fabric filters, the bag leak detector must be installed downstream of the fabric filter.

(8) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(9) The baseline output must be established by adjusting the range and the averaging period of the device and establishing the alarm set points and the alarm delay time according to section 5.0 of the ''Fabric Filter Bag Leak Detection Guidance.''

(10) Following initial adjustment of the system, the owner or operator must not adjust the sensitivity or range, averaging period, alarm set points, or alarm delay time except as detailed in the OM&M plan. In no case may the sensitivity be increased by more than 100 percent or decreased by more than 50 percent over a 365-day period unless such adjustment follows a complete fabric filter inspection that demonstrates that the fabric filter is in good operating condition. You must record each adjustment of your bag leak detection system.

(11) Record the results of each inspection, calibration, and validation check.

(g) For each lime feed rate measurement device that is used to monitor the lime feed rate of a dry injection fabric filter (DIFF) or dry lime scrubber/fabric filter (DLS/FF), or the chemical feed rate of a wet scrubber, you must meet the requirements in paragraph (a) of this section.

(h) For each affected source that is subject to the emission limit specified in item 3, 4, 7, or 8 of Table 1 to this subpart, you must satisfy the requirements of paragraphs (h)(1) through (3) of this section.

(1) Install a THC CEMS at the outlet of the control device or in the stack of the affected source.

(2) Meet the requirements of PS–8 of 40 CFR part 60, appendix B.

(3) Meet the requirements of Procedure 1 of 40 CFR part 60, appendix F.

(i) Requests for approval of alternate monitoring methods must meet the requirements in §§ 63.9800(i)(2) and 63.8(f).

§ 63.9806 How do I demonstrate initial compliance with the emission limits, operating limits, and work practice standards?

(a) You must demonstrate initial compliance with each emission limit that applies to you according to the requirements specified in Table 5 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 specified in § 63.9800 and Table 4 to this subpart.

(c) You must demonstrate initial compliance with each work practice standard that applies to you according to the requirements specified in Table 6 to this subpart.

(d) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.9812(e).

Continuous Compliance Requirements

§ 63.9808 How do I monitor and collect data to demonstrate continuous compliance?

(a) You must monitor and collect data according to this section.

(b) At all times, you must maintain your monitoring systems including, but not limited to, maintaining necessary parts for routine repairs of the monitoring equipment.

(c) Except for, as applicable, monitoring system malfunctions, associated repairs, and required quality assurance or quality control activities, you must monitor continuously whenever your affected process unit is operating. For purposes of calculating data averages, you must not use data recorded during monitoring system malfunctions, associated repairs, and required quality assurance or quality control activities. You must use all the data collected during all other periods in assessing compliance. A monitoring system malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide valid data. Monitoring system malfunctions include out of control continuous monitoring systems (CMS), such as a CPMS. Any averaging period for which you do not have valid monitoring data as a result of a monitoring system malfunction and for which such data are required constitutes a deviation, and you must notify the Administrator in accordance with § 63.9814(e). Monitoring system failures are different from monitoring system malfunctions in that they are caused in part by poor maintenance or careless operation. Any period for which there is a monitoring system failure and data are not available for required calculations constitutes a deviation and you must notify the Administrator in accordance with § 63.9814(e).

§ 63.9810 How do I demonstrate continuous compliance with the emission limits, operating limits, and work practice standards?

(a) You must demonstrate continuous compliance with each emission limit specified in Table 1 to this subpart that applies to you according to the requirements specified in Table 7 to this subpart.

(b) You must demonstrate continuous compliance with each operating limit specified in Table 2 to this subpart that applies to you according to the requirements specified in Table 8 to this subpart.

(c) You must demonstrate continuous compliance with each work practice standard specified in Table 3 to this subpart that applies to you according to the requirements specified in Table 9 to this subpart.

(d) For each affected source that is equipped with an add-on APCD that is not addressed in Table 2 to this subpart or that is using process changes as a means of meeting the emission limits in Table 1 to this subpart, you must demonstrate continuous compliance with each emission limit in Table 1 to this subpart and each operating limit established as required in § 63.9800(i)(3) according to the methods specified in your approved alternative monitoring methods request as described in § 63.9800(i)(2).

(e) You must report each instance in which you did not meet each emission limit and each operating limit in this subpart that applies to you. This includes periods of startup, shutdown, and malfunction. These instances are deviations from the emission limitations in this subpart. These deviations must be reported according to the requirements in § 63.9814.

(1) During periods of startup, shutdown, and malfunction, you must operate according to your SSMP.

(2) 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 according to your SSMP and your OM&M plan. 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).

Notifications, Reports, and Records

§ 63.9812 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.7(b) and (c), 63.8(f)(4), and 63.9 (b) through (e) and (h) that apply to you by the dates specified.

(b) As specified in § 63.9(b)(2) and (3), if you start up your affected source before April 16, 2003, you must submit an Initial Notification not later than 120 calendar days after April 16, 2003.

(c) As specified in § 63.9(b)(3), if you start up your new or reconstructed affected source on or after April 16, 2003, you must submit an Initial Notification not 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 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, you must submit a Notification of Compliance Status as specified in § 63.9(h) and paragraphs (e)(1) and (2) of this section.

(1) For each compliance demonstration that includes a performance test conducted according to the requirements in Table 4 to this subpart, you must submit the Notification of Compliance Status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test, according to § 63.10(d)(2).

(2) In addition to the requirements in § 63.9(h)(2)(i), you must include the information in paragraphs (e)(2)(i) through (iv) of this section in your Notification of Compliance Status.

(i) The operating limit parameter values established for each affected source with supporting documentation and a description of the procedure used to establish the values.

(ii) Design information and analysis with supporting documentation demonstrating conformance with requirements for capture/collection systems in Table 2 to this subpart.

(iii) A description of the methods used to comply with any applicable work practice standard.

(iv) For each APCD that includes a fabric filter, analysis and supporting documentation demonstrating conformance with EPA guidance and specifications for bag leak detection systems in § 63.9804(f).

(f) If you operate a clay refractory products kiln or a chromium refractory products kiln that is subject to the work practice standard specified in item 3 or 4 of Table 3 to this subpart, and you intend to use a fuel other than natural gas or equivalent to fire the affected kiln, you must submit a notification of alternative fuel use within 48 hours of the declaration of a period of natural gas curtailment or supply interruption, as defined in § 63.9824. The notification must include the information specified in paragraphs (f)(1) through (5) of this section.

(1) Company name and address.

(2) Identification of the affected kiln.

(3) Reason you are unable to use natural gas or equivalent fuel, including the date when the natural gas curtailment was declared or the natural gas supply interruption began.

(4) Type of alternative fuel that you intend to use.

(5) Dates when the alternative fuel use is expected to begin and end.

(g) If you own or operate an affected continuous kiln and must perform scheduled maintenance on the control device for that kiln, you must request approval from the Administrator before bypassing the control device, as specified in § 63.9792(e). You must submit a separate request for approval each time you plan to bypass the kiln control device.

§ 63.9814 What reports must I submit and when?

(a) You must submit each report in Table 10 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 report by the date in Table 10 to this subpart and as specified in paragraphs (b)(1) through (5) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.9786 and ending on June 30 or December 31 and lasting at least 6 months but less than 12 months. For example, if your compliance date is March 1, then the first semiannual reporting period would begin on March 1 and end on December 31.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31 for compliance periods ending on June 30 and December 31, respectively.

(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 for compliance periods ending on June 30 and December 31, respectively.

(5) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71 and, if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (b)(1) through (4) of this section. In such cases, you must notify the Administrator of this change.

(c) The compliance report must contain the information in paragraphs (c)(1) through (6) of this section.

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature, certifying that, based on information and belief formed after reasonable inquiry, the statements and information in the report are true, accurate, and complete.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period, and you took actions consistent with your SSMP and OM&M plan, the compliance report must include the information specified in § 63.10(d)(5)(i).

(5) If there are no deviations from any emission limitations (emission limit, operating limit, or work practice standard) that apply to you, the compliance report must include a statement that there were no deviations from the emission limitations during the reporting period.

(6) If there were no periods during which any affected CPMS was out of control as specified in § 63.8(c)(7), the compliance report must include a statement that there were no periods during which the CPMS was out of control during the reporting period.

(d) For each deviation from an emission limitation (emission limit, operating limit, or work practice standard) that occurs at an affected source where you are not using a CPMS to comply with the emission limitations in this subpart, the compliance report must contain the information in paragraphs (c)(1) through (4) and (d)(1) and (2) of this section. This includes periods of startup, shutdown, and malfunction.

(1) The compliance report must include the total operating time of each affected source during the reporting period.

(2) The compliance report must include information on the number, duration, and cause of deviations (including unknown cause, if applicable) and the corrective action taken.

(e) For each deviation from an emission limitation (emission limit, operating limit, or work practice standard) occurring at an affected source where you are using a CPMS to comply with the emission limitation in this subpart, the compliance report must include the information in paragraphs (c)(1) through (4) and (e)(1) through (13) of this section. This includes periods of startup, shutdown, and malfunction.

(1) The total operating time of each affected source during the reporting period.

(2) The date and time that each startup, shutdown, or malfunction started and stopped.

(3) The date, time, and duration that each CPMS was inoperative.

(4) The date, time and duration that each CPMS was out of control, including the information in § 63.8(c)(8), as required by your OM&M plan.

(5) The date and time that each deviation from an emission limitation (emission limit, operating limit, or work practice standard) started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction.

(6) A description of corrective action taken in response to a deviation.

(7) A summary of the total duration of the deviations during the reporting period and the total duration as a percentage of the total source operating time during that reporting period.

(8) 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.

(9) A summary of the total duration of CPMS downtime during the reporting period and the total duration of CPMS downtime as a percentage of the total source operating time during that reporting period.

(10) A brief description of the process units.

(11) A brief description of the CPMS.

(12) The date of the latest CPMS initial validation or accuracy audit.

(13) A description of any changes in CPMS, processes, or controls since the last reporting period.

(f) If you have obtained a title V operating permit pursuant to 40 CFR part 70 or 40 CFR part 71, you must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If you submit a compliance report according to Table 10 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), then submitting the compliance report will satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submitting a compliance report will not otherwise affect any obligation you may have to report deviations from permit requirements to the permit authority.

(g) If you operate a clay refractory products kiln or a chromium refractory products kiln that is subject to the work practice standard specified in item 3 or 4 of Table 3 to this subpart, and you use a fuel other than natural gas or equivalent to fire the affected kiln, you must submit a report of alternative fuel use within 10 working days after terminating the use of the alternative fuel. The report must include the information in paragraphs (g)(1) through (6) of this section.

(1) Company name and address.

(2) Identification of the affected kiln.

(3) Reason for using the alternative fuel.

(4) Type of alternative fuel used to fire the affected kiln.

(5) Dates that the use of the alternative fuel started and ended.

(6) Amount of alternative fuel used.

§ 63.9816 What records must I keep?

(a) You must keep the records listed 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 as required in § 63.10(b)(2)(viii).

(b) You must keep the records required in Tables 7 through 9 to this subpart to show continuous compliance with each emission limitation that applies to you.

(c) You must also maintain the records listed in paragraphs (c)(1) through (10) of this section.

(1) Records of emission data used to develop an emissions profile, as indicated in items 8(a)(i)(4) and 17(b)(i)(4) of Table 4 to this subpart.

(2) Records that document how you comply with any applicable work practice standard.

(3) For each bag leak detection system, records of each alarm, the time of the alarm, the time corrective action was initiated and completed, and a brief description of the cause of the alarm and the corrective action taken.

(4) For each kiln controlled with a DLA, records that document the source of limestone used.

(5) For each deviation of an operating limit parameter value, the date, time,

and duration of the deviation, a brief explanation of the cause of the deviation and the corrective action taken, and whether the deviation occurred during a period of startup, shutdown, or malfunction.

(6) For each affected source, records of production rate on a process throughput basis (either feed rate to the process unit or discharge rate from the process unit).

(7) Records of any approved alternative monitoring method(s) or test procedure(s).

(8) Records of maintenance activities and inspections performed on control devices, including all records associated with the scheduled maintenance of continuous kiln control devices, as specified in § 63.9792(e).

(9) If you operate a source that is subject to the THC emission limits specified in item 2, 3, 6, or 7 of Table 1 to this subpart and is controlled with a catalytic oxidizer, records of annual checks of catalyst activity levels and subsequent corrective actions.

(10) Current copies of the SSMP and the OM&M plan, including any revisions and records documenting conformance with those revisions.

§ 63.9818 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 onsite for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You may keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.9820 What parts of the General Provisions apply to me?

Table 11 to this subpart shows which parts of the General Provisions specified in §§ 63.1 through 63.15 apply to you.

§ 63.9822 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 to this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority to 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 the U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the applicability requirements in §§ 63.9782 and 63.9784, the compliance date requirements in § 63.9786, and the emission limitations in § 63.9788.

(2) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.9824 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in 40 CFR 63.2, the General Provisions of this part, and in this section as follows:

Additive means a minor addition of a chemical, mineral, or metallic substance that is added to a refractory mixture to facilitate processing or impart specific properties to the final refractory product.

Add-on air pollution control device (APCD) means equipment installed on a process vent that reduces the quantity of a pollutant that is emitted to the air.

Autoclave means a vessel that is used to impregnate fired and/or unfired refractory shapes with pitch to form pitch-impregnated refractory products. Autoclaves also can be used as defumers following the impregnation process.

Bag leak detection system means an instrument that is capable of monitoring particulate matter loadings in the exhaust of a fabric filter in order to detect bag failures. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, light-scattering, light-transmittance, or other effects to monitor relative PM loadings.

Basket means the metal container used to hold refractory shapes for pitch impregnation during the shape preheating, impregnation, defuming, and, if applicable, coking processes.

Batch process means a process in which a set of refractory shapes is acted upon as a single unit according to a predetermined schedule, during which none of the refractory shapes being processed are added or removed. A batch process does not operate continuously.

Binder means a substance added to a granular material to give it workability and green or dry strength.

Catalytic oxidizer means an add-on air pollution control device that is designed specifically to destroy organic compounds in a process exhaust gas stream by catalytic incineration. A catalytic oxidizer includes a bed of catalyst media through which the process exhaust stream passes to promote combustion and incineration at a lower temperature than would be possible without the catalyst.

Chromium refractory product means a refractory product that contains at least 1 percent chromium by weight.

Clay refractory product means a refractory product that contains at least 10 percent uncalcined clay by weight prior to firing in a kiln. In this definition, the term ''clay'' means any of the following six classifications of clay defined by the U.S. Geologic Survey: ball clay, bentonite, common clay and shale, fire clay, fuller's earth, and kaolin.

Coking oven means a thermal process unit that operates at a peak temperature typically between 540° and 870°C (1000° and 1600°F) and is used to drive off the volatile constituents of pitch-impregnated refractory shapes under a reducing or oxygen-deprived atmosphere.

Continuous parameter monitoring system (CPMS) means the total equipment that is used to measure and record temperature, pressure, liquid flow rate, gas flow rate, or pH on a continuous basis in one or more locations. ''Total equipment'' includes the sensor, mechanical components, electronic components, data acquisition system, data recording system, electrical wiring, and other components of a CPMS.

Continuous process means a process that operates continuously. In a continuous process unit, the materials or shapes that are processed are either continuously charged (fed) to and discharged from the process unit, or are charged and discharged at regular time intervals without the process unit being shut down. Continuous thermal process units, such as tunnel kilns, generally include temperature zones that are maintained at relatively constant

temperature and through which the materials or shapes being processed are conveyed continuously or at regular time intervals.

Curing oven means a thermal process unit that operates at a peak temperature typically between 90° and 340°C (200° and 650°F) and is used to activate a thermosetting resin, pitch, or other binder in refractory shapes. Curing ovens also perform the same function as shape dryers in removing the free moisture from refractory shapes.

Defumer means a process unit that is used for holding pitch-impregnated refractory shapes as the shapes defume or cool immediately following the impregnation process. This definition includes autoclaves that are opened and exhausted to the atmosphere following an impregnation cycle and used for holding pitch-impregnated refractory shapes while the shapes defume or cool.

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 (emission limit, operating limit, or work practice standard);

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation (emission limit, operating limit, or work practice standard) in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Dry injection fabric filter (DIFF) means an add-on air pollution control device that includes continuous injection of hydrated lime or other sorbent into a duct or reaction chamber followed by a fabric filter.

Dry lime scrubber/fabric filter (DLS/FF) means an add-on air pollution control device that includes continuous injection of humidified hydrated lime or other sorbent into a reaction chamber followed by a fabric filter. These systems may include recirculation of some of the sorbent.

Dry limestone adsorber (DLA) means an air pollution control device that includes a limestone storage bin, a reaction chamber that is essentially a packed-tower filled with limestone, and may or may not include a peeling drum that mechanically scrapes reacted limestone to regenerate the stone for reuse.

Emission limitation means any restriction on the emissions a process unit may discharge.

Fabric filter means an add-on air pollution control device used to capture particulate matter by filtering a process exhaust stream through a filter or filter media; a fabric filter is also known as a baghouse.

Fired refractory shape means a refractory shape that has been fired in a kiln.

HAP means any hazardous air pollutant that appears in section 112(b) of the Clean Air Act.

Kiln means a thermal process unit that operates at a peak temperature greater than 820°C (1500°F) and is used for firing or sintering refractory, ceramic, or other shapes.

Kiln furniture means any refractory shape that is used to hold, support, or position ceramic or refractory products in a kiln during the firing process.

Maximum organic HAP processing rate means the combination of process and refractory product formulation that has the greatest potential to emit organic HAP. The maximum organic HAP processing rate is a function of the organic HAP processing rate, process operating temperature, and other process operating parameters that affect emissions of organic HAP. (See also the definition of *organic HAP processing rate.*)

Organic HAP processing rate means the rate at which the mass of organic HAP materials contained in refractory shapes are processed in an affected thermal process unit. The organic HAP processing rate is a function of the amount of organic HAP contained in the resins, binders, and additives used in a refractory mix; the amounts of those resins, binders, and additives in the refractory mix; and the rate at which the refractory shapes formed from the refractory mix are processed in an affected thermal process unit. For continuous process units, the organic HAP processing rate is expressed in units of mass of organic HAP per unit of time (*e.g.*, pounds per hour). For batch process units, the organic HAP processing rate is expressed in units of mass of organic HAP per unit mass of refractory shapes processed during the batch process cycle (*e.g.*, pounds per ton).

Particulate matter (PM) means, for the purposes of this subpart, emissions of particulate matter that serve as a measure of total particulate emissions as measured by EPA Method 5 of 40 CFR part 60, appendix A.

Peak emissions period means the period of consecutive hourly mass emissions of the applicable pollutant that is greater than any other period of consecutive hourly mass emissions for the same pollutant over the course of a specified batch process cycle, as defined in paragraphs (1) and (2) of this definition. The peak emissions period is a function of the rate at which the temperature of the refractory shapes is increased, the mass and loading configuration of the shapes in the process unit, the constituents of the refractory mix, and the type of pollutants emitted.

(1) The 3-hour peak THC emissions period is the period of 3 consecutive hours over which the sum of the hourly THC mass emissions rates is greater than the sum of the hourly THC mass emissions rates for any other period of 3 consecutive hours during the same batch process cycle.

(2) The 3-hour peak HF emissions period is the period of 3 consecutive hours over which the sum of the hourly HF mass emissions rates is greater than the sum of the hourly HF mass emissions rates for any other period of 3 consecutive hours during the same batch process cycle.

Period of natural gas curtailment or supply interruption means a period of time during which the supply of natural gas to an affected facility is halted for reasons beyond the control of the facility. An increase in the cost or unit price of natural gas does not constitute a period of natural gas curtailment or supply interruption.

Pitch means the residue from the distillation of petroleum or coal tar.

Pitch-bonded refractory product means a formed refractory product that is manufactured using pitch as a bonding agent. Pitch-bonded refractory products are manufactured by mixing pitch with magnesium oxide, graphite, alumina, silicon carbide, silica, or other refractory raw materials, and forming the mix into shapes. After forming, pitch-bonded refractory products are cured in a curing oven and may be subsequently fired in a kiln.

Pitch-impregnated refractory product means a refractory shape that has been fired in a kiln, then impregnated with heated coal tar or petroleum pitch under pressure. After impregnation, pitch-impregnated refractory shapes may undergo the coking process in a coking oven. The total carbon content of a pitch-impregnated refractory product is less than 50 percent.

Pitch working tank means a tank that is used for heating pitch to the impregnation temperature, typically between 150° and 260°C (300° and 500°F); temporarily storing heated pitch between impregnation cycles; and transferring pitch to and from the

autoclave during the impregnation step in manufacturing pitch-impregnated refractory products.

Plant site means all contiguous or adjoining property that is under common control, including properties that are separated only by a road or other public right-of-way. Common control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, or any combination thereof.

Redundant sensor means a second sensor or a back-up sensor that is integrated into a CPMS and is used to check the parameter value (*e.g.*, temperature, pressure) measured by the primary sensor of the CPMS.

Refractory product means nonmetallic materials containing less than 50 percent carbon by weight and having those chemical and physical properties that make them applicable for structures, or as components of systems, that are exposed to environments above 538°C (1000°F). This definition includes, but is not limited to: refractory bricks, kiln furniture, crucibles, refractory ceramic fiber, and other materials used as linings for boilers, kilns, and other processing units and equipment where extremes of temperature, corrosion, and abrasion would destroy other materials.

Refractory products that use organic HAP means resin-bonded refractory products, pitch-bonded refractory products, and other refractory products that are produced using a substance that is an organic HAP, that releases an organic HAP during production of the refractory product, or that contains an organic HAP, such as methanol or ethylene glycol.

Refractory shape means any refractory piece forming a stable mass with specific dimensions.

Research and development process unit means any process unit whose purpose is to conduct research and development for new processes and products and is not engaged in the manufacture of products for commercial sale, except in a de minimis manner.

Resin-bonded refractory product means a formed refractory product that is manufactured using a phenolic resin or other type of thermosetting resin as a bonding agent. Resin-bonded refractory products are manufactured by mixing resin with alumina, magnesium oxide, graphite, silica, zirconia, or other refractory raw materials, and forming the mix into shapes. After forming, resin-bonded refractory products are cured in a curing oven and may be subsequently fired in a kiln.

Responsible official means one of the following:

(1) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decisionmaking functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

(ii) The delegation of authority to such representatives is approved in advance by the Administrator;

(2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

(3) For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (*e.g.*, a Regional Administrator of EPA); or

(4) For affected sources (as defined in this subpart) applying for or subject to a title V permit: ''responsible official'' shall have the same meaning as defined in part 70 or Federal title V regulations in this chapter (42 U.S.C. 7661), whichever is applicable.

Shape dryer means a thermal process unit that operates at a peak temperature typically between 40° and 700°C (100° and 1300°F) and is used exclusively to reduce the free moisture content of a refractory shape. Shape dryers generally are the initial thermal process step following the forming step in refractory products manufacturing. (See also the definition of a *curing oven*.)

Shape preheater means a thermal process unit that operates at a peak temperature typically between 180° and 320°C (350° and 600°F) and is used to heat fired refractory shapes prior to the impregnation step in manufacturing pitch-impregnated refractory products.

Thermal oxidizer means an add-on air pollution control device that includes one or more combustion chambers and is designed specifically to destroy organic compounds in a process exhaust gas stream by incineration.

Uncalcined clay means clay that has not undergone thermal processing in a calciner.

Wet scrubber means an add-on air pollution control device that removes pollutants from a gas stream by bringing them into contact with a liquid, typically water.

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 Clean Air Act.

Tables to Subpart SSSSS of Part 63

As stated in § 63.9788, you must comply with the emission limits for affected sources in the following table:

TABLE 1 TO SUBPART SSSSS OF PART 63.—EMISSION LIMITS

For . . .	You must meet the following emission limits . . .
1. Each new or existing curing oven, shape dryer, and kiln that is used to process refractory products that use organic HAP; each new or existing coking oven and defumer that is used to produce pitch-impregnated refractory products; each new shape preheater that is used to produce pitch-impregnated refractory products; AND each new or existing process unit that is exhausted to a thermal or catalytic oxidizer that also controls emissions from an affected shape preheater or pitch working tank.	As specified in items 2 through 9 of this table.
2. Continuous process units that are controlled with a thermal or catalytic oxidizer.	a. The 3-hour block average THC concentration must not exceed 20 parts per million by volume, dry basis (ppmvd), corrected to 18 percent oxygen, at the outlet of the control device; or b. The 3-hour block average THC mass emissions rate must be reduced by at least 95 percent.
3. Continuous process units that are equipped with a control device other than a thermal or catalytic oxidizer.	a. The 3-hour block average THC concentration must not exceed 20 ppmvd, corrected to 18 percent oxygen, at the outlet of the control device; or b. The 3-hour block average THC mass emissions rate must be reduced by at least 95 percent.
4. Continuous process units that use process changes to reduce organic HAP emissions.	The 3-hour block average THC concentration must not exceed 20 ppmvd, corrected to 18 percent oxygen, at the outlet of the process gas stream.
5. Continuous kilns that are not equipped with a control device	The 3-hour block average THC concentration must not exceed 20 ppmvd, corrected to 18 percent oxygen, at the outlet of the process gas stream.
6. Batch process units that are controlled with a thermal or catalytic oxidizer.	a. The 2-run block average THC concentration for the 3-hour peak emissions period must not exceed 20 ppmvd, corrected to 18 percent oxygen, at the outlet of the control device; or b. The 2-run block average THC mass emissions rate for the 3-hour peak emissions period must be reduced by at least 95 percent.
7. Batch process units that are equipped with a control device other than a thermal or catalytic oxidizer.	a. The 2-run block average THC concentration for the 3-hour peak emissions period must not exceed 20 ppmvd, corrected to 18 percent oxygen, at the outlet of the control device; or b. The 2-run block average THC mass emissions rate for the 3-hour peak emissions period must be reduced by at least 95 percent.
8. Batch process units that use process changes to reduce organic HAP emissions.	The 2-run block average THC concentration for the 3-hour peak emissions period must not exceed 20 ppmvd, corrected to 18 percent oxygen, at the outlet of the process gas stream.
9. Batch process kilns that are not equipped with a control device	The 2-run block average THC concentration for the 3-hour peak emissions period must not exceed 20 ppmvd, corrected to 18 percent oxygen, at the outlet of the process gas stream.
10. Each new continuous kiln that is used to produce clay refractory products.	a. The 3-hour block average HF emissions must not exceed 0.019 kilograms per megagram (kg/Mg) (0.038 pounds per ton (lb/ton)) of uncalcined clay processed, OR the 3-hour block average HF mass emissions rate must be reduced by at least 90 percent; and b. The 3-hour block average HCl emissions must not exceed 0.091 kg/Mg (0.18 lb/ton) of uncalcined clay processed, OR the 3-hour block average HCl mass emissions rate must be reduced by at least 30 percent.
11. Each new batch process kiln that is used to produce clay refractory products.	a. The 2-run block average HF mass emissions rate for the 3-hour peak emissions period must be reduced by at least 90 percent; and b. The 2-run block average HCl mass emissions rate for the 3-hour peak emissions period must be reduced by at least 30 percent.

As stated in § 63.9788, you must comply with the operating limits for affected sources in the following table:

TABLE 2 TO SUBPART SSSSS OF PART 63.—OPERATING LIMITS

For . . .	You must . . .
1. Each affected source listed in Table 1 to this subpart	a. Operate all affected sources according to the requirements to this subpart on and after the date on which the initial performance test is conducted or required to be conducted, whichever date is earlier; and b. Capture emissions and vent them through a closed system; and c. Operate each control device that is required to comply with this subpart on each affected source during all periods that the source is operating, except where specified in § 63.9792(e), item 2 of this table, and item 13 of Table 4 to this subpart; and

TABLE 2 TO SUBPART SSSSS OF PART 63.—OPERATING LIMITS—Continued

For . . .	You must . . .
	d. Record all operating parameters specified in Table 8 to this subpart for the affected source; and
	e. Prepare and implement a written OM&M plan as specified in § 63.9792(d).
2. Each affected continuous kiln that is equipped with an emission control device.	a. Receive approval from the Administrator before taking the control device on the affected kiln out of service for scheduled maintenance, as specified in § 63.9792(e); and
	b. Minimize HAP emissions from the affected kiln during all periods of scheduled maintenance of the kiln control device when the kiln is operating and the control device is out of service; and
	c. Minimize the duration of all periods of scheduled maintenance of the kiln control device when the kiln is operating and the control device is out of service.
3. Each new or existing curing oven, shape dryer, and kiln that is used to process refractory products that use organic HAP; each new or existing coking oven and defumer that is used to produce pitch-impregnated refractory products; each new shape preheater that is used to produce pitch-impregnated refractory products; AND each new or existing process unit that is exhausted to a thermal or catalytic oxidizer that also controls emissions from an affected shape preheater or pitch working tank.	Satisfy the applicable operating limits specified in items 4 through 9 of this table.
4. Each affected continuous process unit	Maintain the 3-hour block average organic HAP processing rate (pounds per hour) at or below the maximum organic HAP processing rate established during the most recent performance test.
5. Continuous process units that are equipped with a thermal oxidizer	Maintain the 3-hour block average operating temperature in the thermal oxidizer combustion chamber at or above the minimum allowable operating temperature for the oxidizer established during the most recent performance test.
6. Continuous process units that are equipped with a catalytic oxidizer	a. Maintain the 3-hour block average operating temperature at the inlet of the catalyst bed of the oxidizer at or above the minimum allowable operating temperature for the oxidizer established during the most recent performance test; and
	b. Check the activity level of the catalyst at least every 12 months.
7. Each affected batch process unit	For each batch cycle, maintain the organic HAP processing rate (pounds per batch) at or below the maximum organic HAP processing rate established during the most recent performance test.
8. Batch process units that are equipped with a thermal oxidizer	a. From the start of each batch cycle until 3 hours have passed since the process unit reached maximum temperature, maintain the hourly average operating temperature in the thermal oxidizer combustion chamber at or above the minimum allowable operating temperature established for the corresponding period during the most recent performance test, as determined according to item 11 of Table 4 to this subpart; and
	b. For each subsequent hour of the batch cycle, maintain the hourly average operating temperature in the thermal oxidizer combustion chamber at or above the minimum allowable operating temperature established for the corresponding hour during the most recent performance test, as specified in item 13 of Table 4 to this subpart.
9. Batch process units that are equipped with a catalytic oxidizer	a. From the start of each batch cycle until 3 hours have passed since the process unit reached maximum temperature, maintain the hourly average operating temperature at the inlet of the catalyst bed at or above the minimum allowable operating temperature established for the corresponding period during the most recent performance test, as determined according to item 12 of Table 4 to this subpart; and
	b. For each subsequent hour of the batch cycle, maintain the hourly average operating temperature at the inlet of the catalyst bed at or above the minimum allowable operating temperature established for the corresponding hour during the most recent performance test, as specified in item 13 of Table 4 to this subpart; and
	c. Check the activity level of the catalyst at least every 12 months.
10. Each new kiln that is used to process clay refractory products	Satisfy the applicable operating limits specified in items 11 through 13 of this table.
11. Each affected kiln that is equipped with a DLA	a. Maintain the 3-hour block average pressure drop across the DLA at or above the minimum levels established during the most recent performance test; and
	b. Maintain free-flowing limestone in the feed hopper, silo, and DLA at all times; and
	c. Maintain the limestone feeder at or above the level established during the most recent performance test; and

TABLE 2 TO SUBPART SSSSS OF PART 63.—OPERATING LIMITS—Continued

For . . .	You must . . .
	d. Use the same grade of limestone from the same source as was used during the most recent performance test and maintain records of the source and type of limestone used.
12. Each affected kiln that is equipped with a DIFF or DLS/FF	a. Initiate corrective action within 1 hour of a bag leak detection system alarm and complete corrective actions in accordance with the OM&M plan; and b. Verify at least once each 8-hour shift that lime is free-flowing by means of a visual check, checking the output of a load cell, carrier gas/lime flow indicator, or carrier gas pressure drop measurement system; and c. Record the lime feeder setting daily to verify that the feeder setting is at or above the level established during the most recent performance test.
13. Each affected kiln that is equipped with a wet scrubber	a. Maintain the 3-hour block average pressure drop across the scrubber, liquid pH, and liquid flow rate at or above the minimum levels established during the most recent performance test; and b. If chemicals are added to the scrubber liquid, maintain the 3-hour block average chemical feed rate at or above the minimum chemical feed rate established during the most recent performance test.

As stated in § 63.9788, you must comply with the work practice standards for affected sources in the following table:

TABLE 3 TO SUBPART SSSSS OF PART 63.—WORK PRACTICE STANDARDS

For . . .	You must . . .	According to one of the following requirements . . .
1. Each basket or container that is used for holding fired refractory shapes in an existing shape preheater and autoclave during the pitch impregnation process.	a. Control POM emissions from any affected shape preheater.	i. At least every 10 preheating cycles, clean the residual pitch from the surfaces of the basket or container by abrasive blasting prior to placing the basket or container in the affected shape preheater; or ii. At least every 10 preheating cycles, subject the basket or container to a thermal process cycle that meets or exceeds the operating temperature and cycle time of the affected preheater, AND is conducted in a process unit that is exhausted to a thermal or catalytic oxidizer that is comparable to the control device used on an affected defumer or coking oven; or iii. Capture emissions from the affected shape preheater and vent them to the control device that is used to control emissions from an affected defumer or coking oven, or to a comparable thermal or catalytic oxidizer.
2. Each new or existing pitch working tank	Control POM emissions	Capture emissions from the affected pitch working tank and vent them to the control device that is used to control emissions from an affected defumer or coking oven, OR to a comparable thermal or catalytic oxidizer.
3. Each new or existing chromium refractory products kiln.	Minimize fuel-based HAP emissions	Use natural gas, or equivalent, as the kiln fuel, except during periods of natural gas curtailment or supply interruption, as defined in § 63.9824.
4. Each existing clay refractory products kiln	Minimize fuel-based HAP emissions	Use natural gas, or equivalent, as the kiln fuel, except during periods of natural gas curtailment or supply interruption, as defined in § 63.9824.

As stated in § 63.9800, you must comply with the requirements for performance tests for affected sources in the following table:

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS

For . . .	You must . . .	Using . . .	According to the following requirements . . .
1. Each affected source listed in Table 1 to this subpart.	a. Conduct performance tests	i. The requirements of the general provisions in subpart A of this part and the requirements to this subpart.	(1) Record the date of the test; and (2) Identify the emission source that is tested; and (3) Collect and record the corresponding operating parameter and emission test data listed in this table for each run of the performance test; and (4) Repeat the performance test at least every 5 years; and (5) Repeat the performance test before changing the parameter value for any operating limit specified in your OM&M plan; and (6) If complying with the THC concentration or THC percentage reduction limits specified in items 2 through 9 of Table 1 to this subpart, repeat the performance test under the conditions specified in items 2.a.2. and 2.a.3. of this table; and (7) If complying with the emission limits for new clay refractory products kilns specified in items 10 and 11 of Table 1 to this subpart, repeat the performance test under the conditions specified in items 14.a.i.4. and 17.a.i.4. of this table.
	b. Select the locations of sampling ports and the number of traverse points.	i. Method 1 or 1A of 40 CFR part 60, appendix A.	(1) To demonstrate compliance with the percentage reduction limits specified in items 2.b., 3.b., 6.b., 7.b., 10, and 11 of Table 1 to this subpart, locate sampling sites at the inlet of the control device and at either the outlet of the control device or at the stack prior to any releases to the atmosphere; and (2) To demonstrate compliance with any other emission limit specified in Table 1 to this subpart, locate all sampling sites at the outlet of the control device or at the stack prior to any releases to the atmosphere.
	c. Determine gas velocity and volumetric flow rate.	Method 2, 2A, 2C, 2D, 2F, or 2G of 40 CFR part 60, appendix A.	Measure gas velocities and volumetric flow rates at 1-hour intervals throughout each test run.
	d. Conduct gas molecular weight analysis.	(i) Method 3, 3A, or 3B of 40 CFR part 60, appendix A; or	As specified in the applicable test method.
		(ii) ASME PTC 19.10–1981–Part 10	You may use ASME PTC 19.10–1981–Part 10 (available for purchase from Three Park Avenue, New York, NY 10016–5990) as an alternative to EPA Method 3B.
	e. Measure gas moisture content	Method 4 of 40 CFR part 60, appendix A.	As specified in the applicable test method.

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	You must . . .	Using . . .	According to the following requirements . . .
2. Each new or existing curing oven, shape dryer, and kiln that is used to process refractory products that use organic HAP; each new or existing coking oven and defumer that is used to produce pitch-impregnated refractory products; each new shape preheater that is used to produce pitch-impregnated refractory products; AND each new or existing process unit that is exhausted to a thermal or catalytic oxidizer that also controls emissions from an affected shape preheater or pitch working tank.	a. Conduct performance tests	.....	(1) Conduct the performance test while the source is operating at the maximum organic HAP processing rate, as defined in § 63.9824, reasonably expected to occur; and (2) Repeat the performance test before starting production of any product for which the organic HAP processing rate is likely to exceed the maximum organic HAP processing rate established during the most recent performance test by more than 10 percent, as specified in § 63.9798(c); and (3) Repeat the performance test on any affected uncontrolled kiln following process changes (e.g., shorter curing oven cycle time) that could increase organic HAP emissions from the affected kiln, as specified in § 63.9798(d).
	b. Satisfy the applicable requirements listed in items 3 through 13 of this table.		
3. Each affected continuous process unit.	a. Perform a minimum of 3 test runs ...	The appropriate test methods specified in items 1, 4, and 5 of this table.	Each test run must be at least 1 hour in duration.
	b. Establish the operating limit for the maximum organic HAP processing rate.	i. Method 311 of 40 CFR part 63, appendix A, OR material safety data sheets (MSDS), OR product labels to determine the mass fraction of organic HAP in each resin, binder, or additive; and	(1) Calculate and record the organic HAP content of all refractory shapes that are processed during the performance test, based on the mass fraction of organic HAP in the resins, binders, or additives; the mass fraction of each resin, binder, or additive, in the product; and the process feed rate; and
		ii. Product formulation data that specify the mass fraction of each resin, binder, and additive in the products that are processed during the performance test; and	(2) Calculate and record the organic HAP processing rate (pounds per hour) for each test run; and
		iii. Process feed rate data (tons per hour).	(3) Calculate and record the maximum organic HAP processing rate as the average of the organic HAP processing rates for the three test runs.
	c. Record the operating temperature of the affected source.	Process data	During each test run and at least once per hour, record the operating temperature in the highest temperature zone of the affected source.
4. Each continuous process unit that is subject to the THC emission limit listed in item 2.a., 3.a., 4, or 5 of Table 1 to this subpart.	a. Measure THC concentrations at the outlet of the control device or in the stack.	i. Method 25A of 40 CFR part 60, appendix A.	(1) Each minute, measure and record the concentrations of THC in the exhaust stream; and (2) Provide at least 50 1-minute measurements for each valid hourly average THC concentration.

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	You must . . .	Using . . .	According to the following requirements . . .
	b. Measure oxygen concentrations at the outlet of the control device or in the stack.	i. Method 3A of 40 CFR part 60, appendix A.	(1) Each minute, measure and record the concentrations of oxygen in the exhaust stream; and (2) Provide at least 50 1-minute measurements for each valid hourly average THC concentration.
	c. Determine the hourly average THC concentration, corrected to 18 percent oxygen.	i. Equation 1 of § 63.9800(g)(1); and ... ii. The 1-minute THC and oxygen concentration data.	(1) Calculate the hourly average THC concentration for each hour of the performance test as the average of the 1-minute THC measurements; and (2) Calculate the hourly average oxygen concentration for each hour of the performance test as the average of the 1-minute oxygen measurements; and (3) Correct the hourly average THC concentrations to 18 percent oxygen using Equation 1 of § 63.9800(g)(1).
	d. Determine the 3-hour block average THC emission concentration, corrected to 18 percent oxygen.	The hourly average concentration of THC, corrected to 18 percent oxygen, for each test run.	Calculate the 3-hour block average THC emission concentration, corrected to 18 percent oxygen, as the average of the hourly average THC emission concentrations, corrected to 18 percent oxygen.
5. Each continuous process unit that is subject to the THC percentage reduction limit listed in item 2.b. or 3.b. of Table 1 to this subpart.	a. Measure THC concentrations at the inlet and outlet of the control device.	i. Method 25A of 40 CFR part 60, appendix A.	(1) Each minute, measure and record the concentrations of THC at the inlet and outlet of the control device; and (2) Provide at least 50 1-minute measurements for each valid hourly average THC concentration at the control device inlet and outlet.
	b. Determine the hourly THC mass emissions rates at the inlet and outlet of the control device.	i. The 1-minute THC concentration data at the control device inlet and outlet; and ii. The volumetric flow rates at the control device inlet and outlet.	Calculate the hourly THC mass emissions rates at the control device inlet and outlet for each hour of the performance test.
	c. Determine the 3-hour block average THC percentage reduction.	i. The hourly THC mass emissions rates at the inlet and outlet of the control device.	(1) Calculate the hourly THC percentage reduction for each hour of the performance test using Equation 2 of § 63.9800(g)(1); and (2) Calculate the 3-hour block average THC percentage reduction.
6. Each continous process unit that is equipped with a thermal oxidizer.	a. Establish the operating limit for the minimum allowable thermal oxidizer combustion chamber temperature.	i. Continuous recording of the output of the combustion chamber temperature measurement device.	(1) At least every 15 minutes, measure and record the thermal oxidizer combustion chamber temperature; and (2) Provide at least one measurement during at least three 15-minute periods per hour of testing; and (3) Calculate the hourly average thermal oxidizer combustion chamber temperature for each hour of the performance test; and (4) Calculate the minimum allowable combustion chamber temperature as the average of the combustion chamber temperatures for the three test runs, minus 14°C (25°F).
7. Each continuous process unit that is equipped with a catalytic oxidizer.	a. Establish the operating limit for the minimum allowable temperature at the inlet of the catalyst bed.	i. Continuous recording of the output of the temperature measurement device.	(1) At least every 15 minutes, measure and record the temperature at the inlet of the catalyst bed; and (2) Provide at least one catalyst bed inlet temperature measurement during at least three 15-minute periods per hour of testing; and (3) Calculate the hourly average catalyst bed inlet temperature for each hour of the performance test; and

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	You must . . .	Using . . .	According to the following requirements . . .
			(4) Calculate the minimum allowable catalyst bed inlet temperature as the average of the catalyst bed inlet temperatures for the three test runs, minus 14°C (25°F).
8. Each affected batch process unit.	a. Perform a minimum of two test runs	i. The appropriate test methods specified in items 1, 9, and 10 of this table.	(1) Each test run must be conducted over a separate batch cycle unless you satisfy the requirements of § 63.9800(f)(3) and (4); and (2) Each test run must begin with the start of a batch cycle, except as specified in item 8.a.i.4. of this table; and (3) Each test run must continue until the end of the batch cycle, except as specified in items 8.a.i.4. and 8.a.i.5. of this table; and (4) If you develop an emissions profile, as described in § 63.9802(a), AND for sources equipped with a thermal or catalytic oxidizer, you do not reduce the oxidizer operating temperature, as specified in item 13 of this table, you can limit each test run to the 3-hour peak THC emissions period; and (5) If you do not develop an emissions profile, a test run can be stopped, and the results of that run considered complete, if you measure emissions continuously until at least 3 hours after the affected process unit has reached maximum temperature, AND the hourly average THC mass emissions rate has not increased during the 3-hour period since maximum process temperature was reached, and the hourly average concentrations of THC at the inlet of the control device have not exceeded 20 ppmvd, corrected to 18 percent oxygen, during the 3-hour period since maximum process temperature was reached or the hourly average THC percentage reduction has been at least 95 percent during the 3-hour period since maximum process temperature was reached, AND, for sources equipped with a thermal or catalytic oxidizer, at least 1 hour has passed since any reduction in the operating temperature of the oxidizer, as specified in item 13 of this table.
	b. Establish the operating limit for the maximum organic HAP processing rate.	i. Method 311 of 40 CFR part 63, appendix A, OR MSDS, OR product labels to determine the mass fraction of organic HAP in each resin, binder, or additive; and	(1) Calculate and record the organic HAP content of all refractory shapes that are processed during the performance test, based on the mass fraction of HAP in the resins, binders, or additives; the mass fraction of each resin, binder, or additive, in the product, and the batch weight prior to processing; and
		ii. Product formulation data that specify the mass fraction of each resin, binder, and additive in the products that are processed during the performance test; and	(2) Calculate and record the organic HAP processing rate (pounds per batch) for each test run; and
		iii. Batch weight (tons)	(3) Calculate and record the maximum organic HAP processing rate as the average of the organic HAP processing rates for the two test runs.

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	You must . . .	Using . . .	According to the following requirements . . .
	c. Record the batch cycle time	Process data	Record the total elapsed time from the start to the completion of the batch cycle.
	d. Record the operating temperature of the affected source.	Process data	Record the operating temperature of the affected source at least once every hour from the start to the completion of the batch cycle.
9. Each batch process unit that is subject to the THC emission limit listed in item 6.a., 7.a., 8, or 9 of Table 1 to this subpart.	a. Measure THC concentrations at the outlet of the control device or in the stack.	i. Method 25A of 40 CFR part 60, appendix A.	(1) Each minute, measure and record the concentrations of THC in the exhaust stream; and (2) Provide at least 50 1-minute measurements for each valid hourly average THC concentration.
	b. Measure oxygen concentrations at the outlet of the control device or in the stack.	i. Method 3A of 40 CFR part 60, appendix A.	(1) Each minute, measure and record the concentrations of oxygen in the exhaust stream; and (2) Provide at least 50 1-minute measurements for each valid hourly average oxygen concentration.
	c. Determine the hourly average THC concentration, corrected to 18 percent oxygen.	i. Equation 1 of § 63.9800(g)(1); and ... ii. The 1-minute THC and oxygen concentration data.	(1) Calculate the hourly average THC concentration for each hour of the performance test as the average of the 1-minute THC measurements; and (2) Calculate the hourly average oxygen concentration for each hour of the performance test as the average of the 1-minute oxygen measurements; and (3) Correct the hourly average THC concentrations to 18 percent oxygen using Equation 1 of § 63.9800(g)(1).
	d. Determine the 3-hour peak THC emissions period for each test run.	The hourly average THC concentrations, corrected to 18 percent oxygen.	Select the period of 3 consecutive hours over which the sum of the hourly average THC concentrations, corrected to 18 percent oxygen, is greater than the sum of the hourly average THC emission concentrations, corrected to 18 percent oxygen, for any other period of 3 consecutive hours during the test run.
	e. Determine the average THC concentration, corrected to 18 percent oxygen, for each test run.	The hourly average THC emission concentrations, corrected to 18 percent oxygen, for the 3-hour peak THC emissions period.	Calculate the average of the hourly average THC concentrations, corrected to 18 percent oxygen, for the 3 hours of the peak emissions period for each test run.
	f. Determine the 2-run block average THC concentration, corrected to 18 percent oxygen, for the emission test.	The average THC concentration, corrected to 18 percent oxygen, for each test run.	Calculate the average of the average THC concentrations, corrected to 18 percent oxygen, for each run.
10. Each batch process unit that is subject to the THC percentage reduction limit listed in item 6.b. or 7.b. of Table 1 to this subpart.	a. Measure THC concentrations at the inlet and outlet of the control device.	i. Method 25A of 40 CFR part 60, appendix A.	(1) Each minute, measure and record the concentrations of THC at the control device inlet and outlet; and (2) Provide at least 50 1-minute measurements for each valid hourly average THC concentration at the control device inlet and outlet.
	b. Determine the hourly THC mass emissions rates at the control device inlet and outlet.	i. The 1-minute THC concentration data at the control device inlet and outlet; and ii. The volumetric flow rates at the control device inlet and outlet.	(1) Calculate the hourly mass emissions rates at the control device inlet and outlet for each hour of the performance test.

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	You must . . .	Using . . .	According to the following requirements . . .
	c. Determine the 3-hour peak THC emissions period for each test run.	The hourly THC mass emissions rates at the control device inlet.	Select the period of 3 consecutive hours over which the sum of the hourly THC mass emissions rates at the control device inlet is greater than the sum of the hourly THC mass emissions rates at the control device inlet for any other period of 3 consecutive hours during the test run.
	d. Determine the average THC percentage reduction for each test run.	i. Equation 2 of § 63.9800(g)(2); and ... ii. The hourly THC mass emissions rates at the control device inlet and outlet for the 3-hour peak THC emissions period.	Calculate the average THC percentage reduction for each test run using Equation 2 of § 63.9800(g)(2).
	e. Determine the 2-run block average THC percentage reduction for the emission test.	The average THC percentage reduction for each test run.	Calculate the average of the average THC percentage reductions for each test run.
11. Each batch process unit that is equipped with a thermal oxidizer.	a. Establish the operating limit for the minimum thermal oxidizer combustion chamber temperature.	i. Continuous recording of the output of the combustion chamber temperature measurement device.	(1) At least every 15 minutes, measure and record the thermal oxidizer combustion chamber temperature; and (2) Provide at least one temperature measurement during at least three 15-minute periods per hour of testing; and (3) Calculate the hourly average combustion chamber temperature for each hour of the 3-hour peak emissions period, as defined in item 9.d. or 10.c. of this table, whichever applies; and (4) Calculate the minimum allowable thermal oxidizer combustion chamber operating temperature as the average of the hourly combustion chamber temperatures for the 3-hour peak emissions period, minus 14°C (25°F).
12. Each batch process unit that is equipped with a catalytic oxidizer.	a. Establish the operating limit for the minimum temperature at the inlet of the catalyst bed.	i. Continuous recording of the output of the temperature measurement device.	(1) At least every 15 minutes, measure and record the temperature at the inlet of the catalyst bed; and (2) Provide at least one catalyst bed inlet temperature measurement during at least three 15-minute periods per hour of testing; and (3) Calculate the hourly average catalyst bed inlet temperature for each hour of the 3-hour peak emissions period, as defined in item 9.d. or 10.c. of this table, whichever applies; and (4) Calculate the minimum allowable catalytic oxidizer catalyst bed inlet temperature as the average of the hourly catalyst bed inlet temperatures for the 3-hour peak emissions period, minus 14°C (25°F).
13. Each batch process unit that is equipped with a thermal or catalytic oxidizer.	a. During each test run, maintain the applicable operating temperature of the oxidizer until emission levels allow the oxidizer to be shut off or the operating temperature of the oxidizer to be reduced.		(1) The oxidizer can be shut off or the oxidizer operating temperature can be reduced if you do not use an emission profile to limit testing to the 3-hour peak emissions period, as specified in item 8.a.i.4. of this table; and (2) At least 3 hours have passed since the affected process unit reached maximum temperature; and

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	You must . . .	Using . . .	According to the following requirements . . .
			(3) The applicable emission limit specified in item 6.a. or 6.b. of Table 1 to this subpart was met during each of the previous three 1-hour periods; and (4) The hourly average THC mass emissions rate did not increase during the 3-hour period since maximum process temperature was reached; and (5) The applicable emission limit specified in item 6.a. and 6.b. of Table 1 to this subpart was met during each of the four 15-minute periods immediately following the oxidizer temperature reduction; and (6) If the applicable emission limit specified in item 6.a. or 6.b. of Table 1 to this subpart was not met during any of the four 15-minute periods immediately following the oxidizer temperature reduction, you must return the oxidizer to its normal operating temperature as soon as possible and maintain that temperature for at least 1 hour; and (7) Continue the test run until the applicable emission limit specified in items 6.a. and 6.b. of Table 1 to this subpart is met for at least four consecutive 15-minute periods that immediately follow the temperature reduction; and (8) Calculate the hourly average oxidizer operating temperature for each hour of the performance test since the affected process unit reached maximum temperature.
14. Each new continuous kiln that is used to process clay refractory products.	a. Measure emissions of HF and HCl ..	i. Method 26A of 40 CFR part 60, appendix A; or ii. Method 26 of 40 CFR part 60, appendix A; or iii. Method 320 of 40 CFR part 63, appendix A.	(1) Conduct the test while the kiln is operating at the maximum production level; and (2) You may use Method 26 of 40 CFR part 60, appendix A, only if no acid PM (*e.g.,* HF or HCl dissolved in water droplets emitted by sources controlled by a wet scrubber) is present; and (3) If you use Method 320 of 40 CFR part 63, appendix A, you must follow the analyte spiking procedures of Section 13 of Method 320 unless you can demonstrate that the complete spiking procedure has been conducted at a similar source; and (4) Repeat the performance test if the affected source is controlled with a DLA and you change the source of the limestone used in the DLA.
	b. Perform a minimum of 3 test runs ...	The appropriate test methods specified in items 1 and 14.a. of this table.	Each test run must be at least 1 hour in duration.

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	You must . . .	Using . . .	According to the following requirements . . .
15. Each new continuous kiln that is subject to the production-based HF and HCl emission limits specified in items 10.a. and 10.b. of Table 1 to this subpart.	a. Record the uncalcined clay processing rate.	i. Production data; and ..... ii. Product formulation data that specify the mass fraction of uncalcined clay in the products that are processed during the performance test.	(1) Record the production rate (tons per hour of fired product); and (2) Calculate and record the average rate at which uncalcined clay is processed (tons per hour) for each test run; and (3) Calculate and record the 3-run average uncalcined clay processing rate as the average of the average uncalcined clay processing rates for each test run.
	b. Determine the HF mass emissions rate at the outlet of the control device or in the stack.	i. Method 26A of 40 CFR part 60, appendix A; or ii. Method 26 of 40 CFR part 60, appendix A; or iii. Method 320 of 40 CFR part 63, appendix A.	Calculate the HF mass emissions rate for each test.
	c. Determine the 3-hour block average production-based HF emissions rate.	i. The HF mass emissions rate for each test run; and ii. The average uncalcined clay processing rate.	(1) Calculate the hourly production-based HF emissions rate for each test run using Equation 3 of § 63.9800(g)(3); and (2) Calculate the 3-hour block average production-based HF emissions rate as the average of the hourly production-based HF emissions rates for each test run.
	d. Determine the HCl mass emissions rate at the outlet of the control device or in the stack.	i. Method 26A of 40 CFR part 60, appendix A; or ii. Method 26 of 40 CFR part 60, appendix A; or iii. Method 320 of 40 CFR part 63, appendix A.	Calculate the HCl mass emissions rate for each test run.
	e. Determine the 3-hour block average production-based HCl emissions rate.	i. The HCl mass emissions rate for each test run; and ii. The average uncalcined clay processing rate.	(1) Calculate the hourly production-based HCl emissions rate for each test run using Equation 3 of § 63.9800(g)(3); and (2) Calculate the 3-hour block average production-based HCl emissions rate as the average of the production-based HCl emissions rates for each test run.
16. Each new continuous kiln that is subject to the HF and HCl percentage reduction limits specified in items 10.a. and 10.b. of Table 1 to this subpart.	a. Measure the HF mass emissions rates at the inlet and outlet of the control device.	i. Method 26A of 40 CFR part 60, appendix A; or ii. Method 26 of 40 CFR part 60, appendix A; or iii. Method 320 of 40 CFR part 63, appendix A.	Calculate the HF mass emissions rates at the control device inlet and outlet for each test run.
	b. Determine the 3-hour block average HF percentage reduction.	i. The HF mass emissions rates at the inlet and outlet of the control device for each test run	(1) Calculate the hourly HF percentage reduction using Equation 2 of § 63.9800(g)(2); and (2) Calculate the 3-hour block average HF percentage reduction as the average of the HF percentage reductions for each test run.
	c. Measure the HCl mass emissions rates at the inlet and outlet of the control device.	i. Method 26A of 40 CFR part 60, appendix A; or ii. Method 26 of 40 CFR part 60, appendix A; or iii. Method 320 of 40 CFR part 63, appendix A.	Calculate the HCl mass emissions rates at the control device inlet and outlet for each test run.
	d. Determine the 3-hour block average HCl percentage reduction.	i. The HCl mass emissions rates at the inlet and outlet of the control device for each test run.	(1) Calculate the hourly HCl percentage reduction using Equation 2 of § 63.9800(g)(2); and (2) Calculate the 3-hour block average HCl percentage reduction as the average of HCl percentage reductions for each test run.

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	You must . . .	Using . . .	According to the following requirements . . .
17. Each new batch process kiln that is used to process clay refractory products.	a. Measure emissions of HF and HCl at the inlet and outlet of the control device.	i. Method 26A of 40 CFR part 60, appendix A; or ii. Method 26 of 40 CFR part 60, appendix A; or iii. Method 320 of 40 CFR part 63, appendix A.	(1) Conduct the test while the kiln is operating at the maximum production level; and (2) You may use Method 26 of 40 CFR part 60, appendix A, only if no acid PM (*e.g.,* HF or HCl dissolved in water droplets emitted by sources controlled by a wet scrubber) is present; and (3) If you use Method 320 of 40 CFR part 63, you must follow the analyte spiking procedures of Section 13 of Method 320 unless you can demonstrate that the complete spiking procedure has been conducted at a similar source; and (4) Repeat the performance test if the affected source is controlled with a DLA and you change the source of the limestone used in the DLA.
	b. Perform a minimum of 2 test runs ...	i. The appropriate test methods specified in items 1 and 17.a. of this table.	(1) Each test run must be conducted over a separate batch cycle unless you satisfy the requirements of § 63.9800(f)(3) and (4); and (2) Each test run must consist of a series of 1-hour runs at the inlet and outlet of the control device, beginning with the start of a batch cycle, except as specified in item 17.b.i.4. of this table; and (3) Each test run must continue until the end of the batch cycle, except as specified in item 17.b.i.4. of this table; and (4) If you develop an emissions profile, as described in § 63.9802(b), you can limit each test run to the 3-hour peak HF emissions period.
	c. Determine the hourly HF and HCl mass emissions rates at the inlet and outlet of the control device.	i. The appropriate test methods specified in items 1 and 17.a. of this table.	Determine the hourly mass HF and HCl emissions rates at the inlet and outlet of the control device for each hour of each test run.
	d. Determine the 3-hour peak HF emissions period.	The hourly HF mass emissions rates at the inlet of the control device.	Select the period of 3 consecutive hours over which the sum of the hourly HF mass emissions rates at the control device inlet is greater than the sum of the hourly HF mass emissions rates at the control device inlet for any other period of 3 consecutive hours during the test run.
	e. Determine the 2-run block average HF percentage reduction for the emissions test.	i. The hourly average HF emissions rates at the inlet and outlet of the control device.	(1) Calculate the HF percentage reduction for each hour of the 3-hour peak HF emissions period using Equation 2 of § 63.9800(g)(2); and (2) Calculate the average HF percentage reduction for each test run as the average of the hourly HF percentage reductions for the 3-hour peak HF emissions period for that run; and (3) Calculate the 2-run block average HF percentage reduction for the emission test as the average of the average HF percentage reductions for the two test runs.

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	You must . . .	Using . . .	According to the following requirements . . .
	f. Determine the 2-run block average HCl percentage reduction for the emission test.	i. The hourly average HCl emissions rates at the inlet and outlet of the control device.	(1) Calculate the HCl percentage reduction for each hour of the 3-hour peak HF emissions period using Equation 2 § 63.9800(g)(2); and (2) Calculate the average HCl percentage reduction for each test run as the average of the hourly HCl percentage reductions for the 3-hour peak HF emissions period for that run; and (3) Calculate the 2-run block average HCl percentage reduction for the emission test as the average of the average HCl percentage reductions for the two test runs.
18. Each new kiln that is used to process clay refractory products and is equipped with a DLA.	a. Establish the operating limit for the minimum pressure drop across the DLA.	Data from the pressure drop measurement device during the performance test.	(1) At least every 15 minutes, measure the pressure drop across the DLA; and (2) Provide at least one pressure drop measurement during at least three 15-minute periods per hour of testing; and (3) Calculate the hourly average pressure drop across the DLA for each hour of the performance test; and (4) Calculate and record the minimum pressure drop as the average of the hourly average pressure drops across the DLA for the two or three test runs, whichever applies.
	b. Establish the operating limit for the limestone feeder setting.	Data from the limestone feeder during the performance test.	(1) Ensure that limestone in the feed hopper, silo, and DLA is free-flowing at all times during the performance test; and (2) Establish the limestone feeder setting 1 week prior to the performance test; and (3) Record and maintain the feeder setting for the 1-week period that precedes the performance test and during the performance test.
19. Each new kiln that is used to process clay refractory products and is equipped with a DIFF or DLS/FF.	a. Document conformance with specifications and requirements of the bag leak detection system.	Data from the installation and calibration of the bag leak detection system.	Submit analyses and supporting documentation demonstrating conformance with EPA guidance and specifications for bag leak detection systems as part of the Notification of Compliance Status.
	b. Establish the operating limit for the lime feeder setting.	i. Data from the lime feeder during the performance test.	(1) For continuous lime injection systems, ensure that lime in the feed hopper or silo is free-flowing at all times during the performance test; and (2) Record the feeder setting for the three test runs; and (3) If the feed rate setting varies during the three test runs, calculate and record the average feed rate for the two or three test runs, whichever applies.
20. Each new kiln that is used to process clay refractory products and is equipped with a wet scrubber.	a. Establish the operating limit for the minimum scrubber pressure drop.	i. Data from the pressure drop measurement device during the performance test.	(1) At least every 15 minutes, measure the pressure drop across the scrubber; and (2) Provide at least one pressure drop measurement during at least three 15-minute periods per hour of testing; and

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	You must . . .	Using . . .	According to the following requirements . . .
			(3) Calculate the hourly average pressure drop across the scrubber for each hour of the performance test; and (4) Calculate and record the minimum pressure drop as the average of the hourly average pressure drops across the scrubber for the two or three test runs, whichever applies.
	b. Establish the operating limit for the minimum scrubber liquid pH.	i. Data from the pH measurement device during the performance test.	(1) At least every 15 minutes, measure scrubber liquid pH; and (2) Provide at least one pH measurement during at least three 15-minute periods per hour of testing; and (3) Calculate the hourly average pH values for each hour of the performance test; and (4) Calculate and record the minimum liquid pH as the average of the hourly average pH measurements for the two or three test runs, whichever applies.
	c. Establish the operating limit for the minimum scrubber liquid flow rate.	i. Data from the flow rate measurement device during the performance test.	(1) At least every 15 minutes, measure the scrubber liquid flow rate; and (2) Provide at least one flow rate measurement during at least three 15-minute periods per hour of testing; and (3) Calculate the hourly average liquid flow rate for each hour of the performance test; and (4) Calculate and record the minimum liquid flow rate as the average of the hourly average liquid flow rates for the two or three test runs, whichever applies.
	d. If chemicals are added to the scrubber liquid, establish the operating limit for the minimum scrubber chemical feed rate.	i. Data from the chemical feed rate measurement device during the performance test.	(1) At least every 15 minutes, measure the scrubber chemical feed rate; and (2) Provide at least one chemical feed rate measurement during at least three 15-minute periods per hour of testing; and (3) Calculate the hourly average chemical feed rate for each hour of the performance test; and (4) Calculate and record the minimum chemical feed rate as the average of the hourly average chemical feed rates for the two or three test runs, whichever applies.

As stated in § 63.9806, you must show initial compliance with the emission limits for affected sources according to the following table:

TABLE 5 TO SUBPART SSSSS OF PART 63.—INITIAL COMPLIANCE WITH EMISSION LIMITS

For . . .	For the following emission limit . . .	You have demonstrated compliance if . . .
1. Each affected source listed in Table 1 to this subpart.	a. Each applicable emission limit listed in Table 1 to this subpart.	i. Emissions measured using the test methods specified in Table 4 to this subpart satisfy the applicable emission limits specified in Table 1 to this subpart; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the performance test period; and iii. You report the results of the performance test in the Notification of Compliance Status, as specified by § 63.9812(e)(1) and (2).

TABLE 5 TO SUBPART SSSSS OF PART 63.—INITIAL COMPLIANCE WITH EMISSION LIMITS—Continued

For . . .	For the following emission limit . . .	You have demonstrated compliance if . . .
2. Each new or existing curing oven, shape dryer, and kiln that is used to process refractory products that use organic HAP; each new or existing coking oven and defumer that is used to produce pitch-impregnated refractory products; each new shape preheater that is used to produce pitch-impregnated refractory products; AND each new or existing process unit that is exhausted to a thermal or catalytic oxidizer that also controls emissions from an affected shape preheater or pitch working tank.	As specified in items 3 through 8 of this table	You have satisfied the applicable requirements specified in items 3 through 8 of this table.
3. Each affected continuous process unit that is subject to the THC emission concentration limit listed in item 2.a., 3.a., 4, or 5 of Table 1 to this subpart.	The average THC concentration must not exceed 20 ppmvd, corrected to 18 percent oxygen.	The 3-hour block average THC emission concentration measured during the performance test using Methods 25A and 3A is equal to or less than 20 ppmvd, corrected to 18 percent oxygen.
4. Each affected continuous process unit that is subject to the THC percentage reduction limit listed in item 2.b. or 3.b. of Table 1 to this subpart.	The average THC percentage reduction must equal or exceed 95 percent.	The 3-hour block average THC percentage reduction measured during the performance test using Method 25A is equal to or greater than 95 percent.
5. Each affected batch process unit that is subject to the THC emission concentration limit listed in item 6.a., 7.a., 8, or 9 of Table 1 to this subpart.	The average THC concentration must not exceed 20 ppmvd, corrected to 18 percent oxygen.	The 2-run block average THC emission concentration for the 3-hour peak emissions period measured during the performance test using Methods 25A and 3A is equal to or less than 20 ppmvd, corrected to 18 percent oxygen.
6. Each affected batch process unit that is subject to the THC percentage reduction limit listed in item 6.b. or 7.b. of Table 1 to this subpart.	The average THC percentage reduction must equal or exceed 95 percent.	The 2-run block average THC percentage reduction for the 3-hour peak emissions period measured during the performance test using Method 25A is equal to or exceeds 95 percent.
7. Each affected continuous or batch process unit that is equipped with a control device other than a thermal or catalytic oxidizer and is subject to the emission limit listed in item 3 or 7 of Table 1 to this subpart.	a. The average THC concentration must not exceed 20 ppmvd, corrected to 18 percent oxygen; or	i. You have installed a THC CEMS at the outlet of the control device or in the stack of the affected source; and
	b. The average THC percentage reduction must equal or exceed 95 percent.	ii. You have satisfied the requirements of PS–8 of 40 CFR part 60, appendix B.
8. Each affected continuous or batch process unit that uses process changes to reduce organic HAP emissions and is subject to the emission limit listed in item 4 or 8 of Table 1 to this subpart.	The average THC concentration must not exceed 20 ppmvd, corrected to 18 percent oxygen.	i. You have installed a THC CEMS at the outlet of the control device or in the stack of the affected source; and ii. You have satisfied the requirements of PS–8 of 40 CFR part 60, appendix B.
9. Each new continuous kiln that is used to process clay refractory products.	a. The average HF emissions must not exceed 0.019 kg/Mg (0.038 lb/ton) of uncalcined clay processed; OR the average uncontrolled HF emissions must be reduced by at least 90 percent.	i. The 3-hour block average production-based HF emissions rate measured during the performance test using one of the methods specified in item 14.a.i. of Table 4 to this subpart is equal to or less than 0.019 kg/Mg (0.038 lb/ton) of uncalcined clay processed; or ii. The 3-hour block average HF emissions reduction measured during the performance test is equal to or greater than 90 percent.
	b. The average HCl emissions must not exceed 0.091 kg/Mg (0.18 lb/ton) of uncalcined clay processed; OR the average uncontrolled HCl emissions must be reduced by at least 30 percent.	i. The 3-hour block average production-based HCl emissions rate measured during the performance test using one of the methods specified in item 14.a.i. of Table 4 to this subpart is equal to or less than 0.091 kg/Mg (0.18 lb/ton) of uncalcined clay processed; or ii. The 3-hour block average HCl emissions reduction measured during the performance test is equal to or greater than 30 percent.
10. Each new batch process kiln that is used to process clay refractory products.	a. The average uncontrolled HF emissions must be reduced by at least 90 percent.	The 2-run block average HF emission reduction measured during the performance test is equal to or greater than 90 percent.
	b. The average uncontrolled HCl emissions must be reduced by at least 30 percent.	The 2-run block average HCl emissions reduction measured during the performance test is equal to or greater than 30 percent.

As stated in § 63.9806, you must show initial compliance with the work practice standards for affected sources according to the following table:

TABLE 6 TO SUBPART SSSSS OF PART 63.—INITIAL COMPLIANCE WITH WORK PRACTICE STANDARDS

For each . . .	For the following standard . . .	You have demonstrated initial compliance if . . .
1. Each affected source listed in Table 3 to this subpart.	a. Each applicable work practice standard listed in Table 3 to this subpart.	i. You have selected a method for performing each of the applicable work practice standards listed in Table 3 to this subpart; and ii. You have included in your Initial Notification a description of the method selected for complying with each applicable work practice standard, as required by § 63.9(b); and iii. You submit a signed statement with the Notification of Compliance Status that you have implemented the applicable work practice standard listed in Table 3 to this subpart; and iv. You have described in your OM&M plan the method for complying with each applicable work practice standard specified in Table 3 to this subpart.
2. Each basket or container that is used for holding fired refractory shapes in an existing shape preheater and autoclave during the pitch impregnation process.	a. Control POM emissions from any affected shape preheater.	i. You have implemented at least one of the work practice standards listed in item 1 of Table 3 to this subpart; and ii. You have established a system for recording the date and cleaning method for each time you clean an affected basket or container.
3. Each affected new or existing pitch working tank.	Control POM emissions	You have captured and vented emissions from the affected pitch working tank to the device that is used to control emissions from an affected defumer or coking oven, or to a thermal or catalytic oxidizer that is comparable to the control device used on an affected defumer or coking oven.
4. Each new or existing chromium refractory products kiln.	Minimize fuel-based HAP emissions	You use natural gas, or equivalent, as the kiln fuel.
5. Each existing clay refractory products kiln	Minimize fuel-based HAP emissions	You use natural gas, or equivalent, as the kiln fuel.

As stated in § 63.9810, you must show continuous compliance with the emission limits for affected sources according to the following table:

TABLE 7 TO SUBPART SSSSS TO PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITS

For . . .	For the following emission limit . . .	You must demonstrate continuous compliance by . . .
1. Each affected source listed in Table 1 to this subpart.	a. Each applicable emission limit listed in Table 1 to this subpart.	i. Collecting and recording the monitoring and process data listed in Table 2 (operating limits) to this subpart; and ii. Reducing the monitoring and process data associated with the operating limits specified in Table 2 to this subpart; and iii. Recording the results of any control device inspections; and iv. Reporting, in accordance with § 63.9814(e), any deviation from the applicable operating limits specified in Table 2 to this subpart.
2. Each new or existing curing oven, shape dryer, and kiln that is used to process refractory products that use organic HAP; each new or existing coking oven and defumer that is used to produce pitch-impregnated refractory products; each new shape preheater that is used to produce pitch-impregnated refractory products; AND each new or existing process unit that is exhausted to a thermal or catalytic oxidizer that also controls emissions from an affected shape preheater or pitch working tank.	As specified in items 3 though 7 of this table	Satisfying the applicable requirements specified in items 3 through 7 of this table.

TABLE 7 TO SUBPART SSSSS TO PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITS—Continued

For . . .	For the following emission limit . . .	You must demonstrate continuous compliance by . . .
3. Each affected process unit that is equipped with a thermal or catalytic oxidizer.	a. The average THC concentration must not exceed 20 ppmvd, corrected to 18 percent oxygen; OR the average THC percentage reduction must equal or exceed 95 percent.	i. Collecting the applicable data measured by the control device temperature monitoring system, as specified in items 5, 6, 8, and 9 of Table 8 to this subpart; and ii. Reducing the applicable data measured by the control device temperature monitoring system, as specified in items 5, 6, 8, and 9 of Table 8 to this subpart; and iii. Maintaining the average control device operating temperature for the applicable averaging period specified in items 5, 6, 8, and 9 of Table 2 to this subpart at or above the minimum allowable operating temperature established during the most recent performance test.
4. Each affected process unit that is equipped with a control device other than a thermal or catalytic oxidizer.	The average THC concentration must not exceed 20 ppmvd, corrected to 18 percent oxygen; OR the average THC performance reduction must equal or exceed 95 percent.	Operating and maintaining a THC CEMS at the outlet of the control device or in the stack of the affected source, according to the requirements of Procedure 1 of 40 CFR part 60, appendix F.
5. Each affected process unit that uses process changes to meet the applicable emission limit.	The average THC concentration must not exceed 20 ppmvd, corrected to 18 percent oxygen.	Operating and maintaining a THC CEMS at the outlet of the control device or in the stack of the affected source, according to the requirements of Procedure 1 of 40 CFR part 60, appendix F.
6. Each affected continuous process unit	The average THC concentration must not exceed 20 ppmvd, corrected to 18 percent oxygen; OR the average THC percentage reduction must equal or exceed 95 percent.	Recording the organic HAP processing rate (pounds per hour) and the operating temperature of the affected source, as specified in items 3.b. and 3.c. of Table 4 to this subpart.
7. Each affected batch process unit	The average THC concentration must not exceed 20 ppmvd, corrected to 18 percent oxygen; OR the average THC percentage reduction must equal or exceed 95 percent.	Recording the organic HAP processing rate (pounds per batch); and process cycle time for each batch cycle; and hourly average operating temperature of the affected source, as specified in items 8.b. through 8.d. of Table 4 to this subpart.
8. Each kiln that is used to process clay refractory products.	As specified in items 9 through 11 of this table.	Satisfying the applicable requirements specified in items 9 through 11 of this table.
9. Each affected kiln that is equipped with a DLA.	a. The average HF emissions must not exceed 0.019 kg/Mg (0.038 lb/ton) of uncalcined clay processed, OR the average uncontrolled HF emissions must be reduced by at least 90 percent; and b. The average HCl emissions must not exceed 0.091 kg/Mg (0.18 lb/ton) of uncalcined clay processed, or the average uncontrolled HCl emissions must be reduced by at least 30 percent.	i. Maintaining the pressure drop across the DLA at or above the minimum levels established during the most recent performance test; and ii. Verifying that the limestone hopper contains an adequate amount of free-flowing limestone by performing a daily visual check of the limestone in the feed hopper; and iii. Recording the limestone feeder setting daily to verify that the feeder setting is at or above the level established during the most recent performance test; and iv. Using the same grade of limestone as was used during the most recent performance test and maintaining records of the source and grade of limestone.
10. Each affected kiln that is equipped with a DIFF or DLS/FF.	a. The average HF emissions must not exceed 0.019 kg/Mg (0.038 lb/ton) of uncalcined clay processed; OR the average uncontrolled HF emissions must be reduced by at least 90 percent; and b. The average HCl emissions must not exceed 0.091 kg/Mg (0.18 lb/ton) of uncalcined clay processed; OR the average uncontrolled HCl emissions must be reduced by at least 30 percent.	i. Verifying at least once each 8-hour shift that lime is free-flowing by means of a visual check, checking the output of a load cell, carrier gas/lime flow indicator, or carrier gas pressure drop measurement system; and ii. Recording feeder setting daily to verify that the feeder setting is at or above the level established during the most recent performance test; and

TABLE 7 TO SUBPART SSSSS TO PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITS—Continued

For . . .	For the following emission limit . . .	You must demonstrate continuous compliance by . . .
		iii. Initiating corrective action within 1 hour of a bag leak detection system alarm AND completing corrective actions in accordance with the OM&M plan, AND operating and maintaining the fabric filter such that the alarm does not engage for more than 5 percent of the total operating time in a 6-month block reporting period.
11. Each affected kiln that is equipped with a wet scrubber.	a. The average HF emissions must not exceed 0.019 kg/Mg (0.038 lb/ton) of uncalcined clay processed; OR the average uncontrolled HF emissions must be reduced by at least 90 percent; and b. The average HCl emissions must not exceed 0.091 kg/Mg (0.18 lb/ton) of uncalcined clay processed; OR the average uncontrolled HCl emissions must be reduced by at least 30 percent.	i. Maintaining the pressure drop across the scrubber, liquid pH, and liquid flow rate at or above the minimum levels established during the most recent performance test; and ii. If chemicals are added to the scrubber liquid, maintaining the average chemical feed rate at or above the minimum chemical feed rate established during the most recent performance test.

As stated in § 63.9810, you must show continuous compliance with the operating limits for affected sources according to the following table:

TABLE 8 TO SUBPART SSSSS OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS

For . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
1. Each affected source listed in Table 2 to this subpart.	a. Each applicable operating limit listed in Table 2 to this subpart.	i. Maintaining all applicable process and control device operating parameters within the limits established during the most recent performance test; and ii. Conducting annually an inspection of all duct work, vents, and capture devices to verify that no leaks exist and that the capture device is operating such that all emissions are properly vented to the control device in accordance with the OM&M plan.
2. Each affected continuous kiln that is equipped with a control device.	a. The operating limits specified in items 2.a. through 2.c. of Table 2 to this subpart.	i. Operating the control device on the affected kiln during all times except during periods of approved scheduled maintenance, as specified in § 63.9792(e); and ii. Minimizing HAP emissions from the affected kiln during all periods of scheduled maintenance of the kiln control device when the kiln is operating and the control device is out of service; and iii. Minimizing the duration of all periods of scheduled maintenance of the kiln control device when the kiln is operating and the control device is out of service.
3. Each new or existing curing oven, shape dryer, and kiln that is used to process refractory products that use organic HAP; each new or existing coking oven and defumer that is used to produce pitch-impregnated refractory products; each new shape preheater that is used to produce pitch-impregnated refractory products; AND each new or existing process unit that is exhausted to a thermal or catalytic oxidizer that also controls emissions from an affected shape preheater or pitch working tank.	As specified in items 4 through 9 of this table.	Satisfying the applicable requirements specified in items 4 through 9 of this table.

TABLE 8 TO SUBPART SSSSS OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS—Continued

For . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
4. Each affected continuous process unit	Maintain process operating parameters within the limits established during the most recent performance test.	i. Recording the organic HAP processing rate (pounds per hour); and ii. Recording the operating temperature of the affected source at least hourly; and iii. Maintaining the 3-hour block average organic HAP processing rate at or below the maximum organic HAP processing rate established during the most recent performance test.
5. Continuous process units that are equipped with a thermal oxidizer.	Maintain the 3-hour block average operating temperature in the thermal oxidizer combustion chamber at or above the minimum allowable operating temperature established during the most recent performance test.	i. Measuring and recording the thermal oxidizer combustion chamber temperature at least every 15 minutes; and ii. Calculating the hourly average thermal oxidizer combustion chamber temperature; and iii. Maintaining the 3-hour block average thermal oxidizer combustion chamber temperature at or above the minimum allowable operating temperature established during the most recent performance test; and iv. Reporting, in accordance with § 63.9814(e), any 3-hour block average operating temperature measurements below the minimum allowable thermal oxidizer combustion chamber operating temperature established during the most recent performance test.
6. Continuous process units that are equipped with a catalytic oxidizer.	a. Maintain the 3-hour block average temperature at the inlet of the catalyst bed at or above the minimum allowable catalyst bed inlet temperature established during the most recent performance test.	i. Measuring and recording the temperature at the inlet of the catalyst bed at least every 15 minutes; and ii. Calculating the hourly average temperature at the inlet of the catalyst bed; and iii. Maintaining the 3-hour block average temperature at the inlet of the catalyst bed at or above the minimum allowable catalyst bed inlet temperature established during the most recent performance test; and iv. Reporting, in accordance with § 63.9814(e), any 3-hour block average catalyst bed inlet temperature measurements below the minimum allowable catalyst bed inlet temperature established during the most recent performance; and v. Checking the activity level of the catalyst at least every 12 months and taking any necessary corrective action, such as replacing the catalyst, to ensure that the catalyst is performing as designed.
7. Each affected batch process unit	Maintain process operating parameters within the limits established during the most recent performance test.	i. Recording the organic HAP processing rate (pounds per batch); and ii. Recording the hourly average operating temperature of the affected source; and iii. Recording the process cycle time for each batch cycle; and iv. Maintaining the organic HAP processing rate at or below the maximum organic HAP processing rate established during the most recent performance test.

TABLE 8 TO SUBPART SSSSS OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS—Continued

For . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
8. Batch process units that are equipped with a thermal oxidizer.	Maintain the hourly average temperature in the thermal oxidizer combustion chamber at or above the hourly average temperature established for the corresponding 1-hour period of the cycle during the most recent performance test.	i. Measuring and recording the thermal oxidizer combustion chamber temperature at least every 15 minutes; and ii. Calculating the hourly average thermal oxidizer combustion chamber temperature; and iii. From the start of each batch cycle until 3 hours have passed since the process unit reached maximum temperature, maintaining the hourly average operating temperature in the thermal oxidizer combustion chamber at or above the minimum allowable operating temperature established for the corresponding period during the most recent performance test, as determined according to item 11 of Table 4 to this subpart; and iv. For each subsequent hour of the batch cycle, maintaining the hourly average operating temperature in the thermal oxidizer combustion chamber at or above the minimum allowable operating temperature established for the corresponding hour during the most recent performance test, as specified in item 13 of Table 4 to this subpart; and v. Reporting, in accordance with § 63.9814(e), any temperature measurements below the minimum allowable thermal oxidizer combustion chamber temperature measured during the most recent performance test.
9. Batch process units that are equipped with a catalytic oxidizer.	Maintain the hourly average temperature at the inlet of the catalyst bed at or above the corresponding hourly average temperature established for the corresponding 1-hour period of the cycle during the most recent performance test.	i. Measuring and recording temperatures at the inlet of the catalyst bed at least every 15 minutes; and ii. Calculating the hourly average temperature at the inlet of the catalyst bed; and iii. From the start of each batch cycle until 3 hours have passed since the process unit reached maximum temperature, maintaining the hourly average operating temperature at the inlet of the catalyst bed at or above the minimum allowable bed inlet temperature established for the corresponding period during the most recent performance test, as determined according to item 12 of Table 4 to this subpart; and iv. For each subsequent hour of the batch cycle, maintaining the hourly average operating temperature at the inlet of the catalyst bed at or above the minimum allowable bed inlet temperature established for the corresponding hour during the most recent performance test, as specified in item 13 of Table 4 to this subpart; and v. Reporting, in accordance with § 63.9814(e), any catalyst bed inlet temperature measurements below the minimum allowable bed inlet temperature measured during the most recent performance test; and vi. Checking the activity level of the catalyst at least every 12 months and taking any necessary corrective action, such as replacing the catalyst, to ensure that the catalyst is performing as designed.
10. Each new kiln that is used to process clay refractory products.	As specified in items 11 through 13 of this table.	Satisfying the applicable requirements specified in items 11 through 13 of this table.
11. Each new kiln that is equipped a DLA	a. Maintain the average pressure drop across the DLA for each 3-hour block period at or above the minimum pressure drop established during the most recent performance test.	i. Collecting the DLA pressure drop data, as specified in item 18.a. of Table 4 to this subpart; and ii. Reducing the DLA pressure drop data to 1-hour and 3-hour block averages; and

TABLE 8 TO SUBPART SSSSS OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS—Continued

For . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
		iii. Maintaining the 3-hour block average pressure drop across the DLA at or above the minimum pressure drop established during the most recent performance test.
	b. Maintain free-flowing limestone in the feed hopper, silo, and DLA.	Verifying that the limestone hopper has an adequate amount of free-flowing limestone by performing a daily visual check of the limestone hopper.
	c. Maintain the limestone feeder setting at or above the level established during the most recent performance test.	Recording the limestone feeder setting at least daily to verify that the feeder setting is being maintained at or above the level established during the most recent performance test.
	d. Use the same grade of limestone from the same source as was used during the most recent performance test.	Using the same grade of limestone as was used during the most recent performance test and maintaining records of the source and grade of limestone.
12. Each new kiln that is equipped with a DIFF or DLS/FF.	a. Initiate corrective action within 1 hour of a bag leak detection system alarm and complete corrective actions in accordance with the OM&M plan; AND operate and maintain the fabric filter such that the alarm does not engage for more than 5 percent of the total operating time in a 6-month block reporting period.	i. Initiating corrective action within 1 hour of a bag leak detection system alarm and completing corrective actions in accordance with the OM&M plan; and
		ii. Operating and maintaining the fabric filter such that the alarm does not engage for more than 5 percent of the total operating time in a 6-month block reporting period; in calculating this operating time fraction, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted; if corrective action is required, each alarm shall be counted as a minimum of 1 hour; if you take longer than 1 hour to initiate corrective action, the alarm time shall be counted as the actual amount of time taken by you to initiate corrective action.
	b. Maintain free-flowing lime in the feed hopper or silo at all times for continuous injection systems; AND maintain feeder setting at or above the level established during the most recent performance test for continuous injection systems.	i. Verifying at least once each 8-hour shift that lime is free-flowing via a load cell, carrier gas/lime flow indicator, carrier gas pressure drop measurement system, or other system; recording all monitor or sensor output, and if lime is found not to be free flowing, promptly initiating and completing corrective actions; and
		ii. Recording the feeder setting once each day of operation to verify that the feeder setting is being maintained at or above the level established during the most recent performance test.
13. Each new kiln that is used to process clay refractory products and is equipped with a wet scrubber.	a. Maintain the average pressure drop across the scrubber for each 3-hour block period at or above the minimum pressure drop established during the most recent performance test.	i. Collecting the scrubber pressure drop data, as specified in item 20.a. of Table 4 to this subpart; and
		ii. Reducing the scrubber pressure drop data to 1-hour and 3-hour block averages; and
		iii. Maintaining the 3-hour block average scrubber pressure drop at or above the minimum pressure drop established during the most recent performance test.
	b. Maintain the average scrubber liquid pH for each 3-hour block period at or above the minimum scrubber liquid pH established during the most recent performance test.	i. Collecting the scrubber liquid pH data, as specified in item 20.b. of Table 4 to this subpart; and
		ii. Reducing the scrubber liquid pH data to 1-hour and 3-hour block averages; and
		iii. Maintaining the 3-hour block average scrubber liquid pH at or above the minimum scrubber liquid pH established during the most recent performance test.

TABLE 8 TO SUBPART SSSSS OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS—Continued

For . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
	c. Maintain the average scrubber liquid flow rate for each 3-hour block period at or above the minimum scrubber liquid flow rate established during the most recent performance test.	i. Collecting the scrubber liquid flow rate data, as specified in item 20.c. of Table 4 to this subpart; and ii. Reducing the scrubber liquid flow rate data to 1-hour and 3-hour block averages; and iii. Maintaining the 3-hour block average scrubber liquid flow rate at or above the minimum scrubber liquid flow rate established during the most recent performance test.
	d. If chemicals are added to the scrubber liquid, maintain the average scrubber chemical feed rate for each 3-hour block period at or above the minimum scrubber chemical feed rate established during the most recent performance test.	i. Collecting the scrubber chemical feed rate data, as specified in item 20.d. of Table 4 to this subpart; and ii. Reducing the scrubber chemical feed rate data to 1-hour and 3-hour block averages; and iii. Maintaining the 3-hour block average scrubber chemical feed rate at or above the minimum scrubber chemical feed rate established during the most recent performance test.

As stated in § 63.9810, you must show continuous compliance with the work practice standards for affected sources according to the following table:

TABLE 9 TO SUBPART SSSSS OF PART 63.—CONTINUOUS COMPLIANCE WITH WORK PRACTICE STANDARDS

For . . .	For the following work practice standard . . .	You must demonstrate continuous compliance by . . .
1. Each affected source listed in Table 3 to this subpart.	Each applicable work practice requirement listed in Table 3 to this subpart.	i. Performing each applicable work practice standard listed in Table 3 to this subpart; and ii. Maintaining records that document the method and frequency for complying with each applicable work practice standard listed in Table 3 to this subpart, as required by §§ 63.10(b) and 63.9816(c)(2).
2. Each basket or container that is used for holding fired refractory shapes in an existing shape preheater and autoclave during the pitch impregnation process.	Control POM emissions from any affected shape preheater.	i. Controlling emissions from the volatilization of residual pitch by implementing one of the work practice standards listed in item 1 of Table 3 to this subpart; and ii. Recording the date and cleaning method each time you clean an affected basket or container.
3. Each new or existing pitch working tank	Control POM emissions	Capturing and venting emissions from the affected pitch working tank to the control device that is used to control emissions from an affected defumer or coking oven, or to a thermal or catalytic oxidizer that is comparable to the control device used on an affected defumer or coking oven.
4. Each new or existing chromium refractory products kiln.	Minimize fuel-based HAP emissions	i. Using natural gas, or equivalent, as the kiln fuel at all times except during periods of natural gas curtailment or supply interruption; and ii. If you intend to use an alternative fuel, submitting a notification of alternative fuel use within 48 hours of the declaration of a period of natural gas curtailment or supply interruption, as defined in § 63.9824; and iii. Submitting a report of alternative fuel use within 10 working days after terminating the use of the alternative fuel, as specified in § 63.9814(g).
5. Each existing clay refractory products kiln	Minimize fuel-based HAP emissions	i. Using natural gas, or equivalent, as the kiln fuel at all times except during periods of natural gas curtailment or supply interruption; and

TABLE 9 TO SUBPART SSSSS OF PART 63.—CONTINUOUS COMPLIANCE WITH WORK PRACTICE STANDARDS—Continued

For . . .	For the following work practice standard . . .	You must demonstrate continuous compliance by . . .
		ii. If you intend to use an alternative fuel, submitting a notification of alternative fuel use within 48 hours of the declaration of a period of natural gas curtailment or supply interruption, as defined in § 63.9824; and iii. Submitting a report of alternative fuel use within 10 working days after terminating the use of the alternative fuel, as specified in § 63.9814(g).

As stated in § 63.9814, you must comply with the requirements for reports in the following table:

TABLE 10 TO SUBPART SSSSS OF PART 63.—REQUIREMENTS FOR REPORTS

You must submit a(n) . . .	The report must contain . . .	You must submit the report . . .
1. Compliance report	The information in § 63.9814(c) through (f)	Semiannually according to the requirements in § 63.9814(a) through (f).
2. Immediate startup, shutdown, and malfunction report if you had a startup, shutdown, or malfunction during the reporting period that is not consistent with your SSMP.	a. Actions taken for the event	By fax or telephone within 2 working days after starting actions inconsistent with the plan.
	b. The information in § 63.10(d)(5)(ii)	By letter within 7 working days after the end of the event unless you have made alternative arrangements with the permitting authority.
3. Report of alternative fuel use	The information in § 63.9814(g) and items 4 and 5 of Table 9 to this subpart.	If you are subject to the work practice standard specified in item 3 or 4 of Table 3 to this subpart, and you use an alternative fuel in the affected kiln, by letter within 10 working days after terminating the use of the alternative fuel.

As stated in § 63.9820, you must comply with the applicable General Provisions requirements according to the following table:

TABLE 11 TO SUBPART SSSSS OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART SSSSS

Citation	Subject	Brief description	Applies to subpart SSSSS
§ 63.1	Applicability		Yes.
§ 63.2	Definitions		Yes.
§ 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)	Applicability	General Provisions (GP) apply unless compliance extension; GP apply to area sources that become major.	Yes.
§ 63.6(b)(1)–(4)	Compliance Dates for New and Reconstructed Sources.	Standards apply at effective date; 3 years after effective date; upon startup; 10 years after construction or reconstruction commences for section 112(f).	Yes.
§ 63.6(b)(5)	Notification		Yes.
§ 63.6(b)(6)	[Reserved]		
§ 63.6(b)(7)	Compliance Dates for New and Reconstructed Area Sources That Become Major.	Area sources that become major must comply with major source standards immediately upon becoming major, regardless of whether required to comply when they were area sources.	Yes.
§ 63.6(c)(1)–(2)	Compliance Dates for Existing Sources	Comply according to date in subpart, which must be no later than 3 years after effective date; for section 112(f) standards, comply within 90 days of effective date unless compliance extension.	Yes.
§ 63.6(c)(3)–(4)	[Reserved]		
§ 63.6(c)(5)	Compliance Dates for Existing Area Sources That Become Major.	Area sources that become major must comply with major source standards by date indicated in subpart or by equivalent time period (for example, 3 years).	Yes.

TABLE 11 TO SUBPART SSSSS OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART SSSSS—Continued

Citation	Subject	Brief description	Applies to subpart SSSSS
§ 63.6(d)	[Reserved]		
§ 63.6(e)(1)–(2)	Operation & Maintenance	Operate to minimize emissions at all times; correct malfunctions as soon as practicable; requirements independently enforceable; information Administrator will use to determine if operation and maintenance requirements were met.	Yes.
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction Plan (SSMP).		Yes.
§ 63.6(f)(1)	Compliance Except During SSM	You must comply with emission standards at all times except during SSM.	Yes.
§ 63.6(f)(2)–(3)	Methods for Determining Compliance	Compliance based on performance test, operation and maintenance plans, records, inspection.	Yes.
§ 63.6(g)(1)–(3)	Alternative Standard	Procedures for getting an alternative standard.	Yes.
§ 63.6(h)(1)–(9)	Opacity/Visible Emission (VE) Standards		Not applicable.
§ 63.6(i)(1)–(14)	Compliance Extension	Procedures and criteria for Administrator to grant compliance extension.	Yes.
§ 63.6(j)	Presidential Compliance Exemption	President may exempt source category	Yes.
§ 63.7(a)(1)–(2)	Performance Test Dates	Dates for conducting initial performance testing and other compliance demonstrations; must conduct 180 days after first subject to rule.	Yes.
§ 63.7(a)(3)	Section 114 Authority	Administrator may require a performance test under CAA section 114 at any time.	Yes.
§ 63.7(b)(1)	Notification of Performance Test	Must notify Administrator 60 days before the test.	Yes.
§ 63.7(b)(2)	Notification of Rescheduling	Must notify Administrator 5 days before scheduled date and provide rescheduled date.	Yes.
§ 63.7(c)	Quality Assurance/Test Plan	Requirements; test plan approval procedures; performance audit requirements; internal and external QA procedures for testing.	Yes.
§ 63.7(d)	Testing Facilities		Yes.
§ 63.7(e)(1)	Conditions for Conducting Performance Tests	Performance tests must be conducted under representative conditions; cannot conduct performance tests during SSM; not a violation to exceed standard during SSM.	No, § 63.9800 specifies requirements; Yes; Yes.
§ 63.7(e)(2)	Conditions for Conducting Performance Tests	Must conduct according to subpart and EPA test methods unless Administrator approves alternative.	Yes.
§ 63.7(e)(3)	Test Run Duration	Must have three test runs of at least 1 hour each; compliance is based on arithmetic mean of three runs; conditions when data from an additional test run can be used.	Yes; Yes, except where specified in § 63.9800 for batch process sources; Yes.
§ 63.7(f)	Alternative Test Method		Yes.
§ 63.7(g)	Performance Test Data Analysis		Yes.
§ 63.7(h)	Waiver of Test		Yes.
§ 63.8(a)(1)	Applicability of Monitoring Requirements		Yes.
§ 63.8(a)(2)	Performance Specifications	Performance Specifications in appendix B of 40 CFR part 60 apply.	Yes.
§ 63.8(a)(3)	[Reserved]		
§ 63.8(a)(4)	Monitoring with Flares		Not applicable.
§ 63.8(b)(1)	Monitoring	Must conduct monitoring according to standard unless Administrator approves alternative.	Yes.
§ 63.8(b)(2)–(3)	Multiple Effluents and Multiple Monitoring Systems.	Specific requirements for installing and reporting on monitoring systems.	Yes.
§ 63.8(c)(1)	Monitoring System Operation and Maintenance	Maintenance consistent with good air pollution control practices.	Yes.
§ 63.8(c)(1)(i)	Routine and Predictable SSM	Reporting requirements for SSM when action is described in SSMP.	Yes.
§ 63.8(c)(1)(ii)	SSM not in SSMP	Reporting requirements for SSM when action is not described in SSMP.	Yes.
§ 63.8(c)(1)(iii)	Compliance with Operation and Maintenance Requirements.	How Administrator determines if source is complying with operation and maintenance requirements.	Yes.
§ 63.8(c)(2)–(3)	Monitoring System Installation	Must install to get representative emission and parameter measurements.	Yes.
§ 63.8(c)(4)	CMS Requirements		No, § 63.9808 specifies requirements.
§ 63.8(c)(5)	COMS Minimum Procedures		Not applicable.

TABLE 11 TO SUBPART SSSSS OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART SSSSS—Continued

Citation	Subject	Brief description	Applies to subpart SSSSS
§ 63.8(c)(6)	CMS Requirements		Applies only to sources required to install and operate a THC CEMS.
§ 63.8(c)(7)(i)(A)	CMS Requirements		Applies only to sources required to install and operate a THC CEMS.
§ 63.8(c)(7)(i)(B)	CMS Requirements		Applies only to sources required to install and operate a THC CEMS.
§ 63.8(c)(7)(i)(C)	CMS Requirements		Not applicable.
§ 63.8(c)(7)(ii)	CMS Requirements	Corrective action required when CMS is out of control.	Yes.
§ 63.8(c)(8)	CMS Requirements		Yes.
§ 63.8(d)	CMS Quality Control		Applies only to sources required to install and operate a THC CEMS.
§ 63.8(e)	CMS Performance Evaluation		Applies only to sources required to install and operate a THC CEMS.
§ 63.8(f)(1)–(5)	Alternative Monitoring Method		Yes.
§ 63.8(f)(6)	Alternative to Relative Accuracy Test		Yes.
§ 63.8(g)	Data Reduction		Applies only to sources required to install and operate a THC CEMS.
§ 63.9(a)	Notification Requirements		Yes.
§ 63.9(b)(1)–(5)	Initial Notifications		Yes.
§ 63.9(c)	Request for Compliance Extension		Yes.
§ 63.9(d)	Notification of Special Compliance Requirements for New Source.		Yes.
§ 63.9(e)	Notification of Performance Test	Notify Administrator 60 days prior	Yes.
§ 63.9(f)	Notification of VE/Opacity Test		Not applicable.
§ 63.9(g)	Additional Notifications When Using CMS		Applies only to sources required to install and operate a THC 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		Yes.
§ 63.10(b)(1)	Recordkeeping/Reporting		Yes.
§ 63.10(b)(2)(i)–(v)	Records Related to Startup, Shutdown, and Malfunction.		Yes.
§ 63.10(b)(2)(vi) and (x–xi).	CMS Records		Yes.
§ 63.10(b)(2)(vii)–(ix).	Records	Measurements to demonstrate compliance with emission limitations; performance test, performance evaluation, and visible emission observation results; measurements to determine conditions of performance tests and performance evaluations.	Yes.
§ 63.10(b)(2)(xii)	Records	Records when under waiver	Yes.
§ 63.10(b)(2)(xiii)	Records	Records when using alternative to relative accuracy test.	Not applicable.
§ 63.10(b)(2)(xiv)	Records	All documentation supporting Initial Notification and Notification of Compliance Status.	Yes.
§ 63.10(b)(3)	Records	Applicability Determinations	Yes.
§ 63.10(c)(1)–(6), (9)–(15).	Records	Additional Records for CMS	Not applicable.
§ 63.10(c)(7)–(8)	Records	Records of excess emissions and parameter monitoring exceedances for CMS.	No, § 63.9816 specifies requirements.
§ 63.10(d)(1)	General Reporting Requirements	Requirements for reporting	Yes.
§ 63.10(d)(2)	Report of Performance Test Results	When to submit to Federal or State authority	Yes.
§ 63.10(d)(3)	Reporting Opacity or VE Observations		Not applicable.

TABLE 11 TO SUBPART SSSSS OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART SSSSS—Continued

Citation	Subject	Brief description	Applies to subpart SSSSS
§ 63.10(d)(4)	Progress Reports	Must submit progress reports on schedule if under compliance extension.	Yes.
§ 63.10(d)(5)	Startup, Shutdown, and Malfunction Reports	Contents and submission	Yes.
§ 63.10(e)(1)–(2)	Additional CMS Reports		Applies only to sources required to install and operate a THC CEMS.
§ 63.10(e)(3)	Reports		No, § 63.9814 specifies requirements.
§ 63.10(e)(4)	Reporting COMS data		Not applicable.
§ 63.10(f)	Waiver for Recordkeeping/Reporting		Yes.
§ 63.11	Flares		Not applicable.
§ 63.12	Delegation		Yes.
§ 63.13	Addresses		Yes.
§ 63.14	Incorporation by Reference		Yes.
§ 63.15	Availability of Information		Yes.

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April 16, 2003

Part III

Securities and Exchange Commission

17 CFR Parts 228, et al.
Standards Relating to Listed Company Audit Committees; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 240, 249 and 274

[Release Nos. 33–8220; 34–47654; IC–26001; File No. S7–02–03]

RIN 3235–AI75

Standards Relating to Listed Company Audit Committees

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: As directed by the Sarbanes-Oxley Act of 2002, we are adopting a new rule to direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with the audit committee requirements mandated by the Sarbanes-Oxley Act of 2002. These requirements relate to: The independence of audit committee members; the audit committee's responsibility to select and oversee the issuer's independent accountant; procedures for handling complaints regarding the issuer's accounting practices; the authority of the audit committee to engage advisors; and funding for the independent auditor and any outside advisors engaged by the audit committee. The rule implements the requirements of section 10A(m)(1) of the Securities Exchange Act of 1934, as added by section 301 of the Sarbanes-Oxley Act of 2002. Under the rule, listed issuers must be in compliance with the new listing rules by the earlier of their first annual shareholders meeting after January 15, 2004, or October 31, 2004. Foreign private issuers and small business issuers will have additional time to comply. In addition, we are adopting amendments to make several changes to our current disclosure requirements regarding audit committees.

DATES: *Effective Date:* April 25, 2003.

Compliance Dates: Each national securities exchange and national securities association must provide to the Commission, no later than July 15, 2003, proposed rules or rule amendments that comply with the requirements of Exchange Act Rule 10A–3. Further, each national securities exchange and national securities association must have final rules or rule amendments that comply with Rule 10A–3 approved by the Commission no later than December 1, 2003. Listed issuers, other than foreign private issuers and small business issuers, must be in compliance with the new listing rules by the earlier of (1) their first annual shareholders meeting after January 15, 2004, or (2) October 31, 2004. Foreign private issuers and small business issuers that are listed must be in compliance with the new listing rules by July 31, 2005. See section II.F.1 for more information regarding implementation and compliance dates. Issuers must comply with the disclosure changes in Regulation S–B, Regulation S–K, Schedule 14A, Form 20–F, Form 40–F and Form N–CSR beginning with reports covering periods ending on or after (or proxy or information statements for actions occurring on or after) the compliance date for the listing standards applicable to the particular issuer. Until such date, issuers should continue to comply with existing Items 7(d)(3)(iv) and 22(b)(14) in their proxy and information statements, if applicable.

FOR FURTHER INFORMATION CONTACT: Jeffrey J. Minton, Special Counsel, or Elizabeth M. Murphy, Chief, Office of Rulemaking, Division of Corporation Finance, at (202) 942–2910, or, with respect to investment companies, Christopher P. Kaiser, Senior Counsel, Office of Disclosure Regulation, Division of Investment Management, at (202) 942–0724, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are adopting new Rule 10A–3 [1] under the Securities Exchange Act of 1934 (the ''Exchange Act''),[2] amendments to Forms 20–F [3] and 40–F [4] and Items 7 and 22 of Schedule 14A [5] under the Exchange Act, amendments to Item 401 [6] of Regulation S–B [7] and Item 401 [8] of Regulation S–K [9] under the Securities Act of 1933 (the ''Securities Act'') [10] and amendments to Form N–CSR [11] under the Exchange Act and the Investment Company Act of 1940 (the ''Investment Company Act'').[12]

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I. Background and Overview of the New Rule and Amendments

In this release, we implement section 10A(m)(1) of the Exchange Act,[13] as added by section 301 of the Sarbanes-Oxley Act of 2002 (the ''Sarbanes-Oxley Act''),[14] which requires us to direct, by rule, the national securities exchanges [15]

[1] 17 CFR 240.10A–3.

[2] 15 U.S.C. 78a *et seq.*

[3] 17 CFR 249.220f.

[4] 17 CFR 249.240f.

[5] 17 CFR 240.14a–101.

[6] 17 CFR 228.401.

[7] 17 CFR 228.10 *et seq.*

[8] 17 CFR 229.401.

[9] 17 CFR 229.10 *et seq.*

[10] 15 U.S.C. 77a *et seq.*

[11] 17 CFR 249.331 and 17 CFR 274.128.

[12] 15 U.S.C. 80a–1 *et seq.*

[13] 15 U.S.C. 78j–1(m)(1).

[14] Pub. L. 107–204, 116 Stat. 745 (2002).

[15] A ''national securities exchange'' is an exchange registered as such under section 6 of the Exchange Act [15 U.S.C. 78f]. There are currently nine national securities exchanges registered under section 6(a) of the Exchange Act: American Stock Exchange (AMEX), Boston Stock Exchange, Chicago Board Options Exchange (CBOE), Chicago Stock Exchange, Cincinnati Stock Exchange, International Securities Exchange, New York Stock Exchange

and national securities associations [16] (or ''SROs'') to prohibit the listing of any security of an issuer that is not in compliance with several enumerated standards regarding issuer audit committees. We received over 185 comments in response to our release proposing to implement the directive in section 10A(m) of the Exchange Act.[17] The final rule and form amendments we adopt today have been revised, as discussed in this release, to incorporate a number of changes recommended by commenters.

Accurate and reliable financial reporting lies at the heart of our disclosure-based system for securities regulation, and is critical to the integrity of the U.S. securities markets. Investors need accurate and reliable financial information to make informed investment decisions. Investor confidence in the reliability of corporate financial information is fundamental to the liquidity and vibrancy of our markets.

Effective oversight of the financial reporting process is fundamental to preserving the integrity of our markets. The board of directors, elected by and accountable to shareholders, is the focal point of the corporate governance system. The audit committee, composed of members of the board of directors, plays a critical role in providing oversight over and serving as a check and balance on a company's financial reporting system. The audit committee provides independent review and oversight of a company's financial reporting processes, internal controls and independent auditors. It provides a forum separate from management in which auditors and other interested parties can candidly discuss concerns. By effectively carrying out its functions and responsibilities, the audit committee helps to ensure that management properly develops and adheres to a sound system of internal controls, that procedures are in place to objectively assess management's practices and internal controls, and that the outside auditors, through their own review, objectively assess the company's financial reporting practices.

Since the early 1940s, the Commission, along with the auditing and corporate communities, has had a continuing interest in promoting effective and independent audit committees.[18] It was largely with the Commission's encouragement, for instance, that the SROs first adopted audit committee requirements in the 1970s.[19] Over the years, others have expressed support for strong, independent audit committees,[20] including the National Commission on Fraudulent Financial Reporting, also known as the Treadway Commission,[21] and the General Accounting Office.[22]

In 1998, the NYSE and the NASD sponsored a committee to study the effectiveness of audit committees. This committee became known as the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees (the ''Blue Ribbon Committee''). In its 1999 report, the Blue Ribbon Committee recognized the importance of audit committees and issued ten recommendations to improve their effectiveness.[23] In response to these recommendations, the NYSE and the NASD, among others, revised their listing standards relating to audit committees,[24] and we adopted new rules requiring disclosure relating to the functioning, governance and independence of corporate audit committees.[25] Beginning last year, at the Commission's request,[26] the NYSE and the NASD again reviewed their corporate governance standards, including their audit committee rules, in light of several high-profile corporate failures, and have proposed changes to their rules to provide more demanding standards for audit committees.[27]

Recent events involving alleged misdeeds by corporate executives and independent auditors have damaged investor confidence in the financial markets.[28] They have highlighted the need for strong, competent and vigilant audit committees with real authority.[29] In response to the threat to the U.S. financial markets posed by these events, Congress passed, and the President signed into law on July 30, 2002, the Sarbanes-Oxley Act. The Sarbanes-Oxley Act mandates sweeping corporate disclosure and financial reporting

(NYSE), Philadelphia Stock Exchange and Pacific Exchange. In addition, an exchange that lists or trades security futures products (as defined in Exchange Act section 3(a)(56) [15 U.S.C. 78c(56)]) may register as a national securities exchange under section 6(g) of the Exchange Act solely for the purpose of trading security futures products. Regarding security futures products, see section II.F.2.b.

[16] A ''national securities association'' is an association of brokers and dealers registered as such under section 15A of the Exchange Act [15 U.S.C. 78o–3]. The National Association of Securities Dealers (NASD) is the only national securities association registered with the Commission under section 15A(a) of the Exchange Act. The NASD partially owns and operates The Nasdaq Stock Market (Nasdaq). Nasdaq has filed an application with the Commission to register as a national securities exchange. In addition, section 15A(k) of the Exchange Act [15 U.S.C. 78o–3(k)] provides that a futures association registered under section 17 of the Commodity Exchange Act [7 U.S.C. 21] shall be registered as a national securities association for the limited purpose of regulating the activities of members who are registered as broker-dealers in security futures products pursuant to section 15(b)(11) of the Exchange Act [15 U.S.C. 78o(b)(11)]. Regarding security futures products, see section II.F.2.b.

[17] Release No. 33–8173 (Jan. 8, 2003) [68 FR 2638] (''Proposing Release''). The public comments we received, and a summary of the comments prepared by our staff (the ''Comment Summary''), can be viewed in our Public Reference Room at 450 Fifth Street, NW., Washington, DC 20549, in File No. S7–02–03. Public comments submitted by electronic mail and the Comment Summary also are available on our Web site, *http://www.sec.gov.*

[18] In 1940, the Commission investigated the auditing practices of McKesson & Robbins, Inc., and the Commission's ensuing report prompted action on auditing procedures by the auditing community. *In the Matter of McKesson & Robbins,* Accounting Series Release (ASR) No. 19, Exchange Act Release No. 2707 (Dec. 5, 1940).

[19] For example, in 1972, the Commission recommended that companies establish audit committees composed of outside directors. See ASR No. 123 (Mar. 23, 1972). In 1974 and 1978, the Commission adopted rules requiring disclosures about audit committees. See Release No. 34–11147 (Dec. 20, 1974) and Release No. 34–15384 (Dec. 6, 1978).

[20] *See, e.g.*, Preliminary Report of the American Bar Association Task Force on Corporate Responsibility (July 16, 2002). The report is available on the American Bar Association's Web site at *http://www.abanet.org/buslaw/.*

[21] The Treadway Commission was sponsored by the American Institute of Certified Public Accountants, the American Accounting Association, the Financial Executives Institute (now Financial Executives International), the Institute of Internal Auditors and the National Association of Accountants. Collectively, these groups were known as the Committee of Sponsoring Organizations, or COSO. The Treadway Commission's report, the Report of the National Commission on Fraudulent Financial Reporting (October 1987), is available at *http://www.coso.org.*

[22] GAO, ''CPA Audit Quality: Status of Actions Taken to Improve Auditing and Financial Reporting of Public Companies,'' at 5 (GAO/AFMD–89–38, March 1989).

[23] See Report and Recommendations of the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees (February 1999). The Blue Ribbon Committee Report is available at *http://www.nyse.com.*

[24] See, for example, Exchange Act Release No. 42231 (Dec. 14, 1999) [64 FR 71523] (Nasdaq rules) and Exchange Act Release No. 42233 (Dec. 14, 1999) (NYSE rules) [64 FR 71529]. See also Exchange Act Release No. 42232 (Dec. 14, 1999) [64 FR 71518] (American Stock Exchange rules) and Release No. 34–43941 (Feb. 7, 2001) [66 FR 10545] (Pacific Exchange rules).

[25] See Exchange Act Release No. 42266 (Dec. 22, 1999) [64 FR 73389].

[26] See Press Release No. 2002–23 (Feb. 13, 2002).

[27] See File Nos. SR–NASD–2002–141 and SR–NYSE–2002–33 (pending before the Commission).

[28] See, for example, John Waggoner and Thomas A. Fogarty, ''Scandals Shred Investors'' Faith: Because of Enron, Andersen and Rising Gas Prices, the Public is More Wary Than Ever of Corporate America,'' USA Today, May 2, 2002; and Louis Aguilar, ''Scandals Jolting Faith of Investors,'' Denver Post, June 27, 2002.

[29] See, for example, John Good, ''After Enron, Beef Up Those Audit Committees,'' The Commercial Appeal, Apr. 26, 2002; and ''FT Comment After Enron: Giving Meaning to the Codes of Best Practice: Corporate Governance: Companies Need Truly Independent Directors, Strong Audit Committees, an Outlet for Whistleblowers and Tight Controls on Share Options,'' The Financial Times, Feb. 19, 2002.

reform to improve the responsibility of public companies for their financial disclosures. This release is the most recent of several that we have issued to implement provisions of the Sarbanes-Oxley Act.[30]

Under new Exchange Act Rule 10A–3, SROs will be prohibited from listing any security of an issuer that is not in compliance with the following standards, as discussed in more detail in this release:

- Each member of the audit committee of the issuer must be independent according to specified criteria;
- The audit committee of each issuer must be directly responsible for the appointment, compensation, retention and oversight of the work of any registered public accounting firm [31] engaged for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the issuer, and each such registered public accounting firm must report directly to the audit committee;
- Each audit committee must establish procedures for the receipt, retention and treatment of complaints regarding accounting, internal accounting controls or auditing matters, including procedures for the confidential, anonymous submission by employees of the issuer of concerns regarding questionable accounting or auditing matters;
- Each audit committee must have the authority to engage independent counsel and other advisors, as it determines necessary to carry out its duties; and
- Each issuer must provide appropriate funding for the audit committee.

With the exceptions specified below, listed issuers must be in compliance with the new listing rules by the earlier of (1) their first annual shareholders meeting after January 15, 2004, or (2) October 31, 2004. Foreign private issuers [32] and small business issuers [33] that are listed must be in compliance with the new listing rules by July 31, 2005.

In addition, the final rule amendments make several changes to our current disclosure requirements regarding audit committees.

II. Discussion

Under section 3(a)(58) of the Exchange Act,[34] as added by section 205 of the Sarbanes-Oxley Act, the term audit committee is defined as:

- A committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of overseeing the accounting and financial reporting processes of the issuer and audits of the financial statements of the issuer; and
- If no such committee exists with respect to an issuer, the entire board of directors of the issuer.

Accordingly, an issuer either may have a separately designated audit committee composed of members of its board or, if it chooses to do so or if it fails to form a separate committee, the entire board of directors will constitute the audit committee. If the entire board constitutes the audit committee, the new SRO rules adopted under Exchange Act Rule 10A–3, including the independence requirements, will apply to the issuer's board as a whole.

In addition, because Exchange Act section 10A(m) imposes requirements that only apply to issuers listed on a national securities exchange or listed in an automated inter-dealer quotation system of a national securities association,[35] the requirements of Exchange Act Rule 10A–3 only apply to issuers that are so listed. None of the requirements of section 10A(m) of the Exchange Act or Exchange Act Rule 10A–3 apply to other reporting companies under section 13(a) [36] or 15(d) [37] of the Exchange Act.[38]

Some commenters requested clarification regarding application of the rule to listed issuers organized as limited partnerships that do not have their own board of directors but instead rely on a managing general partner.[39] We have added a clarification that in the case of a listed issuer that is a limited partnership or limited liability company where such entity does not have a board of directors or equivalent body, the term ''board of directors'' means the board of directors of the managing general partner, managing member or equivalent body.

A. Audit Committee Member Independence

1. Scope of the Requirement

As early as 1940, the Commission encouraged the use of audit committees composed of independent directors.[40] An audit committee comprised of independent directors is better situated to assess objectively the quality of the issuer's financial disclosure and the adequacy of internal controls than a committee that is affiliated with management. Management may face market pressures for short-term performance and corresponding pressures to satisfy market expectations. These pressures could be exacerbated by the use of compensation or other incentives focused on short-term stock appreciation, which can promote self-interest rather than the promotion of long-term shareholder interest. An independent audit committee with adequate resources helps to overcome

[30] For example, see Release No. 34–46421 (Aug. 27, 2002) [67 FR 56462] (Ownership reports and trading by officers, directors and principal security holders); Release No. 33–8124 (Aug. 28, 2002) [67 FR 57276] (Certification of disclosure in companies' quarterly and annual reports); Release No. 33–46685 (Oct. 18, 2002) [67 FR 65325] (Proposals regarding improper influence on conduct of audits); Release No. 33–8138 (Oct. 22, 2002) [67 FR 66208] (Proposals regarding internal control reports); Release No. 33–8170 (Dec. 20, 2002) [67 FR 79466] (Proposals regarding mandated electronic filing and Web site posting for Forms 3, 4 and 5); Release No. 33–8176 (Jan. 22, 2003) [68 FR 4820] (Conditions for use of non-GAAP financial information); Release No. 34–47225 (Jan. 22, 2003) [68 FR 4338] (Insider trades during pension plan blackout periods); Release No. 33–8177 (Jan. 23, 2003) [68 FR 5110] (Disclosure regarding audit committee financial experts and company codes of ethics); Release No. 33–8180 (Jan. 24, 2003) [68 FR 4862] (Retention of records relevant to audits and reviews); Release No. 34–47262 (Jan. 27, 2003) [68 FR 5348] (Adoption of Form N–CSR); Release No. 33–8182 (Jan. 28, 2003) [68 FR 5982] (Disclosure about off-balance sheet arrangements); Release No. 33–8183 (Jan. 28, 2003) [68 FR 6006] (Strengthening the Commission's requirements regarding auditor independence); Release Nos. 33–8185 (Jan. 29, 2003) [68 FR 6296] and 33–8186 (Jan. 29, 2003) [68 FR 6324] (Implementation of standards of professional conduct for attorneys); and Release No. 33–8212 (Mar. 21, 2003) [68 FR 15600] (Certification of disclosure in certain Exchange Act reports).

[31] The term ''registered public accounting firm'' is defined in section 2(a)(12) of the Sarbanes-Oxley Act. See 15 U.S.C. 78c(a)(59). We anticipate that the Public Company Accounting Oversight Board will have established the registration of public accounting firms by the time the implementing listing rules are operative.

[32] The term ''foreign private issuer'' is defined in Exchange Act Rule 3b–4(c) [17 CFR 240.3b–4(c)]. A foreign private issuer is a non-government foreign issuer, except for a company that (1) has more than 50% of its outstanding voting securities owned by U.S. investors and (2) has either a majority of its officers and directors residing in or being citizens of the U.S., a majority of its assets located in the U.S., or its business principally administered in the U.S.

[33] The term ''small business issuer'' is defined in Exchange Act Rule 12b–2 [17 CFR 240.12b–2] as a U.S. or Canadian issuer with less than $25 million in revenues and public float that is not an investment company. Such issuers are eligible to use Form 10–KSB (17 CFR 249.310b) for their annual reports and Form 10-QSB (17 CFR 249.308b) for their quarterly reports.

[34] 15 U.S.C. 78c(a)(58).

[35] In this release, we refer to issuers that are listed on one or more of these markets as ''listed issuers.''

[36] 15 U.S.C. 78m(a).

[37] 15 U.S.C. 78o(d).

[38] Non-listed issuers should still refer to the disclosure updates adopted in this release, as those changes may provide greater flexibility to non-listed issuers in preparing the disclosures they already must make regarding audit committee member independence. See section II.G.3.

[39] *See, e.g.*, the Letter of Plains All American Pipeline, L.P.

[40] See note 18 above.

this problem and to align corporate interests with those of shareholders.

Our final rules enhance audit committee independence by implementing the two basic criteria for determining independence enumerated in section 10A(m) of the Exchange Act, which are discussed in more detail below. Commenters expressed general overall support for the Commission's approach to implementing section 10A(m) of the Exchange Act. Advocates of investors in particular endorsed the Commission's proposals, though not all believed that section 10A(m) and the Commission's proposals went far enough.[41] Several supported having the Commission mandate all independence requirements for listed issuers, not just those specified in Exchange Act section 10A(m), as compared to the proposed approach of building on additional SRO standards for independence. However, a substantial number of commenters did not support having the Commission replace the SROs' role in setting additional criteria, preferring to leave additional requirements to the SRO rulemaking process with appropriate Commission oversight.[42]

As noted in the Proposing Release, in seeking to ensure appropriate levels of independence, we recognize that SROs currently restrict additional business or personal relationships.[43] Further, several SROs are seeking significant improvements to tighten these requirements, in particular in the additional listing standards that are currently under consideration.[44] We fully support the goals the SROs are trying to achieve through these ongoing efforts, and we are firmly committed to working with the SROs to ensure the success of these proposals. Many of the additional relationships that commenters requested the Commission include in the final rule are already restricted by existing SRO rules, or would be restricted under the new SRO proposals.

We continue to believe that our specific mandate under section 10A(m) of the Exchange Act, where independence is evaluated by reference to payments of advisory and compensatory fees and affiliate status, is best fulfilled by the final rule. These requirements standing alone do not, for example, preclude independence on the basis of other commercial relationships not specified in the final rule, and they do not extend to the broad categories of family members that may be reached by SRO listing standards. Instead, as proposed, our requirements build and rely on SRO standards of independence that cover additional relationships not specified in Exchange Act section 10A(m). Our final rule allows SROs flexibility to adopt and administer additional requirements of these sorts through SRO rulemaking conducted under Commission oversight and approval. As mentioned in the Proposing Release, we encourage SROs to review and adopt rigorous independence requirements in connection with their implementation of the standards in Exchange Act rule 10A–3. We will review the rules submitted by the SROs to implement Exchange Act rule 10A–3 so that they contain appropriate overall standards for audit committee independence.

2. Advising, Consulting or Compensatory Fees

As for the two criteria for independence in Exchange Act rule 10A–3, the first is that audit committee members are barred from accepting any consulting, advisory or other compensatory fee from the issuer or any subsidiary thereof, other than in the member's capacity as a member of the board of directors and any board committee.[45] This prohibition will preclude payments to a member as an officer or employee, as well as other compensatory payments.[46]

To prevent evasion of the requirement, disallowed payments to an audit committee member includes payments made either directly or indirectly. The overwhelming majority of commenters supported our determination that barring indirect as well as direct compensatory payments is necessary to implement the intended purposes of Exchange Act section 10A(m).[47] For example, payments to spouses of members raise questions regarding independence comparable to those raised by payments to members themselves. In addition, we believe that payments for services to law firms, accounting firms, consulting firms, investment banks or financial advisory firms in which audit committee members are partners, members, executive officers or hold similar positions, as discussed in more detail below, are the kinds of compensatory payments that were intended to be precluded by Exchange Act section 10A(m). The final rules, therefore, mandate that indirect acceptance of compensatory payments includes payments to spouses, minor children or stepchildren or children or stepchildren sharing a home with the member. In addition, indirect acceptance includes payments accepted by an entity in which such member is a partner, member, officer such as a managing director occupying a comparable position or executive officer, or occupies a similar position (except limited partners, non-managing members and those occupying similar positions who, in each case, have no active role in providing services to the entity) and which provides accounting, consulting, legal, investment banking or financial advisory services to the issuer or any subsidiary.

Commenters generally supported the extent to which family members are included, although a few recommended an extension to additional members,[48] and a few others recommended narrowing the family members covered.[49] We continue to believe that an extension to all relatives is beyond the scope necessary to address the prohibitions in section 10A(m), and we are adopting the family member formulation as proposed. Also, we agree with the commenters who argued that given the limited number of immediate family members affected, an exception for family members that are non-executive employees is not necessary.[50]

Several commenters requested additional guidance regarding the types of prohibited services in the ''indirect''

[41] *See, e.g.*, the Letters of American Federation of Labor and Congress of Industrial Organizations *et al.* (''AFL–CIO''); California Public Employees' Retirement System (''CalPERS''); Council of Institutional Investors (''CII''); International Brotherhood of Teamsters (''Teamsters''); State of Wisconsin Investment Board (''SWIB''); Transparency International—USA.

[42] *See, e.g.*, the Letters of American Bar Association (''ABA''); America's Community Bankers; American Bankers Association; American Institute of Certified Public Accountants (''AICPA''); Computer Sciences Corporation (''CSC''); Deloitte & Touche LLP (''Deloitte''); Letter on behalf of German Chief Financial Officers (''German CFOs''); New York Stock Exchange, Inc. (''NYSE''); PricewaterhouseCoopers LLC (''PwC''); Public Service Enterprise Group Incorporated (''PSEG''); Ralph S. Saul; Southern Company.

[43] See note 24 above.

[44] See note 27 above.

[45] If the committee member is also a shareholder of the issuer, payments made to all shareholders of that class generally, such as dividends, will not be prohibited by this provision. Also, to conform the application of the compensatory fee prohibition with the affiliate prohibition, the final rule clarifies that the compensatory fee prohibition applies to fees from the issuer or any subsidiary thereof.

[46] The final rule does not specify any limits or restrictions on fees paid for capacity as a member of the board of directors or any board committee.

[47] Compare, for example, the Letters of CalPERS; California State Teachers' Retirement System (''CalSTRS''); CSC; NYSE with the Letter of America's Community Bankers.

[48] *See, e.g.*, the Letters of CalPERS and Marcus B. Elliott.

[49] *See, e.g.*, the Letter of State Street Corporation (''State Street'').

[50] *See, e.g.*, the Letter of NYSE.

category.[51] In particular, commenters were most concerned with the application of the prohibition to issuers or associated entities that provide financial services. To clarify application of the prohibition, the final rule specifies that the prohibition covers accounting, consulting, legal, investment banking or financial advisory services. Other commercial relationships are not covered by the final rule, although, as previously discussed, we expect that SROs will contain restrictions on additional services and activities in their own listing standards.[52] For example, the prohibitions in Exchange Act Rule 10A–3 do not include non-advisory financial services such as lending, check clearing, maintaining customer accounts, stock brokerage services or custodial and cash management services. Further, the final rule relates only to requirements for audit committee membership. They do not affect the ability of a director associated with an entity that provides such services to a listed issuer from otherwise serving on that issuer's board of directors, again to the extent other SRO rules permit such relationships.

Several commenters requested clarification regarding the types of positions that are covered at associated entities.[53] The Proposing Release would have applied the prohibition where the audit committee member was a partner, member or principal or occupied a similar position with the associated entity. Some commenters questioned whether the prohibition extended to solely passive ownership positions, such as limited partners in a limited partnership and non-managing members of a manager-managed limited liability company that have no active role in providing services to the entity. Some thought the term ''principal'' was vague outside of organizations that specifically use that term. Others noted that while the formulation correctly indicated the Commission's intention to capture all partners or limited liability company members of a law firm, accounting firm, consulting firm or other professional organization, it was not clear how the formulation was to be applied to entities that do not have or use the term partners or members, such as certain investment banking firms organized as corporations.

In response to these concerns, we have clarified that the list of covered positions includes partners and members (except for limited partners, non-managing members and those occupying similar positions who, in each case, have no active role in providing services to the entity), officers such as managing directors occupying a comparable position and executive officers (to address organizations that do not have partners and members) and others occupying a similar position. We believe extending the prohibition to any employee of an associated entity, as requested by some commenters, would be overly broad for purposes of Exchange Act Rule 10A–3, although SROs may require such an extension in their implementing rules.[54] However, we do believe the formulation should include those persons, such as partners or members in professional organizations, regardless of control, whose compensation could be directly affected by the prohibited fees, even if they are not the primary service provider. Finally, we have deleted the term ''principal'' because we believe the reference to ''those occupying similar positions'' covers entities such as professional corporations that use the ''principal'' designation for positions similar to a partner in a partnership.

The final rule, like our proposal, applies the prohibitions only to current relationships with the audit committee member and related persons. They do not extend to a ''look back'' period before appointment to the audit committee, although we expect the SROs to require such periods in their own listing standards. Similar to the comments regarding including additional independence standards in the final rule, the majority of commenters supported our proposal, arguing it is consistent with the language in Exchange Act section 10A(m) and the Commission's approach of building and relying on the SRO's independence standards that already include look back periods for a broad variety of relationships.[55]

In the Proposing Release, we requested comment on whether we should explicitly clarify whether the prohibition on ''compensatory fees'' excludes compensation under a retirement or similar plan in which a former officer or employee of the issuer participates. Many commenters supported such a clarification.[56] We believe such a clarification is appropriate particularly given that the rules apply only to current relationships, especially where the retirement compensation received is for prior service and is not contingent in any way on continued service. Accordingly, the final rule specifies that, unless an SRO's listing rules provide otherwise, compensatory fees do not include the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the listed issuer (provided that such compensation is not contingent in any way on continued service).[57]

Exchange Act section 10A(m) prohibits the receipt of ''any'' consulting, advisory or compensatory fees. While the Sarbanes-Oxley Act specifically included a *de minimis* exception with respect to other requirements, such as the audit committee pre-approval requirements in Exchange Act section 10A(i)(1)(B),[58] it provided no similar *de minimis* exception in Exchange Act section 10A(m), even though several SROs currently have such exceptions in their listing standards. Consistent with the express language in Exchange Act section 10A(m), our proposed rule did not contain a *de minimis* exception. Nevertheless, we requested comment on whether there should be such an exception. Several commenters, including those that represent investor groups, argued forcefully that no additional relationships should be exempted, including *de minimis* payments. They argued that the statutory mandate is clear, audit committee members should be truly independent, and even a *de minimis* level of payments would create the appearance of conflict.[59] Several other commenters, primarily representing issuers and their advisors, supported some form of *de minimis* or immaterial exception, believing that issuers should have flexibility to pay some level of *de*

[51] *See, e.g.*, the Letters of American Bankers Association; AXA SA; Cleary, Gottlieb, Steen & Hamilton (''Cleary''); F.N.B. Corporation; Linklaters; National Association of Real Estate Investment Trusts; PwC; Greg Swalwell.

[52] As a result, we have declined the suggestion by some commenters to codify in the final rule that additional services are expressly permitted. *See, e.g.*, the Letters of Curtis Thaxter Stevens Border & Micoleau LLC and Linklaters.

[53] *See, e.g.*, the Letters of Cleary; Cravath, Swaine & Moore (''Cravath''); Ford Motor Company; Linklaters; Sullivan & Cromwell (''S&C'').

[54] *See, e.g.*, the Letter of CII.

[55] Compare, *e.g.*, the Letters of ABA; AICPA; American Bankers Association; the Association of the Bar of the City of New York (''NYCBA''); CenturyTel, Inc.; CSC; Deloitte; New York State Bar Association (''NYSBA''); NYSE; PwC; Siemens AG with the Letters of AFL–CIO; CalPERS; CalSTRS; CII; James Fanto; Teamsters; Transparency International—USA.

[56] *See, e.g.*, the Letters of ABA; AICPA; CenturyTel, Inc.; Deloitte; NYSE; Siemens AG; S&C.

[57] The requirement that the compensation be fixed precludes retirement payments that are tied to the continued performance of the relevant entity. The requirement that the compensation be fixed does not preclude customary objectively determined adjustment provisions such as cost of living adjustments.

[58] 15 U.S.C. 78j–1(i)(1)(B).

[59] *See, e.g.*, the Letters of CalPERS; CII; SWIB.

minimis or immaterial fees to make the requirement less restrictive.[60]

We are not persuaded that such an exception is an appropriate deviation from the explicit mandate in Exchange Act section 10A(m). We believe the policies and purposes behind that section, and particularly the use of the term ''any'' when describing such fees in the statute, weighs against providing for such an exception. Further, given the narrow class of services covered by the final rule, the lack of a *de minimis* exception should be less necessary. Moreover, if the level of compensation that the member or associated entity receives is truly *de minimis* and immaterial, we are not persuaded that requiring an issuer to locate another provider so that the member can remain qualified for audit committee service would be overly burdensome. In section II.F.5, we provide a limited accommodation to address the concerns by some commenters regarding an audit committee member that ceases to be independent for reasons outside the member's reasonable control.

3. Affiliated Person of the Issuer or Any Subsidiary Thereof

Consistent with the express requirement in Exchange Act section 10A(m)(3)(B)(ii), the second basic criterion for determining independence is that a member of the audit committee of an issuer that is not an investment company may not be an affiliated person of the issuer or any subsidiary of the issuer apart from his or her capacity as a member of the board and any board committee. Consistent with the Proposing Release, we are defining the terms ''affiliate'' and ''affiliated person'' consistent with our other definitions of these terms under the securities laws, such as in Exchange Act rule 12b–2 [61] and Securities Act rule 144,[62] with an additional safe harbor.[63] We are defining ''affiliate'' of, or a person ''affiliated'' with, a specified person, to mean ''a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.'' [64] We are defining the term ''control'' consistent with our other definitions of this term under the Exchange Act [65] as ''the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.'' [66] Commenters generally supported this approach.[67]

Our definition of ''affiliated person'' for non-investment companies, like our existing definitions of this term for these issuers, requires a factual determination based on a consideration of all relevant facts and circumstances. To facilitate the analysis on facts and circumstances where we are presumptively comfortable, we are adopting a safe harbor for that aspect of the definition of ''affiliated person,'' with minor modifications from the original proposal.[68] Under the safe harbor as adopted, a person who is not an executive officer or a shareholder owning 10% or more of any class of voting equity securities of a specified person will be deemed not to control such specified person.[69] Many commenters supported the safe harbor and the certainty it will provide to non-affiliates.[70] We have clarified in the final rule, in response to several commenter suggestions, that the ownership prong should be based on ownership of any class of voting equity securities, instead of any class of equity securities.

The Proposing Release specified that those that cannot rely on the safe harbor would not be deemed to be or presumed to be affiliates. Those persons would need to conduct a facts and circumstances analysis of control. Nevertheless, some commenters and others reporting on the proposals were concerned that the 10% shareholder prong in the safe harbor somehow is, is implied to be, or would become viewed as an upper ownership limit for non-affiliate status.[71] We have no intention of this being the case. While SROs in their listing rules could establish an upper ownership limit that would preclude independence, the safe harbor in Exchange Act Rule 10A–3 does not establish such a limit. The safe harbor is designed to identify a group of those that are *not* affiliates so as to provide comfort to those individuals or entities that no additional facts and circumstances analysis is necessary. It only creates a safe harbor position for non-affiliate status. Failing to meet the 10% ownership threshold has no bearing on whether a particular person is an affiliate based on an evaluation of all facts and circumstances. A director who is not an executive officer but beneficially owns more than 10% of the issuer's voting equity could be determined to be not an affiliate under a facts and circumstances analysis of control.

We continue to believe that a 10% ownership limit is an appropriate threshold to presume (along with the other aspects of the safe harbor) that a person is *not* an affiliate. Accordingly, we are not changing that threshold. However, the safe harbor does not in any way specify or imply that a certain level of share ownership automatically presumes that a person is an affiliate. To prevent further misconceptions, we have added an explicit paragraph to the final rule to reinforce these points.

We received several comments regarding how beneficial ownership is to be determined for purposes of the safe harbor, as well as for other aspects of the rule, such as the multiple listing exception. Accordingly, we have included an instruction to the final rule to clarify that calculations of beneficial ownership are to be made consistent with Exchange Act rule 13d–3.[72]

The proposed rules would have deemed a director, executive officer, partner, member, principal or designee of an affiliate to be an affiliate. While some commenters expressed specific

[60] *See, e.g.*, the Letters of AICPA; America's Community Bankers; American Bankers Association; American Stock Exchange, Inc. (''Amex''); Cleary; Cravath; Ford Motor Company; NYCBA; PwC; S&C.

[61] 17 CFR 240.12b–2.

[62] 17 CFR 230.144.

[63] Exchange Act section 3(a)(19), in defining several terms in relation to investment companies, includes a definition of ''affiliated person'' by reference to the Investment Company Act. Because that definition is tailored to investment companies, the definition in Exchange Act Rule 10A–3 uses a definition for non-investment companies consistent with our other definitions of ''affiliate'' for non-investment companies.

[64] *See* Exchange Act Rule 10A–3(e)(1)(i).

[65] *See, e.g.*, Exchange Act Rule 12b–2.

[66] *See* Exchange Act Rule 10A–3(e)(4).

[67] *See, e.g.*, the Letters of ABA; Cleary; CSC; Matsushita Electric Industrial Co., Ltd. (''Matsushita''); PwC; Greg Swalwell.

[68] *See* Exchange Act rule 10A–3(e)(1). Note that this safe harbor does not address the question of whether a person ''is controlled by, or is under common control with'' the issuer. We proposed a similar safe harbor from the definition of ''affiliate'' for Securities Act rule 144 in 1997. See Release No. 33–7391 (Feb. 20, 1997) [62 FR 9246].

[69] The Proposing Release also would have included a requirement that the person not be a director. Several commenters pointed out that this requirement is ambiguous because all audit committee members would be directors and the affiliate prohibition would already exclude capacity as a director. Accordingly, that requirement has been removed in the final rule. Also, the final rule clarifies that the safe harbor is available not just for determinations with respect to the issuer, but to any ''specified person.'' Thus, it is also available for determinations with respect to subsidiaries of the issuer, which are also covered by the affiliate prohibition.

[70] *See, e.g.*, the Letters of Cleary; CSC; Matsushita; Nippon Keidanren (Japan Business Federation); PwC; Greg Swalwell.

[71] *See, e.g.*, the Letters of ABA; Cravath; National Venture Capital Association; The News Corporation Limited. See also Roberta S. Karmel, ''Federalization of the Law Regarding Audit Committees,'' *New York Law Journal,* vol. 229, p. 3 (Feb. 20, 2003).

[72] 17 CFR 240.13d–3.

support for this formulation,[73] several others believed the formulation was overly broad and would capture those who may not necessarily control the affiliate, such as outside directors of an affiliate.[74] These commenters raised concerns similar to those raised regarding our proposal to include partners, members and principals in the compensatory fee prohibition. Many also were concerned that including the term ''designee'' could inadvertently mean that where there was a controlling shareholder, all directors that were elected, including those that met the independence requirements, could be considered ''designees'' of an affiliate and disqualified from service because the controlling shareholder had the power to elect all such directors.

After evaluating these comments, we are narrowing the formulation. Under the final rule, only executive officers, directors that are also employees of an affiliate, general partners and managing members of an affiliate will be deemed to be affiliates. The limitation on directors will exclude outside directors of an affiliate from the automatic designation. Also, the reference to executive officers, general partners and managing members of an affiliate includes the positions we intend to cover. This will help clarify that passive, non-control positions, such as limited partners, and those that do not have policy making functions, are not covered. The formulation for being deemed to be an affiliate is narrower than the formulation of covered positions for the indirect acceptance aspect of the ''no compensation'' prong due to their different purposes. We believe a wider formulation is necessary for the ''no compensation'' prong to capture those whose compensation is more directly linked to fees from the prohibited services but who otherwise do not hold executive positions. Finally, we have removed the term ''designee.'' However, consistent with our historical interpretations of the term ''affiliate,'' an affiliate could not evade the prohibitions in the rule simply by designating a third party representative or agent that it directs to act in its place.

For issuers that are investment companies, we are adopting, as proposed, the requirement that a member of the audit committee of an investment company may not be an ''interested person'' of the investment company, as defined in section 2(a)(19)[75] of the Investment Company Act.[76] As described in the Proposing Release, we have substituted the section 2(a)(19) test for the affiliation test applied to operating companies because the section 2(a)(19) test is tailored to capture the broad range of affiliations with investment advisers, principal underwriters, and others that are relevant to ''independence'' in the case of investment companies. Commenters supported this substitution.[77]

4. New Issuers

Under Exchange Act section 10A(m)(3)(C), we have the authority to exempt from the independence requirements particular relationships with respect to audit committee members, if appropriate in light of the circumstances. As discussed in the Proposing Release, companies coming to market for the first time may face particular difficulty in recruiting members that meet the independence requirements. Before completion of a company's initial public offering, the board of directors often will consist primarily, if not exclusively, of representatives of venture capital investors and insiders. Such representation is entirely consistent with the desire of these parties to have representation in their private venture. The difficulty of recruiting independent directors before an initial public offering, coupled with the uncertainty of whether the initial public offering will be completed, may discourage companies from accessing the public markets to grow their business and provide liquidity, as well as from achieving the other benefits of being a public company, if all of their audit committee members must be independent at the time of the initial public offering. Further, the audit committee of some new public companies may function more effectively if it can maintain historical knowledge and experience during the transition to public company status.

As a result, we proposed an exemption for one member of a non-investment company issuer's audit committee from the independence requirements for 90 days from the effective date of an issuer's initial registration statement under section 12 of the Exchange Act or a registration statement under the Securities Act covering an initial public offering of securities of the issuer. We requested comment on whether this exemption should be extended. While not all agreed,[78] the overwhelming majority of commenters believed the proposed exemption was too restrictive to address the potential problems new issuers may face.[79] Particularly given the increased focus on board service in general, and audit committee service in particular, commenters argued that additional accommodations in both the length of the exemption and the number of members covered are necessary to not overly burden access to the capital markets.

While we recognize these potential difficulties, we continue to believe that it is important to have at least some independent representation on the audit committee at the time of an initial listing, and that a majority of the committee and the full committee should reach the independence requirements as soon as practicable. Accordingly, to balance the concerns between the need for independence and the ability to recruit qualified candidates, we are adopting a revised exception for non-investment company issuers that requires at least one fully independent member at the time of an issuer's initial listing, a majority of independent members within 90 days, and a fully independent committee within one year.

5. Overlapping Board Relationships

As discussed in the Proposing Release, many companies, particularly financial institutions and other entities with a holding company structure, operate or obtain financing through subsidiaries. For these companies, the composition of the boards of the parent company and the subsidiary are sometimes similar given the control structure between the parent and the subsidiary. If an audit committee member of the parent is otherwise independent, merely serving also on the board of a controlled subsidiary should not adversely affect the board member's independence, assuming that the board member also would be considered independent of the subsidiary except for the member's seat on the parent's board. Accordingly, we proposed an exemption from the ''affiliated person'' requirement for a committee member that sits on the board of directors of both a parent and a direct or indirect consolidated

[73] *See, e.g.*, the Letter of PwC.

[74] *See, e.g.*, the Letters of ABA; Cravath; S&C.

[75] 15 U.S.C. 80a–2(a)(19).

[76] The ''interested person'' test will apply to business development companies, as well as registered investment companies. Business development companies are a category of closed-end investment company that are not registered under the Investment Company Act, but are subject to certain provisions of that Act. See sections 2(a)(48) and 54–65 of the Investment Company Act [15 U.S.C. 80a–2(a)(48) and 80a–53–64].

[77] *See, e.g.*, the Letters of ABA; Deloitte; the Investment Company Institute (''ICI'').

[78] *See, e.g.*, the Letter of SWIB.

[79] *See, e.g.*, the Letters of ABA; AICPA; Amex; CalSTRS; Cleary; CSC; Deloitte; KPMG LLP; National Venture Capital Association (''NVCA''); NYCBA; NYSE; S&C; Vinson & Elkins L.L.P.

majority-owned subsidiary, if the committee member otherwise meets the independence requirements for both the parent and the subsidiary, including the receipt of only ordinary-course compensation for serving as a member of the board of directors, audit committee or any other board committee of the parent or subsidiary.

Commenters were nearly unanimous in their support for such an exemption.[80] However, many commenters believed the exemption, particularly the requirement that the subsidiary must be both consolidated and majority-owned, was overly restrictive.[81] Some companies may possess the requisite ownership to establish control, but may not consolidate the subsidiary due to particular accounting situations.[82] Others may have the requisite control to consolidate by means other than ownership and therefore may not meet the ownership test. Several commenters were particularly concerned regarding unconsolidated 50% owned joint ventures, arguing that many of the reasons provided by the Commission for the exemption apply as well to such joint ventures where two parents exercise joint control.[83] Other commenters noted that while the Commission's proposal addresses parents and subsidiaries, it did not provide similar accommodations for independent directors that serve on boards of sibling subsidiaries under common control of a parent, if such directors would be independent other than for the fact that the two sibling subsidiaries are affiliated through the parent.

To address these concerns, we are expanding the exemption. Under the final rule, an audit committee member may sit on the board of directors of a listed issuer and any affiliate so long as, except for being a director on each such board of directors, the member otherwise meets the independence requirements for each such entity, including the receipt of only ordinary-course compensation for serving as a member of the board of directors, audit committee or any other board committee of each such entity. Under the revised exemption, audit committee members will still be required to be independent of the issuer and its affiliate, but the exemption will now apply regardless of the source of control.

There are some foreign private issuers that operate under a dual holding company structure.[84] Each holding company is a foreign private issuer organized in a different national jurisdiction. The holding companies together collectively own and supervise the management of one or more businesses conducted as a single economic enterprise. The holding companies do not conduct any business other than collectively owning and supervising such businesses. The boards of directors of these dual holding companies may have all, some or no members in common. The dual holding companies may have established a joint audit committee for the group consisting of directors from each dual holding company. The audit committee members of such entities would otherwise meet the independence requirements for the overall group, but could technically be considered affiliates, or as persons who are not directors, because of the particular structural form of the dual holding companies. We are providing an accommodation for such dual holding companies. First, where a listed issuer is one of two dual holding companies, those companies may designate one audit committee for both companies so long as each member of the audit committee is a member of the board of directors of at least one of such dual holding companies. Second, dual holding companies will not be deemed to be affiliates of each other by virtue of their dual holding company arrangements with each other, including where directors of one dual holding company are also directors of the other dual holding company, or where directors of one or both dual holding companies are also directors of the businesses jointly controlled, directly or indirectly, by the dual holding companies (and in each case receive only ordinary-course compensation for serving as a member of the board of directors, audit committee or any other board committee of the dual holding companies or any entity that is jointly controlled, directly or indirectly, by the dual holding companies).

6. Other Requests for Independence Exemptions

As discussed in section II.G.1 below, issuers availing themselves of exemptions from Exchange Act rule 10A–3 will generally have to disclose that fact. Apart from the two limited exemptions discussed in sections II.B.4 and 5 above and the exemptions for controlling persons, foreign governmental board representatives and non-management employee members of foreign private issuers discussed in section II.F.3.a below, we are not exempting other particular relationships from the independence requirements at this time.

We noted in the Proposing Release that despite the existence of exemptions based on exceptional and limited circumstances in several existing SRO rules,[85] section 10A(m) of the Exchange Act, as enacted by Congress, does not contain any such exemption. Nevertheless, we requested comment as to whether such an exemption would be appropriate. Commenters were split on this point, with the commenters representing investors and investor groups not supporting such an exemption, and the commenters predominantly representing SROs supporting the freedom to provide such exemptions.[86] Some of the commenters that advocated against the exemption were concerned that the existing SRO exceptions have been or could be applied in practice more broadly than intended, though some commenters supporting such an exemption disputed this point. Consistent with our proposal, our final rules do not contain any exemptions based on exceptional and limited circumstances.

We also announced in the Proposing Release that, given the policy and purposes behind the Sarbanes-Oxley Act, as well as to maintain consistency and to ease administration of the requirements by the SROs, we do not intend to entertain exemptions or waivers for particular relationships on a case-by-case basis.[87] We requested comment on whether we should permit companies to request exemptive relief from the Commission or SROs on a case-by-case basis. Commenters also were split on this point, again with the commenters representing predominantly investors and investor groups not supporting case-by-case

[80] *See, e.g.*, America's Community Bankers; American Bankers Association; CalPERS; CSC; Deloitte; NYSE; PwC; Southern Company; Greg Swalwell. But see the Letter of SWIB.

[81] *See, e.g.*, the Letters of Dow Corning Corporation; Michael Groll; Kinder Morgan Energy Partners, L.P.; S&C.

[82] *See, e.g.*, the Letter of Michael Groll.

[83] *See, e.g.*, the Letter of Dow Corning Corporation.

[84] *See, e.g.*, the Letters of Reed Elsevier PLC; Royal Dutch Petroleum Company; Unilever PLC.

[85] See, for example, section 303.01 of the NYSE's listing standards; Rule 4350(d) of the NASD's listing standards and section 121B of the AMEX's listing standards. The rules of the NYSE, NASD and AMEX are available on their Web sites at *http://www.nyse.com, http://www.nasd.com* and *http://www.amex.com,* respectively.

[86] Compare, *e.g.*, the Letters of CalPERS; CII; CSC; Deloitte; PwC; SWIB, with the Letters of AICPA; Amex; The Nasdaq Stock Market, Inc. (''Nasdaq''); NVCA.

[87] Similarly, Commission staff will not entertain no-action letter or exemption requests in this area.

relief.[88] After carefully considering these comments, we still believe that general case-by-case exemptions would be neither appropriate nor consistent with the policies and purposes of the Sarbanes-Oxley Act. However, as requested by many commenters,[89] the Commission has exemptive authority to respond to, and will remain sensitive to, evolving standards of corporate governance, including changes in U.S. or foreign law, to address any new conflicts that cannot be anticipated at this time.

B. Responsibilities Relating to Registered Public Accounting Firms

1. Scope of the Requirement

One of the audit committee's primary functions is to enhance the independence of the audit function, thereby furthering the objectivity of financial reporting. The Commission has long recognized the importance of an auditor's independence in the audit process.[90] The auditing process may be compromised when a company's outside auditors view their main responsibility as serving the company's management rather than its full board of directors or its audit committee. This may occur if the auditor views management as its employer with hiring, firing and compensatory powers. Under these conditions, the auditor may not have the appropriate incentive to raise concerns and conduct an objective review. Further, if the auditor does not appear independent to the public, then investor confidence is undermined and one purpose of the audit is frustrated. One way to help promote auditor independence, then, is for the auditor to be hired, evaluated and, if necessary, terminated by the audit committee. This would help to align the auditor's interests with those of shareholders.

Accordingly, we are adopting as proposed the requirement that the audit committee of a listed issuer will need to be directly responsible for the appointment, compensation, retention and oversight of the work of any registered public accounting firm engaged (including resolution of disagreements between management and the auditor regarding financial reporting) for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the issuer, and the independent auditor will have to report directly to the audit committee.[91] These oversight responsibilities include the authority to retain the outside auditor, which includes the power not to retain (or to terminate) the outside auditor. In addition, in connection with these oversight responsibilities, the audit committee must have ultimate authority to approve all audit engagement fees and terms.[92]

Overall, commenters supported the requirement as proposed, believing additional specificity is not needed and flexibility should be given to the audit committee regarding the execution of these responsibilities, without rigid rules.[93] A few commenters, however, suggested that we should limit the requirement to cover only certain registered public accounting firms that perform audit, review or attest services for the issuer, that we should limit the coverage of services specified by the proposal, or that we should clearly delineate which oversight responsibilities remain with management.[94] We believe these specific decisions regarding the execution of the audit committee's oversight responsibilities, as well as decisions regarding the extent of desired involvement by the audit committee, are best left to the discretion of the audit committee of the individual issuer in assessing the issuer's individual circumstances. Accordingly, we are not limiting the oversight responsibilities provided by the statute and the proposal.

Some commenters requested further clarification regarding the scope of the services included in the requirement, including ''audit, review or attest services.'' We believe these services encompass the same services covered in the ''Audit Fees'' category in an issuer's disclosure of fees paid to its independent public accountants. As discussed in our recent release revising the Commission's auditor independence requirements,[95] this category includes services that normally would be provided by the accountant in connection with statutory and regulatory filings or engagements. In addition to services necessary to perform an audit or review in accordance with Generally Accepted Auditing Standards (''GAAS''),[96] this category also may include services that generally only the independent accountant reasonably can provide, such as comfort letters, statutory audits, attest services, consents and assistance with and review of documents filed with the Commission. This approach does not affect the operation of other Commission rules regarding permissible services or preclude the audit committee from oversight or other involvement in the provision of audit-related or other permissible services.

In the Proposing Release, we requested comment on whether other responsibilities not listed in Exchange Act section 10A(m) should be under the supervision of the audit committee, such as the appointment, compensation, retention and oversight of an issuer's internal auditor. Commenters were split on whether the Commission should mandate oversight responsibility regarding an issuer's internal auditor, with the majority not supporting action by the Commission at this time.[97] Given this split, we are not extending the responsibility requirement to include such oversight.

2. Clarifications Regarding Possible Conflicts With Other Requirements

We proposed adding an instruction to the rule to clarify that the requirements regarding auditor responsibility do not conflict with, and are not affected by, any requirement under an issuer's governing law or documents or other home country requirements that requires shareholders to elect, approve or ratify the selection of the issuer's auditor. The requirements instead relate to the assignment of responsibility to oversee the auditor's work as between the audit committee and management. Commenters welcomed this

[88] Compare, *e.g.*, the Letters of AICPA; CalPERS; CII; CSC; NVCA; the Comptroller of the State of New York; PwC; SWIB, with the Letters of Amex; Deloitte; Ralph S. Saul; S&C.

[89] *See, e.g.*, the Letters of Association of Private French Enterprises—Association of Large French Enterprises (''AFEP–AGREF''); Cleary; Italian Association of Limited Liability Companies (''Assonime''); NYSE.

[90] The federal securities laws recognize the importance of independent auditors. *See, e.g.*, Items 25 and 26 of Schedule A of the Securities Act and sections 12(b)(1)(J) and 13(a)(2) of the Exchange Act [15 U.S.C. 78l(b)(1)(J) and 78m(a)(2)]. See also Title II of the Sarbanes-Oxley Act [Pub. L. 107–204, Title II, 116 Stat. 771–75].

[91] In response to several commenters' questions, we have removed the phrase ''or related work'' from the final rule where describing the preparation and issuance of an issuer's audit report. We believe the reference to ''or other audit, review or attest services'' appropriately delineates the intention behind the phrase ''or related work.''

[92] *See* also Release No. 33–8183 (Jan. 28, 2003). In response to several commenters' questions, these responsibilities are provided as examples and are not intended to be an exclusive list of responsibilities.

[93] *See, e.g.*, the Letters of AICPA; CalSTRS; Financial Executives Institute (''FEI'').

[94] *See, e.g.*, the Letters of Deloitte; Ernst & Young LLP (''E&Y''); PwC; State Street.

[95] *See* Release No. 33–8183 (Jan. 28, 2003).

[96] *See* also section 2(a)(2) of the Sarbanes-Oxley Act which defines the term ''audit.''

[97] Compare, *e.g.*, the Letters of Francisco J. Barragan; Melody Boehl; Marcus B. Elliott; Institute of Internal Auditors; and National Association of Corporate Directors with the Letters of ABA; Canadian Bankers Association (''CBA''); CSC; Deloitte; FEI; C.H. Moore, Jr.; Nasdaq; NYSBA; and NYSE.

clarification.[98] However, several commenters recommended extending the instruction to include other requirements in the rule, such as auditor compensation and termination, to address foreign requirements that vest these responsibilities with shareholders.[99] We agree with these commenters that the same reasons that justify the clarification regarding auditor selection justify an extension to these other responsibilities. We also agree with those commenters that noted that the clarification should apply even if shareholders are not required to vote on the responsibilities, but voluntarily elect to do so.[100]

Accordingly, we are expanding the instruction. The revised instruction clarifies that none of the audit committee requirements in the final rule conflicts with, nor do they affect the application of, any requirement or ability under an issuer's governing law or documents or other home country legal or listing provisions that requires or permits shareholders to ultimately vote on, approve or ratify such requirements. In addition, we are adopting as proposed the further clarification that if such responsibilities are vested with shareholders, and the issuer provides a recommendation or nomination regarding such matters to its shareholders, the audit committee of the issuer, or body performing similar functions, must be responsible for making the recommendation or nomination.

The proposed instruction also included a clarification that the requirement that the audit committee select auditors does not conflict with any requirement in a company's home jurisdiction that prohibits the full board of directors from delegating such responsibility to a committee. In that case, the audit committee would need to be granted advisory and other powers with respect to such matters to the extent permitted by law, including submitting nominations or proposals to the full board. Several commenters noted that this instruction should be expanded to address other responsibilities in the final rule for the same reasons as those relating to shareholder approval.[101] In some jurisdictions, boards may be prohibited from delegating such responsibilities to a committee, including the ability to submit nominations or recommendations to shareholders as called for in the instruction regarding shareholder approval of such matters.

Accordingly, we are expanding the instruction to cover other situations where the board of directors may be prohibited from delegating responsibility to the audit committee, including the ability to submit nominations or recommendations to shareholders. The revised instruction clarifies that none of the audit committee requirements in the final rule, including the requirement that the audit committee provide recommendations to shareholders where such responsibilities are vested with shareholders, conflicts with any legal or listing requirement in an issuer's home jurisdiction that prohibits the full board of directors from delegating such responsibilities to the audit committee or limits the degree of such delegation. However, we continue to believe that in such an instance, the audit committee, or body performing similar functions, must be granted such responsibilities, which can include advisory powers, with respect to such matters to the extent permitted by law, including submitting nominations or recommendations to the full board of directors.

Finally, some commenters noted that in some jurisdictions, the outside auditor can only be removed by court order upon specified circumstances.[102] Other commenters noted that the government is required to select the outside auditor for some foreign private issuers. Similar to the previous instructions, we are providing an additional instruction to clarify that the requirements in the final rule do not conflict with any legal or listing requirement in an issuer's home jurisdiction vesting such responsibilities with a government entity or tribunal. Similar to the other instructions, in such an instance we believe the audit committee should be granted such responsibilities, which can include advisory powers, with respect to such matters to the extent permitted by law.

Some commenters requested that we provide for these clarifications as explicit exemptions from the final rule. As noted previously, however, we believe that the rule's requirements relate to the assignment of such responsibilities as between the audit committee and management. They do not conflict with, and otherwise have no bearing on, the vesting of such responsibilities in other bodies such as shareholders or government entities. Accordingly, we believe it is more appropriate to clarify what the requirements do not apply to or conflict with in the form of an instruction rather than an exemption.

3. Application to Investment Companies

We proposed to exempt investment companies from the requirement that the audit committee be responsible for the selection of the independent auditor. We proposed the exemption in light of section 32(a) of the Investment Company Act,[103] which requires that independent auditors of registered investment companies be selected by majority vote of the disinterested directors.[104]

On January 28, 2003, we adopted amendments to our existing requirements regarding auditor independence.[105] Those amendments require that the audit committee of a registered investment company pre-approve all audit, review, or attest engagements required under the securities laws, a requirement that was supported by the commenters.[106] In order to conform the rules that we are adopting today to the auditor independence rules, we are removing the proposed exemption for investment companies from the requirements regarding selection of the auditor. As a result, the audit committee will be required to select the independent

[98] *See, e.g.*, the Letters of AICPA; The Treasury of the Government of Australia; CalPERS; Deloitte; Financial Services Agency of Japan (''FSA''); German CFOs; NYSE; PwC; Alexander Schaub; Telekom Austria AG.

[99] *See, e.g.*, the Letters of Assonime; Canadian Bankers Association; Cleary; PwC; S&C.

[100] *See, e.g.*, the Letter of Cleary.

[101] *See, e.g.*, the Letters of Brazilian Securities Commission; Cleary; S&C.

[102] *See, e.g.*, the Letters of Aventis SA; Deloitte; France Telecom SA.

[103] 15 U.S.C. 80a–31(a).

[104] Section 32(a) applies to management investment companies and face-amount certificate companies. It does not apply to unit investment trusts, which do not have boards of directors and which we are excluding entirely from the requirements that we are adopting today. *See* section II.F.3.d. concerning unit investment trusts.

There are three types of investment companies: face-amount certificate companies, unit investment trusts and management companies. *See* section 4 of the Investment Company Act [15 U.S.C. 80a–4]. The Investment Company Act divides management companies into two sub-categories, defining an open-end company as a management company that offers for sale or has outstanding any redeemable securities of which it is the issuer and a closed-end company as any management company other than an open-end company. *See* section 5(a) of the Investment Company Act [15 U.S.C. 80a–5(a)]. A unit investment trust is an investment company that is organized under a trust indenture, contract of custodianship or agency, or similar instrument; does not have a board of directors; and issues only redeemable securities, each of which represents an undivided interest in a unit of specified securities, but does not include a voting trust. *See* section 4(2) of the Investment Company Act of 1940 [15 U.S.C. 80a–4(2)].

[105] *See* Release No. 33–8183 (Jan. 28, 2003).

[106] *See, e.g.*, Letter of Investment Company Institute dated January 13, 2003, in response to Release No. 33–8154 (Dec. 2, 2002) [67 FR 76780], proposing auditor independence rules adopted in Release No. 33–8183 (Jan. 28, 2003).

auditor and, under section 32(a) of the Investment Company Act, the independent directors will be required to ratify the selection.

C. Procedures for Handling Complaints

The audit committee must place some reliance on management for information about the company's financial reporting process. Since the audit committee is dependent to a degree on the information provided to it by management and internal and outside auditors, it is imperative for the committee to cultivate open and effective channels of information. Management may not have the appropriate incentives to self-report all questionable practices. A company employee or other individual may be reticent to report concerns regarding questionable accounting or other matters for fear of management reprisal.[107] The establishment of formal procedures for receiving and handling complaints should serve to facilitate disclosures, encourage proper individual conduct and alert the audit committee to potential problems before they have serious consequences.

Accordingly, under the listing standards called for by our final rules, each audit committee must establish procedures for:[108]

- The receipt, retention and treatment of complaints received by the issuer regarding accounting, internal accounting controls or auditing matters, and
- The confidential, anonymous submission by employees of the issuer of concerns regarding questionable accounting or auditing matters.

As proposed, we are not mandating specific procedures that the audit committee must establish. Commenters were split over whether specific procedures should be mandated. The minority, representing primarily consultants and other third-party providers of such services, as well as several commenters representing investors, believed the Commission should mandate specific procedures, and many advocated a national ''one-size-fits-all'' approach.[109] A substantial number of commenters, however, supported the Commission's approach of not mandating specific procedures, instead preferring to leave flexibility to the audit committee to develop appropriate procedures in light of a company's individual circumstances, so long as the required parameters are met.[110]

Given the variety of listed issuers in the U.S. capital markets, we believe audit committees should be provided with flexibility to develop and utilize procedures appropriate for their circumstances. The procedures that will be most effective to meet the requirements for a very small listed issuer with few employees could be very different from the processes and systems that would need to be in place for large, multi-national corporations with thousands of employees in many different jurisdictions. We do not believe that in this instance a ''one-size-fits-all'' approach would be appropriate. As noted in the Proposing Release, we expect each audit committee to develop procedures that work best consistent with its company's individual circumstances to meet the requirements in the final rule. Similarly, we are not adopting the suggestion of a few commenters that, despite the statutory language, the requirement should be limited to only employees in the financial reporting area.[111]

While the scope of the requirements generally includes complaints received by a listed issuer regardless of source, Exchange Act section 10A(m)(4)(B) and the relevant portion of the rules referring to confidential, anonymous submission of concerns are directed to employees of the issuer. One commenter noted that investment companies rarely have direct employees.[112] The commenter suggested that, for investment companies, the confidential, anonymous submission requirements should extend to employees of entities engaged by an investment company to prepare or assist in preparing its financial statements. We encourage the SROs to consider the appropriate scope of the requirement with regard to investment companies, taking account of the fact that most services are rendered to an investment company by employees of third parties, such as the investment adviser, rather than by employees of the investment company.[113]

D. Authority to Engage Advisors

To be effective, an audit committee must have the necessary resources and authority to fulfill its function. The audit committee likely is not equipped to self-advise on all accounting, financial reporting or legal matters. To perform its role effectively, therefore, an audit committee may need the authority to engage its own outside advisors, including experts in particular areas of accounting, as it determines necessary apart from counsel or advisors hired by management, especially when potential conflicts of interest with management may be apparent.

The advice of outside advisors may be necessary to identify potential conflicts of interest and assess the company's disclosure and other compliance obligations with an independent and critical eye. Often, outside advisors can draw on their experience and knowledge to identify best practices of other companies that might be appropriate for the issuer. The assistance of outside advisors also may be needed to independently investigate questions that may arise regarding financial reporting and compliance with the securities laws. Accordingly, as proposed, the final rule specifically requires an issuer's audit committee to have the authority to engage outside advisors, including counsel, as it determines necessary to carry out its duties.[114] Commenters supported this requirement as proposed.[115]

E. Funding

An audit committee's effectiveness may be compromised if it is dependent on management's discretion to compensate the independent auditor or the advisors employed by the committee, especially when potential conflicts of interest with management may be apparent. Accordingly, as proposed, the final rule requires the issuer to provide for appropriate funding, as determined by the audit committee, in its capacity as a

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[107] The Sarbanes-Oxley Act provides additional protections for employees who provide evidence of fraud. See, for example, section 806 of the Sarbanes-Oxley Act.

[108] Exchange Act rule 10A–3 is not intended to preempt or supersede any other federal or state requirements relating to receipt and retention of records.

[109] *See, e.g.*, the Letters of AuditConcerns, Inc.; CalPERS; Michael Chenkin; Confidential Communications Services, LLC; David Gold; The HR Hotline, Inc.; SWIB; Teamsters.

[110] *See, e.g.*, the Letters of ABA; AICPA; American Bankers Association; Cleary; CSC; Deloitte; Edison Electric Institute; E&Y; FEI; ICI; Nasdaq; The Network, Inc.; NYCBA; NYSBA; PSEG; PwC; Ralph S. Saul; State Street Corporation.

[111] *See, e.g.*, the Letter of S&C.

[112] *See* the Letter of PwC.

[113] Compare Release No. 33–8185 (Jan. 29, 2003) (attorney employed by an investment adviser who prepares, or assists in preparing, materials for a registered investment company to be submitted to or filed with the Commission by or on behalf of the investment company is appearing and practicing before the Commission); Release No. 34–47262 (Jan. 27, 2003) (disclosure required of code of ethics applicable to the principal executive officer and financial officer of a registered management investment company, or persons performing similar functions, regardless of whether they are employees of the investment company or a third party).

[114] As proposed, the requirement does not preclude access to or advice from the company's internal counsel or regular outside counsel. It also does not require an audit committee to retain independent counsel.

[115] *See, e.g.*, the Letters of AICPA; CSC; Deloitte; FEI; ICI; PwC.

committee of the board of directors, for payment of compensation:

- To any registered public accounting firm engaged for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the listed issuer;[116] and
- To any advisors employed by the audit committee.

This requirement will further the standard relating to the audit committee's responsibility to appoint, compensate, retain and oversee the outside auditor. It also will add meaning to the standard relating to the audit committee's authority to engage independent advisors. Not only could an audit committee be hindered in its ability to perform its duties objectively by not having control over the ability to compensate these advisors, but the role of the advisors also could be compromised if they are required to rely on management for compensation. Thus, absent such a provision, both the audit committee and the advisors could be less willing to address disagreements or other issues with management.

Commenters supported this requirement.[117] We also requested comment on whether there should be limits on the amount of compensation that could be requested by the audit committee. The overwhelming majority of commenters did not support compensation limits, arguing that to do otherwise would subvert the intent of the requirement.[118] These commenters argued that audit committee members' own fiduciary duties to the issuer and natural oversight by the board of directors as a whole over the audit committee would address any concerns over abuse. The final rule does not set funding limits.

Some commenters believed it would be appropriate to supplement the funding requirements.[119] While the Commission's proposal would address the compensation of advisors, it would not provide assurance that the audit committee itself can obtain the funding it needs to carry out its duties. Specifically, these commenters believed the final rule should also state that the issuer must provide appropriate funding for ordinary administrative expenses of the audit committee. We find merit in this suggestion. An audit committee's effectiveness may be compromised if it is dependent on management's discretion to pay for the committee's expenses, especially when potential conflicts of interest with management may be apparent. Accordingly, the final rule provides that, in addition to funding for advisors, the issuer must provide appropriate funding for ordinary administrative expenses of the audit committee that are necessary or appropriate in carrying out its duties.

F. Application and Implementation of the Standards

1. SROs Affected and Implementation Dates

Section 10A(m) of the Exchange Act by its terms applies to all national securities exchanges and national securities associations. These entities, to the extent that their listing standards do not already comply with the final rule, will be required to issue or modify their rules, subject to Commission review, to conform their listing standards.[120] The SROs are not precluded from adopting additional listing standards regarding audit committees, as long as they are consistent with Exchange Act rule 10A–3.

To facilitate timely implementation of the requirements, we proposed compliance dates by when each SRO must provide to the Commission proposed rules and rule amendments to implement Exchange Act rule 10A–3, as well as by when such rules or rule amendments must be approved by the Commission. As proposed, SROs would have had until 60 days after publication of our final rule in the **Federal Register** to provide proposed rules or rule amendments, and until 270 days after publication of our final rule to have such rules or rule amendments approved by the Commission. Commenters generally supported these compliance dates, although several requested additional time to submit the proposed rules and rule amendments.[121]

In response to these comments, the SRO compliance dates we are adopting in the final rule are designed to facilitate timely implementation of the new requirements, while providing additional time for SROs to submit proposed rules or rule amendments. Under the final rule, each SRO must provide to the Commission proposed rules or rule amendments that comply with the requirements no later than July 15, 2003. Final rules or rule amendments must be approved by the Commission no later than December 1, 2003.

Regarding when listed issuers must be in compliance with the new listing rules, we proposed that the new requirements would need to be operative by the SROs no later than the first anniversary of the publication of our final rule in the **Federal Register**. A few commenters believed the proposed implementation dates were adequate for issuers to make the necessary changes to their audit committees, arguing that timely implementation is key to restoring investor confidence and public trust.[122] However, a substantial group of commenters recommended modifications and additional time for issuers to comply, for three primary reasons.

First, commenters noted that the new requirements as proposed would become operative during the 2004 annual shareholder meeting period for most listed issuers.[123] Given the importance of allowing issuers to identify, evaluate and recruit qualified directors, as well as the desirability of avoiding the burden and expense of requiring special shareholder meetings to elect those directors, commenters requested the ability to coordinate compliance with their annual shareholder meeting schedule, such as the first annual shareholders meeting after approval of the SRO implementing rules, which could occur after the original compliance date proposed by the Commission.

Second, several commenters requested additional time for compliance by foreign private issuers.[124] The new SRO rules may represent the first time that some foreign listed issuers will be subject to such requirements. Some were concerned that the pool of candidates available in some countries that would be qualified to perform the functions required of audit committee members may be limited. As such, it may take additional time to locate and attract qualified directors.

Finally, several commenters requested accommodations for smaller listed

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[116] Exchange Act section 10A(m)(6)(A) uses the phrase ''rendering or issuing an audit report.'' For consistency, we have conformed the language in the final rule to the language used in the oversight requirement in Exchange Act section 10A(m)(2) which refers to ''preparing or issuing an audit report.'' Similarly, the final rule includes as proposed the phrase ''other audit, review or attest services.'' *See* section II.B.1 regarding a discussion of the scope of this formulation.

[117] *See, e.g.,* the Letters of AICPA; CalPERS; Deloitte; FEI; ICI; PwC.

[118] Compare, *e.g.,* the Letters of ABA; Deloitte; E&Y; FEI; PwC with the letters of Southern Company; CalPERS.

[119] *See, e.g.,* the ABA Letter.

[120] An SRO that wished to do so could satisfy the requirements of the rule by requiring that a listed issuer must comply with the requirements set forth in Exchange Act rule 10A–3.

[121] *See, e.g.*, the Letters of ABA; NYSE.

[122] *See, e.g.*, the Letters of CalPERS; CII; CSC; ICI; PwC.

[123] *See, e.g.*, the Letters of ABA; AFEP–AGREF; AXA SA; Cleary; German CFOs; Nippon Keidanren; JPMorgan Chase Bank; Matsushita.

[124] *See, e.g.*, the Letters of Cleary; Davis Polk & Wardwell; Deloitte; European Federation of Accountants (''FEE''); PwC; Telekom Austria AG.

issuers.[125] These issuers may need additional time to locate a sufficient number of qualified directors to meet the requirements. In addition, small business issuers that are listed on some markets, such as Nasdaq, have previously been exempt from listing requirements that require independence for the entire audit committee.[126] Commenters requested an additional transition period for such companies to alleviate the potential burdens they may face.

In response to these concerns, we are adopting a revised set of implementation dates, with an extended date for foreign private issuers and smaller issuers. We are distinguishing listed issuers that are not foreign private issuers by size based upon whether they are a ''small business issuer,'' as defined in Exchange Act rule 12b–2. A small business issuer is a U.S. or Canadian issuer with less than $25 million in revenues and public float that is not an investment company.[127]

Under the final rule, listed issuers, other than foreign private issuers and small business issuers, must be in compliance with the new listing rules by the earlier of (1) their first annual shareholders meeting after January 15, 2004, or (2) October 31, 2004. Foreign private issuers and small business issuers must be in compliance with the new listing rules by July 31, 2005. We believe these dates strike an appropriate balance between the need for timely implementation of the requirements and the ability of listed issuers to comply with the requirements without an unreasonable burden.

As discussed in the Proposing Release, the OTC Bulletin Board (OTCBB), the Pink Sheets and the Yellow Sheets are not affected by Exchange Act rule 10A–3, and therefore issuers whose securities are quoted on these interdealer quotation systems similarly will not be affected, unless their securities also are listed on an exchange or Nasdaq.[128] Each of these quotation systems does not provide issuers with the ability to list their securities, but is a quotation medium for the over-the-counter securities market that collects and distributes market maker quotes to subscribers. These interdealer quotation systems do not maintain or impose listing standards, nor do they have a listing agreement or arrangement with the issuers whose securities are quoted through them. Although market makers may be required to review and maintain specified information about the issuer and to furnish that information to the interdealer quotation system,[129] the issuers whose securities are quoted on such systems do not have any filing or reporting requirements with the system.[130]

2. Securities Affected

In enacting section 10A(m) of the Exchange Act, Congress made no distinction regarding the type of securities to be covered. Section 10A(m)(1)(A) of the Exchange Act prohibits the listing of ''any security'' of an issuer that does not meet the new standards for audit committees. Accordingly, the final rule applies not just to voting equity securities, but to any listed security, regardless of its type, including debt securities, derivative securities and other types of listed securities. We believe investors in all securities of an issuer, whether common equity or fixed income, will benefit from the increased financial oversight of an issuer that would result from a strong and effective audit committee.

Despite the statutory language, a few commenters believed that debt securities and non-convertible preferred securities should be exempted in their entirety.[131] As discussed above, we do not believe such a broad-based exemption is consistent with the language and the intent of section 10A(m). Effective oversight of financial reporting improves the quality and accuracy of such reporting. Quality and accurate financial reporting facilitates the proper pricing and liquidity of all securities on listed markets, regardless of type. While the Sarbanes-Oxley Act made explicit distinctions between debt and equity securities in several different provisions,[132] it made no such distinction in enacting Exchange Act section 10A(m). To avoid undue burden on listed issuers, including debt issuers, we have adopted several exemptions where consistent with the purposes and policies of section 10A(m) and the protection of investors, such as the overlapping board exemption discussed in section II.A.5 and the multiple listing exemption discussed below.

a. Multiple Listings

Many companies today issue multiple classes of securities through various ownership structures on various markets. For example, a company may have a class of common equity securities listed on one market, several classes of debt listed on one or more other markets, and derivative securities listed on yet another market. If an issuer already was subject to the requirements in Exchange Act rule 10A–3 as a result of one listing, there would be little or no additional benefit from having the requirements imposed on the issuer due to an additional listing.

In addition, companies often issue non-equity securities through controlled subsidiaries for various reasons. Requiring these subsidiaries, which often have no purpose other than to issue or guarantee the securities, to be subject to the audit committee requirements would add little additional benefit if the subsidiary is closely controlled or consolidated by a parent issuer that is subject to the requirements. Instead, imposing the requirements on these subsidiaries could create an onerous burden on the parent to recruit and maintain an audit committee meeting the requirements for each specific subsidiary.

Accordingly, we are adopting as proposed an exemption from the requirements for listings of additional classes of securities of an issuer at any time the issuer is subject to the requirements as a result of the listing of a class of common equity or similar securities. The additional listings could be on the same market or on different markets. Some commenters questioned conditioning the exemption on the listing of a class of common equity or similar securities.[133] We proposed conditioning this exemption on the listing of a class of common equity or similar securities because these securities will most likely represent the primary public listing of the company and the applicable listing standards, including those required by our rules, would be likely to be the most comprehensive. We are persuaded that this approach is proper in respect of the listing of subsidiaries' securities, but it is not necessary in the case of multiple listings of the issuer itself. Therefore,

[125] *See, e.g.*, the Letters of ABA; Amex; Nasdaq.

[126] *See, e.g.*, rule 4350(d)(2)(C) of the NASD's listing standards.

[127] Public float is the aggregate market value of a company's outstanding voting and non-voting common equity (*i.e.*, market capitalization) minus the value of common equity held by affiliates of the company.

[128] The OTCBB is operated by The Nasdaq Stock Market, Inc., which is owned by the NASD. Information about the OTCBB can be found at *http://www.otcbb.com*. The Pink Sheets and the Yellow Sheets (as well as the corresponding Electronic Quotation Service) are operated by Pink Sheets LLC. Information about the Pink Sheets, the Yellow Sheets and the Electronic Quotation Service can be found at *http://www.pinksheets.com.*

[129] *See* 17 CFR 240.15c2–11.

[130] However, under OTCBB rules, issuers of securities quoted on the OTCBB must be subject to periodic filing requirements with the Commission or other regulatory authority. *See* NASD rule 6530.

[131] *See, e.g.*, the Letters of ABA; NYSE; S&C.

[132] *See, e.g.*, section 501 of the Sarbanes-Oxley Act.

[133] *See, e.g.*, the Letters of ABA; NYSBA.

the exemption for additional classes of a listed issuer will apply if any class of securities of the issuer is listed on a national securities exchange or national securities association subject to these rules.

Of course, just as an SRO may adopt standards for audit committees that are stricter than those provided in Exchange Act rule 10A–3, they also may apply their listing standards, including those implementing Exchange Act rule 10A–3, to classes of securities where Exchange Act rule 10A–3 would not require it. For example, in the case of an issuer with a class of debt securities listed on an SRO subject to these rules, another SRO may condition listing by that issuer of its common equity securities on full compliance with that second SRO's listing standards regarding the requirements in Exchange Act rule 10A–3. Moreover, our rules do not embody a ''first in time'' principle, so that in the above example, once the class of common equity securities was listed on the second SRO subject to our requirements, unless SRO rules provide otherwise, the multiple listing exemption could be applied in respect of the debt securities listed on the first SRO.

Also as proposed, we are extending the exemption to listings of non-equity securities by certain additional subsidiaries of a parent company, if the parent company is subject to the requirements as a result of the listing of a class of equity securities. We proposed having the exemption apply to non-equity listings by direct or indirect consolidated majority-owned subsidiaries of a parent company. While commenters uniformly supported the exemption,[134] some believed that, for many of the same reasons discussed above regarding the independence exemption for overlapping boards of directors, the number of subsidiaries that would be covered by the multiple listing exemption was too restrictive.[135]

In this instance, however, we believe that a greater degree of interest between the parent and the subsidiary is important. The multiple listing exemption will mean that, unless an SRO's rules provide otherwise, a publicly traded entity will not need to have any independent audit committee members or otherwise be subject to the audit committee responsibilities in Exchange Act rule 10A–3. It is more important in this instance to ensure that the parent company's audit committee is in the appropriate position to provide oversight for the financial reporting of the subsidiary. This is most likely to be the case if the parent consolidates the subsidiary into its own financial statements. Nevertheless, we also understand that a parent may possess the requisite ownership threshold, but may not consolidate the subsidiary due to particular accounting situations.[136] Similarly, 50% owned joint ventures may not be consolidated by the two parents that exercise joint control.[137]

To address these concerns, we are expanding the exemption from the proposal to include listings of non-equity securities by a direct or indirect subsidiary that is consolidated or at least 50% beneficially owned by a parent company, if the parent company is subject to the requirements as a result of the listing of a class of its equity securities. However, as proposed, if the subsidiary were to list its own equity securities (other than non-convertible, non-participating preferred securities[138]), the subsidiary will be required to meet the requirements to protect its own public shareholders. The multiple listing exemption is available to U.S. subsidiaries if the parent is a foreign private issuer, even if the foreign parent is relying on one of the special exemptions for foreign private issuers (such as the board of auditors exemption). However, the special exemptions available to the foreign parent are of course not available to its U.S. subsidiary.

b. Security Futures Products and Standardized Options

The enactment of the Commodity Futures Modernization Act of 2000, or CFMA,[139] addressed the regulation of security futures products.[140] It permits national securities exchanges registered under section 6 of the Exchange Act[141] and national securities associations registered under section 15A(a) of the Exchange Act[142] to trade futures on individual securities and on narrow-based security indices (''security futures'') without being subject to the issuer registration requirements of the Securities Act and Exchange Act as long as they are cleared by a clearing agency that is registered under section 17A of the Exchange Act[143] or that is exempt from registration under section 17A(b)(7)(A) of the Exchange Act. In December 2002, we adopted rules to provide comparable regulatory treatment for standardized options.[144]

The role of the clearing agency for security futures products and standardized options is fundamentally different from a conventional issuer of securities. For example, the purchaser of these products does not, except in the most formal sense, make an investment decision regarding the clearing agency. As a result, information about the clearing agency's business, its officers and directors and its financial statements is less relevant to investors in these products than to investors in the underlying security. Similarly, the investment risk in these products is determined by the market performance of the underlying security rather than the performance of the clearing agency. Moreover, the clearing agencies are self-regulatory organizations subject to regulatory oversight. Furthermore, unlike a conventional issuer, the clearing agency does not receive the proceeds from sales of security futures products or standardized options.[145]

Recognizing these fundamental differences, we are adopting as proposed an exemption for the listing of a security futures product cleared by a clearing agency that is registered under section 17A of the Exchange Act or exempt from registration under section 17A(b)(7) of the Exchange Act. We are adopting as proposed a similar exemption for the listing of standardized options issued by a clearing agency registered under section 17A of the Exchange Act.

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[134] *See, e.g.,* the Letters of ABA; CalPERS; CSC; Edison International; Ford Motor Company; General Electric Company; General Motors Acceptance Corporation; NYSE; PSEG; PwC; Transamerica Finance Corporation (''TFC''); Southern Company.

[135] *See, e.g.,* the Letters of ABA; Cingular Wireless; Corning Incorporated; Dow Corning Corporation; FEI; PwC; S&C; TFC.

[136] *See e,g.,* the Letter of Michael Groll.

[137] *See, e.g.,* the Letters of Cingular Wireless; Corning Incorporated; Dow Corning Corporation; FEI; PwC.

[138] Trust-preferred and similar securities also fall within this category.

[139] Pub. L. No. 106–554, 114 Stat. 2763 (2000).

[140] Securities Act section 2(a)(16) [15 U.S.C. 77b(a)(16)], Exchange Act section 3(a)(56) [15 U.S.C. 78c(a)(56)], and Commodities Exchange Act section 1a(32) [7 U.S.C. 1a(32)] define ''security futures product'' as a security future or an option on a security future.

[141] 15 U.S.C. 78f.

[142] 15 U.S.C. 78o–3(A).

[143] 15 U.S.C. 78q–1.

[144] See Release No. 33–8171 (Dec. 23, 2002) [68 FR 188]. In that release, we exempted standardized options issued by registered clearing agencies and traded on a registered national securities exchange or on a registered national securities association from all provisions of the Securities Act, other than the section 17 antifraud provision of the Securities Act, as well as the Exchange Act registration requirements. Standardized options are defined in Exchange Act rule 9b–1(a)(4) [17 CFR 240.9b–1(a)(4)] as option contracts trading on a national securities exchange, an automated quotation system of a registered securities association, or a foreign securities exchange which relate to option classes the terms of which are limited to specific expiration dates and exercise prices, or such other securities as the Commission may, by order, designate.

[145] However, the clearing agency may receive a clearing fee from its members.

3. Issuers Affected

a. Foreign Issuers

As discussed in the Proposing Release, U.S. investors increasingly have been seeking opportunities to invest in a wide range of securities, including the securities of foreign issuers, and foreign issuers have been seeking opportunities to raise capital and effect equity-based acquisitions in the U.S. using their securities as the ''acquisition currency.'' The Commission has responded to these trends by seeking to facilitate the ability of foreign issuers to access U.S. investors through listings and offerings in the U.S. capital markets. We have long recognized the importance of the globalization of the securities markets both for investors who desire increased diversification and international companies that seek capital in new markets.

Section 10A(m) of the Exchange Act makes no distinction between domestic and foreign issuers. With the growing globalization of the capital markets, the importance of maintaining effective oversight over the financial reporting process is relevant for listed securities of any issuer, regardless of its domicile. Many foreign private issuers already maintain audit committees, and the global trend appears to be toward establishing audit committees.[146] Thus, as proposed, the Commission's direction to the SROs will apply to listings by foreign private issuers as well as domestic issuers.

However, as discussed in the Proposing Release, we are aware that the requirements may conflict with legal requirements, corporate governance standards and the methods for providing auditor oversight in the home jurisdictions of some foreign issuers. Even before we published the Proposing Release, several foreign issuers and their representatives had expressed concerns about the possible application of Exchange Act section 10A(m).[147] The Proposing Release prompted many thoughtful comments from dozens of foreign private issuers and their representatives from around the world. These commenters expressed overwhelming support for the Commission's approach of providing tailored exemptions and guidance where the requirements of Exchange Act section 10A(m) could result in a direct conflict with home country requirements. In our final rules, we have attempted to address commenters' concerns regarding the specific areas in which foreign corporate governance arrangements differ significantly from general practices among U.S. corporations. In addition to the clarifications discussed in section II.B., we discuss these matters below.

i. Employee Representation

We understand that some countries, such as Germany, require that non-management employees, who would not be viewed as ''independent'' under the requirements, serve on the supervisory board or audit committee.[148] Having such employees serve on the board or audit committee can provide an independent check on management, which itself is one of the purposes of the independence requirements under the Sarbanes-Oxley Act. Accordingly, we are adopting as proposed a limited exemption from the independence requirements to address this concern, so long as the employees are not executive officers, as defined by Exchange Act rule 3b–7.[149]

Commenters expressed support for this exemption.[150] Some commenters, however, recommended extending the exemption to include also non-executive employees that serve on the supervisory board or audit committee as a result of an issuer's governing law or documents or an employee collective bargaining or similar agreement. Under the final rule, non-executive employees can sit on the audit committee of a foreign private issuer if the employee is elected or named to the board of directors or audit committee of the foreign private issuer pursuant to the issuer's governing law or documents, an employee collective bargaining or similar agreement or other home country legal or listing requirements.

ii. Two-Tier Board Systems

Some foreign private issuers have a two-tier board system, with one tier designated as the management board and the other tier designated as the supervisory or non-management board. In this circumstance, we believe that the supervisory or non-management board is the body within the company best equipped to comply with the requirements. Our final rule clarifies that in the case of foreign private issuers with two-tier board systems, the term ''board of directors'' means the supervisory or non-management board for purposes of Exchange Act rule 10A–3. As such, the supervisory or non-management board can either form a separate audit committee or, if the entire supervisory or non-management board is independent within the provisions and exceptions of the rule, the entire board can be designated as the audit committee.[151] Commenters supported this clarification.[152]

iii. Controlling Shareholder Representation

Controlling shareholders or shareholder groups are more prevalent among foreign issuers than in the U.S., and those controlling shareholders have traditionally played a more prominent role in corporate governance. In jurisdictions providing for audit committees, representation of controlling shareholders on these committees is common. As proposed, we believe that a limited exception from the independence requirements can accommodate this practice without undercutting the fundamental purposes of the rule. We proposed that one member of the audit committee can be a shareholder, or representative of a shareholder or group, owning more than 50% of the voting securities of a foreign private issuer, if the ''no compensation'' prong of the independence requirements is satisfied, the member in question has only observer status on, and is not a voting member or the chair of, the audit committee, and the member in question is not an executive officer of the issuer.

Several commenters requested that the exemption be extended. Some believed the 50% ownership threshold was too high, arguing that a shareholder can exercise control through lower levels of ownership or through non-

[146] *See*, for example, ''Principles of Auditor Independence and the Role of Corporate Governance in Monitoring an Auditor's Independence,'' Statement of the IOSCO Technical Committee (Oct. 2002) (available at *http://www.iosco.org*); Egon Zehnder International, Board of Directors Global Study (2000) (available at *http://www.zehnder.com*); and KPMG LLP, Corporate Governance in Europe: KPMG Survey 2001/2002 (2002) (available at *http://www.kpmg.com*).

[147] *See, e.g.*, Petition for Rulemaking submitted by the Organization for International Investment, File No. 4–462 (Aug. 19, 2002).

[148] *See, e.g.*, Co-Determination Act of 1976 (Mitbestimmungsgesetz). The exemptions provided in the final rule are available to any foreign private issuer that meets their individual requirements. Examples provided in this release are meant to be for illustrative purposes only.

[149] Exchange Act rule 3b–7 [17 CFR 240.3b–7] defines the term ''executive officer'' as an issuer's president, any vice president of the registrant in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function or any other person who performs similar policy-making functions for the registrant. Executive officers of subsidiaries may be deemed executive officers of the issuer if they perform such policy-making functions for the issuer.

[150] *See, e.g.*, the Letters of Allianz AG; Deutsches Aktieninstitut; German CFOs; NYSE; Alexander Schaub; Telekom Austria AG.

[151] *See* note above and the accompanying text.

[152] *See, e.g.*, the Letters of AFL–CIO; CalPERS; Deutsches Aktieninstitut; FEE.

ownership means.[153] Others requested the ability to have more than one representative if there is more than one controlling shareholder.[154] A few objected to the observer-only status provided by the proposed exemption.[155]

In response to commenters' concerns, we are making minor modifications to the exemption. We are expanding the types of controlling persons covered by the exemption, but we continue to believe that it is appropriate that such representatives have only observer status on, and not be a voting member or chair of, the audit committee. Under the final rule, an audit committee member can be a representative of an affiliate of the foreign private issuer, if the ''no compensation'' prong of the independence requirements is satisfied, the member in question has only observer status on, and is not a voting member or the chair of, the audit committee, and the member in question is not an executive officer of the issuer. As revised, this limited exception is designed to address foreign practices, assure independent membership and an independent chair of the audit committee and still exclude management from the committee. As the exemption is designed to provide only a limited accommodation for the practices of some foreign private issuers, we are not extending the exemption to domestic issuers, as requested by some commenters.[156]

iv. Foreign Government Representation

Foreign governments may have significant shareholdings in some foreign private issuers or may own special shares that entitle the government to exercise certain rights relating to these issuers. However, due to their shareholdings or other rights, these representatives may not be considered independent under the final rule. To address foreign practices, we believe that foreign governmental representatives should be permitted to sit on audit committees of foreign private issuers. Commenters supported our proposal to exempt one member of the audit committee that is foreign government representative, provided the ''no compensation'' prong of the independence requirements is met and the member in question is not an executive officer of the issuer.[157] As with the exemption for controlling shareholder representatives, this limited exception is designed to address foreign practices and still exclude management from the committee. However, some believed the exemption should not be limited to just one foreign government representative if the representatives are otherwise independent and are not executive officers of the issuer. Under the final rule, any audit committee member can be a representative of a foreign government or foreign governmental entity, if the ''no compensation'' prong of the independence requirement is satisfied and the member in question is not an executive officer of the issuer.

We recognize that foreign governments may have varying arrangements relating to their state holdings. Some governments may hold shares directly, some through various branches or agencies, some through an institution organized under public law, and some by other entities. Several commenters believed the legal form of the entity that holds the governmental shareholdings should not be determinative.[158] We agree. The exemption applies regardless of the manner in which the foreign government owns its interest.

v. Listed Issuers That Are Foreign Governments

Several commenters also requested a specific exemption for listed issuers that are themselves foreign governments, as these issuers most likely would not be able to comply with the requirements. Accordingly, we are exempting in the final rule listed issuers that are foreign governments, as defined in Exchange Act rule 3b–4(a).[159]

vi. Boards of Auditors or Similar Bodies

While as noted above there is a continuing trend toward having audit committees in foreign jurisdictions, several foreign jurisdictions require or provide for auditor oversight through a board of auditors or similar body, or groups of statutory auditors, that are in whole or in part separate from the board of directors.[160] We believe that these boards of auditors or statutory auditors are intended to be independent of management, although their members may not in all cases meet all of the independence requirements set forth in section 10A(m) of the Exchange Act. In addition, while these bodies provide independent oversight of outside auditors, they may not have all of the responsibilities set forth in rule 10A–3. The establishment of an audit committee in addition to these bodies, with duplicative functions, might not only be costly and inefficient, but it also could generate possible conflicts of powers and duties. Accordingly, we proposed an exemption from certain of the requirements for audit committees for boards of auditors or statutory auditors of foreign private issuers that fulfilled the remaining requirements of the rule, if those boards operate under legal or listing provisions intended to provide oversight of outside auditors that is independent of management, membership on the board excludes executive officers of the issuer and certain other requirements were met.

Commenters expressed strong support for the exemption as an appropriate response to address the potential conflicts regarding these alternative structures.[161] However, several suggested refinements to the technical wording in the proposed exemption to ensure that it properly covers the appropriate structures in various jurisdictions.[162] Also, many requested removing the proposed requirement that the issuer must be listed on a market outside the U.S., as the board of auditor requirement often is a home country

[153] *See, e.g.*, the Letters of ABA; Cleary; PwC; S&C.

[154] *See, e.g.*, the Letter of AFEP–AGREF.

[155] *See, e.g.*, the Letters of ABA; S&C.

[156] *See, e.g.*, the Letters of Cleary; Duchossois Industries, Inc.; NYSE.

[157] *See, e.g.*, the Letters of ABA; Compania Cervecerias Unidas S.A. (''CCU''); France Telecom SA.

[158] *See, e.g.*, the Letters of Davis Polk & Wardwell; Telekom Austria AG.

[159] 17 CFR 240.3b–4(a). Under that definition, the term ''foreign government'' means the government of any foreign country or of any political subdivision of a foreign country. The exemption encompasses all registrants that are eligible to register securities under Schedule B of the Securities Act.

[160] For example, under current Japanese law, we understand that large Japanese corporations must maintain a board of corporate statutory auditors, a legally separate and independent body from the corporation's board of directors that is elected by shareholders. *See, e.g.*, Law for Special Exceptions to the Commercial Code Concerning Audits, etc. of Corporations (Law No. 22, 1974, as amended). Further, we understand that effective April 1, 2003, Japanese corporations will have the option to elect either a governance system with a separate board of directors and board of corporate auditors or a system based on nominating, audit and compensation committees under the board of directors. We also understand that the Italian corporate governance regime provides for an independent board of statutory auditors (''Collegio Sindicale'') and the Brazilian corporate governance regime allows a Fiscal Council (''Conselho Fiscal''). *See, e.g.*, the Letters of Assonime; Brazilian Securities Commission. As noted previously, the examples provided in this release are for illustrative purposes only. The exemption provided in the final rule for boards of auditors or similar bodies will be available to any foreign private issuer that meets the exemption's requirements because of the issuer's home country regime.

[161] *See, e.g.*, the Letters of ABA; Assonime; Baker & McKenzie; Brazilian Securities Commission; CalPERS; Cleary; FSA; Japan Corporate Auditors Association; Japanese Ministry of Economy, Trade and Industry; Nippon Keidanren; Matsushita; Nomura Holdings, Inc; NTT DoCoMo, Inc.; NYSE; ORIX Corporation.

[162] *See, e.g.*, the Letters of ABA; Assonime; Baker & McKenzie; Brazilian Securities Commission; Cleary; ORIX Corporation; S&C.

legal requirement and not a listing requirement.[163] Others believed that the exemption as proposed would not cover the unique situations in some countries where the board of auditors or similar body consists of one or more independent members of the board of directors in addition to one or more non-board members.[164] Without a modification, these commenters believed issuers from such jurisdictions could not satisfy the exemption because of the requirement that the board of auditors must be entirely separate from the board of directors. The overwhelming majority of commenters did not believe a sunset provision for the exemption would be appropriate.[165]

Accordingly, we are making several modifications to the exemption as adopted. Under the final rule, the listing of securities of a foreign private issuer will be exempt from all of the audit committee requirements if the issuer meets the following requirements:

- The foreign private issuer has a board of auditors (or similar body), or has statutory auditors (collectively, a ''Board of Auditors''), established and selected pursuant to home country legal or listing provisions expressly requiring or permitting such a board or similar body;
- The Board of Auditors is required to be either separate from the board of directors, or composed of one or more members of the board of directors and one or more members that are not also members of the board of directors;
- The Board of Auditors are not elected by management of the issuer and no executive officer of the issuer is a member of the Board of Auditors;
- Home country legal or listing provisions set forth or provide for standards for the independence of the Board of Auditors from the issuer or the management of the issuer;
- The Board of Auditors, in accordance with any applicable home country legal or listing requirements or the issuer's governing documents, is responsible, to the extent permitted by law, for the appointment, retention and oversight of the work of any registered public accounting firm engaged (including, to the extent permitted by law, the resolution of disagreements between management and the auditor regarding financial reporting) for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the issuer; and
- The remaining requirements in the rule, such as the complaint procedures requirement, advisors requirement and funding requirement, apply to the Board of Auditors, to the extent permitted by law.

This revised formulation is designed to address the jurisdictions that provide for boards of auditors or similar structures. In all instances, the requirements described in the revised exemption are to apply consistent with home country requirements. We recognize that while these bodies are designed to provide independent oversight of outside auditors, they may not meet all of the same requirements or have all of the responsibilities set forth in Exchange Act rule 10A–3. This approach nonetheless is a preferable method of implementing the protections of the Sarbanes-Oxley Act against the backdrop of this particular category of conflicting home country governance framework.

We have eliminated the requirement that the issuer must also be listed on a market outside the U.S. Also, we are not adopting a sunset date for the exemption. Finally, despite some commenters suggestions, we have not extended the relief to foreign private issuers that have audit committees. [166]

vii. Requests for Other Foreign Exemptions

A foreign private issuer availing itself of the exemptions discussed in this section will be subject to specific disclosure requirements discussed in section II.G.1 below. Consistent with our proposal, there will be no other ability for an SRO to exempt or waive foreign issuers from the requirements. In adopting these exemptions, we recognize that some foreign jurisdictions continue to have historical structures that may conflict with maintaining audit committees meeting the requirements of section 10A(m) of the Exchange Act. We encourage foreign issuers that access the U.S. capital markets to continue to move toward internationally accepted best practices in corporate governance.[167] We also understand that corporate governance structures throughout the world will continue to evolve, and that all future conflicts cannot be anticipated at this time. Accordingly, as requested by many commenters,[168] the Commission has the authority to respond to, and will remain sensitive to, the evolving standards of corporate governance throughout the world to address any new conflicts that may arise with foreign corporate governance rules and practices that cannot be anticipated at this time.

b. Small Businesses

Section 10A(m) of the Exchange Act makes no distinction based on an issuer's size. As discussed in the Proposing Release, we think that improvements in the financial reporting process for companies of all sizes are important for promoting investor confidence in our markets. In this regard, because there have been instances of financial fraud at small companies as well as at large companies, we think that improving the effectiveness of audit committees of small and large companies is important.[169] The final rule, therefore, applies to listed issuers of all sizes as proposed.

The majority of commenters generally agreed with this approach and did not support lesser standards for smaller issuers.[170] These commenters did not believe the requirements will impose a disproportionate burden on small issuers. A few commenters, however, were concerned that smaller issuers may have particular difficulty locating qualified audit committee candidates that will meet the independence criteria, especially given the implementation period proposed by the Commission.[171] While these commenters advocated various approaches, such as an exceptional and limited circumstances exemption for smaller issuers or SRO authority to exempt individual small issuers on a case-by-case basis, most agreed that an additional initial implementation period would be appropriate for these issuers.

We recognize that because the final rule applies only to listed issuers, quantitative listing standards applicable to listed securities, such as minimum revenue, market capitalization and

[163] *See, e.g.*, the Letters of ABA, Cleary; Internet Initiative Japan, Inc.; FSA; Japanese Ministry of Economy, Trade and Industry; Nippon Keidanren; Linklaters; NYSE; S&C.

[164] *See, e.g.*, the Letters of Perusahaan Perseroan (Persero) PT Telekomunikasi Indonesia Tbk; S&C.

[165] Compare, *e.g.*, the letters of ABA; FSA; Japanese Ministry of Economy, Trade and Industry; Nippon Keidanren; Japan Corporate Auditors Association; Matsushita; Nomura Holdings, Inc; NTT DoCoMo, Inc.; NYSE; ORIX Corporation with the letters of CalPERS; PwC.

[166] *See, e.g.*, the Letters of FSA; Japanese Ministry of Economy, Trade and Industry; Nippon Keidanren; Matsushita; Nomura Holdings, Inc; PwC; ORIX Corporation; S&C.

[167] See, *e.g.*, IOSCO Principles of Auditor Independence and the Role of Corporate Governance in Monitoring an Auditor's Independence (2002); OECD Principles of Corporate Governance (1999).

[168] *See, e.g.*, the Letters of AFEP–AGREF; Assonime; Cleary; NYSE.

[169] *See* Beasley, Carcello and Hermanson, Fraudulent Financial Reporting: 1987–1997, An Analysis of U.S. Public Companies (Mar. 1999) (study commissioned by the Committee of Sponsoring Organizations of the Treadway Commission).

[170] *See, e.g.*, the Letters of CalPERS; CBA; CSC; Deloitte; PwC.

[171] *See, e.g.*, the Letters of ABA; Amex; Nasdaq.

shareholder equity requirements, will limit the size of issuers that will be affected by the requirements.[172] However, we are sensitive to the possible implication for smaller issuers and for SROs that would like to specialize in securities of these issuers. As discussed in section II.F.1, we are providing an extended compliance period for listed issuers that are small business issuers. In addition, the modifications to several of the other exemptions in the final rule, such as the overlapping board exemption and the new issuer exemption, should provide additional flexibility to small and new issuers in meeting the requirements of the rule. Our approach of not mandating specific procedures for the auditor responsibility requirement and the complaint procedures requirement also should provide issuers flexibility in meeting these requirements.

c. Issuers of Asset-Backed Securities and Certain Other Passive Issuers

In several of our releases implementing provisions of the Sarbanes-Oxley Act,[173] we have noted the special nature of asset-backed issuers.[174] Because of the nature of these entities, such issuers are subject to substantially different reporting requirements. Most significantly, asset-backed issuers are generally not required to file the types of financial statements that other companies must file. Also, such entities typically are passive pools of assets, without a board of directors or persons acting in a similar capacity. Accordingly, we are excluding asset-backed issuers from the requirements as proposed. Commenters supported this exclusion.[175]

Several commenters advocated similar relief for additional types of securities that are issued by trusts where the trust's activities are limited to passively owning or holding (as well as administering and distributing amounts in respect of) securities, rights, collateral or other assets on behalf of or for the benefit of the holders of the listed securities.[176] For example, issuers of royalty trust securities and trust issued receipts often meet such criteria. Structures such as royalty trusts act as mere conduits though which proceeds on the underlying assets are distributed to securityholders.[177] For securities such as trust issued receipts, the receipts represent undivided beneficial ownership of the specified underlying securities that are held in the trust.[178] Because such structures are similar to asset-backed issuers in that they do not have a board of directors or comparable persons from which to form an audit committee, the same policy reasons that exempt asset-backed issuers generally apply to such structures as well.

We recognize that we cannot anticipate all of the various types of these entities that may seek a listing on a national securities exchange or national securities association. Under the final rule, SROs may exclude from Exchange Act Rule 10A–3's requirements issuers that are organized as trusts or other unincorporated associations that do not have a board of directors or persons acting in a similar capacity and whose activities are limited to passively owning or holding (as well as administering and distributing amounts in respect of) securities, rights, collateral or other assets on behalf of or for the benefit of the holders of the listed securities.

d. Investment Companies

We proposed that the rule cover closed-end investment companies and so-called ''exchange-traded funds'' (''ETFs'') structured as open-end investment companies.[179] We proposed to exclude ETFs structured as unit investment trusts (''UITs''). Two commenters argued that open-end ETFs should also be excluded from the rule.[180] The commenters stated that the rule would impose unjustified competitive burdens on open-end ETFs in relation to both open-end investment companies that are not exchange-traded and ETFs structured as UITs.

However, Exchange Act section 10A(m)(1) requires us to direct the SROs to prohibit the listing of any security of an issuer that is not in compliance with the enumerated audit committee standards. Thus, the statute is specifically addressed to issuers listed for trading on SROs, and, as a result, we believe that it would be inconsistent with the statute to exclude open-end ETFs from the rule. With regard to the exclusion for UIT ETFs, we note that UITs, like asset-backed issuers and unlike open-end ETFs, are not actively managed and do not have boards of directors from which audit committee members could be drawn.

4. Determining Compliance With Proposed Standards

Apart from the general requirement to prohibit the listing of a security not in compliance with the enumerated standards, section 10A(m) of the Exchange Act does not establish specific mechanisms for a national securities exchange or a national securities association to ensure that issuers comply with the standards on an ongoing basis. SROs are required to comply with statutory provisions and Commission rules pertaining to SROs and to enforce their own rules, including rules that govern listing requirements and affect their listed issuers.

To further the purposes of section 10A(m), we proposed that SROs, as part of their implementing rules, must require a listed issuer to notify the applicable SRO promptly after an executive officer of an issuer becomes aware of any material noncompliance by the listed issuer with the requirements.[181] The overwhelming majority of commenters supported this proposal.[182] Accordingly, the final rule includes this requirement as proposed.

We also requested comment on whether listed issuers should be required to disclose periodically to the

[172] Examples of the types of quantitative standards necessary for initial and continued listings on the NYSE, Nasdaq and AMEX are available on their respective Web sites.

[173] *See* note above.

[174] The term ''Asset-Backed Issuer'' is defined in 17 CFR 240.13a–14(g) and 240.15d–14(g).

[175] *See, e.g.,* the Letters of CSC; Deloitte; NYSE.

[176] *See, e.g.,* the Letters of ABA; Nasdaq; NYSE.

[177] For a more detailed description of royalty trusts, see Staff Accounting Bulletin No. 47. Of course, the exemption we are establishing will not extend to structures that hold, in addition to the royalty interest, an interest in the operating company that actually owns the oil and gas properties, such as structures commonly known as Canadian income trusts. In these situations, the trustee often also delegates significant management decisions to an operating company, which in turn may delegate those decisions to a manager. The operating company often has a board of directors that is appointed by both the manager and the trust unit holders. We believe such structures should be treated in a manner similar to limited partnerships.

[178] For a further description of trust issued receipts, see, for example, rule 1200 of the AMEX's listing standards, rule 1200 of the NYSE's listing standards, and HOLDRs, SEC No-Action Letter (Sep. 3, 1999) (the staff agreed not to recommend enforcement action to the Commission if, among other things, the trust did not register as an investment company under the Investment Company Act).

[179] Business development companies are covered by the final rules.

Investment companies may avail themselves of the general exemptions in Exchange Act Rule 10A–3(c) [17 CFR 240.10A–3(c)], if applicable. The independence exemptions of Exchange Act rule 10A–3(b)(1)(iv)(A)–(E) [17 CFR 240.10A–3(b)(1)(iv)(A)–(E)] will not apply to investment companies.

[180] *See* the Letters of Amex; Barclays Global Investors, N.A.

[181] We encourage the SROs to impose a similar requirement for noncompliance with other SRO listing standards that pertain to corporate governance standards apart from the audit committee requirements in Exchange Act Rule 10A–3, to the extent SROs do not already provide for such a notice requirement. Commenters also expressed strong support for such a requirement.

[182] *See, e.g.,* the Letters of Amex; CalPERS; CII; CSC; Matsushita; PwC; Transparency International-USA.

SROs whether they have been in compliance with the standards. Commenters were more mixed on this point. Several commenters supported periodic confirmation of compliance to SROs.[183] Others believed it would be redundant to require periodic confirmations in addition to notice of actual breaches, and believed it should be left to the SROs to decide whether periodic confirmations should be included as part of their compliance monitoring procedures.[184] Two national securities exchanges indicated they already require or intend to require such confirmations.[185] We are not adopting a requirement that listed issuers must provide periodic confirmations of compliance to SROs at this time. However, we recognize, as many of the commenters did, that periodic confirmations can be part of an effective overall system for monitoring compliance with listing rules.

5. Opportunity To Cure Defects

Section 10A(m)(1)(B) of the Exchange Act specifies that our rules must provide for appropriate procedures for an issuer to have an opportunity to cure any defects that would be the basis for a prohibition of the issuer's securities as a result of its failure to meet section 10A(m)'s audit committee standards, before imposition of such a prohibition. To effectuate this mandate, our final rule requires SROs to establish such procedures before they prohibit the listing of or delist any security of an issuer.[186] As discussed in the Proposing Release, we believe that existing continued listing or maintenance standards and delisting procedures of the SROs generally will suffice as procedures for an issuer to have an opportunity to cure any defects on an ongoing basis. These procedures already provide issuers with notice and opportunity for a hearing, an opportunity for an appeal and an opportunity to cure any defects before their securities are delisted.[187]

We requested comment as to whether the Commission should specify the maximum time limits for an opportunity to cure defects. Commenters were mixed on this point. Some supported having the Commission mandate specific time periods for the SROs, such as 30 days or 90 days.[188] Others did not support specific time periods, again believing that it should be left to the individual SROs to decide the appropriate time periods given the differences of each market.[189] We are not mandating specific time periods in the final rule. However, as mentioned in the Proposing Release, we expect that the rules of each SRO will provide for definite procedures and time periods for compliance to the extent they do not already do so.

Several commenters expressed concern regarding rare situations that may occur where an audit committee member ceases to be independent for reasons outside the member's reasonable control. For example, an audit committee member could be a partner in a law firm that provides no services to the listed issuer on which the member sits, but the listed issuer could acquire another company that is one of the law firm's clients. Without an opportunity to cure such a defect, the audit committee member would cease to be independent. Additional time may be necessary to cure such defects, such as ceasing the issuer's relationship with the audit committee member's firm or replacing the audit committee member. Accordingly, under our final rule, SRO implementing rules may provide that if a member of an audit committee ceases to be independent for reasons outside the member's reasonable control, that person, with notice by the issuer to the applicable national securities exchange or national securities association, may remain an audit committee member of the listed issuer until the earlier of the next annual meeting of the listed issuer or one year from the occurrence of the event that caused the member to be no longer independent.

G. Disclosure Changes Regarding Audit Committees

1. Disclosure Regarding Exemptions

Exchange Act rule 10A–3 provides for certain exemptions. Because these exemptions will distinguish certain issuers from most other listed issuers, we believe that it is important for investors to know if an issuer is availing itself of one of these exemptions. Accordingly, we are adopting as proposed a requirement that these issuers must disclose their reliance on an exemption and their assessment of whether, and if so, how, such reliance will materially adversely affect the ability of their audit committee to act independently and to satisfy the other requirements of Exchange Act rule 10A–3. Such disclosure will need to appear in, or be incorporated by reference into, annual reports filed with the Commission.[190] The disclosure also will need to appear in proxy statements or information statements of issuers subject to our proxy rules for shareholders' meetings at which elections for directors are held.

While two commenters[191] did not believe the proposed disclosure would result in meaningful disclosure to investors, and several others did not support the assessment disclosure,[192] commenters representing investors and investor groups and others uniformly believed the disclosure, including the assessment disclosure, would provide meaningful information to investors.[193] The purpose of the disclosure is not to single out particular issuers or to imply that a particular listed issuer's home country regime is somehow less effective. Instead, the disclosure is designed to provide additional transparency to investors regarding the listed issuer's audit committee arrangements and the issuer's assessment of the effectiveness of those arrangements.

We proposed that foreign private issuers availing themselves of the exemption for boards of auditors and similar structures would be required to file an exhibit to their annual reports stating that they are doing so. This exhibit would have been in addition to the disclosure required in the body of the report regarding the issuer's use of that exemption. Several commenters did not support the exhibit requirement, arguing that it would be unnecessarily

[183] *See, e.g.*, the Letters of CalPERS; CII; PwC; Transparency International-USA.

[184] *See, e.g.*, the Letters of CSC; Nasdaq.

[185] *See* the Letters of Amex; NYSE.

[186] These procedures, of course, cannot include an extended exemption or waiver of the requirements apart from those provided for in Exchange Act Rule 10A–3.

[187] *See, e.g.*, NASD rule 4800 Series and NYSE Listed Company Manual section 804.

[188] *See, e.g.*, the Letters of CalPERS; CSC; PwC.

[189] *See, e.g.*, the Letters of ABA; NYSE.

[190] This disclosure is to be included in Part III of annual reports on Form 10–K [17 CFR 249.310] and 10–KSB (through an addition to Item 401 of Regulations S–K and S–B). Consequently, companies subject to the proxy rules will be able to incorporate the required disclosure from a proxy or information statement that involves the election of directors into the annual report, if the issuer filed such proxy or information statement within 120 days after the end of the fiscal year covered by the report. See General Instruction G.(3) of Form 10–K and General Instruction E.3. of Form 10–KSB.

For foreign private issuers that file their annual reports on Form 20–F, the disclosure requirement will appear in new Item 16D.

For foreign private issuers that file their annual reports on Form 40–F, the disclosure requirement will appear in paragraph (14) to General Instruction B.

For registered investment companies, the disclosure will appear in Item 5(b) of Form N–CSR and Item 22(b)(14) of Schedule 14A.

[191] *See, e.g.*, the Letters of ABA; S&C.

[192] *See, e.g.*, the Letters of Cravath; Nippon Keidanren; Matsushita; NTT DoCoMo, Inc.

[193] *See, e.g.*, the Letters of CalPERS; CII; CSC; Deloitte; E&Y; PwC; Teachers Insurance and Annuity Association '' College Retirement Equities Fund (''TIAA–CREF''); Transparency International-USA.

redundant of the disclosure in the report.[194] To avoid imposing a duplicative requirement, we are not adopting the exhibit requirement.

We proposed to exclude unit investment trusts from the disclosure requirements relating to their use of the general exemption for UITs. As a passive investment vehicle, a UIT has no board of directors, and there is little reason why investors would expect a UIT to have an audit committee. We also proposed to exclude issuers availing themselves of the multiple listing exemption from the disclosure requirements. These issuers, or their controlling parents, will be required to comply with the audit committee requirements as a result of a separate listing. Accordingly, disclosure of the use of that exemption will not serve the purpose of highlighting for investors those issuers that are different from most other listed issuers. The majority of commenters supported these proposals, and we are adopting them.[195]

We requested comment on whether we should exclude additional issuers from the exemption disclosure requirement. Some commenters recommended excluding disclosure of additional exemptions, such as the exemptions for overlapping boards, security futures products, standardized options, securities issued by foreign governments and securities issued by Asset-Backed Issuers and similar passive issuers.[196] For overlapping boards, issuers relying on that exemption will still be required to have independent directors, so disclosure of the exemption would not serve to highlight those issuers that are different from most issuers. Regarding security futures products, standardized options, foreign governments and Asset-Backed Issuers and similar passive issuers, like UITs, there would be little reason to believe that these issuers would have audit committees. Accordingly, we also are excluding listed issuers that rely on these exemptions from the disclosure requirement.

2. Identification of the Audit Committee in Annual Reports

An issuer subject to the proxy rules of section 14 of the Exchange Act[197] is currently required to disclose in its proxy statement or information statement, if action is to be taken with respect to the election of directors, whether the issuer has a standing audit committee, the names of each committee member, the number of committee meetings held by the audit committee during the last fiscal year and the functions performed by the committee.[198] As discussed in the Proposing Release, we believe it is important for investors to be able to readily determine basic information about the composition of a listed issuer's audit committee. To foster greater availability of this basic information, we are adopting as proposed a requirement that disclosure of the members of the audit committee be included or incorporated by reference in the listed issuer's annual report.[199] Also, because the Exchange Act now provides that in the absence of an audit committee the entire board of directors will be considered to be the audit committee, we also are requiring a listed issuer that has not separately designated, or has chosen not to separately designate an audit committee, to disclose that the entire board of directors is acting as the issuer's audit committee.

We are adopting as proposed similar changes for foreign private issuers that file their annual reports on Form 40–F. Foreign private issuers that file their annual reports on Form 20–F already are required to identify the members of their audit committee in their annual reports. For these listed issuers, however, we are adopting the requirement that these issuers must disclose if the entire board of directors is acting as the audit committee.[200] We also are adopting similar changes for registered management investment companies.[201]

Commenters expressed support for these changes.[202] Some commenters, however, recommended that listed issuers that are not required to provide disclosure of their reliance on one of the exemptions to the rule—such as a subsidiary relying on the multiple listing exemption, a foreign government issuer or an Asset-Backed Issuer or similar issuer—also should be excluded from the requirement to disclose whether or not they have a separate audit committee.[203] According to these commenters, because these listed issuers need not disclose they are availing themselves of the exemption to the audit committee requirements, it would be anomalous to require these same listed issuers to disclose whether or not they have an audit committee. We are persuaded by these comments. Accordingly, we are excluding such issuers from this disclosure requirement. We are not making a corresponding change to Form N–CSR for registered management investment companies. We expect that registered management investment companies would only rarely, if at all, rely on the exemptions that trigger a disclosure requirement.[204] We believe that in such an unusual case, it would nonetheless be appropriate for the investment company to disclose whether it has an audit committee.

3. Updates to Existing Audit Committee Disclosure

An issuer subject to the proxy rules is currently required to disclose additional information about its audit committee in its proxy statement or information statement, if action is to be taken with

[194] *See, e.g.*, the Letters of ABA; Cleary; NTT DoCoMo, Inc.; ORIX Corporation.

[195] Compare, *e.g.*, the Letters of ABA; CCU; General Electric Company; General Motors Corporation; General Motors Acceptance Corporation; Nasdaq; PSEG with the Letter of CalPERS.

[196] *See, e.g.*, the ABA Letter.

[197] 15 U.S.C. 78n.

[198] See Item 7(d)(1) of Schedule 14A. Identical information is required with respect to nominating and compensation committees of the board of directors.

[199] Because this information will be included in Part III of annual reports on Forms 10–K and 10–KSB, companies subject to the proxy rules will be able to incorporate the required disclosure from a proxy or information statement that involves the election of directors, where it is already required to appear, into their annual reports. Information regarding the number of meetings of the audit committee and the basic functions performed by the audit committee, as well as the information regarding nominating and compensation committees, will continue to be required only in proxy or information statements that involve the election of directors.

[200] In addition, we have added an instruction to Item 6.C. in Form 20–F that if the company is relying on the exemption in Exchange Act rule 10A–3(c)(3) because it has a board of auditors or similar body, the disclosure required by that Item with regard to the company's audit committee can be provided with respect to the company's board of auditors, or similar body.

[201] Item 22(b)(14) of Schedule 14A and Item 5 of Form N–CSR. Form N–CSR is used by registered management investment companies to file certified shareholder reports with the Commission under the Sarbanes-Oxley Act. See Investment Company Act Release No. 25914 (Jan. 27, 2003) [68 FR 5348].

[202] *See, e.g.*, the Letters of ABA; CalPERS; CSC; PwC; Transparency International-USA.

[203] *See, e.g.*, the Letters of Edison International; General Electric Company; TFC.

Unit investment trusts are not required to provide disclosure of their use of the exemption under Exchange Act rule 10A–3(c)(6)(ii). See Exchange Act rule 10A–3(d). As proposed, UITs were not subject to any requirement that they disclose whether or not they have a separate audit committee, since UITs do not file proxy or information statements where action is to be taken with respect to election of directors, or Form N–CSR, where such disclosure would be made.

[204] These exemptions include those for listing certain securities of subsidiaries of a parent whose listed securities are subject to Exchange Act rule 10A–3, security futures products, standardized options, securities issued by asset-backed issuers, foreign governments and passive issuers. Exchange Act rule 10A–3(c)(2), (4)–(7) [17 CFR 240.10A–3(c)(2), (4)–(7)].

respect to the election of directors.[205] First, the audit committee must provide a report disclosing whether the audit committee has reviewed and discussed the audited financial statements with management and discussed certain matters with the independent auditors.[206] Second, issuers must disclose whether the audit committee is governed by a charter, and if so, include a copy of the charter as an appendix to the proxy statement at least once every three years.[207] Finally, the issuer must disclose whether the members of the audit committee are independent. Under the existing requirements, issuers whose securities are listed on the NYSE or AMEX or quoted on Nasdaq must disclose whether the audit committee members are independent, as defined in the applicable listing standards.[208] These issuers also must disclose if its board of directors has determined to appoint one director to its audit committee due to an exceptional and limited circumstances exception in the applicable listing standards.[209] Issuers whose securities are not listed on the NYSE or AMEX or quoted on Nasdaq also are required to disclose whether their audit committee members are independent. These issuers may choose which definition of independence to use from any of the NYSE, AMEX or Nasdaq listing standards.[210]

Regarding the independence disclosure, all national securities exchanges and national securities associations under our final rule will need to have independence standards for audit committee members, not just the NYSE, AMEX and Nasdaq. The specification in the existing requirements to listings on these three markets is therefore no longer necessary.

Accordingly, as proposed, we are updating the disclosure requirements regarding the independence of audit committee members to reflect the new SROs rules to be adopted under Exchange Act rule 10A–3. Commenters supported these updates.[211] If the registrant is a listed issuer, it will still be required to disclose whether the members of its audit committee are independent. The listed issuer must use the definition of independence for audit committee members included in the listing standards applicable to the listed issuer. Further, because the Exchange Act now provides that in the absence of an audit committee the entire board of directors will be considered to be the audit committee, we are clarifying in the rules that if the registrant does not have a separately designated audit committee, or committee performing similar functions, the registrant must provide the disclosure with respect to all members of its board of directors.

Non-listed issuers that have separately designated audit committees will still be required to disclose whether their audit committee members are independent. In determining whether a member is independent, these registrants will be allowed to choose any definition for audit committee member independence of a national securities exchange or national securities association that has been approved by the Commission.[212]

In the Proposing Release, we proposed eliminating disclosure by listed issuers of use of an exceptional and limited circumstances exception in existing SRO listing standards. We did so because our rules do not provide a similar exception to the independence requirements mandated by Exchange Act rule 10A–3. However, it is conceivable that some SROs may retain an exceptional and limited circumstances exception for SRO independence requirements apart from those in Exchange Act rule 10A–3. We are therefore retaining disclosure of the use of such an exemption for standards apart from the requirements in Exchange Act rule 10A–3. We also are eliminating the exclusion of small business issuers from this disclosure requirement, as it is conceivable that such an exception could extend to these issuers as well.

Issuers must comply with the new disclosure changes regarding use of exemptions, identification of the audit committee in annual reports and the independence disclosure updates beginning with reports covering periods ending on or after (or proxy or information statements for actions occurring on or after) the compliance date for the listing standards applicable to the particular issuer. If the issuer is not a listed-issuer, it should use the date that would apply as if it was a listed issuer. Until such dates, issuers should continue to comply with existing Items 7(d)(3)(iv) and 22(b)(14) in their proxy and information statements, if applicable.

Several commenters advocated additional disclosure regarding a board's determination of an audit committee member's independence apart from that currently required.[213] Several of the additional SRO listing standards currently under consideration by the Commission would require such disclosure by listed issuers.[214] We intend to analyze these proposals and the SRO rules implementing Exchange Act 10A–3 to determine if any additional disclosure in this area would be appropriate.

4. Audit Committee Financial Expert Disclosure for Foreign Private Issuers

In our release adopting the disclosure requirements for audit committee financial experts, we expressed our intention to revisit the disclosure requirements regarding the independence of audit committee financial experts of foreign private issuers.[215] Specifically, we noted that in conjunction with the adoption of rules implementing Exchange Act section 10A(m), we would revise the audit committee financial expert disclosure requirements that apply to foreign private issuers such that the concept of ''independence'' under the section 10A(m) rules would be consistent with the concept of ''independence'' under the audit committee financial expert disclosure requirements. Therefore, we are now adopting amendments to the audit committee financial expert disclosure provisions as they apply to foreign private issuers. If the foreign private issuer is a listed issuer, the amendments require the foreign private issuer to disclose whether its audit committee financial expert is independent, as that term is defined by the SRO listing standards applicable to that issuer.[216] If a foreign private issuer is not a listed issuer, it must choose one of the SRO definitions of audit committee member independence that have been approved by the Commission

[205] *See* Item 7(d)(3) of Schedule 14A. These disclosure requirements were adopted in Release No. 34–42266 (Dec. 22, 1999).

[206] *See* Item 7(d)(3)(i) of Schedule 14A. The requirements for the audit committee report are specified in Items 306 of Regulations S–B [17 CFR 228.306] and S–K [17 CFR 229.306]. Under the existing requirements, if the company does not have an audit committee, the board committee tasked with similar responsibilities, or the full board of directors, is responsible for the disclosure.

[207] *See* Items 7(d)(3)(ii) and (iii) of Schedule 14A.

[208] *See* Item 7(d)(3)(iv)(A)(1) of Schedule 14A.

[209] *See* Item 7(d)(3)(iv)(A)(2) of Schedule 14A.

[210] *See* Item 7(d)(3)(iv)(B) of Schedule 14A. Whichever definition is chosen must be applied consistently to all members of the audit committee.

[211] *See, e.g.*, the Letters of ABA; CalPERS; CSC; PwC.

[212] Such definition must include the requirements of Exchange Act section 10A–3. These issuers will still be required to state which definition was used. Further, the requirement that the same definition must be applied consistently to all members of the audit committee will be retained.

[213] *See, e.g.*, the Letters of AFL–CIO; AICPA; Amex; Deloitte; PwC; Transparency International-USA. However, for commenters that did not support such expanded disclosure, *see, e.g.*, the Letters of ABA; Southern Company.

[214] *See* note 27 above.

[215] *See* Release No. 33–8177 (Jan. 23, 2003).

[216] *See* revised Item 16A of Form 20–F and revised paragraph 8 to General Instruction B of Form 40–F.

in determining whether its audit committee financial expert, if it has one, is independent. It must also disclose which definition was used. Foreign private issuers need not comply with these disclosure requirements until July 31, 2005.

Also in that release, we noted our intention to address the treatment of a foreign private issuer with a board of auditors or statutory auditors under home country legal or listing provisions. Specifically, we requested comment as to whether and, if so, how foreign private issuers with boards of auditors or similar bodies or statutory auditors should comply with the audit committee financial expert disclosure requirements. We received several comments both supporting and opposing application of such disclosure requirements to issuers with such bodies. One commenter suggested that the audit committee financial expert's expertise should be related to home country generally accepted accounting principles (''GAAP''), even if the issuer's primary financial statements are filed with the Commission in conformity with U.S. GAAP. We believe that the intent of section 407 of Sarbanes-Oxley Act is to strengthen audit committee oversight of the preparation and audit of financial statements that are presented to U.S. investors, and thus we continue to believe that the audit committee financial expert's expertise should be related to the body of generally accepted accounting principles used in the issuer's primary financial statements filed with the Commission. We do, however, acknowledge the differing regulatory structures of foreign jurisdictions. Therefore, we have added a sentence to the instructions to the audit committee financial expert disclosure provisions to clarify that, for purposes of those provisions, the term ''audit committee'' means the board of auditors or similar bodies or statutory auditors, if the issuer meets the criteria specified in new rule 10A–3(c)(3).[217]

H. Application to the Commission's Auditor Independence Rules

Similar to the issues addressed by the multiple listing exception discussed in section II.F.2.a, some commenters raised an issue with respect to the audit committee pre-approval requirements contained in the Commission's auditor independence rules.[218] Those rules require that the issuer's audit committee pre-approve audit and non-audit services provided to the issuer and its consolidated subsidiaries [219] by the independent accountant. However, to the extent that a consolidated entity contains more than one issuer, some have indicated that it is not clear whether the parent company audit committee's pre-approval of the services to be provided by the independent accountant would satisfy the pre-approval requirements for the separately-issued financial statements of a subsidiary which also is an issuer.[220]

The Commission believes that the audit committee of the parent company that controls another entity within the consolidated group can perform the pre-approval function for the parent company and any consolidated subsidiaries both with respect to the consolidated financial statements and with respect to the financial statements of any consolidated subsidiary that also is an issuer. However, the Commission also understands that there may be instances where such entities have their own audit committees. In those situations, we would not expect that both audit committees be responsible for pre-approving the services that are provided by the auditor. Rather, the relevant facts and circumstances surrounding the engagement or relationship should be evaluated to determine which audit committee is in the best position to review the impact of the service on the auditor's independence.

As noted at the beginning of section II, the definition of the term ''audit committee'' in Exchange Act section 3(a)(58) provides that an issuer either may have a separately designated audit committee composed of members of its board, or if it chooses to do so or if it fails to form a separate committee, the entire board of directors will constitute the audit committee.[221] Moreover, as discussed in section II.F.3.a.vi, certain foreign jurisdictions permit many of the functions normally performed by audit committees to be performed by a board of auditors or similar body which is separate in whole or in part from the issuer's board of directors.

In either of these situations, commenters have asked how issuers should comply with the audit committee pre-approval requirements established by the Commission in its rules on auditor independence. While the Commission's rules on auditor independence require that the audit committee pre-approve audit and non-audit services provided by the independent accountant, those rules do not require that companies establish separately-designated audit committees. If an issuer chooses to do so or fails to form a separate committee, the entire board of directors will constitute the audit committee and may perform the pre-approval function for the issuer.[222] Furthermore, consistent with the intent of Exchange Act rule 10A–3(c)(3), in situations where the issuer has a board of auditors or similar body as allowed by law or listing requirements of that jurisdiction, such board or body may perform the audit committee pre-approval function required by the Commission's rules on auditor independence.

The Commission also reminds registrants and their auditors that the Commission's rules require that auditors communicate certain information to the audit committee.[223] The same body responsible for pre-approval of audit and non-audit services also should be the body to whom these required communications are made by the issuer's auditor.

III. Paperwork Reduction Act

A. Background

The amendments described in this document contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[224] We published a notice requesting comment on the collection of information requirements in the Proposing Release, and we submitted these requirements to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[225] As discussed in Part II

[217] *See* revised Instruction 3 to Item 401(h) of Regulation S–K and revised Instruction 3 to Item 16A of Form 20–F.

[218] *See* Release No. 33–8183 (Jan. 28, 2003).

[219] In accordance with the Commission's rules on auditor independence, the issuer's audit committee is required to pre-approve audit and non-audit services for the issuer and all of its consolidated subsidiaries whether those subsidiaries are separate issuers or not.

[220] For example, some entities may be issuers as a result of registered debt outstanding.

[221] *See* note above and the accompanying text.

[222] However, as previously discussed, if the issuer is a listed issuer and its entire board constitutes the audit committee, the new SRO rules adopted under Exchange Act Rule 10A–3, including the independence requirements, will apply to the issuer's board as a whole. See note 34 above and the accompanying text.

[223] Auditors are required to communicate the following information to the issuer's audit committee: (1) All critical accounting policies and practices used by the issuer, (2) all alternative accounting treatments of financial information within GAAP related to material items that have been discussed with management, including the ramifications of the use of such alternative treatments and disclosures and the treatment preferred by the accounting firm, and (3) other material written communications between the accounting firm and management of the issuer. See Rule 2–07 of Regulation S–X [17 CFR 210.2–07].

[224] 44 U.S.C. 3501 *et seq.*

[225] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

above, we received several comment letters on the proposals. We have made several changes to the proposals in response to these comments which will reduce the incremental burden associated with the final rule and rule amendments. Accordingly, we are revising our previous burden estimates.

The titles for the collections of information are:

(1) ''Proxy Statements—Regulation 14A (Commission Rules 14a–1 through 14a–15 and Schedule 14A)'' (OMB Control No. 3235–0059);

(2) ''Information Statements—Regulation 14C (Commission Rules 14c–1 through 14c–7 and Schedule 14C)'' (OMB Control No. 3235–0057);

(3) ''Form 10–K'' (OMB Control No. 3235–0063);

(4) ''Form 10–KSB'' (OMB Control No. 3235–0420);

(5) ''Form 20–F'' (OMB Control No. 3235–0288);

(6) ''Form 40–F'' (OMB Control No. 3235–0381);

(7) ''Regulation S–K'' (OMB Control No. 3235–0071);

(8) ''Regulation S–B'' (OMB Control No. 3235–0417); and

(9) ''Form N–CSR'' (OMB Control No. 3235–0570).

These regulations and forms were adopted pursuant to the Securities Act, the Exchange Act and the Investment Company Act and set forth the disclosure requirements for periodic reports, registration statements and proxy and information statements filed by companies to ensure that investors are informed. The hours and costs associated with preparing, filing and sending these forms constitute reporting and cost burdens imposed by each collection of 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.

B. Summary of Amendments

Under our amendments, we would direct SROs to prohibit the listing of any security of an issuer that is not in compliance with several enumerated standards relating to the issuer's audit committee. We are making these changes pursuant to the legislative mandate in section 10A(m) of the Exchange Act, as added by section 301 of the Sarbanes-Oxley Act. As part of our amendments, we are adopting several limited exemptions from the requirements to address the special circumstances of particular issuers. If an issuer were to avail itself of one of these exemptions, it would need to disclose this fact and its assessment of whether, and if so, how, such reliance will materially adversely affect the ability of the audit committee to act independently and to satisfy the other requirements of the final rule. Such disclosure will need to appear in its proxy or information statement for shareholders' meetings at which elections for directors are held. The disclosure also will need to appear in, or be incorporated by reference into, the annual reports of these companies filed with the Commission. We are excluding issuers from these disclosure requirements for reliance on certain exemptions, such as the overlapping board exemption, the multiple listing exemption and the exemption for exchange-traded UITs, foreign government issuers and Asset-Backed Issuers and similar issuers. Collectively, we call these changes the ''Exemption Disclosure.''

Under our amendments, listed issuers also will be required to disclose the names of the members of their audit committee, or that their entire board of directors is acting as their audit committee, in their annual reports. Listed issuers that will be excluded from the Exemption Disclosure will also be excluded from this disclosure, except for issuers relying on the overlapping board exemption. We call these changes the ''Identification Disclosure.''

Finally, we are adopting several updates to existing disclosure requirements regarding audit committees to reflect our amendments and changes made by the Sarbanes-Oxley Act. We call these changes the ''Disclosure Updates.''

These disclosure changes are designed to alert investors of basic information about an issuer's audit committee, including the identity of the issuer's audit committee, whether the issuer is availing itself of an exemption and whether the members of the audit committee are independent. Compliance with the revised disclosure requirements is mandatory. There will be no mandatory retention period for the information disclosed, and responses to the disclosure requirements will not be kept confidential. We do not believe that the imposition of these disclosure changes will alter significantly the number of respondents that file on the affected forms.

In addition to the above, our final rule adopts, as proposed, a requirement that SROs must require a listed issuer to notify the applicable SRO promptly after an executive officer of an issuer becomes aware of any material noncompliance by the listed issuer with the proposed requirements. We believe that any burden imposed by this collection of information will be minimal. For the most part, we believe that listed issuers are already required to make the type of disclosure contemplated by this requirement, either pursuant to existing SRO rules or as a requirement of existing listing agreements. We therefore believe that any reporting and recordkeeping requirements imposed by this aspect of the requirements are ''usual and customary'' activities for listed issuers.[226]

C. Summary of Comment Letters and Revisions to Proposals

We requested comment on the PRA analysis contained in the Proposing Release. We received no comments in response to this request. While we have adopted the disclosure amendments substantially as proposed, some of the changes we have made in the final rules will reduce the number of listed issuers that will be required to make the required disclosure. For example, we have excluded additional issuers from the Exemption Disclosure. These changes will reduce the burden on these registrants. Accordingly, we are revising our PRA reporting and cost burden estimates.

D. Revisions to PRA Reporting and Cost Burden Estimates

As a result of the changes described above, the reporting and cost burden estimates for the collections of information have changed. For purposes of the PRA, we now estimate that the annual incremental paperwork burden for all companies to prepare the disclosure that will be required under our amendments will be approximately 401 hours of personnel time and a cost of approximately $62,400 for the services of outside professionals. We derived these estimates first by estimating the total amount of time it will take for a company to prepare the required disclosure. The Disclosure Updates simply update the disclosure requirements to reflect our amendments and changes to terminology made by the Sarbanes-Oxley Act. We do not believe these changes will change the burden required by this disclosure. The Exemption Disclosure will require only a minimal additional statement by issuers that avail themselves of one of the exemptions in Exchange Act rule 10A–3. We estimated that the Exemption Disclosure will add 0.25 hours per affected filing. The Identification Disclosure will require a company to disclose either the members

[226] *See* 5 CFR 1320.3(b)(2).

of its audit committee, or a brief statement that the board of directors of the issuer is acting as the audit committee. We estimated that the Identification Disclosure will add 0.25 hours per affected filing.

The Exemption Disclosure and Identification Disclosure apply only to listed issuers. Accordingly, not all issuers will be required to make the disclosure. We estimate that there are approximately 7,250 issuers that are listed on a national securities exchange or traded on the Nasdaq National Market or the Nasdaq Smallcap Market.[227] Each of these listed issuers, except for certain issuers relying on exemptions, will be required to at least provide the basic Identification Disclosure in their annual report. Some of these listed issuers also will need to make the Exemption Disclosure.[228] We have increased the number of issuers that will not need to make the Exemption Disclosure.

Further, since the disclosure in the annual report may be incorporated by reference from an issuer's proxy or information statement, we assume that the disclosure will appear in a maximum of one report per affected issuer. As the information will appear in part III of an issuer's Form 10–K or 10–KSB (which can be incorporated by reference from the issuer's proxy statement if directors are to be elected), or in item 5 of Form N–CSR, which may also be incorporated by reference, we assume that affected issuers will follow the general practice of most issuers of including the disclosure in their proxy or information statement where directors are elected and incorporating by reference the disclosure into their annual report. Accordingly, we reduced the number of affected reports on Forms 10–K, 10–KSB and N–CSR to account for this assumption.[229] Further, we assume that the Identification Disclosure is already provided in these proxy or information statements,[230] and the burden hours for this disclosure by these filers therefore has already been assigned to Schedules 14A and 14C. Accordingly, we estimated that the Identification Disclosure will not affect the burden for Schedules 14A and 14C.

The tables below illustrate the revised incremental annual compliance burdens of the collections of information in hours and in cost for annual reports and proxy and information statements under the Exchange Act. The burden was calculated by multiplying the estimated number of affected responses by the estimated average number of hours each entity spends preparing the disclosure. We have based our estimates of the number of affected responses on the actual number of filers during the 2002 fiscal year and our estimates of the number of listed issuers that may be affected by the disclosure changes.[231] For Exchange Act annual reports and proxy and information statements, we estimate that 75% of the burden of preparation is carried by the company internally and that 25% of the burden of preparation is carried by outside professionals retained by the company at an average cost of $300 per hour.[232] The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the company internally is reflected in hours.

CALCULATION OF THE INCREMENTAL BURDEN OF THE EXEMPTION DISCLOSURE [233]

	Affected responses (A)	Incremental hours/form (B)	Total incremental burden (C)=(A)×(B)	75% company (D)=(C)×0.75	25% professional (E)=(C)×0.25	$300 professional cost (F)=(E)×300
20–F	292 [234]	0.25	73	18	55	$16,500.00
40–F	7 [235]	0.25	2	1	2	$600.00
10–K	54 [236]	0.25	14	11	4	$1,200.00
10–KSB	22 [237]	0.25	6	5	2	$600.00
14A	271 [238]	0.25	68	51	17	$5,100.00
14C	17 [239]	0.25	4	3	1	$300.00
Total			167	89	81	$24,300.00

CALCULATION OF THE INCREMENTAL BURDEN OF THE IDENTIFICATION DISCLOSURE

	Affected responses (A)	Incremental hours/form (B)	Total incremental burden (C)=(A)×(B)	75% company (D)=(C)×0.75	25% professional (E)=(C)×0.25	$300 professional cost (F)=(E)×300
20–F	0 [240]	0.25	0	0	0	$0.00
40–F	134 [241]	0.25	34	9	26	$7,800.00
10–K	1,073 [242]	0.25	268	201	67	$20,100.00
10–KSB	430 [243]	0.25	108	81	27	$8,100.00
N–CSR	113 [244]	0.25	28	21	7	$2,100.00

[227] We derived this estimate from 2002 data from the Standard & Poors Research Insight Compustat Database and the Commission's 2001 annual report.

[228] With respect to investment companies, the independence exemptions will not be available. A general exemption will be applicable to UITs, but UITs are excluded from Exemption Disclosure requirements. We anticipate that only a negligible number of investment companies will fall under the other general exemptions. Accordingly, we anticipate that the reporting burden imposed by the Exemption Disclosure requirements on listed investment companies will be negligible.

[229] Foreign private issuers are exempt from the requirements to provide proxy materials, so we assume no adjustment to the number of affected annual reports on Forms 20–F and 40–F.

[230] *See* Item 7(d)(1) of Schedule 14A.

[231] We estimate that 5% of listed issuers will be required to provide disclosure regarding the new issuer exemption in Exchange Act Rule 10A–3(b)(iv)(A). This is based on a weighted average of the number of listed companies that went public over the last three years.

[232] This allocation of the burden is consistent with our recent PRA submissions for Exchange Act periodic reports and proxy and information statements. See, *e.g.*, Release No. 33–8144 (Nov. 4, 2002). Traditionally, we have estimated that the company carried 25% of the burden internally and 75% of the burden of preparation was carried by outside professionals retained by the company. We believe that the new allocation more accurately reflects current practice for annual reports and proxy and information statements. We estimate, however, that the traditional 25% company and 75% outside professional allocation remains applicable for Forms 20–F and 40–F because those forms are prepared by foreign private issuers who rely more heavily on outside counsel for their preparation.

CALCULATION OF THE INCREMENTAL BURDEN OF THE IDENTIFICATION DISCLOSURE—Continued

	Affected responses	Incremental hours/form	Total incremental burden	75% company	25% professional	$300 professional cost
	(A)	(B)	(C)=(A)×(B)	(D)=(C)×0.75	(E)=(C)×0.25	(F)=(E)×300
14A	0[245]	0.25	0	0	0	$0.00
14C	0[246]	0.25	0	0	0	$0.00
Total	.....	.....	438	312	127	$38,100.00

Regulation S–K includes the requirements that a registrant must provide in filings under both the Securities Act and the Exchange Act. Regulation S–B includes the requirements that a small business issuer must provide in filings under the Securities Act and the Exchange Act. The disclosure changes will include changes to items under Regulation S–K and Regulation S–B. However, the filing requirements themselves are included in Form 10–K, Form 10–KSB, Form 20–F, Form 40–F, Schedule 14A and Schedule 14C. We have reflected the burden for the new requirements in the burden estimates for those firms. The items in Regulation S–K and Regulation S–B do not impose any separate burden. We previously have assigned one burden hour each to Regulations S–B and S–K for administrative convenience to reflect the fact that these regulations do not impose any direct burden on companies.

IV. Cost-Benefit Analysis

The amendments represent the implementation of a Congressional mandate. We recognize that implementation of the Sarbanes-Oxley Act will likely create costs and benefits to the economy. We are sensitive to the costs and benefits imposed by our rules, and we have identified certain costs and benefits of our amendments.

A. Background

Section 10A(m)(1) of the Exchange Act, as added by section 301 of the Sarbanes-Oxley Act, requires us to direct, by rule, the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with several enumerated standards regarding issuer audit committees. The new rule must become effective by April 26, 2003, which is 270 days after the date of enactment of the Sarbanes-Oxley Act and section 10A(m) of the Exchange Act.

In general, according to the standards listed in section 10A(m) of the Exchange Act, SROs will be prohibited from listing any security of an issuer that is not in compliance with the following standards:

- Each member of the audit committee of the issuer must be independent according to specified criteria;
- The audit committee of each issuer must be directly responsible for the appointment, compensation, retention and oversight of the work of any registered public accounting firm engaged for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the listed issuer, and each such registered public accounting firm must report directly to the audit committee;
- Each audit committee must establish procedures for the receipt, retention and treatment of complaints regarding accounting, internal accounting controls or auditing matters, including procedures for the confidential, anonymous submission by employees of the issuer of concerns regarding questionable accounting or auditing matters;
- Each audit committee must have the authority to engage independent counsel and other advisors, as it determines necessary to carry out its duties; and
- Each issuer must provide appropriate funding for the audit committee.

The amendments described in this document respond directly to the requirements in section 10A(m) of the Exchange Act. In addition, our amendments include several additional provisions, such as:

- Revising existing disclosure requirements regarding the composition of audit committees by also requiring this disclosure in annual reports of listed issuers filed with the Commission;
- Requiring a company availing itself of one of the exemptions from the requirements to disclose that it is doing so;
- Updating existing disclosure requirements regarding audit committees to reflect changes made by the amendments and the Sarbanes-Oxley Act; and
- Revising the disclosure requirements regarding the independence of audit committee financial experts for foreign private issuers.

B. Benefits

One of the main goals of the Sarbanes-Oxley Act is to improve investor confidence in the financial markets. The amendments in this document are among many required by the Sarbanes-

[233] For convenience, the estimated PRA hour burdens have been rounded to the nearest whole number, and the estimated PRA cost burdens have been rounded to the nearest $100. As a result of rounding, the sum of the entries in columns (D) and (E) of the tables may not exactly equal the corresponding entry in column (C).

[234] This figure is based on our estimate of the total number of affected responses by listed issuers.

[235] This figure is based on our estimate of the total number of affected responses by listed issuers.

[236] This figure is based on our estimate of the total number of affected responses by listed issuers, as adjusted for the number of responses where Part III information would be incorporated by reference from a proxy or information statement.

[237] This figure is based on our estimate of the total number of affected responses by listed issuers, as adjusted for the number of responses where Part III information would be incorporated by reference from a proxy or information statement.

[238] This figure is based on our estimate of the total number of affected responses by listed issuers.

[239] This figure is based on our estimate of the total number of affected responses by listed issuers.

[240] Issuers that file their annual report on Form 20–F are already required to identify the members of their audit committee.

[241] This figure is based on our estimate of the total number of affected responses by listed issuers.

[242] This figure is based on our estimate of the total number of affected responses by listed issuers, as adjusted for the number of responses where Part III information would be incorporated by reference from a proxy or information statement.

[243] This figure is based on our estimate of the total number of affected responses by listed issuers, as adjusted for the number of responses where Part III information would be incorporated by reference from a proxy or information statement.

[244] This figure is based on our estimate of the total number of affected responses by listed issuers, as adjusted for the number of responses where Item 5 information would be incorporated by reference from a proxy or information statement.

[245] We estimate that proxy statements on Schedule 14A are already required to identify the members of their audit committee.

[246] We estimate that information statements on Schedule 14C are already required to identify the members of their audit committee.

Oxley Act.[247] They seek to help achieve the Act's goals by promoting strong, effective audit committees to perform their oversight role. By increasing the competence of audit committees, the amendments are designed to further greater accountability and to improve the quality of financial disclosure and oversight of the process by qualified and independent audit committees. Vigilant and informed oversight by a strong, effective and independent audit committee could help to counterbalance pressures to misreport results and impose increased discipline on the process of preparing financial information. Improved oversight may help detect fraudulent financial reporting earlier and perhaps thus deter it or minimize its effects. All of these benefits imply increased market efficiency due to improved information and investor confidence in the reliability of a company's financial disclosure and system of internal controls. These benefits are not readily quantifiable. Commenters overwhelmingly supported the benefits of the amendments and the importance of audit committees to the financial reporting process. Further, as the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees summarized regarding its own recommendations for audit committees:

> Improving oversight of the financial reporting process necessarily involves the imposition of certain burdens and costs on public companies. Despite these costs, the Committee believes that a more transparent and reliable financial reporting process ultimately results in a more efficient allocation of and lower cost of capital. To the extent that instances of outright fraud, as well as other practices that result in lower quality financial reporting, are reduced with improved oversight, the benefits clearly justify these expenditures of resources.[248]

In addition, we are requiring basic information about the composition of an issuer's audit committee in a listed issuer's annual report. The disclosure is currently only required in proxy or information statements where directors are being elected, and not all listed issuers are subject to the proxy rules or elect directors each year. Also, because the Exchange Act now provides that in the absence of an audit committee the entire board of directors will be considered to be the audit committee, we are requiring a listed issuer that has not or has chosen not to separately designate an audit committee to disclose that the entire board of directors is acting as the issuer's audit committee. Also, if a company relies on one of the exemptions to the requirements, some minimal additional disclosure will be required. In our final rules, we are excluding certain issuers from these disclosure requirements to reduce overall burdens consistent with investor protection. We also are making several updates to existing disclosure requirements regarding audit committees and audit committee financial experts to reflect the final rule and changes made by the Sarbanes-Oxley Act.

As a result of these disclosure changes, investors will receive more detailed information on a consistent basis about the basic composition of an issuer's audit committee. These disclosures will afford investors greater visibility about the issuer's audit committee. Providing this information on a more widespread basis also may allow investors to ask more direct and useful questions of management and directors regarding the composition and role of the audit committee. The overwhelming majority of commenters, including many representing investor groups, expressed strong support for the changes, believing they provide important information for investors.

C. Costs

SROs not in compliance with the standards will need to spend additional time and incur additional costs in modifying their rules to comply. There also may be ongoing costs in monitoring compliance with the standards and taking appropriate remedial steps. If the standards have the effect of causing companies to delist or forego listing of their securities, SROs will lose trading volume. The standards could have the effect of discouraging the formation of trading markets that specialize in particular types of issuers (*i.e.*, small issuers or foreign issuers), if those issuers found the requirements too burdensome to seek a listing on those markets. The possibility of these effects and their magnitude if they were to occur are difficult to quantify.

Issuers will need to comply with the audit committee standards if they wish to have their securities listed on a national securities exchange or national securities association. This may require one-time costs by companies to spend additional time and incur additional costs in establishing or modifying their audit committees (or full boards if they do not have a separate audit committee) to comply with the standards. There may be search costs involved in locating independent directors willing to serve on a company's audit committee, including the costs of preparing proxy statements and holding shareholder meetings to elect those directors. If the requirements reduce the pool of candidates that will be willing to serve on an issuer's audit committee, these search costs may increase. Convincing directors to serve on an audit committee may require additional compensation or increased liability insurance coverage due to the new requirements imposed on audit committees. Companies may decide to increase the size of their boards to accommodate new directors meeting the new requirements. If additional independent directors were added to the board, or if existing non-independent directors are replaced, this may increase the percentage of the board that is independent from management. If a company had previously received services from an audit committee member of the type that will be prohibited under the final rule, the company may incur costs in locating an alternative provider for these services.

There also may be ongoing costs in monitoring compliance with the standards or maintaining any additional procedures established by the standards, such as the procedures for handling complaints. To the extent the audit committee incurs expenses or engages independent counsel or other advisors where it could not do so previously, there will be additional costs for the payment for such expenses and advisors. Companies also may incur additional ongoing expenses if they decide to increase the size of their boards in response to the requirements. In addition, the incremental cost of future director searches to replace an audit committee member may likely be higher as a result of the additional independence requirements.

We believe that as a result of many current SRO listing standards,[249] the Commission's audit committee disclosure requirements adopted in 1999,[250] the prior disclosures related to the involvement of the audit committee in recommending or approving changes in auditors and the resolution of disagreements between management and the auditors,[251] and professional standards that require communications between the auditor and audit committees on auditor independence issues,[252] many companies currently

[247] *See* note above.

[248] See note above.

[249] *See* note 24 above.

[250] *See* note 25 above.

[251] *See, e.g.*, Item 4 of Form 8–K [17 CFR 249.308] and Item 304 of Regulation S–K [17 CFR 229.304].

[252] *See, e.g.*, AICPA, ''Communications with Audit Committees,'' Statements of Auditing Standards (''SAS'') 61, as amended by SAS 89 and

Continued

have audit committees. However, these audit committees may not meet all of the requirements of the final rule. Smaller companies may constitute a larger representative share of issuers that do not meet the requirements, particularly the independence requirements. However, we recognize that because the requirements apply only to listed issuers, the quantitative listing standards applicable to listed securities, such as minimum revenue, market capitalization and shareholder equity requirements, will limit the size of issuers that will be affected by the requirements. Nevertheless, we are providing an additional transition period for smaller issuers to alleviate some of the potential burdens they may face. We are also providing an additional transition period for foreign issuers. Companies that do not currently meet the requirements will face all of the costs described above. However, these entities, because they currently lack the protections provided by the standards, may bear a disproportionately greater risk of fraudulent financial reporting, and thus may reap proportionately greater benefits.

We also are adopting limited exemptions to the requirements, such as an exemption for multiple listings, a limited exemption for new public companies and exemptions for certain foreign issuers, to alleviate some of the burdens companies may face where consistent with investor protection. Commenters expressed overwhelming support for these exemptions which will alleviate unnecessary costs and burdens companies may face without any attendant loss in investor protection. Companies that perceive the requirements as too onerous could be dissuaded from seeking or maintaining a listing for their securities, which could impact capital formation and negatively impact the transparency and liquidity of its securities.

We requested comment on the type, amount and duration of these costs. We received no specific data in response to our request. We have no reliable basis for estimating the actual number of companies that will face increased costs as a result of Exchange Act Section 10A(m) or the amount of such costs.

With respect to the disclosure changes regarding audit committees, issuers subject to the proxy rules are already required to compile most of this information for proxy or information statements where directors are being elected. Foreign private issuers that file their annual reports on Form 20-F also are already required to identify the members of their audit committee. The disclosure regarding if a listed issuer is availing itself of an exemption to the requirements should result in minimal additional disclosure. Using estimates derived from our Paperwork Reduction Act analysis, we estimated that the incremental impact of our disclosure changes will result in a total cost of $112,525 for all affected companies.[253]

In formulating the final amendments, we considered several regulatory alternatives that would be consistent with the specific mandate required by section 10A(m) of the Exchange Act. For example, we considered the propriety of excluding all foreign issuers, issuers of a particular size or additional classes of securities, but we determined that such an exclusion would not be appropriate or consistent with the policies underlying the Sarbanes-Oxley Act. The overwhelming majority of commenters agreed with this approach. We think that improvements in the financial reporting process for all listed issuers are important for promoting investor confidence in our markets.

We also considered whether we should provide objective guidance for determining who is an ''affiliated person'' for purposes of the independence requirement. While the majority of commenters supported a safe harbor, some did not want a safe harbor for fear any thresholds in the safe harbor would be viewed as a ceiling that would disqualify a director from serving on the audit committee. In considering the uncertainty that may arise in determining whether a person is an ''affiliated person,'' we have adopted a safe harbor from the definition of affiliate for non-investment companies. However, to add clarity we have added explicit language specifying that the thresholds in the safe harbor are not designed to be viewed as an upper limit on permissible levels.

We have also adopted other limited exemptions to alleviate some of the burdens companies may face where consistent with the Sarbanes-Oxley Act and investor protection. We have expanded these exemptions in a number of instances, where consistent with the Sarbanes-Oxley Act and investor protection, to alleviate unnecessary burdens and expenses. We believe the final rule reflects an appropriate balance between investors and investor groups who advocated more stringent requirements and issuers and their representatives who requested a much larger expansion of the exemptions.

V. Consideration of Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act[254] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The amendments represent the implementation of a Congressional mandate. They are intended to increase the independence and effectiveness of listed company audit committees. We anticipate these requirements will enhance the proper functioning of the capital markets by increasing the quality and accountability of financial reporting and restoring investor confidence. This increases the competitiveness of companies participating in the U.S. capital markets. However, the requirements relate only to companies listed on a national securities exchange or national securities association. Competitors not subject to the standards specified in section 10A(m) of the Exchange Act may be subject to fewer corporate governance burdens. Similarly, to the extent foreign exchanges or other markets do not impose these standards, competitors could, all things being equal, migrate to those markets to avoid compliance. This could cause U.S. exchanges and securities associations to lose trading volume and investors to lose liquidity or the benefits of trading in a U.S. market. Competitors and markets not subject to the standard, however, also may suffer from decreased investor confidence compared to those that do comply with the new standards.

Section 2(b) of the Securities Act,[255] section 3(f) of the Exchange Act[256] and section 2(c) of the Investment Company

90; AICPA, Codification of Statements on Auditing Standards (''AU'') § 380; Independence Standards Board, ''Independence Discussion with Audit Committees,'' Independence Standard No. 1 (Jan. 1999).

[253] The estimate is based on the burden hour estimates calculated under the Paperwork Reduction Act. For purposes of the Paperwork Reduction Act, we estimate that the additional disclosure will result in 401 internal burden hours and $62,400 in external costs. Assuming a cost of $125/hour for in-house professional staff, the total cost for the internal burden hours would be $50,125. Hence the aggregate cost estimate is $112,525 ($50,125 + 62,400). The $125/hour cost estimate is based on data obtained from *The SIA Report on Management and Professional Earnings in the Securities Industry (Oct. 2001).*

[254] 15 U.S.C. 78w(a)(2).

[255] 17 U.S.C. 77b(b).

[256] 15 U.S.C. 78c(f).

Act [257] require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. The amendments are designed to enhance the quality and accountability of the financial reporting process and may help increase investor confidence, which implies increased efficiency and competitiveness of the U.S. capital markets. Increased market efficiency and investor confidence also may encourage more efficient capital formation. As noted above, however, the requirements could have certain indirect negative effects, such as inconsistent application across all competitors. In addition, the requirements, while providing great flexibility for implementation, do remove a certain amount of individual control over the corporate governance process, which could have the possible effect of stifling more efficient approaches from being implemented if they were to develop.

If a company found the requirements too onerous, it could be dissuaded from accessing the U.S. public capital markets, which could impact capital formation. The possibility of these effects and their magnitude if they were to occur are difficult to quantify. We are adopting several limited exemptions from the requirements to alleviate some of the burdens companies may face where consistent with investor protection. For example, the limited exemption for new public companies is intended to counteract any disincentive the requirements may have on a company's willingness to access the public capital markets.

We requested comments on these analyses in the Proposing Release. We received no comments in response to these requests.

VI. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis, or FRFA, has been prepared in accordance with the Regulatory Flexibility Act.[258] This FRFA involves new rules and amendments to direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with several enumerated standards relating to the issuer's audit committee. An Initial Regulatory Flexibility Analysis (''IRFA'') was prepared in accordance with the Regulatory Flexibility Act [259] in conjunction with the Proposing Release. The Proposing Release included the IRFA and solicited comments on it.

A. Need for the Amendments

We are adopting new Exchange Act rule 10A–3 to comply with the mandate of the Sarbanes-Oxley Act and new section 10A(m)(1) of the Exchange Act. The amendments are intended to enhance investor confidence in the fairness and integrity of the securities markets by increasing the competence and independence, and hence effectiveness, of listed company audit committees. In addition, the amendments change current disclosure requirements regarding audit committees to increase the transparency of these committees. We believe that these amendments will help to improve the quality and accountability of financial disclosure and oversight of the process by qualified and independent audit committees.

B. Significant Issues Raised by Public Comment

We received no comments in response to the IRFA.

C. Small Entities Subject to the Amendments

The amendments will directly affect the national securities exchanges that trade listed securities, none of which is a small entity as defined by Commission rules. Exchange Act rule 0–10(e)[260] states that the term ''small business,'' when referring to an exchange, means any exchange that has been exempted from the reporting requirements of Exchange Act rule 11Aa3–1.[261] The amendments also will directly affect national securities associations. No affected national securities association is a small entity, as defined by 13 CFR 121.201.

The amendments may have an indirect effect on some small entities. We also have defined the term ''small business'' in Exchange Act rule 0–10(a) to be an issuer, other than an investment company, that, on the last day of its most recent fiscal year, had total assets of $5 million or less and when used with reference to an investment company, an investment company together with other investment companies in the same group of related investment companies with net assets of $50 million or less as of the end of its most recent fiscal year.[262] Under these limits, depending on other restrictions imposed by the various SROs, such as quantitative listing standards, a small entity may be listed on a national securities exchange or a national securities association. We estimate that 7,250 issuers are listed on a national securities exchange or traded on Nasdaq, and we estimate that 6,640 of these issuers are not investment companies.[263] We estimate that less than 225, or approximately 3%, of the issuers that are not investment companies,[264] and less than 25, or approximately 4% of the issuers that are investment companies,[265] are ''small entities'' for purposes of the Regulatory Flexibility Act that possibly could be affected by the amendments.

D. Reporting, Recordkeeping, and Other Compliance Requirements

Under the amendments, national securities exchanges and national securities associations are directed to prohibit the listing of any security of an issuer, both large and small, that is not in compliance with certain enumerated standards regarding the issuer's audit committee. These standards relate to: The independence of audit committee members; the audit committee's responsibility to select and oversee the issuer's independent accountant; procedures for handling complaints regarding the issuer's accounting practices; the authority of the audit committee to engage advisors; and funding for the independent auditor and any outside advisors engaged by the audit committee.

Small entities will need to comply with these standards if they wish to have their securities listed on a national securities exchange or a national securities association. The rules will not require an entity to maintain an audit committee. However, the Exchange Act now provides that in the absence of an audit committee, the entire board of directors will be considered to be the audit committee. There are reasons to believe that many small entities currently have separately-designated audit committees.[266] However, not all of the audit committees of these small entities may comply with the new requirements. A small entity whose board or audit committee does not comply with the new requirements will

[257] 15 U.S.C. 80a–2(c).

[258] 5 U.S.C. 601.

[259] 5 U.S.C. 603.

[260] 17 CFR 240.0–10(e).

[261] 17 CFR 240.11Aa3–1.

[262] *See* Exchange Act rule 0–10(a).

[263] *See* note above.

[264] We derived this estimate from the Standard & Poors Research Insight Compustat Database.

[265] We derived this estimate from information compiled by Commission staff.

[266] *See, e.g.*, NACD, *2001–2002 Public Company Governance Survey* (Nov. 2001).

need to spend additional time and incur additional costs in modifying their audit committees or board to comply with the standards. Small entities may face particular difficulties in recruiting directors that meet the independence requirements.

There also may be ongoing costs in monitoring compliance with the standards or maintaining any additional procedures established by the standards, such as the procedures for handling complaints. To the extent the audit committee incurs expenses or engages independent counsel or other advisors where it could not do so previously, there will be additional costs for the payment of these expenses and advisors. Due to the small size of these small entities, these additional costs may have a larger proportional impact on these entities than larger listed issuers.

In addition, the small entity may need to make additional disclosure about its audit committee in its annual report as well as its proxy or information statement if directors are being elected. This may require additional costs in order to collect, record and report the information to be disclosed under the rules. Small entities subject to the proxy rules are already required to disclose most of the information affected by our amendments in proxy or information statements where directors are being elected. This information should be readily available to small entities. Further, the disclosure regarding any exemption from the listing standards should entail only a minimal additional statement.

We have little data to determine how many small entities do not already comply with the final rules and amendments or how much it would cost to comply. We recognize that because the amendments apply only to listed issuers, the quantitative listing standards applicable to listed securities, such as minimum revenue, market capitalization and shareholder equity requirements, will limit the size and number of issuers that will be affected by the requirements.

E. Agency Action To Minimize Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. In connection with the amendments, we considered the following alternatives:

- Establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities;
- Clarifying, consolidating or simplifying compliance and reporting requirements under the rules for small entities;
- Using performance rather than design standards; and
- Exempting small entities from all or part of the requirements.

The coverage of section 10A(m) of the Exchange Act, as added by Congress in section 301 of the Sarbanes-Oxley Act, makes no distinction based on an issuer's size. We think that improvements in the financial reporting process for listed issuers of all sizes are important for promoting investor confidence in our markets. For example, a 1999 report commissioned by the organizations that sponsored the Treadway Commission found that the incidence of financial fraud was greater in small companies.[267] However, we are sensitive to the costs and burdens that will be faced by small entities. We have endeavored through the amendments to alleviate the regulatory burden on all listed issuers, including the small proportion of small entities that will be affected, while meeting our regulatory objectives.

We believe that a blanket exemption for small entities from coverage of the requirements is not appropriate and inconsistent with the policies underlying the Sarbanes-Oxley Act. Similarly, we believe that different compliance requirements for small entities also would interfere with achieving the primary goal of the amendments to increase the competency and effectiveness of audit committees for all companies with listed securities. The majority of commenters generally agreed with this approach and did not support lesser standards for smaller issuers overall. These commenters did not believe the requirements will impose a disproportionate burden on small issuers. We recognize that because the requirements apply only to listed issuers, the quantitative listing standards applicable to listed securities, such as minimum revenue, market capitalization and shareholder equity requirements, already serve somewhat as a limit on the size of issuers that will be affected by the requirements.

Other commenters, however, were concerned that smaller issuers may have particular difficulty locating qualified audit committee candidates that will meet the independence criteria, especially given the implementation period proposed by the Commission. While these commenters advocated various approaches, such as an exceptional and limited circumstances exemption for smaller issuers or SRO authority to exempt individual small issuers on a case-by-case basis, most agreed that an additional implementation period would be appropriate for these issuers. We are sensitive to the possible implication for smaller issuers and for SROs that would like to specialize in securities of these issuers. The final rule provides an extended compliance period for listed issuers that are small business issuers. In addition, the modifications to several of the other exemptions in the final rule, such as the overlapping board exemption and the new issuer exemption, should provide additional flexibility to small and new issuers in meeting the requirements of the rule. Our approach of not mandating specific procedures for the auditor responsibility requirement and the complaint procedures requirement should give issuers additional flexibility in meeting these requirements. Given the fact that the requirements will impact such a small number of small entities, we are not aware of how to further clarify, consolidate or simplify these amendments for small entities.

The amendments use performance standards in a number of respects. As noted above, we are not specifying the specific procedures or arrangements an issuer or audit committee must develop to comply with the standards. We do provide design standards regarding audit committee member independence, as these are the standards we are directed to implement by Congress. Accordingly, we believe that design standards are necessary to achieve the objectives of the statutory mandate. We do have the authority under section 10A(m)(3)(C) to exempt particular relationships with respect to audit committee members, although, for the reasons discussed above, we are not using that authority at this time for small entities.

VII. Effective Date

The final rules and amendments are effective on April 25, 2003. The Administrative Procedure Act, or APA, generally requires that an agency publish an adopted rule in the **Federal Register** 30 days before it becomes effective.[268] This requirement, however, does not apply if the agency finds good cause for making the rule effective sooner.[269] The Commission believes that it is appropriate to waive the full 30-day advance publication of the new rule and amendments. The Sarbanes-Oxley Act requires the rules to be

[267] *See* note above.

[268] 5 U.S.C. 553(d).

[269] *Id.*

effective by April 26, 2003. We have been working with the SROs to implement the statutory requirement in an orderly fashion. However, because of the extended compliance dates, a notice period of less than 30 days should not prejudice anyone. Under the final rule and amendments, SROs are not required to submit proposals implementing the directive in Exchange Act rule 10A–3 until July 15, 2003. The rules based on those proposals must be approved by the Commission by December 1, 2003. Listed issuers do not have to comply with the new listing rules until their first annual shareholders meeting after January 15, 2004, at the earliest, and small business issuers and foreign private issuers will have additional time to comply. Issuers need not comply with the disclosure changes until reports covering periods ending on or after (or proxy or information statements for actions occurring on or after) the compliance date for the listing standards applicable to the listed issuer. Because of this delay before any action is required as a result of the rules, the Commission finds good cause to make the new rules and amendments effective on April 25, 2003.

VIII. Statutory Authority and Text of Rule Amendments

The amendments contained in this document are being adopted under the authority set forth in sections 2,[270] 6,[271] 7,[272] 8,[273] 10,[274] 17[275] and 19[276] of the Securities Act, sections 3(b), 10A, 12, 13, 14, 15, 23 and 36[277] of the Exchange Act, sections 8,[278] 20,[279] 24(a),[280] 30[281] and 38[282] of the Investment Company Act of 1940 and sections 3 and 301 of the Sarbanes-Oxley Act.

Text of Amendments

List of Subjects

17 CFR Parts 228, 229, 240 and 249

Reporting and recordkeeping requirements, Securities.

17 CFR Part 274

Reporting and recordkeeping requirements, Securities, Investment Companies.

[270] 15 U.S.C. 77b.
[271] 15 U.S.C. 77f.
[272] 15 U.S.C. 77g.
[273] 15 U.S.C. 77h.
[274] 15 U.S.C. 77j.
[275] 15 U.S.C. 77q.
[276] 15 U.S.C. 77s.
[277] 17 U.S.C. 78mm.
[278] 15 U.S.C. 80a-8.
[279] 15 U.S.C. 80a-20.
[280] 15 U.S.C. 80a-24(a).
[281] 15 U.S.C. 80a-29.
[282] 15 U.S.C. 80a-37.

■ In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows.

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

■ 1. The general authority citation for Part 228 is revised to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78l, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11 and 7202.

* * * * *

■ 2. Amend § 228.401 by adding paragraph (f) to read as follows:

§ 228.401 (Item 401) Directors, Executive Officers, Promoters and Control Persons.

* * * * *

(f) *Identification of the audit committee.* (1) If you meet the following requirements, provide the disclosure in paragraph (f)(2) of this section:

(i) You are a listed issuer, as defined in § 240.10A–3 of this chapter;

(ii) You are filing either an annual report on Form 10–KSB (17 CFR 249.310b), or a proxy statement or information statement pursuant to the Exchange Act (15 U.S.C. 78a *et seq.*) if action is to be taken with respect to the election of directors; and

(iii) You are neither:

(A) A subsidiary of another listed issuer that is relying on the exemption in § 240.10A–3(c)(2) of this chapter; nor

(B) Relying on any of the exemptions in § 240.10A–3(c)(4) through (c)(7) of this chapter.

(2)(i) State whether or not the small business issuer has a separately-designated standing audit committee established in accordance with section 3(a)(58)(A) of the Exchange Act (15 U.S.C. 78c(a)(58)(A)), or a committee performing similar functions. If the small business issuer has such a committee, however designated, identify each committee member. If the entire board of directors is acting as the small business issuer's audit committee as specified in section 3(a)(58)(B) of the Exchange Act (15 U.S.C. 78c(a)(58)(B)), so state.

(ii) If applicable, provide the disclosure required by § 240.10A–3(d) of this chapter regarding an exemption from the listing standards for audit committees.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

■ 3. The general authority citation for Part 229 is revised to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*(d), 78mm, 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80b–11, and 7202, unless otherwise noted.

* * * * *

■ 4. Amend § 229.401 by:
■ a. Revising Instruction 3 to paragraph (h); and
■ b. Adding paragraph (i).

The additions and revisions read as follows:

§ 229.401 (Item 401) Directors, executive officers, promoters and control persons.

* * * * *

Instructions to Item 401(h)

* * * * *

3. In the case of a foreign private issuer with a two-tier board of directors, for purposes of this Item 401(h), the term *board of directors* means the supervisory or non-management board. In the case of a foreign private issuer meeting the requirements of § 240.10A–3(c)(3), for purposes of this Item 401(h), the term *board of directors* means the issuer's board of auditors (or similar body) or statutory auditors, as applicable. Also, in the case of a foreign private issuer, the term generally accepted accounting principles in paragraph (h)(2)(i) of this Item means the body of *generally accepted accounting principles* used by that issuer in its primary financial statements filed with the Commission.

* * * * *

(i) *Identification of the audit committee.* (1) If you meet the following requirements, provide the disclosure in paragraph (i)(2) of this section:

(i) You are a listed issuer, as defined in § 240.10A–3 of this chapter;

(ii) You are filing either an annual report on Form 10–K or 10–KSB (17 CFR 249.310 or 17 CFR 249.310b), or a proxy statement or information statement pursuant to the Exchange Act (15 U.S.C. 78a *et seq.*) if action is to be taken with respect to the election of directors; and

(iii)You are neither:

(A) A subsidiary of another listed issuer that is relying on the exemption in § 240.10A–3(c)(2) of this chapter; nor

(B) Relying on any of the exemptions in § 240.10A–3(c)(4) through (c)(7) of this chapter.

(2)(i)State whether or not the registrant has a separately-designated standing audit committee established in accordance with section 3(a)(58)(A) of the Exchange Act (15 U.S.C. 78c(a)(58)(A)), or a committee performing similar functions. If the registrant has such a committee, however designated, identify each committee member. If the entire board of directors is acting as the registrant's audit committee as specified in section 3(a)(58)(B) of the Exchange Act (15 U.S.C. 78c(a)(58)(B)), so state.

(ii) If applicable, provide the disclosure required by § 240.10A–3(d) of this chapter regarding an exemption from the listing standards for audit committees.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 5. The authority citation for Part 240 is revised to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7202, unless otherwise noted.

* * * * *

■ 6. Add § 240.10A–3 to read as follows:

§ 240.10A–3 Listing standards relating to audit committees.

(a) Pursuant to section 10A(m) of the Act (15 U.S.C. 78j–1(m)) and section 3 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7202):

(1) *National securities exchanges.* The rules of each national securities exchange registered pursuant to section 6 of the Act (15 U.S.C. 78f) must, in accordance with the provisions of this section, prohibit the initial or continued listing of any security of an issuer that is not in compliance with the requirements of any portion of paragraph (b) or (c) of this section.

(2) *National securities associations.* The rules of each national securities association registered pursuant to section 15A of the Act (15 U.S.C. 78o–3) must, in accordance with the provisions of this section, prohibit the initial or continued listing in an automated inter-dealer quotation system of any security of an issuer that is not in compliance with the requirements of any portion of paragraph (b) or (c) of this section.

(3) *Opportunity to cure defects.* The rules required by paragraphs (a)(1) and (a)(2) of this section must provide for appropriate procedures for a listed issuer to have an opportunity to cure any defects that would be the basis for a prohibition under paragraph (a) of this section, before the imposition of such prohibition. Such rules also may provide that if a member of an audit committee ceases to be independent in accordance with the requirements of this section for reasons outside the member's reasonable control, that person, with notice by the issuer to the applicable national securities exchange or national securities association, may remain an audit committee member of the listed issuer until the earlier of the next annual shareholders meeting of the listed issuer or one year from the occurrence of the event that caused the member to be no longer independent.

(4) *Notification of noncompliance.* The rules required by paragraphs (a)(1) and (a)(2) of this section must include a requirement that a listed issuer must notify the applicable national securities exchange or national securities association promptly after an executive officer of the listed issuer becomes aware of any material noncompliance by the listed issuer with the requirements of this section.

(5) *Implementation.* (i) The rules of each national securities exchange or national securities association meeting the requirements of this section must be operative, and listed issuers must be in compliance with those rules, by the following dates:

(A) July 31, 2005 for foreign private issuers and small business issuers (as defined in § 240.12b–2); and

(B) For all other listed issuers, the earlier of the listed issuer's first annual shareholders meeting after January 15, 2004, or October 31, 2004.

(ii) Each national securities exchange and national securities association must provide to the Commission, no later than July 15, 2003, proposed rules or rule amendments that comply with this section.

(iii) Each national securities exchange and national securities association must have final rules or rule amendments that comply with this section approved by the Commission no later than December 1, 2003.

(b) *Required standards*—(1) *Independence.* (i) Each member of the audit committee must be a member of the board of directors of the listed issuer, and must otherwise be independent; provided that, where a listed issuer is one of two dual holding companies, those companies may designate one audit committee for both companies so long as each member of the audit committee is a member of the board of directors of at least one of such dual holding companies.

(ii) *Independence requirements for non-investment company issuers.* In order to be considered to be independent for purposes of this paragraph (b)(1), a member of an audit committee of a listed issuer that is not an investment company may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee:

(A) Accept directly or indirectly any consulting, advisory, or other compensatory fee from the issuer or any subsidiary thereof, provided that, unless the rules of the national securities exchange or national securities association provide otherwise, compensatory fees do not include the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the listed issuer (provided that such compensation is not contingent in any way on continued service); or

(B) Be an affiliated person of the issuer or any subsidiary thereof.

(iii) *Independence requirements for investment company issuers.* In order to be considered to be independent for purposes of this paragraph (b)(1), a member of an audit committee of a listed issuer that is an investment company may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee:

(A) Accept directly or indirectly any consulting, advisory, or other compensatory fee from the issuer or any subsidiary thereof, provided that, unless the rules of the national securities exchange or national securities association provide otherwise, compensatory fees do not include the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the listed issuer (provided that such compensation is not contingent in any way on continued service); or

(B) Be an ''interested person'' of the issuer as defined in section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)).

(iv) *Exemptions from the independence requirements.*

(A) For an issuer listing securities pursuant to a registration statement under section 12 of the Act (15 U.S.C. 78l), or for an issuer that has a registration statement under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) covering an initial public offering of securities to be listed by the issuer, where in each case the listed issuer was

not, immediately prior to the effective date of such registration statement, required to file reports with the Commission pursuant to section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d)):

(*1*) All but one of the members of the listed issuer's audit committee may be exempt from the independence requirements of paragraph (b)(1)(ii) of this section for 90 days from the date of effectiveness of such registration statement; and

(*2*) A minority of the members of the listed issuer's audit committee may be exempt from the independence requirements of paragraph (b)(1)(ii) of this section for one year from the date of effectiveness of such registration statement.

(B) An audit committee member that sits on the board of directors of a listed issuer and an affiliate of the listed issuer is exempt from the requirements of paragraph (b)(1)(ii)(B) of this section if the member, except for being a director on each such board of directors, otherwise meets the independence requirements of paragraph (b)(1)(ii) of this section for each such entity, including the receipt of only ordinary-course compensation for serving as a member of the board of directors, audit committee or any other board committee of each such entity.

(C) An employee of a foreign private issuer who is not an executive officer of the foreign private issuer is exempt from the requirements of paragraph (b)(1)(ii) of this section if the employee is elected or named to the board of directors or audit committee of the foreign private issuer pursuant to the issuer's governing law or documents, an employee collective bargaining or similar agreement or other home country legal or listing requirements.

(D) An audit committee member of a foreign private issuer may be exempt from the requirements of paragraph (b)(1)(ii)(B) of this section if that member meets the following requirements:

(*1*) The member is an affiliate of the foreign private issuer or a representative of such an affiliate;

(*2*) The member has only observer status on, and is not a voting member or the chair of, the audit committee; and

(*3*) Neither the member nor the affiliate is an executive officer of the foreign private issuer.

(E) An audit committee member of a foreign private issuer may be exempt from the requirements of paragraph (b)(1)(ii)(B) of this section if that member meets the following requirements:

(*1*) The member is a representative or designee of a foreign government or foreign governmental entity that is an affiliate of the foreign private issuer; and

(*2*) The member is not an executive officer of the foreign private issuer.

(F) In addition to paragraphs (b)(1)(iv)(A) through (E) of this section, the Commission may exempt from the requirements of paragraphs (b)(1)(ii) or (b)(1)(iii) of this section a particular relationship with respect to audit committee members, as the Commission determines appropriate in light of the circumstances.

(2) *Responsibilities relating to registered public accounting firms.* The audit committee of each listed issuer, in its capacity as a committee of the board of directors, must be directly responsible for the appointment, compensation, retention and oversight of the work of any registered public accounting firm engaged (including resolution of disagreements between management and the auditor regarding financial reporting) for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the listed issuer, and each such registered public accounting firm must report directly to the audit committee.

(3) *Complaints.* Each audit committee must establish procedures for:

(i) The receipt, retention, and treatment of complaints received by the listed issuer regarding accounting, internal accounting controls, or auditing matters; and

(ii) The confidential, anonymous submission by employees of the listed issuer of concerns regarding questionable accounting or auditing matters.

(4) *Authority to engage advisers.* Each audit committee must have the authority to engage independent counsel and other advisers, as it determines necessary to carry out its duties.

(5) *Funding.* Each listed issuer must provide for appropriate funding, as determined by the audit committee, in its capacity as a committee of the board of directors, for payment of:

(i) Compensation to any registered public accounting firm engaged for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the listed issuer;

(ii) Compensation to any advisers employed by the audit committee under paragraph (b)(4) of this section; and

(iii) Ordinary administrative expenses of the audit committee that are necessary or appropriate in carrying out its duties.

(c) *General exemptions.* (1) At any time when an issuer has a class of securities that is listed on a national securities exchange or national securities association subject to the requirements of this section, the listing of other classes of securities of the listed issuer on a national securities exchange or national securities association is not subject to the requirements of this section.

(2) At any time when an issuer has a class of common equity securities (or similar securities) that is listed on a national securities exchange or national securities association subject to the requirements of this section, the listing of classes of securities of a direct or indirect consolidated subsidiary or an at least 50% beneficially owned subsidiary of the issuer (except classes of equity securities, other than non-convertible, non-participating preferred securities, of such subsidiary) is not subject to the requirements of this section.

(3) The listing of securities of a foreign private issuer is not subject to the requirements of paragraphs (b)(1) through (b)(5) of this section if the foreign private issuer meets the following requirements:

(i) The foreign private issuer has a board of auditors (or similar body), or has statutory auditors, established and selected pursuant to home country legal or listing provisions expressly requiring or permitting such a board or similar body;

(ii) The board or body, or statutory auditors is required under home country legal or listing requirements to be either:

(A) Separate from the board of directors; or

(B) Composed of one or more members of the board of directors and one or more members that are not also members of the board of directors;

(iii) The board or body, or statutory auditors, are not elected by management of such issuer and no executive officer of the foreign private issuer is a member of such board or body, or statutory auditors;

(iv) Home country legal or listing provisions set forth or provide for standards for the independence of such board or body, or statutory auditors, from the foreign private issuer or the management of such issuer;

(v) Such board or body, or statutory auditors, in accordance with any applicable home country legal or listing requirements or the issuer's governing documents, are responsible, to the extent permitted by law, for the appointment, retention and oversight of the work of any registered public accounting firm engaged (including, to the extent permitted by law, the

resolution of disagreements between management and the auditor regarding financial reporting) for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the issuer; and

(vi) The audit committee requirements of paragraphs (b)(3), (b)(4) and (b)(5) of this section apply to such board or body, or statutory auditors, to the extent permitted by law.

(4) The listing of a security futures product cleared by a clearing agency that is registered pursuant to section 17A of the Act (15 U.S.C. 78q–1) or that is exempt from the registration requirements of section 17A pursuant to paragraph (b)(7)(A) of such section is not subject to the requirements of this section.

(5) The listing of a standardized option, as defined in § 240.9b–1(a)(4), issued by a clearing agency that is registered pursuant to section 17A of the Act (15 U.S.C. 78q–1) is not subject to the requirements of this section.

(6) The listing of securities of the following listed issuers are not subject to the requirements of this section:

(i) Asset-Backed Issuers (as defined in § 240.13a–14(g) and § 240.15d–14(g));

(ii) Unit investment trusts (as defined in 15 U.S.C. 80a–4(2)); and

(iii)Foreign governments (as defined in § 240.3b–4(a)).

(7) The listing of securities of a listed issuer is not subject to the requirements of this section if:

(i) The listed issuer, as reflected in the applicable listing application, is organized as a trust or other unincorporated association that does not have a board of directors or persons acting in a similar capacity; and

(ii) The activities of the listed issuer that is described in paragraph (c)(7)(i) of this section are limited to passively owning or holding (as well as administering and distributing amounts in respect of) securities, rights, collateral or other assets on behalf of or for the benefit of the holders of the listed securities.

(d) *Disclosure.* Any listed issuer availing itself of an exemption from the independence standards contained in paragraph (b)(1)(iv) of this section (except paragraph (b)(1)(iv)(B) of this section), the general exemption contained in paragraph (c)(3) of this section or the last sentence of paragraph (a)(3) of this section, must:

(1) Disclose its reliance on the exemption and its assessment of whether, and if so, how, such reliance would materially adversely affect the ability of the audit committee to act independently and to satisfy the other requirements of this section in any proxy or information statement for a meeting of shareholders at which directors are elected that is filed with the Commission pursuant to the requirements of section 14 of the Act (15 U.S.C. 78n); and

(2) Disclose the information specified in paragraph (d)(1) of this section in, or incorporate such information by reference from such proxy or information statement filed with the Commission into, its annual report filed with the Commission pursuant to the requirements of section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d)).

(e) *Definitions.* Unless the context otherwise requires, all terms used in this section have the same meaning as in the Act. In addition, unless the context otherwise requires, the following definitions apply for purposes of this section:

(1)(i) The term *affiliate* of, or a person *affiliated* with, a specified person, means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(ii)(A) A person will be deemed not to be in control of a specified person for purposes of this section if the person:

(*1*) Is not the beneficial owner, directly or indirectly, of more than 10% of any class of voting equity securities of the specified person; and

(*2*) Is not an executive officer of the specified person.

(B) Paragraph (e)(1)(ii)(A) of this section only creates a safe harbor position that a person does not control a specified person. The existence of the safe harbor does not create a presumption in any way that a person exceeding the ownership requirement in paragraph (e)(1)(ii)(A)(*1*) of this section controls or is otherwise an affiliate of a specified person.

(iii) The following will be deemed to be affiliates:

(A) An executive officer of an affiliate;

(B) A director who also is an employee of an affiliate;

(C) A general partner of an affiliate; and

(D) A managing member of an affiliate.

(iv) For purposes of paragraph (e)(1)(i) of this section, dual holding companies will not be deemed to be affiliates of or persons affiliated with each other by virtue of their dual holding company arrangements with each other, including where directors of one dual holding company are also directors of the other dual holding company, or where directors of one or both dual holding companies are also directors of the businesses jointly controlled, directly or indirectly, by the dual holding companies (and, in each case, receive only ordinary-course compensation for serving as a member of the board of directors, audit committee or any other board committee of the dual holding companies or any entity that is jointly controlled, directly or indirectly, by the dual holding companies).

(2) In the case of foreign private issuers with a two-tier board system, the term *board of directors* means the supervisory or non-management board.

(3) In the case of a listed issuer that is a limited partnership or limited liability company where such entity does not have a board of directors or equivalent body, the term *board of directors* means the board of directors of the managing general partner, managing member or equivalent body.

(4) The term *control* (including the terms *controlling, controlled by* and under *common control with*) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(5) The term *dual holding companies* means two foreign private issuers that:

(i) Are organized in different national jurisdictions;

(ii) Collectively own and supervise the management of one or more businesses which are conducted as a single economic enterprise; and

(iii) Do not conduct any business other than collectively owning and supervising such businesses and activities reasonably incidental thereto.

(6) The term *executive officer* has the meaning set forth in § 240.3b–7.

(7) The term *foreign private issuer* has the meaning set forth in § 240.3b–4(c).

(8) The term *indirect* acceptance by a member of an audit committee of any consulting, advisory or other compensatory fee includes acceptance of such a fee by a spouse, a minor child or stepchild or a child or stepchild sharing a home with the member or by an entity in which such member is a partner, member, an officer such as a managing director occupying a comparable position or executive officer, or occupies a similar position (except limited partners, non-managing members and those occupying similar positions who, in each case, have no active role in providing services to the entity) and which provides accounting, consulting, legal, investment banking or financial advisory services to the issuer or any subsidiary of the issuer.

(9) The terms *listed* and *listing* refer to securities listed on a national securities exchange or listed in an

automated inter-dealer quotation system of a national securities association or to issuers of such securities.

Instructions to § 240.10A–3

1. The requirements in paragraphs (b)(2) through (b)(5), (c)(3)(v) and (c)(3)(vi) of this section do not conflict with, and do not affect the application of, any requirement or ability under a listed issuer's governing law or documents or other home country legal or listing provisions that requires or permits shareholders to ultimately vote on, approve or ratify such requirements. The requirements instead relate to the assignment of responsibility as between the audit committee and management. In such an instance, however, if the listed issuer provides a recommendation or nomination regarding such responsibilities to shareholders, the audit committee of the listed issuer, or body performing similar functions, must be responsible for making the recommendation or nomination.

2. The requirements in paragraphs (b)(2) through (b)(5), (c)(3)(v), (c)(3)(vi) and Instruction 1 of this section do not conflict with any legal or listing requirement in a listed issuer's home jurisdiction that prohibits the full board of directors from delegating such responsibilities to the listed issuer's audit committee or limits the degree of such delegation. In that case, the audit committee, or body performing similar functions, must be granted such responsibilities, which can include advisory powers, with respect to such matters to the extent permitted by law, including submitting nominations or recommendations to the full board.

3. The requirements in paragraphs (b)(2) through (b)(5), (c)(3)(v) and (c)(3)(vi) of this section do not conflict with any legal or listing requirement in a listed issuer's home jurisdiction that vests such responsibilities with a government entity or tribunal. In that case, the audit committee, or body performing similar functions, must be granted such responsibilities, which can include advisory powers, with respect to such matters to the extent permitted by law.

4. For purposes of this section, the determination of a person's beneficial ownership must be made in accordance with § 240.13d–3.

■ 7. Amend § 240.14a–101 by:

■ a. Adding a sentence to the end of paragraph (d)(1) of Item 7;

■ b. Revising paragraph (d)(3)(iv) of Item 7; and

■ c. Revising the introductory text of paragraph (b)(14) of Item 22.

The additions and revisions read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

Schedule 14A Information

* * * * *

Item 7. Directors and executive officers.
* * *

(d)(1) * * * Such disclosure need not be provided to the extent it is duplicative of disclosure provided in accordance with Item 401(i) of Regulation S–K (§ 229.401(i) of this chapter).

* * * * *

(3) * * *

(iv)(A) If the registrant is a listed issuer, as defined in § 240.10A–3:

(*1*) Disclose whether the members of the audit committee are independent, as independence for audit committee members is defined in the listing standards applicable to the listed issuer. If the registrant does not have a separately designated audit committee, or committee performing similar functions, the registrant must provide the disclosure with respect to all members of its board of directors.

(*2*) If the listed issuer's board of directors determines, in accordance with the listing standards applicable to the listed issuer, to appoint a director to the audit committee who is not independent (apart from the requirements in § 240.10A–3) because of exceptional or limited or similar circumstances, disclose the nature of the relationship that makes that individual not independent and the reasons for the board of directors' determination.

(B) If the registrant, including a small business issuer, is not a listed issuer, disclose whether the registrant has an audit committee established in accordance with section 3(a)(58)(A) of the Act (15 U.S.C. 78c(a)(58)(A)) and, if so, whether the members of the committee are independent. In determining whether a member is independent, the registrant must use a definition for audit committee member independence of a national securities exchange registered pursuant to section 6(a) of the Act (15 U.S.C. 78f(a)) or a national securities association registered pursuant to section 15A(a) of the Act (15 U.S.C. 78o–3(a)) that has been approved by the Commission (as such definition may be modified or supplemented), and state which definition was used. Whichever definition is chosen must be applied consistently to all members of the audit committee.

* * * * *

Item 22. Information required in investment company proxy statement.
* * *

(b) * * *

(14) State whether or not the Fund has a separately designated audit committee established in accordance with section 3(a)(58)(A) of the Act (15 U.S.C. 78c(a)(58)(A)). If the entire board of directors is acting as the Fund's audit committee as specified in section 3(a)(58)(B) of the Act (15 U.S.C. 78c(a)(58)(B)), so state. If applicable, provide the disclosure required by § 240.10A–3(d) regarding an exemption from the listing standards for audit committees. Identify the other standing committees of the Fund's board of directors, and provide the following information about each committee, including any separately designated audit committee:

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 8. The general authority citation for Part 249 is revised to read as follows:

Authority: 15 U.S.C. 78a, *et seq.*, and 7202, unless otherwise noted.

* * * * *

■ 9. Amend Form 20–F (referenced in § 249.220f) by:

■ a. Revising the Instruction to Item 6.C;

■ b. Revising paragraph (a)(2) of Item 16A;

■ c. Revising instruction 3 to Item 16A; and

■ d. Adding Item 16D.

The additions and revisions read as follows:

Note: The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 20–F

* * * * *

Item 6. Directors, Senior Management and Employees

* * * * *

Instructions to Item 6.C

1. The term ''plan'' is used very broadly and includes any type of arrangement for compensation, even if the terms of the plan are not contained in a formal document.

2. If the company is a listed issuer as defined in Exchange Act Rule 10A–3 (17 CFR 240.10A–3) and its entire board of directors is acting as the company's audit committee as specified in section 3(a)(58)(B) of the Exchange Act (15 U.S.C. 78c(a)(58)(B)), so state.

3. If the company has a board of auditors or similar body, as described in Exchange Act Rule 10A–3(c)(3) (17 CFR 240.10A–3(c)(3)), the disclosure required by this Item 6.C. with regard to the company's audit committee can be provided with respect to the company's board of auditors, or similar body.

* * * * *

Item 16A. Audit Committee Financial Expert

* * * * *

(a)(1) * * *

(2) If the registrant provides the disclosure required by paragraph (a)(1)(i) of this Item, it must disclose the name of the audit committee financial expert and whether that person is *independent*, as that term is defined in the listing standards applicable to the registrant if the registrant is a listed issuer, as defined in 17 CFR 240.10A–3. If the registrant is not a listed issuer, it must use a definition of audit committee member independence of a national securities exchange registered pursuant to section 6(a) of the Exchange Act (15 U.S.C. 78f(a)) or a national securities association registered pursuant to section 15A(a) of the Exchange Act (15 U.S.C. 78o–3(a)) that has been approved by the Commission (as such definition may be modified or supplemented) in determining whether its audit committee financial expert is independent, and state which definition was used.

* * * * *

Instructions to Item 16A

* * * * *

3. In the case of a foreign private issuer with a two-tier board of directors, for purposes of this Item 16A, the term *board of directors* means the supervisory or non-management board. In the case of a foreign private issuer meeting the requirements of 17 CFR 240.10A–3(c)(3), for purposes of this Item 16A, the term *board of directors* means the issuer's board of auditors (or similar body) or statutory auditors, as applicable. Also, in the case of a foreign private issuer, the term *generally accepted accounting principles* in paragraph (b)(1) of this Item means the body of generally accepted accounting principles used by that issuer in its primary financial statements filed with the Commission.

* * * * *

Item 16D. Exemptions From the Listing Standards for Audit Committees

If applicable, provide the disclosure required by Exchange Act rule 10A–3(d) (17 CFR 240.10A–3(d)) regarding an exemption from the listing standards for audit committees. You do not need to provide the information called for by this Item 16D unless you are using this form as an annual report.

* * * * *

■ 10. Amend Form 40–F (referenced in § 249.240f) by:

■ a. Revising paragraph (8)(a)(2) of General Instruction B; and

■ b. Adding paragraph (14) to General Instruction B.

The additions and revisions read as follows:

Note: The text of Form 40–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 40–F

* * * * *

General Instructions

* * * * *

B. Information To Be Filed on This Form

* * * * *

(8)(a)(1) * * *

(2) If the registrant provides the disclosure required by paragraph (8)(a)(1)(i) of this General Instruction B, it must disclose the name of the audit committee financial expert and whether that person is *independent*, as that term is defined in the listing standards applicable to the registrant if the registrant is a listed issuer, as defined in 17 CFR 240.10A–3. If the registrant is not a listed issuer, it must use a definition of audit committee member independence of a national securities exchange registered pursuant to section 6(a) of the Exchange Act (15 U.S.C. 78f(a)) or a national securities association registered pursuant to section 15A(a) of the Exchange Act (15 U.S.C. 78o–3(a)) that has been approved by the Commission (as such definition may be modified or supplemented) in determining whether its audit committee financial expert is independent, and state which definition was used.

* * * * *

(14) Identification of the Audit Committee. (a) If you meet the following requirements, provide the disclosure in paragraph (b) of this section:

(1) You are a listed issuer, as defined in Exchange Act Rule 10A–3 (17 CFR 240.10A–3) of this chapter;

(2) You are using this form as an annual report; and

(3) You are neither:

(i) A subsidiary of another listed issuer that is relying on the exemption in Exchange Act Rule 10A–3(c)(2) (17 CFR 240.10A–3(c)(2)); nor

(ii) Relying on any of the exemptions in Exchange Act Rule 10A–3(c)(4) through (c)(7) (17 CFR 240.10A–3(c)(4) through (c)(7)).

(b)(1) State whether or not the registrant has a separately-designated standing audit committee established in accordance with section 3(a)(58)(A) of the Exchange Act (15 U.S.C. 78c(a)(58)(A)), or a committee performing similar functions. If the registrant has such a committee, however designated, identify each committee member. If the entire board of directors is acting as the registrant's audit committee as specified in section 3(a)(58)(B) of the Exchange Act (15 U.S.C. 78c(a)(58)(B)), so state.

(2) If applicable, provide the disclosure required by Exchange Act Rule 10A–3(d) (17 CFR 240.10A–3(d)) regarding an exemption from the listing standards for audit committees.

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 11. The authority citation for Part 274 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

* * * * *

■ 12. Form N–CSR (referenced in §§ 249.331 and 274.128) is amended by:

■ a. Removing the phrase ''Items 4 and 10(a)'' from General Instruction D and in its place adding ''Items 4, 5 and 10(a)'';

■ b. Removing the phrase ''The information required by Item 4'' from General Instruction D and in its place adding ''The information required by Items 4 and 5''; and

■ c. Adding Item 5 to read as follows.

Note: The text of Form N–CSR does not, and this amendment will not, appear in the Code of Federal Regulations.

Form N–CSR

* * * * *

Item 5. Audit Committee of Listed Registrants

(a) If the registrant is a listed issuer as defined in rule 10A–3 under the Exchange Act (17 CFR 240.10A–3), state whether or not the registrant has a separately-designated standing audit committee established in accordance with section 3(a)(58)(A) of the Exchange Act (15 U.S.C. 78c(a)(58)(A)). If the registrant has such a committee, however designated, identify each committee member. If the entire board of directors is acting as the registrant's audit committee as specified in section 3(a)(58)(B) of the Exchange Act (15 U.S.C. 78c(a)(58)(B)), so state.

(b) If applicable, provide the disclosure required by rule 10A–3(d) under the Exchange Act (17 CFR 240.10A–3(d)) regarding an exemption from the listing standards for audit committees.

Instruction. The information required by this Item is only required in an annual report on this Form N–CSR.

* * * * *

By the Commission.

Dated: April 9, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9157 Filed 4–15–03; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Wednesday,
April 16, 2003

Part IV

Federal Communications Commission

47 CFR Part 64

Provision of Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities and Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission; Final Rule and Notice

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 98–67; FCC 03–46]

Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

AGENCY: Federal Communications Commission.

ACTION: Waiver and clarification.

SUMMARY: This document extends the previously granted one-year waivers of the emergency call handling, voice carry over (VCO), and speech-to-speech (STS) telecommunications relay services mandatory minimum standards for five years for IP Relay providers. Additionally, this document waives the ''900'' number services (a type of pay-per-call service) and the hearing carry over (HCO) telecommunications relay service (TRS) mandatory minimum standards for a five-year period for IP Relay providers. All waivers are contingent on IP Relay providers filing an annual report with the Commission detailing the technological changes in these areas, the progress made, and the steps taken to resolve the technical problems that prohibit IP Relay providers from meeting the TRS mandatory minimum standards waived in this document. These waivers of TRS mandatory minimum standards apply to all other current and potential IP Relay providers.

DATES: Effective March 14, 2002.

FOR FURTHER INFORMATION CONTACT: Janet Sievert, of the Consumer & Governmental Affairs Bureau at (202) 418–1362 (voice), (202) 418–1398 (TTY), or e-mail *jsievert@fcc.gov.* For additional information concerning the information collection(s) contained in the *Order on Reconsideration*, contact Leslie Smith at (202) 418–0217, or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order on Reconsideration*, adopted March 4, 2003, and released March 14, 2003. *See* 67 FR 39863, June 11, 2002. This *Order on Reconsideration* contains a new information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507 of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection(s) contained in this *Order on Reconsideration.* Copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0531 (voice), (202) 418–7365 (TTY). This *Order on Reconsideration* can also be downloaded in Text and ASCII formats at: *http://www.fcc.gov/cgb/dro.*

Synopsis

In this *Order on Reconsideration*, the Commission resolves two petitions for reconsideration filed by WorldCom, Inc., and Sprint Corporation. WorldCom requests that the Commission extend the emergency call handling, VCO, and STS waivers from a one-year period to either a five-year period or an indefinite time. Because a one-year period may be too short of a time period for the necessary technological advancements to make it feasible for IP Relay providers to offer emergency call handling, VCO and STS, the Commission extended the one-year waiver of these requirements to a five-year period. Sprint requests that the Commission grant IP Relay providers waivers of the 900 number services and hearing carry over (HCO) TRS mandatory minimum standards. Additionally, because it is technically infeasible for IP Relay providers to offer 900 number services (47 CFR 64.604(a)(3)) and one-line HCO (47 CFR 64.604(a)(5)), the Commission waived these TRS mandatory minimum standards for a period of five years for IP Relay providers. All waivers were granted contingent on IP Relay providers filing an annual report with the Commission detailing the technological changes in these areas, the progress made, and the steps taken to resolve the technical problems that prohibit IP Relay providers from meeting the TRS mandatory minimum standards waived. For administrative convenience all wavers granted in this document expire on January 1, 2008.

Final Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980, as amended (RFA) requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that ''the rule will not have a significant economic impact on a substantial number of small entities. The RFA, *see* 5 U.S.C. 601 *et. seq*., has been amended by the Contract with America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Act of 1996 (SBREFA). 5 U.S.C.605(b). The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction. 5 U.S.C. 601(b). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definitions(s) in the **Federal Register**.'' A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration. This item imposes a regulatory burden on IP Relay providers , requiring them to file an annual report with the Commission concerning the status of technology developed that will allow IP Relay providers to meet the telecommunications relay services mandatory minimum standards waived herein for IP Relay providers. Currently only three entities are providing IP Relay: AT&T, Sprint, and WorldCom. These are large entities. There is one entity, Hamilton Relay, Inc., that is preparing to offer IP Relay service which may be a small entity. The effect of this reporting requirement on any small business will not be significant. Based on the small number of entities providing IP Relay service, we conclude that this action will not cause a significant impact on small business. Based on the above, we conclude that our action will not affect a substantial

number of small businesses. Therefore, we certify that the requirements of this *Order on Reconsideration* will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the *Order on Reconsideration* including a copy of this final certification, in a report to Congress pursuant to the Congressional Review Act of 1996. *See* 5 U.S.C. 801(a)(1)(A). In addition, the *Order on Reconsideration* and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**. *See* 5 U.S.C. 605(b).

Paperwork Reduction Act

This Order on Reconsideration contains a new information collection(s). The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general pubic to comment on the information collection(s) contained in the *Order on Reconsideration* as required by the Paperwork Reduction Act (''PRA'') of 1995, Public Law 104–13. Public and agency comments are due June 16, 2003. The information collection(s) shall become effective following approval by the Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

Ordering Clauses

Accordingly, *It is ordered* that, pursuant to the authority contained in Sections 1.2 and 225 of the Communications Act of 1934, as amended, 47 U.S.C.151, 152 and 225, this *Order on Reconsideration is adopted.*

It is further ordered that WorldCom's Petition for Reconsideration IS GRANTED to the extent indicated herein.

It is further ordered that Sprint's Petition for Limited Reconsideration IS GRANTED to the extent indicated herein (granting waivers of 47 CFR 64.604(a)(3) and 47 CFR 64.604(a)(5)).

It is further ordered that IP Relay providers subject to the waivers granted shall submit annually a report, as indicated herein, to the Commission twelve months after publication of this *Order on Reconsideration* in the **Federal Register**.

It is further ordered that the late filed comments of Telecommunications for the Deaf, Inc., and Self Help for Hard of Hearing People are considered as part of the record in this proceeding.

It is further ordered that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *Shall send* a copy of the *Order on Reconsideration*, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

It is further ordered that the information collection(s) contained in the *Order on Reconsideration Shall become effective* following approval by the Office of Management and Budget in the **Federal Register** announcing the effective date for those sections.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 03–9253 Filed 4–15–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

March 26, 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 16, 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–XXXX.

Title: Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 4.

Estimated Time per Response: 10 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 40 hours.

Total Annual Costs: N/A.

Needs and Uses: On March 14, 2003, the FCC released an Order on Reconsideration (''Order''), *In the Matter of Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CC Docket No. 98–67, FCC 03–46. In this Order, the Commission will require IP Relay providers to submit a report to the FCC annually detailing the technical developments that have occurred to enable IP Relay providers to meet the TRS mandatory minimum standards waived in the Order.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 03–9254 Filed 4–15–03; 8:45 am]

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Federal Register

Wednesday,
April 16, 2003

Part V

The President

Proclamation 7663—Pan American Day and Pan American Week, 2003

Federal Register
Vol. 68, No. 73
Wednesday, April 16, 2003

Presidential Documents

Title 3—

The President

Proclamation 7663 of April 11, 2003

Pan American Day and Pan American Week, 2003

By the President of the United States of America

A Proclamation

Our Nation takes great pride in the unity of the Pan American community. We enjoy strong bonds of friendship with our neighbors throughout the Western Hemisphere, and the almost 33 million citizens of Latin American and Caribbean descent who are a part of the rich cultural diversity of our country. Their contributions have enriched our Nation. In the Western Hemisphere, we share common commitments to overcoming poverty, achieving peace and prosperity for all, and providing safety in our hemisphere. As we observe Pan American Day and Pan American Week, we renew our dedication to working with the Pan American community of nations to protect democracy, promote economic growth, and provide for the defense and security of all our citizens.

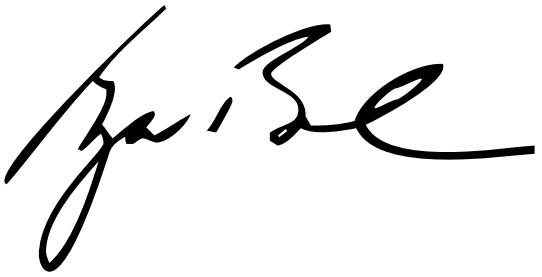
The governments of the region continue to make important progress in advancing democracy, as demonstrated by the free, fair, and transparent elections that took place throughout the region this past year. The United States joins with our neighbors in the hemisphere in congratulating the citizens and governments of those nations on their achievements, and my Administration remains dedicated to working with the democratically elected governments of the Americas to defend freedoms whenever and wherever they are threatened. The historic Inter-American Democratic Charter, adopted on September 11, 2001, continues to guide efforts across the region to protect human rights and political freedoms, combat corruption, promote good governance, and strengthen democratic institutions.

The countries of our hemisphere have made great strides in opening their economies in recent decades, and we must continue to work towards open exchanges of ideas and goods throughout Pan America. To promote these goals, we must welcome the expansion of economic integration and renew our dedication to creating a Free Trade Area of the Americas.

Ensuring hemispheric security remains one of our most important common objectives. Today and in the future, we will continue our efforts to safeguard our citizens and to ensure that individuals throughout our hemisphere enjoy the full benefits of freedom. By working together, we can achieve the Pan American goals of protecting democracy and human rights, defeating tyranny, and overcoming poverty and lawlessness.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 14, 2003, as Pan American Day, and April 13 through April 19, 2003, as Pan American Week. I encourage the Governors of the 50 States, the Governor of the Commonwealth of Puerto Rico, and the officials of other areas under the flag of the United States of America to honor these observances with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of April, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 03–9555
Filed 4–15–03; 9:18 am]
Billing code 3195–01–P

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Refractory products manufacturing; published 4-16-03; comments due by 12-30-99; published 4-16-03 [FR 03-05622]

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FEDERAL COMMUNICATIONS COMMISSION

Television broadcasting:

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The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402

(phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

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