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Presidential Documents

Title 3—

The President

Proclamation 7733 of November 10, 2003

Veterans Day, 2003

By the President of the United States of America

A Proclamation

The willingness of America's veterans to sacrifice for our country has earned them our lasting gratitude. On this, our Nation's 50th annual Veterans Day observance, we celebrate and honor the patriots who have fought to protect the democratic ideals that are the foundation of our country.

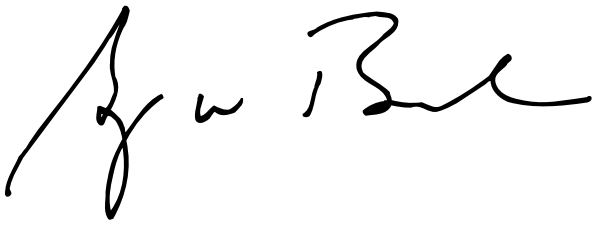
When the armistice ending World War I was signed on November 11, 1918, more than 4.7 million Americans put down their arms and turned to the work of strengthening our Nation. The end of that first global conflict was initially commemorated as Armistice Day. In 1954, the Congress renamed the day as Veterans Day to recognize all those who have served in our Armed Forces.

Throughout our history, loyal citizens from every corner of America have willingly assumed the duty of military life. And time after time, in conflicts across the globe, they have proven that democracy is mightier than tyranny. From World War I and World War II, to the conflicts in Korea, Vietnam, and the Persian Gulf, to the recent battles in the war on terror, our military has built a great tradition of courageous and faithful service. Our veterans have helped bring freedom to countries around the world. Free nations and peoples liberated by American troops are grateful for the long, distinguished line of American veterans who have come to their aid.

Today, our veterans inspire new generations of Americans as we work to defeat terrorism and advance peace. In respect for and recognition of the contributions our service men and women have made to the cause of peace and freedom around the world, the Congress has provided (5 U.S.C. 6103(a)) that November 11 of each year shall be set aside as a legal public holiday to honor veterans.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim November 11, 2003, as Veterans Day and urge all Americans to observe November 9 through November 15, 2003, as National Veterans Awareness Week. I encourage all Americans to recognize the valor and sacrifice of our veterans through appropriate ceremonies and prayers. I call upon Federal, State, and local officials to display the flag of the United States and to participate in patriotic activities in their communities. I invite civic and fraternal organizations, places of worship, schools, businesses, unions, and the media to support this national observance with suitable commemorative expressions and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of November, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-eighth.



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Rules and Regulations

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

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AK26

Prevailing Rate Systems; Redefinition of the San Francisco, CA, Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing an interim regulation to abolish the San Francisco, CA, Nonappropriated Fund (NAF) Federal Wage System (FWS) wage area. This regulation redefines San Francisco County to the Santa Clara, CA, NAF wage area as an area of application. Because of downsizing associated with closures of Federal installations in San Francisco, the San Francisco wage area no longer has an installation with sufficient local personnel or financial resources to conduct local NAF wage surveys.

DATES: This interim rule is effective on November 30, 2003. OPM must receive comments by December 15, 2003.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Deputy Associate Director for Pay and Performance Policy, Strategic Human Resources Policy Division, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200, e-mail *payleave@OPM.gov,* or FAX: (202) 606–4264.

FOR FURTHER INFORMATION CONTACT: Mark Allen, (202) 606–2838; e-mail *maallen@opm.gov,* or FAX: (202) 606–4264.

SUPPLEMENTARY INFORMATION: San Francisco, CA, is presently defined as a separate wage area for pay-setting purposes for Federal blue-collar workers who are paid from nonappropriated funds. The Department of Defense (DOD) notified the Office of Personnel Management (OPM) earlier this year that the Federal activity that hosts local wage surveys in the San Francisco wage area, Fort Mason Officers' Club, has closed, and there is no other NAF employer in the wage area capable of hosting local wage surveys. San Francisco County no longer meets OPM's regulatory criteria to be established as a separate wage area. Under 5 CFR 532.219, there must be at least 26 NAF FWS employees in a county for it to be established as an FWS wage area. The only remaining NAF employer in San Francisco County, the Department of Veterans Affairs Canteen Service, has fewer than the required 26 NAF FWS employees. Therefore, San Francisco County must be defined as an area of application to an existing NAF wage area for pay-setting purposes.

OPM considers the following criteria when it combines two or more counties to constitute a single wage area:

(1) Proximity of largest activity in each county;

(2) Transportation facilities and commuting patterns; and

(3) Similarities of the counties in:

(i) Overall population;

(ii) Private employment in major industry categories; and

(iii) Kinds and sizes of private industrial establishments.

In selecting a wage area to which San Francisco County should be redefined, proximity favors the Santa Clara, CA, NAF wage area. The transportation facilities criterion does not favor one wage area more than another. The commuting patterns criterion favors the Santa Clara wage area. A review of the population, employment, and industry criteria shows that San Francisco County is more similar to the Santa Clara than other nearby wage areas. Based on these findings, OPM is defining San Francisco County to the Santa Clara wage area as an area of application.

OPM is abolishing the San Francisco wage area and defining San Francisco County to the Santa Clara wage area effective November 30, 2003, the date that the next wage schedule for the San Francisco wage area would have become effective if the wage area continued as a separate wage area. Remaining NAF FWS employees in San Francisco County will continue to be paid from the current San Francisco wage schedule until November 30. After that date, the employees will be assigned to the wage schedule for the Santa Clara wage area. The Federal Prevailing Rate Advisory Committee, the national labor-management committee that advises OPM on matters affecting the pay of FWS employees, reviewed and recommended this wage area redefinition by majority vote.

Waiver of Notice of Proposed Rulemaking and Delayed Effective Date

Pursuant to section 553(b)(3)(B) and (d)(3) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking to accommodate changes necessitated by downsizing of the Federal workforce. The notice is being waived because it is necessary to abolish the present San Francisco wage area and redefine San Francisco County to the Santa Clara wage area as soon as possible because no Federal activity has the capability to conduct a local wage survey in the San Francisco wage area.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Kay Coles James,

Director.

■ Accordingly, the Office of Personnel Management is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

Appendix B to Subpart B of Part 532—Nationwide Schedule of Nonappropriated Fund Regular Wage Surveys—[Amended]

■ 2. Appendix B to subpart B is amended by removing, under the State of California, ''San Francisco.''

Appendix D to Subpart B of Part 532—[Amended]

■ 3. Appendix D to subpart B is amended for the State of California by removing the wage area listing for San Francisco, California, and revising the wage area listing for Santa Clara, California, to read as follows:

* * * * *

CALIFORNIA

* * * * *

SANTA CLARA

Survey Area

California:
Santa Clara

Area of application. Survey area plus:

California:
Alameda
Contra Costa
San Franciso
San Mateo

* * * * *

[FR Doc. 03–28466 Filed 11–13–03; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV03–905–3 FIR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Limiting the Volume of Small Red Seedless Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule limiting the volume of small red seedless grapefruit entering the fresh market under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida (order). The Citrus Administrative Committee (Committee) administers the order locally and recommended this action. This rule limits the volume of sizes 48 and 56 red seedless grapefruit shipped during the first 22 weeks of the 2003–04 season by continuing in effect the weekly percentages for each of the 22 weeks, beginning September 15, 2003. This action supplies enough small red seedless grapefruit, without saturating all markets with these small sizes. This rule should help stabilize the market and improve grower returns.

EFFECTIVE DATE: December 15, 2003.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884–1671; *telephone:* (863) 324–3375, *Fax:* (863) 325–8793; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; *telephone:* (202) 720–2491, *Fax:* (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule limits the volume of small red seedless grapefruit entering the fresh market. This rule restricts the volume of sizes 48 and 56 fresh red seedless grapefruit shipped during the first 22 weeks of the 2003–04 season by establishing a weekly percentage for each of the 22 weeks, beginning September 15, 2003. This rule supplies enough small red seedless grapefruit, without saturating all markets with these small sizes. This action should help stabilize the market and improve grower returns.

Section 905.52 of the order provides authority to limit shipments of any grade or size, or both, of any variety of Florida citrus. Such limitations may restrict the shipment of a portion of a specified grade or size of a variety. Under such a limitation, the quantity of such grade or size a handler may ship during a particular week is established as a percentage of the total shipments of such variety shipped by that handler during a prior period, established by the Committee and approved by USDA.

Section 905.153 of the regulations provides procedures for limiting the volume of small red seedless grapefruit entering the fresh market. The procedures specify that the Committee may recommend that only a certain percentage of sizes 48 and 56 red seedless grapefruit be made available for shipment into fresh market channels for any week or weeks during the regulatory period. The regulation period is 22 weeks long and begins the third Monday in September. Under such a limitation, the quantity of sizes 48 and 56 red seedless grapefruit that may be shipped by a handler during a regulated week is calculated using the recommended percentage. By taking the recommended weekly percentage times the average weekly volume of red seedless grapefruit handled by such handler in the previous five seasons, handlers can calculate the total volume of sizes 48 and 56 they may ship in a regulated week.

This rule continues to limit the volume of sizes 48 ($3\frac{9}{16}$ inches minimum diameter) and 56 ($3\frac{5}{16}$ inches minimum diameter) red seedless

grapefruit entering the fresh market by instituting weekly percentages for the first 22 weeks of the 2003–04 season. This rule continues established weekly percentages at 45 percent for weeks 1 and 2 (September 15 through September 28, 2003), 35 percent for weeks 3 through 19 (September 29, 2003, through January 25, 2004), and 40 percent for weeks 20, 21, and 22 (January 26 through February 15, 2004). The Committee recommended this action unanimously at a meeting on July 1, 2003. This action is similar to those taken the previous six seasons.

The Committee believes the over shipment of smaller-sized red seedless grapefruit has a detrimental effect on the market. While there is a market for small-sized red seedless grapefruit, the availability of large quantities oversupplies the fresh market with these sizes and negatively impacts the market for all sizes. These smaller sizes, 48 and 56, normally return the lowest prices when compared to the other larger sizes. However, when there is too much volume of the smaller sizes available, the overabundance of small-sized fruit pulls the prices down for all sizes.

For the three seasons prior to the use of percentage size regulation, 1994–95, 1995–96, and 1996–97, returns for red seedless grapefruit had been declining, often not returning the cost of production. On-tree prices for red seedless grapefruit had fallen steadily from $6.87 per box (1⅗ bushel) during the 1991–92 season, to $3.38 per box during the 1993–94 season, to $1.91 per box during the 1996–97 season.

An economic study done by the University of Florida—Institute of Food and Agricultural Sciences in May 1997, found that on-tree prices had fallen from a high near $7.00 per carton in 1991–92 to around $1.50 per carton for the 1996–97 season. The study projected that if the industry elected to make no changes, the on-tree price would remain around $1.50 per carton. The study also indicated that increasing minimum size restrictions could help raise returns.

The Committee believes the over shipment of smaller-sized red seedless grapefruit contributed to these poor returns for growers and to lower prices. Based on available statistical information, Committee members concluded that once shipments of sizes 48 and 56 reached levels above 250,000 cartons per week, prices declined on those and most other sizes of red seedless grapefruit. The Committee believed if shipments of small sizes were maintained at around or below 250,000 cartons a week, prices would stabilize and demand for larger, more profitable sizes would increase. Consequently, in 1996, the Committee recommended changing its rules and regulations to establish the procedures in § 905.153 to limit the volume of small red seedless grapefruit entering the market. The Committee has successfully used the provisions of § 905.153 to address the problems associated with the over shipment of small red seedless grapefruit, recommending percentage of size regulation during the first 11 weeks of the 1997–98, 1998–99, 1999–2000, and 2000–01 seasons, and for the first 22 weeks of the 2001–02 and 2002–03 seasons. Under percentage of size regulation, prices increased and movement stabilized when compared to seasons without regulation.

The Committee believes for the 2003–04 season small-sized red seedless grapefruit will negatively impact the market for all grapefruit if not regulated. By regulating the volume of small sizes entering the fresh market for the first 22 weeks of the season, shipments of sizes 48 and 56 can be maintained near the 250,000-carton per week level. To address the volume of small-sized red seedless grapefruit available and to prevent the over shipment of small sizes, the Committee voted to utilize the provisions of § 905.153 and establish percentage of size regulation for each of the 22 weeks of the regulatory period for the 2003–04 season.

In making its recommendation, the Committee considered the success of previous percentage of size regulations and their experience from past seasons. At the meeting, the Committee reviewed the results of a study commissioned to determine the merit of percentage of size regulation. The study completed by Robert E. Barber, Jr., Director of Economics, Florida Citrus Mutual, entitled ''An Econometric Spatial Equilibrium Analysis of the 48/56 Red Grapefruit Rule,'' dated July 1, 2003, evaluated the effectiveness of past percentage of size regulation.

One of the Committee's goals in establishing percentage of size regulation was to stabilize prices and increase returns. The Committee believes percentage of size regulation has been effective in this area, and the study shows this to be true. The study estimates that percentage of size regulation has increased total f.o.b. revenues for red grapefruit by a total of 12 percent or $18.9 million over the six-year period from 1997–98 to 2002–03, averaging $3.15 million per season. Each of the six seasons had an increase in f.o.b. revenues ranging from a low of $2.52 million during the 1999–2000 season to a high of $3.73 million for the 2002–03 season. The f.o.b. prices per carton are also estimated to have increased by an average of 17 percent or $1.00 per carton during this six-year period.

In the three seasons prior to the first percentage of size regulation in 1997–98, prices of red seedless grapefruit fell from a weighted average f.o.b. price of $7.80 per carton in October to a weighted average f.o.b. price of $5.50 per carton in December. In the six seasons utilizing percentage of size regulation, red seedless grapefruit maintained higher prices throughout the season with a weighted average f.o.b. price of $8.10 per carton in October, $7.06 per carton in December, and remained at around $6.90 in April.

Average prices for the season have also been higher during seasons with percentage of size regulation. The average season price for red seedless grapefruit was $7.00 for the last six years compared to $5.83 for the three years prior to using percentage of size regulation. The Barber study shows that prices for the past six seasons would have been from around $0.72 to $1.00 lower per carton without regulation.

On-tree prices for fresh red seedless grapefruit have also been higher during seasons with percentage of size regulation than for the three seasons prior to regulation. The average on-tree price for fresh red seedless grapefruit was $4.42 for the seasons 1997–98 through 2001–02 with percentage of size regulation compared to $3.08 for the three years prior to regulation.

The University of Florida, Citrus Research and Education Center published an estimated cost of production for grapefruit for the 2001–2002 season. The cost to produce grapefruit for the fresh market was estimated at $1,008.77 per acre for the Indian River area, the major grapefruit production area in Florida. Indian River grapefruit production has averaged around 417 boxes per acre. Based on the cost of production, and the average boxes per acre, growers need to earn a total on-tree value (fruit going both to the fresh market and to processing) of approximately $2.42 per box in order to break even. For the three seasons prior to percentage of size regulation, the total on-tree value averaged $1.78 per box. Comparatively, for the seasons with regulation, 1997–98 through 2001–02, the on-tree value has averaged $2.45 per box for Indian River grapefruit.

Small growers have struggled the last eight seasons to receive returns near the cost of production. For many, the higher on-tree returns produced under percentage of size regulation have meant the difference between profit and loss.

Another of the Committee's goals in establishing percentage of size

regulation was to help maintain the price differential between the prices for larger sizes and those for smaller sizes. At the start of the season, larger-sized fruit command a premium price. The f.o.b. price can be $4 to $10 more a carton than for the smaller sizes. The last three seasons, the f.o.b. price for a size 27 has averaged around $13.50 per carton in October. This compares to an average f.o.b. price of around $5.80 per carton for a size 56 during the same period. In the three years before the issuance of a percentage size regulation, the f.o.b. price for large sizes dropped to within $1 or $2 of the f.o.b. price for small sizes by the middle of the season due to the oversupply of the smaller sizes.

Percentage of size regulation has helped sustain the price differential, maintaining higher prices for the larger-sized fruit. During the three years before regulation, the average differential between the carton price for a size 27 and a size 56 was $3.47 at the end of October and dropped to $1.68 by mid-December. In the six years with percentage of size regulation, the average differential between the carton price for a size 27 and a size 56 was $5.43 at the end of October, $3.78 in mid-December, and remained at around $3.10 the first week in May.

The Barber study also states that f.o.b. revenues for larger sized red grapefruit benefited substantially from percentage of size regulation. Of the $18.9 million increase in total fresh f.o.b. revenues for red grapefruit the last six seasons, nearly $16.7 million can be attributed to gains made by fruit larger than sizes 48 and 56.

According to the Economic Analysis and Program Planning Branch, USDA, the margins between the prices for the various sizes of red grapefruit have remained fairly constant throughout the seasons covered under percentage of size regulation. However, if the domestic market becomes glutted with too many small-sized grapefruit (48 and 56), these margins would be negatively impacted and total grower returns would be reduced.

The goal of this percentage of size rule is to reduce the volume of the least valuable fruit in the market and strengthen grower prices and revenues. Without this rule, the fresh grapefruit market will become glutted with small-sized fruit, which will have a negative impact on prices for larger-sized fruit and grower returns. Absent this rule, the price margins between sizes (23, 27, 32, 36, 40, 48, and 56) will diminish and ultimately result in lower grower returns. This rule is intended to fully supply all markets for small sizes with fresh red seedless grapefruit size 48 and 56, while avoiding oversupplying these markets to the detriment of grower revenues.

The Committee believes percentage of size regulation has also helped stabilize the volume of small sizes entering the fresh market. During deliberations in past seasons, Committee members concluded once shipments of sizes 48 and 56 reached levels above 250,000 cartons per week, prices declined on those and most other sizes of red seedless grapefruit. The last six seasons during the weeks regulated by a percentage of size regulation, weekly shipment of sizes 48 and 56 red seedless grapefruit remained near or below 250,000 cartons for nearly 90 percent of the regulated weeks. Also, based on the Barber study, while percentage of size regulation has been successful in controlling the volume of small sizes entering the fresh market, it has had only a limited effect on total shipments.

In addition, an economic study by Florida Citrus Mutual (Lakeland, Florida) dated April 1998, also found that the weekly percentage regulation was effective. The study stated that part of the strength in early season pricing appeared to be due to the use of the weekly percentage rule to limit the volume of sizes 48 and 56. It said prices were generally higher across the size spectrum with sizes 48 and 56 having the largest gains, and larger-sized grapefruit also registering modest improvements. The rule shifted the size distribution toward the higher-priced, larger-sized grapefruit, which helped raise average f.o.b. prices. It further stated that sizes 48 and 56 accounted for only 17 percent of domestic shipments during the same period in the 1997–98 season, as small sizes were used to supply export customers with preferences for small-sized grapefruit.

In addition to the success of past regulations, there are other circumstances warranting the consideration of establishing percentage of size regulation. For the three seasons, 1999–2000, 2000–01, and 2001–02, the percentage of the remaining crop represented by small sizes in February averaged around 53 percent. This compares to an average of 31 percent for the same month for seasons 1995–96 through 1997–98. These three seasons, 1999–2000 through 2001–02, averaged a greater percentage of smaller sizes across each month, October through February, than over the three seasons 1995–96 through 1997–98. For the seven seasons prior to the 2002–03 season there has been a movement toward an increased volume of small sizes as a percentage of the overall crop. For the 2002–03 season, grapefruit sized larger than in the previous seasons and small sizes were not as dominant a factor. However, while the crop sized well throughout last season, it is unclear how the 2003–04 crop will size. It is possible that the 2003–04 crop may produce the volume of small sizes represented in the majority of past seasons, making an even greater supply of small-sized fruit available for market.

Problems with the European and Asian markets could also impact the volume of small sizes available. These markets have shown a strong demand for the smaller-sized red seedless grapefruit. However, the reduction in shipments to these areas experienced during the last few years is expected to continue during the upcoming season due to their weak economies. This could result in a greater amount of small sizes for remaining markets to absorb.

The market for processed grapefruit is also a consideration. Approximately 48 percent of red seedless grapefruit is used for processing, with the majority being squeezed for juice. However, this outlet offers limited returns and is currently not profitable. Of the last six years, only 1999–2000 produced on-tree returns for processed red seedless grapefruit exceeding $1 per box. When on-tree returns for processed grapefruit drop below a dollar, there is pressure to shift a larger volume of the overall crop to the fresh market to benefit from the higher prices normally paid for fresh fruit. From 1977 through 2000, the differential between fresh prices and processed prices has averaged $3.55 per box. Consequently, growers prefer to ship grapefruit to the fresh market.

Statistics from the Florida Department of Citrus estimated that at the start of the current season over 35 weeks worth of grapefruit juice remained in inventory. Due to available inventories, on-tree prices for processed red seedless grapefruit for the 2003–04 season will most likely mirror prices from past seasons and remain below a dollar. A fair percentage of red seedless grapefruit shipped for processing are smaller sizes. With limited returns for processed grapefruit, an additional volume of small sizes could be shifted toward the fresh market, further aggravating problems with excessive volumes of small sizes.

Further, red seedless grapefruit production continues to exceed demand. This has contributed to the low returns and led to economic abandonment. According to information from the National Agricultural Statistics Service, the seasons of 1995–96, 1996–97, 1997–98, 2000–01, and 2001–02 had an average economic abandonment of

two million boxes or more of red seedless grapefruit. Final data for the 2002–03 season will not be published until February 2004. However, it is likely some economic abandonment did occur last season.

Economic abandonment and prices falling below the cost of production support the use of percentage of size regulation to control the volume of small sizes. The percentage of size regulation has a positive impact on price and is intended to make the most economically viable fruit available to the fresh market without oversupplying small-sized fruit. The above considerations further support the need to control the volume of sizes 48 and 56 during the season to prevent small sizes from overwhelming all markets.

The Committee believes the volume of small red seedless grapefruit available will have a detrimental effect on the market if it is not controlled. Members believe establishing weekly percentages during the last six seasons has been effective and that problems successfully addressed by percentage of size regulation will return without regulation. Consequently, the Committee believes weekly percentage of size regulation should be established for each of the 22 weeks of the regulatory period for the 2003–04 season. The Committee recommended establishing weekly percentages at 45 percent for the first two weeks, 35 percent for weeks 3 through 19, and 40 percent for weeks 20, 21, and 22.

The Committee considered the percentages set last year as a basis for discussing percentages for the 2003–04 season. They believe the percentages set last year worked well, and decided to make their initial recommendation for each of the 22 weeks at the same levels. Committee members believed setting last season's percentages higher than the most restrictive level allowed of 25 percent had worked well, providing some restriction while affording volume for those markets that prefer small sizes.

Committee members believe if shipments of small sizes are maintained at around or below 250,000 cartons a week, prices stabilize and demand for larger, more profitable sizes increases. The Committee considered the 250,000-carton level when recommending the weekly percentages. The first two weeks were set at 45 percent because it was likely there would only be a limited volume shipped. In the last five seasons, total shipments of red seedless grapefruit have only exceeded 250,000 cartons once in the first two weeks of the season.

Setting weekly percentages at 35 percent for the majority of weeks provides a total allotment of 252,610 cartons (35 percent of the total industry base of 721,743 cartons) per week. While this is slightly more than 250,000 cartons, it is unlikely all available allotment will be used each week, and this allows individual handlers some additional flexibility. The increase to 40 percent for the last three weeks offers a little more allotment providing some transition to the period without regulation and helps to prevent the dumping of small sizes following the end of regulation. The Committee believes these percentages provide some flexibility while holding weekly shipments at sizes 48 and 56 close to the 250,000-carton mark.

The Committee recognized they could meet again during the regulation period, as needed, and use the most current information to consider adjustments in the weekly percentage rates. This will help the Committee make the most informed decisions as to whether the established percentages are appropriate. Any changes to the weekly percentages set by this rule will require additional rulemaking and the approval of USDA.

Therefore, this rule continues the weekly percentages at 45 percent for the first two weeks, 35 percent for weeks 3 through 19, and at 40 percent for weeks 20 through 22. This rule is intended to fully supply all markets for small sizes with fresh red seedless grapefruit sizes 48 and 56, while avoiding oversupplying these markets to the detriment of grower revenues. The Committee plans to meet as needed during the 22-week period to ensure weekly percentages are at the appropriate levels.

Under § 905.153, the quantity of sizes 48 and 56 red seedless grapefruit a handler may ship during a regulated week is calculated using the set weekly percentage. Handlers can fill their allotment with size 56, size 48, or a combination of the two sizes such that the total of these shipments is within the established limits. The Committee staff performs the specified calculations and provides them to each handler. The regulatory period began the third Monday in September, September 15, 2003. Each regulation week begins Monday at 12 a.m. and ends at 11:59 p.m. the following Sunday.

Section 905.153(d) provides the allowances for overshipments, loans, and transfers of allotment. These tolerances allow handlers the opportunity to supply their markets while limiting the impact of small sizes.

The Committee can also act on behalf of handlers wanting to arrange allotment loans or participate in the transfer of allotment. Repayment of an allotment loan is at the discretion of the handlers party to the loan. The Committee will inform each handler of the quantity of sizes 48 and 56 red seedless grapefruit they can handle during a particular week, making the necessary adjustments for overshipments and loan repayments.

Section 8e of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for certain commodities under a domestic marketing order, including grapefruit, imports of that commodity must meet the same or comparable requirements. This rule does not change the minimum grade and size requirements under the order, only the percentages of sizes 48 and 56 red grapefruit that may be handled. Therefore, no change is necessary in the grapefruit import regulations as a result of this action.

Final Regulatory Flexibility Analysis

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

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

There are approximately 75 grapefruit handlers subject to regulation under the order and approximately 11,000 growers of citrus in the regulated area. Small agricultural service firms, including handlers, are defined by the Small Business Administration (SBA) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000 (13 CFR 121.201).

Based on industry and Committee data, the average annual f.o.b. price for fresh Florida red seedless grapefruit during the 2002–03 season was approximately $7.24 per 4/5-bushel carton, and total fresh shipments for the 2002–03 season are estimated at 22.9 million cartons of red grapefruit. Approximately 25 percent of all handlers handled 75 percent of Florida's grapefruit shipments. Using the average f.o.b. price, at least 75 percent of the grapefruit handlers could be considered small businesses under SBA's definition. Therefore, the majority of

Florida grapefruit handlers may be classified as small entities. The majority of Florida grapefruit producers may also be classified as small entities.

The overshipment of small-sized red seedless grapefruit contributes to poor returns and lower on-tree values. This rule continues to limit the volume of sizes 48 and 56 red seedless grapefruit shipped during the first 22 weeks of the 2003–04 season by establishing weekly percentages for each of the 22 weeks, beginning September 15, 2003. This rule sets the weekly percentages at 45 percent for weeks 1 and 2, 35 percent for week 3 through week 19, and at 40 percent for weeks 20, 21, and 22. The quantity of sizes 48 and 56 red seedless grapefruit that may be shipped by a handler during a particular week is calculated using the percentages set. This action supplies enough small red seedless grapefruit, without saturating all markets with small sizes. This action will help stabilize the market and improve grower returns. This rule uses the provisions of § 905.153. Authority for this action is provided in § 905.52 of the order. The Committee unanimously recommended this action at a meeting on July 1, 2003.

While the establishment of volume regulation may necessitate additional spot picking, which could entail slightly higher harvesting costs, in most cases this is already a standard industry practice. The Barber study indicates spot picking will only fractionally increase harvesting costs on just a small segment of the boxes picked. In addition, with spot picking, the persons harvesting the fruit are more selective and pick only the desired sizes and qualities. This reduces the amount of time and effort needed in sorting fruit, because undersized fruit is not harvested. This may result in a cost savings through reduced processing and packing costs. In addition, because this regulation is only in effect for part of the season, the overall effect on costs is minimal. Consequently, this rule is not expected to appreciably increase costs to producers.

If a 25 percent restriction on small sizes had been applied during the 22-week period for the three seasons prior to the 1997–98 season, an average of 3.1 percent of overall shipments during that period would have been constrained by regulation. A large percentage of this volume most likely could have been replaced by larger sizes for which there are no volume restrictions. Under regulation, larger sizes have been substituted for smaller sizes with a nominal effect on overall shipments.

In addition, handlers can transfer, borrow or loan allotment based on their needs in a given week. Handlers also have the option of over shipping their allotment by 10 percent in a week, provided the over shipment is deducted from the following week's shipments. Approximately 227 loans and transfers were utilized last season. Statistics for 2002–03 show that, in only 2 weeks of the regulated period was the total available allotment used. Therefore, with the weekly percentages for the 2003–04 season set at the same levels as last season, the overall impact of this regulation on total shipments should be minimal.

The Committee believes establishing percentage of size regulation during the 2003–04 season will have benefits similar to those realized under past regulations. Handlers and producers have received higher returns under percentage of size regulation. In the three seasons prior to the first percentage of size regulation in 1997–98, prices of red seedless grapefruit fell from a weighted average f.o.b. price of $7.80 per carton in October to a weighted average f.o.b. price of $5.50 per carton in December. In the six seasons utilizing percentage of size regulation, red seedless grapefruit maintained higher prices throughout the season with a weighted average f.o.b. price of $8.10 per carton in October, to an average f.o.b. price of $7.06 per carton in December, and remained at around $6.90 in April. Average prices for the season have also been higher during seasons with percentage of size regulation. The average season price for red seedless grapefruit was $7.00 for the last six years compared to $5.83 for the three prior years.

On-tree earnings per box for fresh red seedless grapefruit have also improved under regulation, providing better returns to growers. The average on-tree price for fresh red seedless grapefruit was $4.42 for the seasons 1997–98 through 2001–02 with percentage of size regulation, compared to $3.08 for the three years prior to regulation. Small growers have struggled the last eight seasons to receive returns near the cost of production. For many, the higher returns provided by percentage of size regulation meant the difference between profit and loss.

Shipments during the 22 weeks covered by this regulation account for nearly 60 percent of the total volume of red seedless grapefruit shipped to the fresh market. Considering this volume and the very limited returns from grapefruit for processing, it is imperative that returns from the fresh market be maximized during this period. Even a small increase in price when coupled with the volume shipped represents a significant increase in the overall return to growers.

The Barber study stated that prices rose anywhere from 12.9 percent or $.72 to 17.5 percent or $1.00 per 4/5-bushel carton during percentage of size regulation. Even if this action were only successful in raising returns by $.10 per carton, this increase in combination with the substantial number of shipments generally made during this 22-week period, would represent an increased return of nearly $1.4 million. Consequently, any increased returns generated by this action should more than offset any additional costs associated with this regulation.

The purpose of this rule is to help stabilize the market and improve grower returns. Percentage of size regulation is intended to reduce the volume of the least valuable fruit in the market, and shift it to those markets that prefer small sizes. This regulation helps the industry address marketing problems by keeping small sizes (sizes 48 and 56) more in balance with market demand without glutting the fresh market with these sizes.

This rule provides a supply of small-sized red seedless grapefruit sufficient to meet market demand, without saturating all markets with these small sizes. This action is not expected to decrease the overall consumption of red seedless grapefruit. With supply in excess of demand, this rule is not expected to impact consumer prices or demand. The benefits of this rule are expected to be available to all red seedless grapefruit growers and handlers regardless of their size of operation. This rule will likely help small under-capitalized growers who need additional weekly revenues to meet operating costs.

The Committee considered several alternatives when discussing this action. One alternative discussed was changing the way loans and transfers are handled. Another alternative discussed was changing the way allotment base is calculated. The Committee agreed both alternatives should first be thoroughly reviewed by the Regulation Subcommittee to consider options to bring before the full Committee. Therefore, these alternatives were rejected.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements contained in this rule have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information

requirements and duplication by industry and public sectors.

In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. However, red seedless grapefruit must meet the requirements as specified in the U.S. Standards for Grades of Florida Grapefruit (7 CFR 51.760 through 51.784) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627).

The Committee's meeting was widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the July 1, 2003, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on September 9, 2003. Copies of the rule were mailed by the Committee's staff to all Committee members and grapefruit handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided for a 30-day comment period, which ended October 9, 2003. No comments were received.

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

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (68 FR 53015) on September 9, 2003 will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

■ Accordingly, the interim final rule amending 7 CFR part 905 which was published at 68 FR 53015, September 9, 2003, is adopted as a final rule without change.

Dated: November 7, 2003.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–28520 Filed 11–13–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV03–916–4 FIR]

Nectarines and Peaches Grown in California; Increased Assessment Rates

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule which increased the assessment rate established for the Nectarine Administrative Committee and the Peach Commodity Committee (committees) for the 2003–04 and subsequent fiscal periods from $0.19 to $0.20 per 25-pound container or container equivalent of nectarines and peaches handled. The committees locally administer the marketing orders which regulate the handling of nectarines and peaches grown in California. Authorization to assess nectarine and peach handlers enables the committees to incur expenses that are reasonable and necessary to administer the programs. The fiscal periods run from March 1 through the last day of February. The assessment rates will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: December 15, 2003.

FOR FURTHER INFORMATION CONTACT: Toni Sasselli, Marketing Assistant, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721, (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement Nos. 85 and 124 and Order Nos. 916 and 917, both as amended (7 CFR parts 916 and 917), regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the ''orders.'' The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing orders now in effect, California nectarine and peach handlers are subject to assessments. Funds to administer the orders are derived from such assessments. It is intended that the assessment rates as issued herein will be applicable to all assessable nectarines and peaches beginning on March 1, 2003, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule continues to increase the assessment rates established for the committees for the 2003–04 and subsequent fiscal periods from $0.19 to $0.20 per 25-pound container or container equivalent of nectarines and peaches.

The nectarine and peach marketing orders provide authority for the committees, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the programs. The members of the Nectarine Administrative Committee (NAC) and Peach Commodity Committee (PCC) are producers of California nectarines and peaches, respectively. They are familiar with the committees' needs and with the costs for goods and services in their local area, and are, thus, in a position to formulate appropriate budgets and assessment rates. The assessment rates are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

NAC Assessment and Expenses

The NAC recommended, for the 2002–03 fiscal period, and USDA approved, an assessment rate of $0.19 that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other information available to USDA.

The NAC met on May 1, 2003, and recommended 2003–04 expenditures of $4,173,438 and an assessment rate of $0.20 per 25-pound container or container equivalent of nectarines on a 7 to 1 vote. In comparison, last year's budgeted expenditures were $4,671,342. The assessment rate of $0.20 is $0.01 higher than the rate previously in effect.

The dissenting voter stated that the growers he represented did not support increasing the assessment rate. However, later in the meeting, following a discussion about the development of a nectarine fruit beverage, the dissenter indicated he no longer opposed the assessment increase because the CTFA intended to fund beverage development. He further stated that funds used to create more outlets for nectarines will provide a service to the industry.

The rate increase was recommended to ensure that the NAC could meet its 2003–04 anticipated expenses and carry over a financial reserve that will provide adequate funds at the beginning of the 2004 season before assessment collections begin. A financial reserve carryover of about $400,000 is desirable because major expense outlays for seasonal promotions and other activities occur before assessments are received. Increasing the assessment rate from $0.19 to $0.20 per 25-pound container is expected to provide about $220,400 in additional assessment revenue, and will allow the NAC to start the 2004 season with about $438,374.

The major expenditures recommended by the NAC for the 2003–04 fiscal period include $226,121 for salaries and benefits, $142,612 for general expenses and industry activities, $1,210,220 for inspection, $138,929 for research, and $2,263,061 for domestic and international promotion. Budgeted expenses for these items in 2002–03 were $505,000 for salaries and benefits, $309,039 for general expenses and industry activities, $1,050,000 for inspection, $138,018 for research, and $2,574,160 for domestic and international promotion.

The 2002–03 and 2003–04 budgeted expenses differ somewhat because the NAC reorganized some expense categories for 2003–2004. NAC's total expenses are significantly lower this fiscal year compared to last fiscal year.

The 2003–04 NAC assessment rate was derived after considering the total NAC expenses of $4,173,438; the estimated assessable nectarines of 22,004,000 25-pound containers or container equivalents; the estimated income from other sources, such as interest; and the need for an adequate financial reserve to carry the NAC into the 2004 season. The committee decided that a financial reserve of $400,000 is necessary to meet its obligations in the early part of each season, before handler assessments are billed and received. To meet these goals, the NAC recommended an assessment rate of $0.20 per 25-pound containers or container equivalent. According to the committee, that assessment rate will result in an adequate financial reserve, yet one well within the maximum permitted by the order (one year's expenses; § 916.42).

PCC Assessment and Expenses

The PCC recommended, for the 1996–97 fiscal period, and USDA approved, an assessment rate of $0.19 that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other information available to USDA.

The PCC also met on May 1, 2003, and recommended 2003–04 expenditures of $4,086,316 and an assessment rate of $0.20 per 25-pound container or container equivalent of peaches on a vote of 12 to 1. In comparison, last year's budgeted expenditures were $4,678,883. The assessment rate of $0.20 is $0.01 higher than the rate previously in effect.

The dissenting voter stated that the growers he represented did not support increasing the assessment rate, and he, therefore, could not support the increase.

The rate increase was recommended to ensure that the PCC could meet its 2003–04 anticipated expenses and carry over a financial reserve for the PCC which will provide adequate funds at the beginning of the 2004 season before assessment collections begin. A financial reserve carryover of $500,000 is desirable because major expense outlays for seasonal promotions and other activities occur before assessments are received. Increasing the assessment rate from $0.19 to $0.20 per 25-pound container is expected to provide about $213,360 in additional assessment revenue, and will allow the PCC to start the 2004 season with about $530,586.

The major expenditures recommended by the PCC for the 2003–04 fiscal period include $226,121 for salaries and benefits, $144,743 for general expenses and industry activities, $1,206,414 for inspection, $138,930 for research, and $2,211,346 for domestic and international promotion. Budgeted expenses for these items in 2002–03 were $505,000 for salaries and benefits, $206,747 for general expenses, $1,100,000 for inspection, $142,186 for research, and $2,529,036 for domestic and international promotion.

The 2002–03 and 2003–04 budgeted expenses differ somewhat because the PCC reorganized some expense categories for 2003–2004. PCC's total expenses are significantly lower this fiscal year compared to last fiscal year.

The 2003–04 PCC assessment rate was derived after considering the total PCC expenses of $4,086,316; the estimated assessable peaches of 21,336,000 25-pound containers or container equivalents; the estimated income from other sources, such as interest; and the need for an adequate reserve to carry the PCC into the 2004 season. The committee decided that a financial reserve of $500,000 is necessary to meet its obligations in the early part of each season, before handler assessments are billed and received. To meet these goals, the PCC recommended an assessment rate of $0.20 per 25-pound container or container equivalent. According to the committee, that assessment rate will result in an adequate financial reserve, yet one well within the maximum permitted by the order (one year's expenses; § 917.38).

Continuance of Assessment Rates

The assessment rates established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information

submitted by the committees or other available information.

Although these assessment rates will be in effect for an indefinite period, the committees will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rates. The dates and times of committee meetings are available from the committees' website or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate the committees' recommendations and other available information to determine whether modification of the assessment rate for each committee is needed. Further rulemaking will be undertaken as necessary. The committees' 2003–04 budgets were reviewed and approved on August 27, 2003, and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

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

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

There are approximately 300 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 1,800 producers of these fruits in California. Small agricultural service firms, which include handlers, are defined by the Small Business Administration [13 CFR 121.201] as those whose annual receipts are less than $5,000,000. Small agricultural producers are defined by the Small Business Administration as those having annual receipts of less than $750,000. A majority of these handlers and producers may be classified as small entities.

The committees' staff has estimated that there are less than 20 handlers in the industry who could be defined as other than small entities. For the 2002 season, the committees' staff estimated that the average handler price received was $9.00 per container or container equivalent of nectarines or peaches. A handler would have to ship at least 556,000 containers to have annual receipts of $5,000,000. Given data on shipments maintained by the committees' staff and the average handler price received during the 2002 season, the committees' staff estimates that small handlers represent approximately 94 percent of all the handlers within the industry.

The committees' staff has also estimated that less than 20 percent of the producers in the industry could be defined as other than small entities. For the 2002 season, the committees' estimated the average producer price received was $4.00 per container or container equivalent for nectarines and peaches. A producer would have to produce at least 187,500 containers of nectarines and peaches to have annual receipts of $750,000.

With data maintained by the committees' staff and the average producer price received during the 2002 season, the committees' staff estimates that small producers represent more than 80 percent of the producers within the industry. With an average producer price of $4.00 per container or container equivalent, and a combined packout of nectarines and peaches of 43,340,000 containers, the value of the 2002 packout level is estimated to be $173,360,000. Dividing this total estimated grower revenue figure by the estimated number of producers (1,800) yields an estimate of average revenue per producer of about $96,311 from the sales of peaches and nectarines.

This rule continues to increase the assessment rates established for the committees and collected from handlers for the 2003–04 and subsequent fiscal periods from $0.19 to $0.20 per 25-pound container or container equivalent of nectarines and peaches. The committees recommended 2003–04 expenditures of $4,173,438 for nectarines and expenditures of $4,086,316 for peaches and an assessment rate of $0.20 per 25-pound container or container equivalent of nectarines and peaches. The assessment rate of $0.20 is $0.01 higher than the rate previously in effect.

Analysis of NAC Budget

The quantity of assessable nectarines for the 2003–04 fiscal year continues to be estimated at 22,004,000 25-pound container or container equivalents. Thus, the $0.20 rate should provide $4,400,800 in assessment income. Income derived from handler assessments will be adequate to cover budgeted expenses and permit an adequate reserve.

The major expenditures recommended by the NAC for the 2003–04 year include $226,121 for salaries and benefits, $142,612 for general expenses and industry activities, $1,210,220 for inspection, $138,929 for research, and $2,263,061 for domestic and international promotion.

Budgeted expenses for these items in 2002–03 were $505,000 for salaries and benefits, $309,039 for general expenses and industry activities, $1,050,000 for inspection, $138,018 for research, and $2,574,160 for domestic and international promotion.

The NAC recommended an increase in the assessment rate to meet anticipated 2003–04 expenses and preserve an acceptable financial reserve. A reserve of $400,000 is needed to fund expenses for the following year until assessments for that year are received. The NAC reviewed and recommended 2003–04 expenditures of $4,173,438 and the increased assessment rate.

Analysis of PCC Budget

The quantity of assessable peaches for the 2003–04 fiscal year continues to be estimated at 21,336,000 25-pound container or container equivalents. Thus, the $0.20 rate should provide $4,267,200 in assessment income. Income derived from handler assessments will be adequate to cover budgeted expenses and permit a small increase in reserves.

The major expenditures recommended by the PCC for the 2003–04 year include $226,121 for salaries and benefits, $144,743 for general expenses and industry activities, $1,206,414 for inspection, $138,930 for research, and $2,211,346 for domestic and international promotion.

Budgeted expenses for these items in 2002–03 were $505,000 for salaries and benefits, $206,747 for general expenses, $1,100,000 for inspection, $142,186 for research, and $2,529,036 for domestic and international promotion.

The PCC recommended an increase in the assessment rate to meet anticipated 2003–04 expenses and preserve an acceptable financial reserve. A reserve of $500,000 to $550,000 is needed to fund expenses for the following year until assessments for that year are received. The PCC reviewed and recommended 2003–04 expenditures of $4,086,316 and the increased assessment rate.

Considerations in Determining Expenses and Assessment Rates

Prior to arriving at these budgets, the committees considered information and recommendations from various sources, including, but not limited to: The Executive Committee, the Research Subcommittee, the International Programs Subcommittee, the Grade and Size Subcommittee, and the Domestic Promotion Subcommittee.

Each of the committees then reviewed the proposed expenses; the total estimated assessable 25-pound containers or container equivalents; and the estimated income from other sources, such as interest income, prior to recommending a final assessment rate. The NAC decided that an assessment rate of $0.20 per 25-pound container or container equivalent will allow it to meet its 2003–04 expenses and carry over an operating reserve of about $438,374, which is in line with the committee's financial needs. The PCC decided that an assessment rate of $0.20 per 25-pound container or container equivalent will allow it to meet its 2003–04 expenses and carry over an operating reserve of $530,586, which is in line with the committee's financial needs. The committees then recommended this rate to USDA with one dissenting vote from each committee.

A review of historical and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2003–04 seasons could range between $4.00 and $6.00 per 25-pound container or container equivalent. Therefore, the estimated assessment revenue for the 2003–04 fiscal period as a percentage of total grower revenue could range between 3.33 and 5.0 percent.

This action continues to increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived from the operation of the marketing orders. In addition, the committees' meetings were widely publicized throughout the California nectarine and peach industries and all interested persons were invited to attend the meetings and participate in the committees' deliberations on all issues. Like all committee meetings, the May 1, 2003, meetings were public meetings and all entities of all sizes were able to express views on this issue. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

An interim final rule concerning this action was published in the **Federal Register** on August 15, 2003 (68 FR 48767). Copies of that rule were also mailed to committee members and made available as a link on the committees' Web site. Finally, the interim final rule was made available through the Internet by the Office of the Federal Register and USDA. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on October 14, 2003, and no comments were received.

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

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

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

PART 916—NECTARINES GROWN IN CALIFORNIA

§ 916.234 Assessment rate.

■ Accordingly, the interim final rule amending 7 CFR part 916 which was published at 68 FR 48767 on August 15, 2003, is adopted as a final rule without change.

PART 917—PEACHES GROWN IN CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 917 which was published at 68 FR 48767 on August 15, 2003, is adopted as a final rule without change.

Dated: November 7, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–28521 Filed 11–13–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV03–989–7 FIR]

Raisins Produced From Grapes Grown in California; Reduction in Additional Storage Payments Regarding Reserve Raisins Intended for Use as Cattle Feed

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that reduced the additional holding and storage payments regarding 2002 Natural (sun-dried) Seedless (NS) reserve raisins that were carried into the 2003 crop year and used as cattle feed. The crop year runs from August 1 through July 31. Such payments are authorized under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (RAC). This action continues to reduce expenses incurred by the 2002 reserve pool and thereby helps improve returns to 2002 equity holders, primarily raisin producers.

EFFECTIVE DATE: Effective December 15, 2003.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Senior Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400

Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule continues to reduce the additional holding and storage payments regarding 2002 NS reserve raisins that were carried into the 2003 crop year and used as cattle feed. The crop year runs from August 1 through July 31. Under the order, handlers are compensated for receiving, storing, fumigating, and handling reserve tonnage raisins acquired during a crop year. The order also authorizes additional payments for reserve raisins held beyond the crop year of acquisition. The RAC met on July 2, 2003, and unanimously recommended that additional payments for reserve raisins used as cattle feed accrue beginning September 13, 2003, rather than August 1, 2003. This action continues to reduce expenses incurred by the 2002 reserve pool and thereby helps improve returns to 2002 equity holders, primarily raisin producers.

Volume Regulation Provisions

The order provides authority for volume regulation designed to promote orderly marketing conditions, stabilize prices and supplies, and improve producer returns. When volume regulation is in effect, a certain percentage of the California raisin crop may be sold by handlers to any market (free tonnage) while the remaining percentage must be held by handlers in a reserve pool (reserve) for the account of the RAC. Reserve raisins are disposed of through various programs authorized under the order. For example, reserve raisins may be sold by the RAC to handlers for free use or to replace part of the free tonnage they exported; carried over as a hedge against a short crop the following year; or may be disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed. Net proceeds from sales of reserve raisins are ultimately distributed to the reserve pool's equity holders, primarily producers.

Costs Regarding Holding and Storage of Reserve Raisins

Section 989.66(f) of the order specifies that handlers be compensated for receiving, storing, fumigating, and handling that tonnage of reserve raisins determined by the reserve percentage of a crop year and held by them for the account of the RAC, in accordance with a schedule of payments established by the RAC and approved by the Secretary. Further, the RAC must pay rent to producers or handlers for boxes used in storing reserve raisins held beyond the crop year of acquisition. As previously mentioned, the crop year runs from August 1 through July 31.

Section 989.401(b) of the order's rules and regulations specifies additional payments to handlers for storing, handling, and fumigating reserve raisins held beyond the crop year of acquisition. Specifically, handlers must be compensated for such raisins at a rate of $2.30 per ton for the first 3 months (August through October), and at a rate of $1.18 per ton per month for the remaining 9 months (November through July).

Section 989.401(c) specifies further payment of rental on boxes and bins containing raisins held beyond the crop year of acquisition. Specifically, persons who furnish boxes or bins used for storing reserve raisins held for the account of the RAC on August 1 are compensated for the use of such containers as follows: For boxes, 2½ cents per day, not to exceed a total payment of $1.00 per box per year, per average net weight of raisins in a sweatbox, with equivalent rates for raisins in boxes other than sweatboxes; and for bins, 20 cents per day per bin, not to exceed a total of $10.00 per bin per year.

Disposal Program

Pursuant to § 989.67(b) of the order, the RAC implemented a program to dispose of about 38,000 tons of 2002 NS reserve raisins for use as cattle feed. The tonnage was stored at handler facilities and was adulterated to ensure that the raisins remain in non-commercial channels. The program helped the industry reduce its burdensome oversupply of raisins. It also helped to make available bins for storing raisins during the new crop year, which began August 1, 2003. Nearly all of the reserve tonnage that was used as cattle feed was removed from handler premises by mid-September 2003 (about 425 tons remained).

RAC Recommendation

The RAC met on July 2, 2003, and unanimously recommended reducing the additional holding and storage payments regarding 2002 NS reserve raisins held by handlers on August 1, 2003, and used as cattle feed. Specifically, additional payments for such raisins were accrued beginning September 13, 2003, rather than August 1, 2003. Thus, additional costs were only incurred for such tonnage that remained at handler premises after September 12, 2003 (425 tons). Payments for storing and holding reserve raisins are deducted from reserve pool proceeds, and net proceeds are ultimately distributed to equity holders. Thus, reducing the expenses for 2002 NS reserve tonnage used as cattle feed will help improve returns to 2002 equity holders.

Final Regulatory Flexibility Analysis

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

Accordingly, AMS has prepared this final regulatory flexibility analysis.

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

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less that $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 7 handlers have sales less than $5,000,000. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities.

This rule continues to reduce the additional holding and storage payments specified in paragraphs (b) and (c) of § 989.401 regarding 2002 NS reserve raisins that were used as cattle feed. Specifically, additional payments for such raisins accrued beginning September 13, 2003, rather than August 1, 2003. Under the order, handlers are compensated for receiving, storing, fumigating, and handling reserve tonnage raisins acquired during a crop year. The order also authorizes additional holding and storage payments for reserve raisins held beyond the crop year of acquisition. This action continues to reduce these additional payments for 2002 NS reserve raisins held by handlers on August 1, 2003, that were used as cattle feed. Authority for this action is provided in § 989.66(f) of the order.

Regarding the impact of this rule on affected entities, handlers and producers, the order provides that handlers store reserve raisins for the account of the RAC. Net proceeds from sales of such reserve raisins are distributed to the reserve pool's equity holders, primarily producers. Handlers are compensated from reserve pool funds for their costs in receiving, storing, fumigating, and handling reserve raisins during the crop year of acquisition and for the subsequent crop year. Compensation is also paid for the use of bins and boxes for storing reserve raisins held beyond the crop year of acquisition.

Under the disposal program, 22,541 tons of reserve raisins remained at handler premises after August 1, 2003. About 525 tons were removed per day. The cost to store, handle, and fumigate the remaining tonnage at the rate of $2.30 per ton per month between August 1 and September 12, 2003, would have been about $66,256. Bin-rental costs for the same period at the current rate of $0.20 per day per bin would have been about $198,075.00. Thus, the RAC saved about $264,331 in costs that would have been used for holding and storing 2002 reserve raisins intended for use as cattle feed between August 1 and September 12, 2003. This rule continues to reduce these costs to zero and thereby reduce expenses incurred by the 2002 NS reserve pool. Handlers, however, will not be compensated this amount for holding and storing this tonnage.

Regarding alternatives to this action, one option would be to maintain the status quo and have the 2002 reserve pool incur these costs. However, this would not help to improve returns to 2002 equity holders. Another alternative would be to reduce the payments for the period August 1 through September 12, 2003, to figures lower than those currently specified in § 989.401. However, all RAC members supported reducing the additional holding and storage payments for 2002 reserve raisins intended for use as cattle feed so that such payments accrued beginning September 13, 2003, rather than August 1, 2003.

This rule imposes no additional reporting or recordkeeping requirements on either small or large raisin handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the RAC's Administrative Issues Subcommittee and RAC meetings on July 2, 2003, where this action was deliberated were both public meetings widely publicized throughout the raisin industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations.

An interim final rule concerning this action was published in the **Federal Register** on July 31, 2003 (68 FR 44857). Copies of the rule were mailed by the RAC staff to all RAC members and alternates, the Raisin Bargaining Association, handlers, and dehydrators. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. The rule provided for a 60-day comment period that ended on September 29, 2003. No comments were received.

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

After consideration of all relevant material presented, including the information and recommendation submitted by the RAC and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 989 which was published at 68 FR 44857 on July 31, 2003, is adopted as a final rule without change.

Dated: November 7, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–28519 Filed 11–13–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 130

[Docket No. 03–036–2]

Veterinary Services User Fees; Pet Food Facility Inspection and Approval Fees

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the user fee regulations to replace the flat rate annual user fees currently charged for the inspection and approval of pet food manufacturing, rendering, blending,

digest, and spraying and drying facilities with user fees based on hourly rates for inspections and approval. We have found that the flat rate annual user fees we have been charging no longer cover the costs of our inspections and cannot be adequately formulated to cover the costs of the inspections and reinspections mandated by various foreign regions to which those facilities export their pet food ingredients or products. This action will ensure that our user fees cover the cost of providing these services to pet food facilities.

EFFECTIVE DATE: December 15, 2003.

FOR FURTHER INFORMATION CONTACT: For information concerning program operations for Veterinary Services, contact Dr. Thomas W. Burleson, Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 44, Riverdale, MD 20737–1231; (301) 734–8364.

For information concerning user fee rate development, contact Mrs. Kris Caraher, User Fees Section Head, Financial Systems and Services Branch, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737–1232; (301) 734–5901.

SUPPLEMENTARY INFORMATION:

Background

Pet food rendering facilities process animal byproducts by cooking them down into various products that are used as ingredients in pet foods and animal feeds. Pet food blending facilities take different materials and mix them according to manufacturers' specifications. Pet food digest facilities produce enzymatic meals in powdered or liquid form for use as pet food flavor enhancers. Pet food spraying and drying facilities produce powdered materials, which are also used as flavor enhancers. Pet food manufacturing facilities combine and cook ingredients to produce the finished pet food, which is then packaged for sale in the United States or for export to another country.

Facilities that process or manufacture pet food ingredients or products for export, including manufacturing, rendering, blending, digest, and spraying and drying facilities, are required by the European Union (EU) and some other foreign regions to be inspected and approved by the Animal and Plant Health Inspection Service (APHIS). These inspections and approvals are carried out by APHIS in accordance with the regulations in 9 CFR part 156, ''Voluntary Inspection and Certification Service.''

User fees to reimburse APHIS for the costs of providing veterinary diagnostic services and import- and export-related services for live animals and birds and animal products are contained in 9 CFR part 130. Section 130.11 lists flat rate annual fees for inspecting and approving pet food manufacturing, rendering, blending, digest, and spraying and drying facilities.

On July 9, 2003, we published in the **Federal Register** (68 FR 40817–40820, Docket No. 03–036–1) a proposal to amend the regulations by replacing the flat rate annual user fees currently charged for the inspection and approval of pet food manufacturing, rendering, blending, digest, and spraying and drying facilities in § 130.11 with user fees for inspections and approval based on the hourly rates in § 130.30. We took this action because APHIS was not recovering its full costs for providing these services under the flat rate annual user fees and because the flat rate annual user fees could not be adequately reformulated due to changes in the inspection and approval requirements of the EU for pet food facilities that export their products to the EU.

We solicited comments concerning our proposal for 60 days ending September 8, 2003. We received one comment by that date, from a pet food manufacturer. This commenter requested that, instead of establishing user fees for inspections and approval of pet food facilities based on hourly rates, we develop new flat rate annual user fees.

We realize that flat rate annual user fees aid pet food facilities by allowing them to know in advance what their costs for inspection and approval will be; in fact, we previously established the flat rate annual user fees for these activities at the request of pet food industry representatives. However, as we discussed in the proposed rule, the EU's new requirements make it infeasible to address the present unrecovered costs by simply recalculating the current flat rate user fees for inspection and approval of pet food facilities.

The amount of time needed to complete the inspection processes that are required by the EU varies widely between pet food facilities, even pet food facilities of the same type. Charging a flat rate user fee for inspections performed in accordance with these new requirements would thus be inequitable, as facility operators whose facilities could be inspected in a relatively short amount of time would, in effect, be subsidizing facility operators whose facilities required inspections of greater length.

Furthermore, under the EU's new requirements, pet food facilities that are not found to be in compliance at the initial inspection must, if they still wish to export pet food to the EU, undergo reinspection. The APHIS flat rate annual user fees for inspection and approval and for renewal of approval in § 130.11 are intended to cover APHIS' costs for all inspections required during the year. We developed these flat rate user fees based on an average of two inspections per year. However, the new EU requirements are likely to require more frequent reinspections for some facilities. The cost of these additional reinspections will not be recovered under the current flat rate user fees. A flat rate annual user fee that did take the possibility of these additional reinspections into account would also be inequitable; under such a fee, facility owners whose facilities required relatively few inspections would, in effect, be subsidizing those whose facilities required more inspections, to a far greater degree than under the EU's previous requirements.

Finally, we cannot predict what changes foreign governments may make to their requirements for inspection and approval of pet food facilities in the future, or what changes we might need to make in the flat rate user fees because of those changes. A more flexible system, using the hourly rates established here, will reduce the need for future rulemaking while ensuring that APHIS properly recovers its full costs for providing these services and that all customers are charged fairly.

These considerations have led us to conclude that the flat rate annual user fees for inspection and approval of pet food facilities, while providing cost certainty for facility operators, will not be able to achieve their primary goal: Ensuring that APHIS recovers the costs of inspecting and approving such facilities. Returning to an hourly rate user fee will allow us to charge facility operators an appropriate amount for the labor expended in inspecting and approving their facilities, will allow us to recover the costs of any reinspections that may be required, and will give us more flexibility should the requirements of importing countries for inspection and approval change in the future. We are not making any changes to the proposed rule in response to this comment.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has

been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

APHIS will be using the hourly and premium hourly rate user fees listed in § 130.30 to cover the cost of providing services for the approval of U.S. pet food manufacturing, rendering, blending, digest, and spraying and drying facilities in lieu of the current flat rate user fees contained in § 130.11. Facilities that process or manufacture pet food ingredients or products for export are required by the EU and other foreign countries to be inspected and approved by APHIS in order for the pet food to be imported. APHIS is replacing the flat rates with hourly rates to recover its full costs for these inspection and approval services.

User fees recover the cost of operating a public system by charging those members of the public who use the system, rather than the public as a whole, for its operation. It is justifiable to recover the costs of the inspection and approval of U.S. pet food manufacturing, rendering, blending, digest, and spraying and drying facilities through user fees. These facilities benefit from the inspection service as it provides the approvals required by the countries to which they export; user fees thus internalize the costs of this service to those who require the service and benefit from it.

APHIS user fees are intended to cover the full cost of providing the service for which the fee is charged. The cost of providing a service includes direct labor and direct material costs. It also includes administrative support, Agency overhead, and departmental charges. Due to changes in the inspection and approval requirements of certain countries, APHIS has found that providing these services can now require up to 1½ times the labor estimated as being necessary when the flat rate annual user fees were set. Therefore, APHIS is not currently recovering all appropriate costs. In addition, the EU's requirements for inspection and approval of facilities that wish to export pet food to the EU changed dramatically on May 1, 2003. Inspections under these new requirements are more complex and thus require more labor, meaning that the labor estimates used for the current flat rates have become yet more outdated.

The amount of time required to perform an inspection can vary widely, depending on such factors as the size of the facility, the complexity of the operation, and the preparation that has occurred at the facility in anticipation of the inspection. However, the labor time associated with inspections is generally underrepresented by the current fees, and will become more so as requirements change. The current flat rate user fee of $404.75 for an initial inspection and approval at a pet food manufacturing, rendering, blending, or digest facility is the equivalent of approximately 5 hours at the hourly rate, but we have found it can easily take 10 or more hours to approve some facilities. It can, therefore, be expected that the total user fees charged under the hourly rate will be greater than the current flat rate for inspection and approval services.

To the extent that changes in user fees alter operational costs, any entity that utilizes APHIS services that are subject to user fees will be affected by a rule that changes those fees. The degree to which an entity is affected depends on its market power, or the ability to which costs can be either absorbed or passed on to its buyers. Without information on either profit margins and operational expenses of the affected entities, or the supply responsiveness of the pet food industry,[1] the scale of potential economic effects cannot be precisely predicted.

However, we do not expect that these changes in user fees will significantly impact users. Even at higher levels, the inspection fees represent a very small portion of the value of shipments from these facilities. In 1997,[2] dog and cat food manufacturers[3] had an average total annual value of shipments of $46.6 million, and even the smallest operations (1 to 4 employees) had an average total annual value of shipments of nearly $700,000. Other animal food manufacturers[4] had an average total annual value of shipments of $12.7 million, with the smallest operations (1 to 4 employees) having an average total annual value of shipments of $2.3 million. Renderers and other meat byproduct processors[5] had an average total annual value of shipments of $10.7 million, with the smallest operations (1 to 4 employees) having an average total annual value of shipments of nearly $800,000. Those processors specifically dealing with animal and marine feed and fertilizer byproducts[6] had an average total annual value of shipments of $16.2 million. Even if these hourly rate user fees were to triple the inspection and approval costs of pet food facilities, the fees charged to these facilities will continue to be very small compared to their revenues.

Because the EU and other countries require U.S. facilities that process or manufacture pet food ingredients or products for export be inspected and approved by APHIS in order for the pet food to be imported into those countries, those facilities directly benefit from the inspections, as they are a necessary element for exports of these products to occur. In addition, using hourly rates will allow the fee to be tied directly to the amount of time required to perform the service at a given facility.

Impact on Small Entities

The Regulatory Flexibility Act requires that agencies specifically consider the economic effects of their rules on small entities. The Small Business Administration (SBA) has set out criteria based on the North American Industry Classification System for determining which economic entities meet the definition of a small business. The entities potentially affected by this final rule will be U.S. manufacturers of pet food and pet food ingredients intended for export.

Under the SBA's criteria, an entity engaged in the manufacture of pet food or in rendering and meat byproduct processing is considered to be a small entity if it employs 500 or fewer employees. In 1997, nearly 99 percent of dog and cat food manufacturers would have been considered small under this criterion. Similarly, 100 percent of other animal food manufacturers and rendering and meat byproduct processors would have been considered small under this criterion. However, because, as discussed above, the inspection fees represent a very small portion of the value of shipments from these facilities, we expect that this change in user fees will have a minimal impact on users, whether small or large.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to

[1] The measurement of supply responsiveness would provide information on the likely impact on an entity's activities due to changes in operating costs.

[2] U.S. Census Bureau, 1997 Economic Census. The 2002 Census is not yet available.

[3] North American Industry Classification System (NAICS) code 311111, Dog and Cat Food Manufacturing.

[4] NAICS code 311119, Other Animal Food Manufacturing.

[5] NAICS code 311613, Rendering and Meat By-product Processing.

[6] NAICS code 3116134, Animal and Marine Feed and Fertilizer Byproducts.

Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent 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 final 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 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Tests.

■ Accordingly, we are amending 9 CFR part 130 as follows:

PART 130—USER FEES

■ 1. The authority citation for part 130 continues to read as follows:

Authority: 5 U.S.C. 5542; 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 3701, 3716, 3717, 3719, and 3720A; 7 CFR 2.22, 2.80, and 371.4.

§ 130.1 [Amended]

■ 2. Section 130.1 is amended by removing the definitions for *pet food blending facility, pet food digest facility, pet food manufacturing facility, pet food rendering facility,* and *pet food spraying and drying facility.*

■ 3. In § 130.11, paragraph (a), the table is revised to read as follows:

§ 130.11 User fees for inspecting and approving import/export facilities and establishments.

(a) * * *

Service	Unit	User fee beginning Oct. 1, 2003
Embryo collection center inspection and approval (all inspections required during the year for facility approval).	per year	$380.00
Inspection for approval of biosecurity level three laboratories (all inspections related to approving the laboratory for handling one defined set of organisms or vectors).	per inspection	977.00
Inspection for approval of slaughter establishment:		
Initial approval (all inspections)	per year	373.00
Renewal (all inspections)	per year	323.00
Inspection of approved establishments, warehouses, and facilities under 9 CFR parts 94 through 96:		
Approval (compliance agreement) (all inspections for first year of 3-year approval)	per year	398.00
Renewed approval (all inspections for second and third years of 3-year approval)	per year	230.00

* * * * *

Done in Washington, DC, this 7th day of November 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–28512 Filed 11–13–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 145 and 147

[Docket No. 03–017–2]

National Poultry Improvement Plan and Auxiliary Provisions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the National Poultry Improvement Plan (the Plan) and its auxiliary provisions by providing new or modified sampling and testing procedures for Plan participants and participating flocks. These changes were voted on and approved by the voting delegates at the Plan's 2002 National Plan Conference and will keep the provisions of the Plan current with changes in the poultry industry and provide for the use of new sampling and testing procedures.

EFFECTIVE DATE: December 15, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew R. Rhorer, Senior Coordinator, Poultry Improvement Staff, National Poultry Improvement Plan, Veterinary Services, APHIS, USDA, 1498 Klondike Road, Suite 200, Conyers, GA 30094–5104; (770) 922–3496.

SUPPLEMENTARY INFORMATION:

Background

The National Poultry Improvement Plan (NPIP, also referred to below as ''the Plan'') is a cooperative Federal-State-industry mechanism for controlling certain poultry diseases. The Plan consists of a variety of programs intended to prevent and control egg-transmitted, hatchery-disseminated poultry diseases. Participation in all Plan programs is voluntary, but flocks, hatcheries, and dealers must first qualify as ''U.S. Pullorum-Typhoid Clean'' as a condition for participating in the other Plan programs. The regulations in 9 CFR parts 145 and 147 (referred to below as the regulations) contain the provisions of the Plan. The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) amends these provisions from time to time to incorporate new scientific information and technologies within the Plan.

On May 23, 2003, we published in the **Federal Register** (68 FR 28169–28175, Docket No. 03–017–1) a proposal to amend the Plan by providing new or modified sampling and testing procedures, removing the requirements for the minimum weight of hatching eggs, changing the restrictions on animal protein used in mash and pellet feed, adding a reinstatement procedure to the U.S. S. Enteritidis Clean program, and adding new U.S. Avian Influenza Clean programs for turkey breeding flocks and products and waterfowl, exhibition poultry, and game breeding flocks and products.

We solicited comments concerning our proposal for 60 days ending July 22, 2003. We received one comment by that date, from a private citizen. This commenter raised several issues related to the proposed rule. These issues are discussed below.

The commenter objected to the fact that the changes we proposed to make to the Plan were developed by Federal and State animal health officials and industry representatives working cooperatively. The commenter stated that other groups with an interest in

commercial poultry production, particularly animal protection groups, should have been invited to observe and contribute to the development of the Plan. Without adequate oversight from other groups, this commenter asserted, decisions could be made that would have a deleterious effect on poultry health and welfare.

On May 2, 2002, we published in the **Federal Register** (67 FR 22038–22039, Docket No. 02–039–1) a notice of the meetings of the General Conference Committee of the Plan, which was held on May 30, 2002, and the 2002 National Plan Conference, which was held on May 31 and June 1, 2002. The notice indicated that the meetings would be open to the public and listed the topics that would be addressed at these meetings. The decisions made at the meetings on how to address these topics became the basis of the proposed rule. Due to time constraints, the public was not allowed to participate in discussions during either of the meetings; however, the notice indicated that written statements on the meeting topics would be accepted either at the meetings or before or after the meetings. In addition, all interested parties had an opportunity to comment on the proposed rule during the 60-day comment period. We believe interested parties had adequate access to the deliberations of the General Conference Committee and the proceedings of the National Plan Conference and have had adequate opportunity to comment on the proposed changes.

The commenter objected to our proposed changes to the U.S. S. Enteritidis Clean and U.S. Salmonella Monitored programs for meat type chicken breeding flocks and products and the U.S. Sanitation Monitored program for turkey breeding flocks and products on the basis that animal protein should not be fed to chickens or turkeys. The commenter asserted that feeding animal protein to chickens and turkeys could spread illness to the chickens and turkeys or to other poultry.

The programs cited in the previous paragraph are intended to reduce the incidence of *S. enteritidis* and *Salmonella* in chickens and *Salmonella* in turkeys. These bacteria primarily pose a risk to human health, and as such are under the purview of the USDA's Food Safety and Inspection Service and the U.S. Food and Drug Administration. The Plan's programs are voluntary and provide flockowners with guidelines to reduce or eliminate the incidence of these bacteria in their flocks. If it became necessary to restrict or prohibit feeding animal protein to poultry due to a risk of animal disease transmission, such feeding would be restricted or prohibited elsewhere in APHIS's regulations. We have no evidence indicating that chickens and turkeys that are fed animal protein that meets the guidelines of these programs are at risk for animal disease transmission, and the commenter did not provide any such evidence. We are making no changes in response to this comment.

The commenter asserted that laboratories that perform the tests provided for by the Plan should be tested to ensure that they are providing accurate, unbiased results. All laboratories that perform tests provided for by the Plan must be authorized laboratories. An *authorized laboratory,* as defined in § 145.1 of the regulations, is a laboratory designated by an Official State Agency and subject to review by APHIS. The APHIS review may include, but will not necessarily be limited to, checking records, laboratory protocol, check-test proficiency, periodic duplicate samples, and peer review. Only after this review is a laboratory authorized to perform the tests provided for by the Plan. We believe that such a review adequately addresses the commenter's concerns in this regard.

We proposed to add a reinstatement process to the U.S. S. Enteritidis Clean program. The commenter argued that flockowners who would seek to have their flocks reinstated under such a program should be required to pay for all testing themselves. The authorized laboratories that would perform such testing are operated by State, educational, or commercial entities, and it is beyond the scope of the regulations to require that these entities charge user fees for testing. We are making no changes in response to this comment.

However, we are making one change to the proposed rule that has been necessitated by a regulatory action taken since the proposed rule's publication. On June 20, 2003, we published in the **Federal Register** (68 FR 36898–36900, Docket No. 00–107–2) a final rule that, among other things, removed the regulations governing *Salmonella enteritidis* serotype *enteritidis* in 9 CFR part 82, subpart C (§§ 82.30 through 82.38). In the proposed rule, we had proposed to update a reference to the U.S. Salmonella Monitored program in § 82.34 by replacing it with a reference to the U.S. Salmonella Clean program to reflect a previous change in the name of that program. Since § 82.34 has been removed, it is not necessary to include that proposed change in this final rule.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the change discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

The objective of the NPIP is to provide a cooperative Federal-State-industry program through which new technology can be effectively applied to the improvement of poultry and poultry products throughout the country. The provisions of the Plan, developed jointly by industry members and State and Federal officials, establish standards for the evaluation of poultry breeding stock and hatchery products with respect to freedom from hatchery-disseminated diseases. Participation in the program is voluntary. Currently, the NPIP has active control programs for pullorum, fowl typhoid, avian mycoplasmas, *Salmonella enteritidis,* and avian influenza.

Periodically, the provisions of the Plan are amended to keep current with the development of the poultry industry and the utilization of new information as it becomes available, based on the recommendations of representatives of member States, hatcheries, dealers, flockowners, and breeders who take part in the Plan's National Plan Conference. Accordingly, this final rule changes some of the Plan's provisions to keep the provisions of the Plan current with changes in the poultry industry, establish new certification programs, modify current disease control practices, and provide for the use of new sampling and testing procedures. The changes were voted on and approved by the voting delegates at the Plan's 2002 National Plan Conference. The changes have been generated by industry representatives, Official State Agencies, or Federal representatives with the goal of reducing disease risk and increasing product marketability.

The United States is the world's largest producer and exporter of poultry meat and the second-largest egg producer. In 2001, U.S. producers held a total of 441.1 million chickens, excluding commercial broilers, whose estimated value was $1.068 billion. Broiler production, which primarily comes from chickens raised under contract with a broiler processor, totaled 8.262 billion broilers with a combined live weight of 41.5 billion pounds. The value of broiler production for that year was $13.9 billion. The United States is also the world's largest turkey producer.

In 2001, turkey production totaled 269 million birds with a combined live weight of 6.98 billion pounds and value of $2.8 billion. Finally, in 2000, the United States produced approximately 84.4 billion eggs worth an estimated $4.3 billion.[1]

The U.S. poultry industry plays a significant role in international trade. In fact, the United States is the world's largest exporter of both broilers and turkey products. In 2001, broiler exports totaled 5.5 billion pounds, valued at $1.8 billion. Turkey exports for the same year totaled 487 million pounds and were valued at $257 million. In addition, 191 million dozen eggs and egg products were exported in 2001.[2]

Participation in the Plan serves as a ''seal of approval'' for eggs and poultry producers in the sense that tests and procedures recommended by the Plan are considered optimal for the industry. As such, while participation in the Plan is voluntary, many foreign nations, such as Russia, do not accept poultry products unless they have originated from flocks participating in the Plan.[3] Consequently, participation in the Plan increases product marketability both domestically and internationally, which in turn increases the economic benefits received by the poultry industry from participation in the Plan.

The Regulatory Flexibility Act requires that agencies consider the economic impact of their regulations on small entities. Under the North American Industry Classification System (NAICS) used by the Small Business Administration, chicken egg operations are considered small entities if they have $10.5 million or less in annual receipts (NAICS code 112310). All other poultry products and meat operations are considered small entities if they have $750,000 or less in annual receipts (NAICS code 112320).[4] As this final rule only makes minor changes in a continuing program in an effort to better safeguard poultry health, the economic effects on poultry producers are not expected to be significant.

The last agricultural census estimated there were 63,246 domestic poultry and poultry products farms.[5] Unfortunately, the size distribution of these farms is not known. However, because most poultry production is carried out by small farms working under contract with larger processors or marketing firms, we can assume a fair amount of poultry production is carried out by small operations.

However, only those producers that voluntarily participate in the Plan will be affected. As is the case in the majority of voluntary control programs, individuals are likely to remain in the program as long as the costs of implementing the program are lower than the added benefits they receive from the program. In any event, the changes in this final rule will not have a significant economic effect on Plan participants.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

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 final 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 final 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 Parts 145 and 147

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

■ Accordingly, we are amending 9 CFR parts 145 and 147 as follows:

PART 145—NATIONAL POULTRY IMPROVEMENT PLAN

■ 1. The authority citation for part 145 continues to read as follows:

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

■ 2. Section 145.10 is amended as follows:

■ a. In paragraph (r), by removing the word ''and'' and adding a comma in its place and by adding the words '', and 145.53(e)'' after the citation ''145.33(l)''.

■ b. By adding a new paragraph (t) to read as set forth below.

§ 145.10 Terminology and classification; flocks, products, and States.

* * * * *

(t) *U.S. H5/H7 Avian Influenza Clean.* (*See* § 145.43(g).)

[1] USDA, *Agricultural Statistics 2002.* Washington, DC: National Agricultural Statistics Service, 2002.

[2] USDA, *Poultry and Eggs: Trade.* Washington, DC: Economic Research Service, 2002.

[3] USDA, *Export Requirements for Russia.* Washington, DC: Food Safety and Inspection Service, 2003.

[4] Table of Size Standards based on NAICS 2002. Washington, DC: U.S. Small Business Administration, 2002.

[5] USDA, *1997 Census of Agriculture.* Washington, DC: National Agricultural Statistics Service.

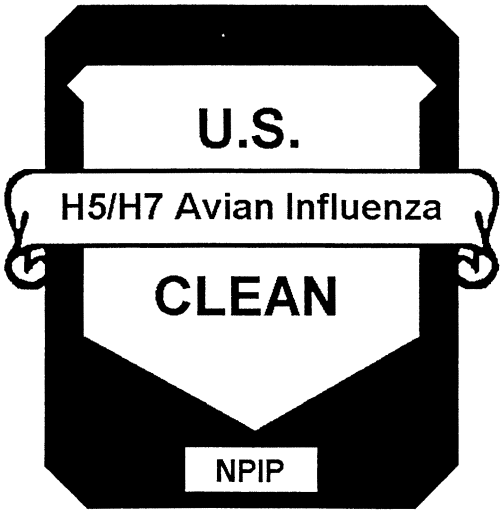

FIGURE 21

■ 3. Section 145.14 is amended as follows:

■ a. By removing paragraph (a)(9).

■ b. By redesignating paragraphs (a)(6) through (a)(8) as paragraphs (a)(7) through (a)(9), respectively.

■ c. In newly redesignated paragraph (a)(7), in the first sentence, by removing the words ''reactors are found in serum or blood from any flock, or''.

■ d. By adding a new paragraph (a)(6) to read as set forth below.

§ 145.14 Blood testing.

* * * * *

(a) * * *

(6) Poultry from flocks undergoing qualification testing for participation in the Plan that have a positive reaction to an official blood test named in paragraph (a)(1) of this section shall be evaluated for pullorum-typhoid as follows:

(i) Serum samples that react on rapid serum test or enzyme-labeled immunosorbent assay test (ELISA), or blood from birds that react on the stained antigen, rapid whole-blood test for all birds except turkeys, shall be tested with either the standard tube agglutination test or the microagglutination test.

(ii) Reactors to the standard tube agglutination test (in dilutions of 1:50 or greater) or the microagglutination test (in dilutions of 1:40 or greater) shall be submitted to an authorized laboratory for bacteriological examination. If there are more than four reactors in a flock, a minimum of four reactors shall be submitted to the authorized laboratory; if the flock has four or fewer reactors, all of the reactors must be submitted. The approved procedure for bacteriological examination is set forth in § 147.11 of this chapter. When reactors are submitted to the authorized laboratory within 10 days of the date of reading an official blood test named in paragraph (a)(6)(i) of this section, and the bacteriological examination fails to demonstrate pullorum-typhoid infection, the Official State Agency shall presume that the flock has no pullorum-typhoid reactors.

(iii) If a flock owner does not wish to submit reactors for bacteriological examination, then the reactors shall be isolated and retested within 30 days using an official blood test named in paragraph (a)(1) of this section. If this retest is positive, additional examination of the reactors and flock will be performed in accordance with paragraph (a)(6)(ii) of this section. During this 30-day period, the flock must be maintained under a security system, specified or approved by the Official State Agency, that will prevent physical contact with other birds and assure that personnel, equipment, and supplies that could be a source of pullorum-typhoid spread are sanitized.

* * * * *

§ 145.22 [Amended]

■ 4. In § 145.22, paragraphs (a) and (b) are removed and paragraphs (c) through (e) are redesignated as paragraphs (a) through (c), respectively.

§ 145.32 [Amended]

■ 5. In § 145.32, paragraph (a) is removed and paragraphs (b) through (d) are redesignated as paragraphs (a) through (c), respectively.

■ 6. Section 145.33 is amended as follows:

■ a. By revising paragraphs (c)(4), (e)(4), (h)(1)(ii)(A), (h)(1)(ii)(B), (i)(1)(iii), (j)(1), and (k)(1) to read as set forth below.

■ b. By adding a new paragraph (h)(6) to read as set forth below.

§ 145.33 Terminology and classification; flocks and products.

* * * * *

(c) * * *

(4) Before male breeding birds may be added to a participating multiplier breeding flock, a sample of at least 30 birds to be added, with a minimum of 10 birds per pen, shall be tested for *M. gallisepticum* as provided in § 145.14(b), or by a polymerase chain reaction (PCR)-based procedure approved by the Department. If fewer than 30 male breeding birds are being added, all the birds shall be tested as described above. The male birds shall be tested no more than 14 days prior to their intended introduction into the flock. If the serologic testing of the birds yields hemagglutination inhibition titers of 1:40 or higher as provided in § 145.14(b), or if the PCR testing is positive for *M. gallisepticum,* the male birds may not be added to the flock and must be either retested or destroyed.

* * * * *

(e) * * *

(4) Before male breeding birds may be added to a participating multiplier breeding flock, a sample of at least 30 birds to be added, with a minimum of 10 birds per pen, shall be tested for *M. synoviae* as provided in § 145.14(b) or by a polymerase chain reaction (PCR)-based procedure approved by the Department. If fewer than 30 male breeding birds are being added, all the birds shall be tested as described above. The male birds shall be tested no more

than 14 days prior to their intended introduction into the flock. If the serologic testing of the birds yields hemagglutination inhibition titers of 1:40 or higher as provided in § 145.14(b), or if the PCR testing is positive for *M. synoviae,* the male birds may not be added to the flock and must be either retested or destroyed.

* * * * *

(h) * * *

(1) * * *

(ii) * * *

(A) Pelletized feed must have a minimum moisture content of 14.5 percent and must have been heated throughout to a minimum temperature of 190 °F, or to a minimum temperature of 165 °F for at least 20 minutes, or to a minimum temperature of 184 °F under 70 lb pressure during the manufacturing process;

(B) Mash feed may contain animal protein if the finished feed is treated with a salmonella control product approved by the Food and Drug Administration.

* * * * *

(6) A pedigree, experimental, or great-grandparent flock that is removed from the U.S. *S. Enteritidis* Clean program may be reinstated whenever the following conditions are met:

(i) The owner attests that corrective measures have been implemented, which may include one or more of the following:

(A) Test and slaughter infected birds based on blood tests of every bird in the flock, with either pullorum antigen or by a federally licensed *Salmonella enteritidis* enzyme-linked immunosorbent assay (ELISA) test when the flock is more than 4 months of age.

(B) Perform other corrective actions including, but not limited to, vaccination, medication, cleaning and disinfection of houses, rodent control, and movement of uninfected birds to premises that have been determined to be environmentally negative for *S. enteritidis* as described in § 147.12(a) of this chapter.

(C) One hundred percent of blood samples from the birds moved to the clean premises are tested negative for *Salmonella pullorum* and group D *Salmonella.* All birds with positive or inconclusive reactions, up to a maximum of 25 birds, shall be submitted to an authorized laboratory and examined for the presence of group D *Salmonella,* as described in § 147.11 of this chapter. Cultures from positive samples shall be serotyped.

(D) Two consecutive environmental drag swabs taken at the clean premises collected as specified in § 147.12(a) of this chapter 4 weeks apart are negative for *S. enteritidis.*

(E) Other corrective measures at the discretion of the Official State Agency.

(ii) Following reinstatement, a flock will remain eligible for this classification if the flock is tested in accordance with paragraph (h)(1)(v) of this section every 30 days and no positive samples are found and the flock meets the requirements set forth in § 145.33(h).

(i) * * *

(1) * * *

(iii) If feed contains animal protein, the protein products must have a minimum moisture content of 14.5 percent and must have been heated throughout to a minimum temperature of 190 °F or above, or to a minimum temperature of 165 °F for at least 20 minutes, or to a minimum temperature of 184 °F under 70 lb pressure during the manufacturing process;

* * * * *

(j) * * * (1) A multiplier breeding flock in which all birds or a sample of at least 30 birds per house has been tested for *M. gallisepticum* as provided in § 145.14(b) when more than 4 months of age: *Provided,* That to retain this classification, a minimum of 30 birds per house shall be tested again at 36 to 38 weeks and at 48 to 50 weeks at a minimum: *And provided further,* That each 30-bird sample should come from 2 locations within the house (15 from the front half of the house and 15 from the back half of the house). A representative sample of males and females should be sampled. The samples shall be marked ''male'' or ''female.''

* * * * *

(k) * * * (1) A multiplier breeding flock in which all birds or a sample of at least 30 birds per house has been tested for *M. synoviae* as provided in § 145.14(b) when more than 4 months of age: *Provided,* That to retain this classification, a minimum of 30 birds per house shall be tested again at 36 to 38 weeks and at 48 to 50 weeks at a minimum: *And provided further,* That each 30-bird sample should come from 2 locations within the house (15 from the front half of the house and 15 from the back half of the house). A representative sample of males and females should be sampled. The samples shall be marked ''male'' or ''female.''

* * * * *

§ 145.42 [Amended]

■ 7. In § 145.42, paragraph (b) is removed and paragraphs (c) and (d) are redesignated as paragraphs (b) and (c), respectively.

■ 8. Section 145.43 is amended as follows:

■ a. By revising paragraph (f)(3) to read as set forth below.

■ b. By adding a new paragraph (g) to read as set forth below.

§ 145.43 Terminology and classification; flocks and products.

* * * * *

(f) * * *

(3) Feed for turkeys in the candidate and breeding flock should meet the following requirements:

(i) All feed manufactured in pellet form must have a maximum moisture content of 13.5 percent upon delivery to the farm. It should have been preconditioned to the minimum of one of the following parameters before pelleting:

(A) Feed is to reach a minimum temperature of 185 °F for a minimum of 6 minutes of retention in the conditioning chamber. The conditioned mash feed moisture must be a minimum of 16 percent during the conditioning process. This method utilizes time retention to allow permeation to the center core of each feed particle; or

(B) The feed is to be pressurized in order to expedite the transfer of the heat and moisture to the core of each feed particle. The feed should be conditioned to the parameters of a minimum of 16 percent moisture and 200 °F; or

(C) The feed should be submitted to pressurization to the extent that the initial feed temperature rises to 235 °F for 4 seconds; or

(D) The feed should be submitted to an equivalent thermal lethality treatment; or

(E) A Food and Drug Administration (FDA)-approved product for *Salmonella* control should be added to the finished pellets.

(ii) Mash feed should be treated with an FDA-approved *Salmonella* control product.

(iii) All feed is to be stored and transported in such a manner as to prevent possible contamination with pathogenic bacteria.

(iv) FDA-approved products for *Salmonella* control may be added to either unfinished or finished feed.

* * * * *

(g) *U.S. H5/H7 Avian Influenza Clean.* This program is intended to be the basis from which the turkey breeding industry may conduct a program for the prevention and control of the H5 and H7 subtypes of avian influenza. It is intended to determine the presence of the H5 and H7 subtypes of avian influenza in breeding turkeys through

routine serological surveillance of each participating breeding flock. A flock, and the hatching eggs and poults produced from it, will qualify for this classification when the Official State Agency determines that it has met one of the following requirements:

(1) It is a primary breeding flock in which a minimum of 30 birds has been tested negative for antibodies to the H5 and H7 subtypes of avian influenza by the agar gel immunodiffusion test specified in § 147.9 of this chapter when more than 4 months of age. To retain this classification:

(i) A sample of at least 30 birds must be tested negative at intervals of 90 days; or

(ii) A sample of fewer than 30 birds may be tested, and found to be negative, at any one time if all pens are equally represented and a total of 30 birds are tested within each 90-day period.

(2) It is a multiplier breeding flock in which a minimum of 30 birds has been tested negative for antibodies to the H5 and H7 subtypes of avian influenza by the agar gel immunodiffusion test specified in § 147.9 of this chapter when more than 4 months of age. To retain this classification:

(i) A sample of at least 30 birds must be tested negative at intervals of 180 days; or

(ii) A sample of fewer than 30 birds may be tested, and found to be negative, at any one time if all pens are equally represented and a total of 30 birds are tested within each 180-day period.

(3) For both primary and multiplier breeding flocks, if a killed influenza vaccine against avian influenza subtypes other than H5 and H7 is used, then the hemagglutinin and the neuraminidase subtypes of the vaccine must be reported to the Official State Agency for laboratory and reporting purposes.

* * * * *

■ 9. In § 145.53, a new paragraph (e) is added to read as follows:

§ 145.53 Terminology and classification; flocks and products.

* * * * *

(e) *U.S. Avian Influenza Clean.* This program is intended to be the basis from which the breeding-hatchery industry may conduct a program for the prevention and control of avian influenza. It is intended to determine the presence of avian influenza in waterfowl, exhibition poultry, and game bird breeding flocks through routine serological surveillance of each participating breeding flock. A flock, and the hatching eggs and chicks produced from it, will qualify for this classification when the Official State Agency determines that it has met one of the following requirements:

(1) It is a primary breeding flock in which a minimum of 30 birds has been tested negative for antibodies to avian influenza by the agar gel immunodiffusion test specified in § 147.9 of this chapter when more than 4 months of age. To retain this classification:

(i) A sample of at least 30 birds must be tested negative at intervals of 90 days; or

(ii) A sample of fewer than 30 birds may be tested, and found to be negative, at any one time if all pens are equally represented and a total of 30 birds are tested within each 90-day period.

(2) It is a multiplier breeding flock in which a minimum of 30 birds has been tested negative for antibodies to avian influenza by the agar gel immunodiffusion test specified in § 147.9 of this chapter when more than 4 months of age. To retain this classification:

(i) A sample of at least 30 birds must be tested negative at intervals of 180 days; or

(ii) A sample of fewer than 30 birds may be tested, and found to be negative, at any one time if all pens are equally represented and a total of 30 unvaccinated sentinel birds are tested within each 180-day period.

* * * * *

PART 147—AUXILIARY PROVISIONS ON NATIONAL POULTRY IMPROVEMENT PLAN

■ 10. The authority citation for part 147 continues to read as follows:

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

■ 11. Section 147.12 is amended as follows:

■ a. In paragraph (b), introductory text, by adding the words ''or the rapid detection method'' after the word ''procedures.''

■ b. By adding a new paragraph (b)(3) to read as set forth below.

§ 147.12 Procedures for collection, isolation, and identification of Salmonella from environmental samples, cloacal swabs, chick box papers, and meconium samples.

* * * * *

(b) * * *

(3) *Approved rapid detection method.* After selective enrichment, a rapid ruthenium-labeled *Salmonella* sandwich immunoassay may be used to determine the presence of *Salmonella.* Positive samples from the immunoassay are then inoculated to selective plates (such as BGN and XLT4). Incubate the plates at 37 °C for 20 to 24 hours. Inoculate three to five *Salmonella*-suspect colonies from the plates into triple sugar iron (TSI) and lysine iron agar (LIA) slants. Incubate the slants at 37 °C for 20 to 24 hours. Screen colonies by serological (*i.e.*, serogroup) and biochemical (*e.g.*, API) procedures as shown in illustration 2. As a supplement to screening three to five *Salmonella*-suspect colonies on TSI and LIA slants, a group D colony lift assay may be utilized to signal the presence of hard-to-detect group D *Salmonella* colonies on agar plates.

* * * * *

Done in Washington, DC, this 7th day of November, 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–28511 Filed 11–13–03; 8:45 am]

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FEDERAL ELECTION COMMISSION

11 CFR Parts 102 and 110

[Notice 2003–19]

Multicandidate Committees and Biennial Contribution Limits

AGENCY: Federal Election Commission.

ACTION: Final rules and transmittal of regulations to Congress.

SUMMARY: The Federal Election Commission is revising its rules covering four areas: (1) Multicandidate political committee status, (2) annual contributions by persons other than multicandidate committees to national party committees, (3) contributions to candidates for more than one Federal office; and (4) biennial contribution limits for individuals. These final rules provide that once a political committee satisfies certain criteria, it automatically becomes a multicandidate committee and is required to notify the Commission of its new status. The final rules also update the limit on contributions from persons other than multicandidate committees to national party committees and to candidates running for more than one Federal office. In addition, the final rules adjust the attribution of contributions to candidates from individuals under the biennial limits. Further information is provided in the supplementary information that follows.

EFFECTIVE DATE: December 15, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. John C. Vergelli, Acting Assistant General Counsel, Mr. Richard T. Ewell, Attorney, or Mr. Albert J. Kiss, Attorney,

999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: These final rules address four different issues. First, the Commission confirms that political committees automatically become multicandidate committees once certain statutory requirements are met. Second, the Commission updates the annual limit on contributions from persons other than multicandidate committees to national party committees to conform to the change made by Congress in the Bipartisan Campaign Reform Act of 2002 (''BCRA''). Third, the Commission implements a separate conforming change to the limits on contributions to candidates running for more than one Federal office. Finally, the Commission corrects its rules governing the biennial limit on aggregate individual contributions in light of BCRA. These final rules implement the provisions of the Federal Election Campaign Act of 1971, as amended (''FECA'' or the ''Act''), 2 U.S.C. 431 *et seq.*

The Notice of Proposed Rulemaking (''NPRM''), on which these final rules are based, was published in the **Federal Register** on August 21, 2003. 68 FR 50,488 (August 21, 2003). The comment period was originally set to close on September 19, 2003, but the Commission extended the comment period until September 29, 2003. The Commission received seven comments on the proposed rules.[1] The Commission held a public hearing on this and three other rulemakings on October 1, 2003. Seven witnesses testified during the hearing. Transcripts of the hearing are available at *http://www.fec.gov/register.htm.* Please note that, for purposes of this document, the terms ''commenter'' and ''comment'' apply to both written comments and oral testimony at the public hearing.

Under the Administrative Procedures Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate, and publish them in the **Federal Register** at least 30 calendar days before they take effect. The final rules that follow were transmitted to Congress on November 7, 2003.

[1] The Commission received written comments from: Perkins, Coie LLP; The Campaign Legal Center, National Republican Senatorial Committee, Republican National Committee; Sandler, Reiff & Young, P.C.; attorneys Lyn Utrecht, Eric Kleinfeld, Pat Fiori, and James Lamb of Ryan, Phillips, Utrecht & MacKinnon; and the Internal Revenue Service.

Explanation and Justification

11 CFR 102.2 Statement of Organization; Forms and Committee Identification Number

Section 441a(a)(4) of the FECA provides that, ''the term 'multicandidate political committee' means a political committee which has been registered with [the Commission or Secretary of the Senate] for a period of not less than six months, which has received contributions from more than 50 persons, and except for any State political party organization, has made contributions to 5 or more candidates for Federal office.'' 2 U.S.C. 441a(a)(4). On the basis of this statutory provision, the Commission's rules at 11 CFR 100.5(e)(3) define a ''multicandidate committee'' as a political committee meeting these three requirements.

To monitor compliance with the contribution limits for multicandidate political committees set out at 11 CFR 110.2, the Commission has required such committees to file FEC Form 1M to certify that they satisfied the criteria for becoming multicandidate political committees. *See* discussion below regarding revisions to 11 CFR 110.2. Specifically, 11 CFR 102.2(a)(3) formerly required that this certification be filed before a political committee may avail itself of the multicandidate committee contribution limits.

In the NPRM, the Commission proposed amending 11 CFR 102.2(a)(3) to eliminate the requirement that a political committee file Form 1M with the Commission before making any contributions under the increased contribution limits with respect to candidates in 11 CFR 110.2(b). The only comment on this issue indicated that the Commission's approach would be consistent with a determination that multicandidate status is mandatory rather than elective, but would not be consistent with a general rule permitting political committees to choose their status.

For the reasons stated in the Explanation and Justification for 11 CFR 110.2, the Commission views multicandidate committee status as automatic once all three necessary criteria are satisfied. Therefore, the Commission is revising 102.2(a)(3) to specify that a political committee must certify its status as a multicandidate committee within ten days of satisfying the requirements of 11 CFR 100.5(e)(3). This certification provides clear notice of the political committee's status to recipients of contributions from the committee, and to the Commission. The ten-day requirement was selected because it corresponds to the analogous time requirement for a political committee to report any changes to its Statement of Organization. *See* 11 CFR 102.2(a)(2).

The Commission specifically sought comment on how it should address a situation where a political committee qualifies for multicandidate status, yet does not certify its status within ten days, and, once so qualified, makes a contribution exceeding $2,000 to a candidate for Federal office. None of the commenters addressed this issue. Because the previous rule at 11 CFR 102.2(a)(3) required a committee to certify its multicandidate status prior to making a contribution in excess of the limit for non-multicandidate committees, failure to comply with the previous rule resulted in both a reporting violation and an excessive contribution. Given the removal of the ban on making contributions of (in the previous rule) more than $1,000 without filing the certification, the Commission concludes that failure to comply with the new rule is a violation of the reporting requirements of 2 U.S.C. 433, but not an excessive contribution so long as the amount is within the contribution limits prescribed for political committees with multicandidate committee status.

11 CFR 110.1 Contributions by Persons Other Than Multicandidate Political Committees

A. 11 CFR 110.1(c) Contributions by Persons Other Than Multicandidate Committees to National Party Committees

In section 307(a)(2) of BCRA, Congress raised the annual aggregate limit on contributions by persons other than multicandidate political committees to national political party committees from $20,000 to $25,000. 2 U.S.C. 441a(a)(1)(B). The Commission proposed revising the corresponding regulation in 11 CFR 110.1(c)(3) to reflect this statutory change. 68 FR 50,490. The Commission received no comments on this proposal. The Commission is therefore revising 11 CFR 110.1(c)(3) as proposed in the NPRM to reflect accurately the new annual aggregate limit.

B. 11 CFR 110.1(f) Contributions to Candidates for More Than One Federal Office

In BCRA, Congress raised the per election limit on contributions to candidates from persons other than multicandidate committees from $1,000 to $2,000. 2 U.S.C. 441a(a)(1)(A). The Commission is accordingly revising 11 CFR 110.1(f) to conform its regulations

to this new statutory limit. Because the Commission's rules must accurately reflect Congress's decision to adjust this contribution limit, which took effect on January 1, 2003, it is appropriate to implement this higher limit in the final rules. This provision was not discussed in the NPRM. The Commission determines that, under section 553(b)(3) of the Administrative Procedure Act, good cause exists to implement this technical and conforming change without delay. It is not necessary to seek public comment at this point when the Commission obtained and fully considered public comment on the underlying rules at 11 CFR 110.1(a) implementing the contribution limits. *See* Final Rules and Explanation and Justification for Contribution Limitations and Prohibitions, 67 FR 69,928 (Nov. 19, 2002). Accordingly, the Commission is issuing this final rule without notice and comment.

11 CFR 110.2 Contributions by Multicandidate Political Committees

11 CFR 110.2 sets forth contribution limits for multicandidate political committees in accordance with 2 U.S.C. 441a(a)(2). FECA, prior to BCRA, provided significantly higher limits on contributions to candidates for political committees with multicandidate status than for those without that status ($5,000 per election versus $1,000). BCRA raised and indexed for inflation the contribution limit for non-multicandidate committees (to $2,000 per election). As the Commission explained in the NPRM, due to the inflation adjustment this non-multicandidate committee limit may eventually exceed the limit imposed on multicandidate committees. *See* 2 U.S.C. 441a(c). If this occurs, it will create a disincentive for attaining multicandidate political committee status.

In addition, BCRA increased the limit on non-multicandidate committee contributions to national party committees from $20,000 to $25,000 per year. Yet Congress did not similarly adjust the limit on multicandidate committee contributions to the same national party committees. That limit remains $15,000 per year, as it was prior to BCRA. 2 U.S.C. 441a(a)(1)(B) and (2)(B). Furthermore, Congress did not index for inflation the contribution limit for multicandidate committees, which means that over time the current $10,000 difference in the respective contribution limits to national party committees will increase. 2 U.S.C. 441a(c).

In light of these statutory changes, the Commission sought comment on whether political committees may elect to opt out of multicandidate committee status even if they meet the three criteria of 2 U.S.C. 441a(a)(4) and 11 CFR 100.5(e)(3). Two commenters addressed this question. One commenter asserted that the language of 2 U.S.C. 441a(a)(4) clearly indicates that multicandidate status is automatically conferred when the three criteria are met. This commenter urged the Commission to adopt the changes to its regulations as proposed in the NPRM. While acknowledging the potential disadvantages of multicandidate status created by Congress through BCRA, this commenter observed that political committees may still elect to ''opt out'' of multicandidate status by refraining from meeting one or more of the three criteria (*i.e.*, by only contributing to 4 candidates).

On the other hand, a different commenter opposed mandatory status, arguing that the Commission should change its regulations to ensure that political committees are not forced to accept multicandidate status if they do not perceive that status as beneficial. The criteria in 2 U.S.C. 441a(a)(4), this commenter asserted, were ''selected by Congress to identify committees entitled to preferred treatment'' because ''it believed that committees with these attributes were less likely to be employed by individuals for the purpose of circumventing the individual contribution limit.'' This commenter agreed with the Commission's assessment in the NPRM that post-BCRA multicandidate status could become a liability, rather than a benefit, in some circumstances. Therefore, this commenter cautioned that multicandidate status should not be mandatory unless the Commission is ''extremely confident'' that Congress now intends to disadvantage multicandidate committees.

The Commission notes that Congress did not take certain steps with regard to multicandidate committees that it took with regard to other political committees and individuals, such as indexing contribution limits for inflation and increasing the contribution limit to national party committees. The Senator who offered the amendment to increase the contribution limits for non-multicandidate committees explained its purpose shortly before the Senate voted to approve the BCRA in its near final form:

> The Thompson-Feinstein amendment, by increasing the limit on individual and national party committee contributions to Federal candidates, will reduce the need for raising campaign funds from political action committees, PACs. Our amendment, therefore, will reduce the relative influence of PACs, making it easier to replace PAC monies with funds raised from individual donors.

148 Cong. Rec. S2154 (daily ed. Mar. 20, 2002) (statement of Sen. Feinstein).

Accordingly, the final rules adopt the approach that best comports with the plain language of 2 U.S.C. 441a(a)(4): A political committee becomes a multicandidate committee once it has been registered with the Commission or Secretary of the Senate for a period of not less than six months, has received contributions from more than 50 persons, and has made contributions to 5 or more candidates for Federal office. Specifically, the Commission is adding a sentence to 11 CFR 110.2(a) to confirm this result. To address situations where a multicandidate political committee achieves multicandidate status through affiliation with a pre-existing multicandidate committee, the Commission is adding additional language to 11 CFR 110.2(a)(3) to specify that both affiliated committees would automatically be multicandidate committees at the time of affiliation.

It is important to note that the only ''disadvantage'' that multicandidate committees currently face is the lower limit on contributions to national political party committees. Notwithstanding the latter commenter's assertions that ''[t]his unexplained different treatment is more likely the result of a political compromise than it is a product of a considered judgment,'' Congress clearly set lower limits even before BCRA for multicandidate committee contributions to national party committees than for other political committees' contributions to national party committees. The multicandidate committee contribution limits with respect to all Federal candidates, however, still remain $3,000 per election higher than the contribution limits for other political committees. To the extent that some future disadvantage actually emerges from the fact that multicandidate committee contribution limits are not indexed for inflation, it would be for Congress to reconsider the contribution limits it established. The Commission has submitted a legislative recommendation urging Congress to do so. *FEC Annual Report 2002,* at 46. At present, the Commission implements what it deems the most straightforward reading of the language of 2 U.S.C. 441a(a)(4).

The same commenter also noted, under current law, State party committees are automatically treated as multicandidate committees regardless of whether they make contributions to five

or more candidates. *See* 11 CFR 100.5(e)(3). Thus, a State party committee could be negatively impacted to the same extent as other multicandidate committees by Congress's conspicuous choice to index one set of contribution limits to inflation but not the limits of multicandidate committees. The commenter urged the Commission to permit State party committees to opt out of multicandidate committee status for the same reasons set forth above. The Commission declines to do so for the reasons explained above.

11 CFR 110.5(c) Application of the Aggregate Biennial Contribution Limitation for Individuals

Prior to BCRA, total contributions by an individual were limited to $25,000 in any calendar year. Also, any contribution made to a candidate with respect to an election in a year other than the calendar year in which the election is held was considered to be made during the calendar year in which the election is held. 2 U.S.C. 441a(a)(3) (2001). Thus, when individuals made contributions to candidates for elections to be held in years after the calendar year the contribution was made, those contributions counted against the contributor's $25,000 annual contribution limit for the year of the future election, instead of the year the contribution was actually made. The Commission implemented this statutory provision in 11 CFR 110.5(c).

After BCRA, section 441a(a)(3) provides that contributions made in a specified two-year period (*i.e.*, ''the period which begins on January 1 of an odd-numbered year and ends on December 31 of the next even-numbered year'') may not exceed $37,500, in the case of contributions to candidates and the authorized committees of candidates, and $57,500 in the case of other contributions. Also, in BCRA, Congress removed the language of former section 441a(a)(3) that treated some contributions as made in a year other than the year in which actually made (*i.e.*, the year the election is held).

In the NPRM, the Commission noted that, despite these statutory changes, it had retained 11 CFR 110.5(c) when it revised section 110.5 in 2002 after passage of BCRA. *See* Contribution Limitations and Prohibitions; Final Rules, 67 FR 69,928 (November 19, 2002). The NPRM proposed to amend section 110.5(c) to state that, for purposes of the biennial contribution limits in section 441a(a)(3) and 11 CFR 110.5(b), a contribution to a candidate will be attributed to the two-year period in which the contribution is actually made, regardless of when the election with respect to which it is made is held. 68 FR 50,488, 50,490.

In the final rules, the Commission has bifurcated 11 CFR 110.5(c) into two paragraphs. New paragraph (c)(1) of section 110.5 applies to contributions made on or after January 1, 2004. The Commission chose this date for two reasons. First, beginning the operation of the new rule with the new year will minimize confusion. Second, it will insure that the change will occur at the beginning of a reporting period for most filers. The final rule is otherwise the same as the proposed rule in the NPRM. New paragraph (c)(2) applies to contributions made before January 1, 2004. It otherwise is the same as the rule in previous 11 CFR 110.5(c). New paragraph (c)(2) is included in the final rules to preclude any question of the retroactive application of paragraph (c)(1) to contributions made before the effective date of the regulation in reliance on the Commission's previous interpretation of post-BCRA section 441a(a)(3).

For example, under new paragraph (c)(1) of section 110.5, a contribution made in 2004 to a candidate in a 2006 Senate race is attributed to the individual's biennial limit for the 2003–2004 period. Similarly, a contribution made in 2005 to a candidate in the 2008 presidential race is attributed to the individual's biennial limit for the 2005–2006 period. In addition, a contribution made during 2007 to retire debt from a 2006 House election is attributed to the individual's biennial limit for the 2007–2008 period. Under new paragraph (c)(2), as under the previous language of 11 CFR 110.5(c), a contribution made in 2003 to a candidate in a 2006 Senate race would be attributed to the individual's biennial limit for the 2005–2006 period.

There was no consensus among the commenters in response to the NPRM. One commenter supported the Commission's proposals, stating that the language of section 441a(a)(3) as amended ''plainly attributes candidate contributions by individuals to the aggregate limit for the two-year period in which such contributions are actually made.'' This commenter opined that ''conforming the FEC's regulation [at section 110.5(c)] to the revised statute's clear requirement that individuals' hard money contributions to candidates tally against their aggregate limit for the two-year period in which such contributions are actually made would eliminate the confusion (and inadvertent donor violations) that prevailed under the previous approach.'' As such, this commenter asserts that the NPRM's proposed change would lessen, not increase confusion.

On the other hand, several commenters were opposed to the NPRM's proposed changes. Some commenters asserted that confusion will ensue for both contributors and recipient candidates. A commenter observed that if the proposed changes were made, contributors may have multiple contributions to the same candidate that would count toward different biennial limits and this may be very confusing to contributors. To mitigate any confusion, the Commission has decided to continue to apply the previous rule prior to January 1, 2004, and to apply the new rule on and after that date. This approach ensures that the new rules will not have retroactive application.

Some comments asserted that the Commission should not penalize donors who may have inadvertently exceeded the $37,500 limit for the 2003–04 two-year period, to the extent that the donor exceeded the limit as a result of contributions made before the effective date of the Commission's proposed new rule to candidates that are not running in the 2003–04 two-year period. Because the Commission's final rule does not change the treatment of contributions made prior to the effective date of the new rule, contributors will not have inadvertently exceeded the $37,500 limit for the 2003–04 two-year period based on the Commission's new rules.

Several commenters focused on the reliance interest that contributors, candidates and political committees have in the current language of section 110.5(c), and suggested either a deferred effective date for the new rule (*e.g.*, January 1, 2005), or adoption of a transition rule that fairly treats those who have reasonably relied upon the existing regulation. Commenters asserted that a deferred effective date is needed because changing the rule in the middle of an election cycle could cause inadvertent violations. In its final rule for § 110.5(c), the Commission accommodates contributors' reliance interest by preserving the previous language of section 110.5(c) for contributions made prior to January 1, 2004. However, the Commission does not interpret section 441a(a)(3), as amended by BCRA, to permit a transition period. The Commission is also concerned that any transition period is likely to engender additional confusion.

Some comments suggested that current section 110.5(c) is primarily related to candidates for the U.S. Senate, and that changing the provision would have an adverse impact on Senate

candidate fundraising, because the proposed rule will limit a Senator's ability to raise funds in the first four years of his or her term. For example, a contributor who intends to contribute $37,500 every biennial period may be disinclined to contribute to a 2006 candidate during the 2004 election cycle if it counts against his or her 2004 aggregate biennial limit rather than the 2006 cycle limit. The Commission has considered these comments, but observes that it is required to respond to Congress's changes to section 441a(a)(3), and must give effect to Congress's deletion of the statutory provision on which the regulatory provision was based.

A commenter asserted that the Commission should not, before the effective date of the new rule, count contributions made to a candidate not running in the 2003–04 two-year period against the donor's aggregate limit for the cycle in which the candidate is running, asserting that such an application of the limit would ''clearly be contrary to section 441a(a)(3)(A).'' The Commission observes that under the previous language of section 110.5(c), a contribution made to a candidate not running in the 2003–04 two-year period was counted against the donor's aggregate limit for the two-year period in which the candidate is running. This comment suggests, in effect, that the Commission ignore, or suspend the operation of, the previous language of section 110.5(c) for contributions made before January 1, 2004. The Commission declines to either ignore or suspend the operation of the previous language of section 110.5(c) for contributions made before January 1, 2004.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]

The attached rules will not have a significant economic impact on a substantial number of small entities. The basis of this certification is that State and local party committees of the two major political parties and most other political committees are not small entities under 5 U.S.C. 601 because they are not small businesses, small organizations, or small governmental jurisdictions. Further, individual citizens operating under these rules are not small entities.

To the extent that any persons subject to these rules may fall within the definition of ''small entities,'' these rules do not impose a significant economic impact on those persons. These rules do not change the criteria for status as a multicandidate committee; they merely confirm that this status acquired automatically when the existing criteria are met. The one modified filing requirement merely replaces a similar filing requirement that is removed, and no new compliance efforts are required. The remainder of the final rules are conforming changes updating existing regulations to new contribution limits set by Congress. As such, these updates require no new or increased disclosure, or other requirements that would increase compliance costs.

List of Subjects

11 CFR Part 102

Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 110

Campaign funds, Political committees and parties.

■ For the reasons set out in the preamble, the Federal Election Commission is amending subchapter A of chapter 1 of title 11 of the Code of Federal Regulations as follows:

PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)

■ 1. The authority citation for part 102 continues to read as follows:

Authority: 2 U.S.C. 432, 433, 434(a)(11), 438(a)(8), 441d.

■ 2. Section 102.2 is amended by revising paragraph (a)(3) to read as follows:

§ 102.2 Statement of organization: Forms and committee identification number (2 U.S.C. 433(b), (c)).

(a) * * *

(3) A committee shall certify to the Commission that it has satisfied the criteria for becoming a multicandidate committee set forth at 11 CFR 100.5(e)(3) by filing FEC Form 1M no later than ten (10) calendar days after qualifying for multicandidate committee status.

* * * * *

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

■ 3. The authority citation for part 110 continues to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d, 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h, and 441k.

■ 4. Section 110.1 is amended by:

■ a. revising paragraph (c)(3); and

■ b. revising the introductory language in paragraph (f).

The revisions and additions read as follows:

§ 110.1 Contributions by persons other than multicandidate political committees (2 U.S.C. 441a(a)(1)).

* * * * *

(c) * * *

(3) Each recipient committee referred to in 11 CFR 110.1(c)(2) may receive up to the $25,000 limitation from a contributor, but the limits of 11 CFR 110.5 shall also apply to contributions made by an individual.

* * * * *

(f) *Contributions to candidates for more than one Federal office.* If an individual is a candidate for more than one Federal office, a person may make contributions which do not exceed $2,000 to the candidate, or his or her authorized political committees for each election for each office, as long as—

* * * * *

■ 5. Section 110.2 is amended by revising paragraph (a)(1) to read as follows:

§ 110.2 Contributions by multicandidate political committees (2 U.S.C. 441a(a)(2)).

(a)(1) *Scope.* This section applies to all contributions made by any multicandidate political committee as defined in 11 CFR 100.5(e)(3). See 11 CFR 102.2(a)(3) for multicandidate political committee certification requirements. A political committee becomes a multicandidate committee at the time the political committee meets the requirements of 11 CFR 100.5(e)(3) or becomes affiliated with an existing multicandidate committee, whether or not the political committee has certified its status as a multicandidate committee with the Commission in accordance with 11 CFR 102.2(a)(3).

* * * * *

■ 6. The section heading for section 110.5 is amended by removing ''bi-annual'' and adding ''biennial'' in its place.

■ 7. Section 110.5 is amended by revising paragraph (c) to read as follows:

§ 110.5 Aggregate biennial contribution limitation for individuals (2 U.S.C. 441a(a)(3)).

* * * * *

(c)(1) Contributions made on or after January 1, 2004. Any contribution subject to this paragraph (c)(1) to a candidate or his or her authorized committee with respect to a particular election shall be considered to be made during the two-year period described in paragraph (b)(1) of this section in which the contribution is actually made,

regardless of the year in which the particular election is held. See 11 CFR 110.1(b)(6). This paragraph (c)(1) also applies to earmarked contributions and contributions to a single candidate committee that has supported or anticipates supporting the candidate.

(2) Contributions made prior to January 1, 2004.

(i) For purposes of this paragraph (c)(2), a contribution to a candidate or his or her authorized committee with respect to a particular election shall be considered to be made during the calendar year in which such election is held.

(ii) For purposes of this paragraph (c)(2), any contribution to an unauthorized committee shall not be considered to be made during the calendar year in which an election is held unless:

(A) The political committee is a single candidate committee which has supported or anticipates supporting the candidate; or

(B) The contribution is earmarked by the contributor for a particular candidate with respect to a particular election.

* * * * *

Dated: November 7, 2003.

Bradley A. Smith,

Vice Chairman, Federal Election Commission.

[FR Doc. 03–28469 Filed 11–13–03; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

11 CFR Part 106

[Notice 2003–20]

Party Committee Telephone Banks

AGENCY: Federal Election Commission.

ACTION: Final rule and transmittal of regulations to Congress.

SUMMARY: The Federal Election Commission is promulgating final rules regarding the attribution of political party committee disbursements for telephone bank communications made on behalf of a clearly identified Federal candidate. The final rules address the proper attribution of a party committee's or party organization's disbursements for communications that refer to a clearly identified Federal candidate when the party's other candidates are referred to generically, but not by name. The entire disbursement must be paid for with Federal funds. Further information is provided in the Supplementary Information that follows.

EFFECTIVE DATE: December 15, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Mai T. Dinh, Acting Assistant General Counsel, or Mr. Jonathan M. Levin, Senior Attorney, 999 E Street NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: In the months leading up to a general election, political party committees, or party committees in conjunction with the principal campaign committees of Federal candidates, may conduct phone banks to get out the vote (''GOTV'') or otherwise promote the party and its candidates. Such phone banks may involve the reading of scripted messages that include a statement asking the person called specifically to vote, or get their family and friends out to vote, for the named Federal candidate and that then make one or more general promotional references to the party's other candidates. An example would be: ''Please tell your family and friends to come out and vote for President John Doe and our great Party team.'' Given that no other Federal or non-Federal candidates are specifically mentioned, the question is whether the entire cost of the communication, or only a portion of the cost, should be attributed to the Federal candidate. The Commission is issuing final rules to provide clear guidance on how to attribute the cost of these communications.

Under the Administrative Procedures Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate and publish them in the **Federal Register** at least 30 calendar days before they take effect. The final rules on party committee phone banks were transmitted to Congress on November 7, 2003.

Explanation and Justification

The Commission published a Notice of Proposed Rulemaking (''NPRM'') on September 4, 2003, in which it sought comment on proposed rules that would add a new section to 11 CFR part 106 to address telephone bank expenditures by political party committees and organizations. 68 FR 52529 (Sept. 4, 2003). The comment period was originally set to close on September 25, 2003, but the Commission extended the comment period until September 29, 2003. In addition to the comments concerning the proposed rules, the NPRM sought comments on a number of other issues including: (1) Whether the scope of the rulemaking should be expanded to include other types of communications such as broadcast or print media and to include candidates for the Senate or House of Representatives; (2) whether the final rules should explicitly state that a State party committee's use of its coordinated party expenditure authority to pay for these phone banks is subject to the restrictions of 11 CFR 109.33; and (3) whether the final rules should explicitly state that party committees are prohibited from using contributions designated for a particular candidate to pay for these phone bank expenditures.

The Commission received one comment in response to the NPRM. The Commission did not receive any requests to testify on the subject of party committee's disbursements for telephone banks at its hearing on October 1, 2003.

11 CFR 106.8 Allocation of Expenses for Political Party Committee Phone Banks That Refer to a Clearly Identified Federal Candidate

The Commission is adding new section 106.8 to address the costs of phone banks conducted by national, State and local party committees and party organizations on behalf of clearly identified Federal candidates. In Federal election years, party committees and organizations conduct such phone banks to encourage voters to support the entire ticket. Although the specific mention of the clearly identified Federal candidate provides something of value to the candidate being promoted, it also provides the party with a benefit. The final rules, discussed below, reflect that such communications benefit both the candidate and the party.

1. 11 CFR 106.8(a) Scope

New section 106.8(a) begins by stating the conditions under which the special attribution rule in paragraph (b) would apply. Paragraphs (a)(1) through (a)(5) of new section 106.8 describe the communications that are subject to the final rule. The proposed rules would have limited the scope of the new section 106.8 to presidential and vice presidential nominees, although the Commission asked whether they should be expanded to include candidates for the Senate and the House of Representatives. The commenter urged that the rules be extended to these candidates while noting that the underlying coordinated party expenditure limits would differ for these candidates. Because there is no apparent reason to distinguish presidential and vice presidential candidates from other Federal candidates, and to maintain a consistent approach for all Federal candidates, the

Commission is extending the final rules to all Federal candidates.

Consequently, the conditions set forth in 11 CFR 106.8(a)(1) through (a)(5) implement this approach. Under paragraph (a)(1) the communication must refer to a clearly identified Federal candidate. The term ''clearly identified'' is defined in 2 U.S.C. 431(18) and 11 CFR 100.17. Second, the communication must also refer to no other clearly identified Federal or non-Federal candidate under paragraph (a)(2). Third, under paragraph (a)(3), the communication must refer generically to the other candidates of the clearly identified Federal candidate's party without clearly identifying them. Generic references to ''our great Republican team'' or ''our great Democratic ticket'' would satisfy the latter requirement. The commenter suggested that the final rules make clear that the generic reference is to other candidates and not to the clearly identified Federal candidate. For instance, according to the commenter, a reference to the ''great Presidential Candidate X team'' with no other generic reference to other candidates should not fall within the scope of the final rules because the word ''team'' should be treated as a reference to the presidential ticket and not as a reference to other candidates of the same party. The language in paragraph (a)(3) is slightly different from the proposed rule to make clear that the communication must include another reference that generically refers to other candidates and not the clearly identified Federal candidate.

Under paragraph (a)(4), the communication must not solicit contributions, donations, or any funds from any person for any Federal or non-Federal candidate, or for any political committee or political organization, or any entity disbursing funds in connection with a Federal or non-Federal election. If such a solicitation were made, it would change the nature of the communication and may require a different determination as to the attribution of the party's spending for the communication among candidates or committees.

Under paragraph (a)(5), the phone bank must not be exempt from the definitions of ''contribution'' and ''expenditure'' under 11 CFR 100.89 and 100.149. These sections implement the statutory exceptions for certain voter registration and GOTV activities conducted by party committees under 2 U.S.C. 431(8)(B)(xi) and 431(9)(B)(ix). Consequently, a State or local party committee's voter registration and GOTV activities, including phone banks operated by volunteers under 11 CFR 100.89(e) or 100.149(e) conducted on behalf of a presidential or vice presidential nominee, which are exempt from the definitions of ''contribution'' and ''expenditure,'' are not affected by new section 106.8, provided that the conditions set forth in 11 CFR 100.89(a) through (g) or 100.149(a) through (g) are satisfied. Thus, State and local party committees may continue to spend on behalf of publicly financed presidential candidates for these purposes without making an expenditure or a contribution.

The Commission did not receive any comments in response to its question as to whether the final rules should specifically prohibit State and local party committees from using contributions that were designated for a particular Federal candidate to make expenditures for these phone banks. *See* 11 CFR 100.89(c) and 100.149(c). This situation is already governed by the ''coattails'' exception in 2 U.S.C. 431(8)(B)(xi) and (9)(B)(ix) and is not relevant to situations addressed in new section 106.8. The Commission therefore is not including this prohibition in the final rules. In answer to the Commission's question of whether 11 CFR 106.8 should include other forms of communications such as broadcast or print media, the commenter urged the Commission to defer consideration of extending the final rules to include other forms of communications. The Commission has decided to limit the scope of new section 106.8 to phone banks at this time because each type of communication presents different issues that need to be considered in further detail before establishing new rules.

2. 11 CFR 106.8(b) Attribution

The NPRM included two alternatives for new section 106.8(b) to establish the attribution of the party committee's payments for the phone bank. Under Alternative A, party committees and organizations would have attributed fifty percent of the disbursement to clearly identified presidential and vice presidential nominees, and the remaining fifty percent would not have been attributable to any Federal or non-Federal candidate but would have to be paid solely with Federal funds. Alternative B would have provided that 100 percent of the disbursement must be attributed to the clearly identified presidential and vice presidential nominees.

The Commission sought comment on which of these two alternatives would be preferable, or on whether the percentage should be based on the actual space or time used to refer to the presidential nominee, or some other factor. The commenter argued that a fifty percent attribution to the presidential or vice presidential nominee is permissible provided that the entire phone bank expenditure is paid for with Federal funds.

The Commission is incorporating Alternative A in the final rules. Because these phone bank communications contain two references—one to a clearly identified Federal candidate and one that generically refers to other candidates—it is appropriate that the disbursement for the communications be attributed evenly between the two references. Thus, new section 106.8(b)(1) states that fifty percent of the disbursement for the phone bank is not attributed to any candidate because the generic reference does not refer to any clearly identified candidate and therefore cannot be attributed to any specific candidate.

The Commission has determined that Federal funds must be used to pay for all disbursements for telephone banks that fall within the scope of new section 106.8, even the portion that is not attributed to any particular candidate. Barring the unlikely event that the phone bank will involve 500 or fewer calls, a message such as, ''Please vote for President John Doe and our great Party team,'' would be a public communication that refers to a clearly identified Federal candidate and promotes that candidate. It would thus be a form of Federal election activity that must be paid for entirely with Federal funds, pursuant to 11 CFR 300.33(c)(1), if conducted by a State, district, or local party committee. *See* 11 CFR 100.24(b)(3), 100.26 and 100.28. It must also be paid for entirely with Federal funds if conducted by a national party committee, which only has Federal funds under 2 U.S.C. 441i(a) and 11 CFR 300.10. The amount that is not attributed to a Federal candidate, however, is not considered an in-kind contribution to any candidate, a coordinated party expenditure, or an independent expenditure by the party committee or organization.

Section 106.8(b)(2) requires that the remaining fifty percent of the disbursement be attributed to the clearly identified Federal candidate and that this portion of the disbursement must be paid for with Federal funds. Generally, party committees have several options in how to treat the attributed portion of a disbursement ''as an in-kind contribution, a coordinated party expenditure, or an independent expenditure, depending on the circumstances. They may also obtain

reimbursement from the clearly identified Federal candidate of some or the entire attributed portion of the disbursement. Consequently, paragraph (b)(2) allows party committees and organizations to treat the portions of disbursements attributed to clearly identified Federal candidates as in-kind contributions, or as coordinated or independent expenditures, or as expenses to be reimbursed by the clearly identified Federal candidates, or a combination of any of these. Under paragraph (b)(2)(i), if the disbursement is treated as an in-kind contribution, it is subject to the contribution limitations of 11 CFR 110.1 or 110.2.

The Commission notes that a State party committee would be able to make coordinated party expenditures (under 2 U.S.C. 441a(d)) to pay for phone bank communications on behalf of its presidential candidate subject to new 11 CFR 106.8 only if the national party committee has made a written assignment of a specific amount of its coordinated party expenditure authority to the State party committee. *See* 11 CFR 109.33(a). Similarly, a district or local party committee may spend some of the amount authorized by the national or the State party committee upon receiving a written authorization to do so. *See* 11 CFR 109.33(b). The Commission did not receive any comments in response to its question on whether the final rule should refer to this requirement or whether it is understood that this final rule would not exempt a State, district, or local party committee from these requirements. The Commission is including a reference to 11 CFR 109.33 as well as to section 109.32 in new section 106.8(b)(2)(ii) to ensure that party committees understand that these sections apply to disbursements for phone banks that are treated as coordinated expenditures.

New section 106.8(b)(2)(ii) also provides for the disbursements attributed to the clearly identified Federal candidate to be treated as independent expenditures. As independent expenditures, they are also subject to the requirements of 11 CFR 109.10, and a reference to that section is included in paragraph (b)(2)(ii). This paragraph also includes a reference to 11 CFR 109.35 requiring party committees to choose between making either coordinated party expenditures or independent expenditures, but not both, on behalf of a Federal candidate after the party has nominated that candidate. Once, a party committee makes a coordinated party expenditure on behalf of a Federal candidate, it may not make an independent expenditure on behalf of that Federal candidate, and vice versa.

3. Examples

The following examples illustrate the scope and operation of new section 106.8.

Example 1: A week before the general election, a local party committee operates a phone bank through the use of volunteers and the message is: ''You can show your support for the Green Party presidential nominee by going to the polls next Tuesday and contributing to the local party committee so that it can help others to get to the polls too.''

The costs of the phone bank would not fall within the scope of 11 CFR 106.8 for three reasons. First, by using volunteers to run a phone bank that seeks to get out the vote for the presidential and vice presidential nominee, and by complying with other requirements in 11 CFR 100.89(e) and 100.149(e), the local party committee does not make a contribution or expenditure under 11 CFR 100.89 and 100.149, and, therefore, these costs are excluded from the provisions of section 106.8. Second, the communication only contains a reference to the clearly identified Federal candidate (''Green Party presidential nominee'') and does not refer generically to other candidates. Thus, it does not meet the condition set forth in 11 CFR 106.8(a)(3). Finally, the message includes a solicitation for the local party committee, and, therefore, does not meet the condition set forth in section 106.8(a)(4).

Example 2: The Republican National Committee (''RNC'') operates a phone bank and the message is: ''When you vote for Representative Jane Smith on Tuesday, remember to vote for the other Republican candidates.'' The cost of operating this phone bank is $20,000. The RNC has already made an independent expenditure on behalf of Representative Smith but has not made any contributions to her authorized committee.

The costs of the phone bank would come within the scope of 11 CFR 106.8 because the communication: (1) Contains a reference to a clearly identified Federal candidate (''Representative Jane Smith''); (2) contains a generic reference to other Republican candidates; (3) does not include a reference to any other clearly identified candidate; (4) does not solicit a contribution or donation from any person; and (5) is conveyed by paid workers, not volunteers, and is thus not exempt from the definitions of ''contribution'' and ''expenditure.'' The RNC must attribute $10,000 to Representative Smith. Because the RNC has already made an independent expenditure on behalf of Representative Smith, it cannot treat this $10,000 as a coordinated party expenditure. *See* 2 U.S.C. 441a(d)(4)(A)(i); 11 CFR 109.35(b)(1). Rather it may treat the entire amount as an independent expenditure provided that it has not coordinated with Representative Smith or her authorized committee or agents. If the RNC or its agents coordinated this phone bank with Representative Smith or her agents, then it may treat $5,000 as an in-kind contribution to her authorized committee under the limits of 2 U.S.C. 441a(a)(2)(A), and it must seek reimbursement from her authorized committee for the other $5,000. The remaining fifty percent of the expenditure ($10,000) is not attributed to any candidate and the entire $20,000 must be paid for with Federal funds.

Example 3: A State party committee operates a phone bank and the message is: ''Show your support for Senator John Doe and the great Democratic team by voting for them.'' The cost of operating the phone bank is $34,000. The State party committee's coordinated party expenditure limit under 2 U.S.C. 441a(d) is $20,000 and it already spent $5,000 in coordinated party expenditures on behalf of Senator Doe. The State party committee is a multicandidate committee and has made a $1,000 contribution to his campaign.

The costs of this phone bank are within the scope of 11 CFR 106.8 because the communication: (1) Contains a reference to a clearly identified Federal candidate (''Senator John Doe''); (2) contains a generic reference to other Democratic candidates; (3) does not include a reference to any other clearly identified candidate; (4) does not solicit a contribution or donation from any person; and (5) does not qualify for the 11 CFR 100.89 and 100.149 exceptions. Because the State party committee has already made a coordinated party expenditure on behalf of Senator Doe after the nomination, the State party committee cannot make a subsequent independent expenditure on his behalf. *See* 2 U.S.C. 441a(d)(4)(A)(ii); 11 CFR 109.35(b)(2). The State party committee does not have to attribute $17,000 to any candidate but must still use all Federal funds to pay for that $17,000. The remaining $17,000 must be attributed to Senator Doe and must also be paid for with Federal funds. The State party committee may treat $15,000, which is equal to its remaining coordinated party spending authority, of the attributed amount as a coordinated party expenditure. The remaining $2,000 may

be treated as an in-kind contribution because when aggregated with the earlier $1,000 contribution, it does not exceed the State party committee's $5,000 contribution limit under 11 CFR 110.2.

Certification of No Effect Pursuant to 5 U.S.C. 605(b)

[Regulatory Flexibility Act]

The attached final rules do not have a significant economic impact on a substantial number of small entities. The basis for this certification is that few, if any, small entities are affected by these rules, which apply only to committees of political parties and other party organizations. National, State and many local party committees of the two major political parties and other political committees and organizations are not small entities under 5 U.S.C. 601 because they are not small businesses, small organizations, or small governmental jurisdictions. The final rules simplify the determination as to the amount of a party committee disbursement that must be attributed to a clearly identified Federal candidate in the case of certain telephone bank communications and clarify what funding is permissible. Any increase in the cost of compliance that might result from these proposed rules would not be in an amount sufficient to cause a significant economic impact.

List of Subjects in 11 CFR Part 106

Campaign funds, political committees and parties, political candidates.

■ For the reasons set out in the preamble, the Federal Election Commission amends subchapter A of chapter 1 of title 11 of the *Code of Federal Regulations* as follows:

PART 106—ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES

■ 1. The authority citation for part 106 continues to read as follows:

Authority: 2 U.S.C. 438(a)(8), 441a(b), 441a(g).

■ 2. New section 106.8 is added to read as follows:

§ 106.8 Allocation of expenses for political party committee phone banks that refer to a clearly identified Federal candidate.

(a) *Scope.* This section applies to the costs of a phone bank conducted by a national, State, district, or local committee or organization of a political party where—

(1) The communication refers to a clearly identified Federal candidate;

(2) The communication does not refer to any other clearly identified Federal or non-Federal candidate;

(3) The communication includes another reference that generically refers to other candidates of the Federal candidate's party without clearly identifying them;

(4) The communication does not solicit a contribution, donation, or any other funds from any person; and

(5) The phone bank is not exempt from the definition of ''contribution'' under 11 CFR 100.89 and is not exempt from the definition of ''expenditure'' under 11 CFR 100.149.

(b) *Attribution.* Each disbursement for the costs of a phone bank described in paragraph (a) of this section shall be attributed as follows:

(1) Fifty percent of the disbursement is not attributable to any other Federal or non-Federal candidate, but must be paid for entirely with Federal funds; and

(2) Fifty percent of the disbursement is attributed to the clearly identified Federal candidate and must be paid for entirely with Federal funds. This disbursement may be one or a combination of the following:

(i) An in-kind contribution, subject to the limitations set forth in 11 CFR 110.1 or 110.2; or

(ii) A coordinated expenditure or an independent expenditure, subject to the limitations, restrictions, and requirements of 11 CFR 109.10, 109.32, 109.33 and 109.35; or

(iii) Reimbursed by the clearly identified Federal candidate or his or her authorized committee.

Dated: November 7, 2003.

Bradley A. Smith,

Vice Chairman, Federal Election Commission.

[FR Doc. 03–28472 Filed 11–13–03; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE200, Special Condition 23–140–SC]

Special Conditions: Honeywell, Inc., Pilatus PC–12/45; Protection of Systems for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to Honeywell, Inc., 23500 W. 105th Street, Olathe, KS 66061, for a supplemental type certificate for the Pilatus PC–12/45 airplane. This airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of two electronic barometric altimeters, Model AM–250, manufactured by Honeywell for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is October 31, 2003. Comments must be received on or before December 15, 2003.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE200, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE200. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Wes Ryan, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4123.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address

specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. CE200.'' The postcard will be date stamped and returned to the commenter.

Background

On March 04, 2003, Honeywell, Inc. made an application to the FAA for a new supplemental type certificate for the Pilatus PC–12/45 airplane. The PC–12/45 is currently approved under TC No. A78EU. The proposed modification incorporates a novel or unusual design feature, such as digital avionics consisting of digital barometric altimeters that are vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.101, Honeywell, Inc. must show that the Pilatus PC–12/45 aircraft meets the following provisions, or the applicable regulations in effect on the date of application for the change to the Pilatus PC–12/45: 14 CFR, part 21, §§ 21.29, 21.183(c) and 14 CFR part 23, Normal Category, effective February 4, 1991, including Amendments 23–1 through 23–42 and § 23.1305c(3) of Amendment 23–43 and § 23.1507 of Amendment 23–45 and §§ 23.49(c) and 23.562(d) of Amendment 23–44; § 23.479 paragraphs (b) and (c) of Amendment 23–45, Noise Certification—FAR 36 up to Amendment 10, as applicable. Fuel Venting Emissions—SFAR 27 up to Amendment 3, as applicable, and § 23.1301 of Amendment 23–20; §§ 23.1309, 23.1311, and 23.1321 of Amendment 23–49; and § 23.1322 of Amendment 23–43; exemptions, if any; and the special conditions adopted by this rulemaking action.

Discussion

If the Administrator finds that the applicable airworthiness standards do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38 after public notice and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model already included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

Honeywell, Inc. will incorporate the following novel and unusual design features:

Protection of Systems from High Intensity Radiated Fields (HIRF):

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid-state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter, electrical field strength, from 10 kHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify either electrical or electronic systems that perform critical functions. The term ''critical'' means those functions whose failure would contribute to, or cause, a

failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Applicability

As discussed above, these special conditions are applicable to the Pilatus PC–12/45 airplane. Should Honeywell, Inc. apply at a later date for a supplemental type certificate to modify any other model on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.38 and 11.19.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Pilatus PC–12/45 airplane modified by Honeywell, Inc. to add digital barometric altimeters.

1. Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF). Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies: Critical Functions: Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri, on October 31, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–28530 Filed 11–13–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15849; Airspace Docket No. 03–ASO–15]

Amendment of Class E Airspace; Rocky Mount, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E5 airspace at Rocky Mount, NC. An Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Nash General Hospital, Rocky Mount, NC. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

EFFECTIVE DATE: 0901 UTC February 19, 2004.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20-636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On August 20, 2003, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class E5 airspace at Rocky Mount, NC, (68 FR 50083). This action provides adequate Class E5 airspace for IFR operations at Nash General Hospital, Rocky Mount, NC. Designations for Class E are published in FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document will be published subsequently in the Order.

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

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class E5 airspace at Rocky Mount, NC.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASO NC E5 Rocky Mount, NC [REVISED]

Rocky Mount-Wilson Airport, NC
(Lat. 35°51′23″ N, long. 77°53′31″ W)

Nash General Hospital Point in Space Coordinates

(Lat. 35°57′47″ N, long. 77°51′19″ W)
That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Rocky Mount-Wilson Airport and within a 6-mile radius of the point in space (Lat. 35°57′47″ N, long. 77°51′19″ W) serving Nash General Hospital.

* * * * *

Issued in College Park, Georgia, October 29, 2003.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 03–28535 Filed 11–13–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15848; Airspace Docket No. 03–ASO–14]

Amendment of Class E Airspace; Smithfield, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E5 airspace at Smithfield, NC. A Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Johnston Memorial Hospital, Smithfield, NC. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

EFFECTIVE DATES: 0901 UTC, February 19, 2004.

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

SUPPLEMENTARY INFORMATION:

History

On August 20, 2003, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class E5 airspace at Smithfield, NC, (68 FR 50082). This action provides adequate Class E5 airspace for IFR operations at Johnston Memorial Hospital, Smithfield, NC. Designations for Class E are published in FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR part 71.1. The Class E designation listed in this document will be published subsequently in the Order.

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

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class E5 airspace at Smithfield, NC.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASO NC E5 Smithfield, NC [REVISED]

Smithfield/Johnston County Airport, NC
(Lat. 35°32′27″ N, long. 78°23′25″ W)

Johnston Memorial Hospital

Point In Space Coordinates
(Lat. 35°31′23″ N, long. 78°20′35″ W)
That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Smithfield/Johnston county airport and within a 6-mile radius of the point in space (Lat. 35°31′23″ N, long. 78°20′35″ W) serving Johnston Memorial Hospital.

* * * * *

Issued in College Park, Georgia, October 29, 2003.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 03–28537 Filed 11–13–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16079; Airspace Docket No. 03–ACE–71]

Establishment of Class E4 Airspace; and Modification of Class E5 Airspace; Goodland, KS.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes a Class E airspace area designated as an extension to the existing Class E surface area and modifies Class E airspace extending upward from 700 feet above the surface at Goodland, KS. These actions are to accommodate new and amended Standard Instrument Approach Procedures (SIAPs) developed to serve Renner Field-Goodland Municipal Airport, Goodland, KS. The effect of this rule is to provide appropriate controlled Class E airspace for aircraft executing instrument approach procedures to Renner Field-Goodland Municipal Airport and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: 0901 UTC, December 25, 2003.

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

SUPPLEMENTARY INFORMATION:

History

On Monday, September 22, 2003, the FAA proposed to amend 14 CFR part 71 by establishing a Class E airspace area designated as an extension to the Class E surface area and revising the Class E airspace area extending upward from 700 feet or more above the surface at Goodland, KS (68 FR 55015) [FR Doc. 03–24143]. Area Navigation (RNAV) Global Positioning System (GPS) Runway (RWY) 30, ORIGINAL SIAP; RNAV (GPS) RWY 12, ORIGINAL SIAP; RNAV (GPS) RWY 23, ORIGINAL SIAP; Instrument Landing System (ILS) or Localizer (LOC)/Distance Measuring Equipment (DME) RWY 30, ORIGINAL SIAP; VHF Omni-directional Range (VOR) RWY 30, AMENDMENT 8 SIAP; Nondirectional Radio Beacon (NDB) RWY 30, AMENDMENT 7 SIAP; and VOR/DME RWY 30, AMENDMENT 7 SIAP have been developed to serve Renner Field-Goodland Municipal Airport. The proposal was to provide appropriate controlled airspace to contain aircraft executing the approach procedures. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Class E airspace areas designated as an extension to a Class D or Class E surface area are published in Paragraph 6004 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of the same Order. The Class E airspace designations listed in this document will be subsequently published in the Order.

The Rule

This amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) establishes a Class E airspace area designated as an extension to the Class E surface area and modifies the Class E airspace area extending upward from 700 feet or more above the surface at Goodland, KS. These actions provide appropriate controlled Class E airspace for aircraft executing instrument approach procedures to Renner Field-Goodland Municipal Airport and segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions. The airspace areas will be depicted on appropriate aeronautical charts.

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

List of Subjects in 14 CFR Part 71

Airspace, incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§71.1 [Amended]

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

Paragraph 6004 Class E airspace areas designated as an extension to Class D or Class E Surface area.

* * * * *

ACE KS E4 Goodland, KS

Renner Field-Goodland Municipal Airport, KS
(Lat. 39°22′14″ N, long. 101°41′56″ W)
Goodland VORTAC
(Lat. 39°23′16″ N, long. 101°41′32″ W)

That airspace extending upward from the surface within 2.4 miles each side of the Goodland VORTAC 164° radial extending from the 4.1-mile radius of Renner Field-Goodland Municipal Airport to 7 miles southeast of the VORTAC.

* * * * *

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

* * * * *

ACE KS E5 Goodland, KS

Renner Field-Goodland Municipal Airport, KS
(Lat. 39°22′14″ N, long. 101°41′56″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-miles radius of Renner Field-Goodland Municipal Airport.

* * * * *

Issued in Kansas City, MO, on October 27, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Divison, Central Region

[FR Doc. 03–28538 Filed 11–13–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. 2002–FAA–14912; Airspace Docket No. 03–AWP–4]

RIN 2120–AA66

Amendment of Restricted Area R–2301E Ajo East, AZ; and R–2304, and 2305 Gila Bend, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the designated time of use for Restricted Area 2301E Ajo East, AZ (R–2301E); and R–2304 and R–2305, Gila Bend, AZ. Increased training requirements at Luke Air Force Base (AFB) have resulted in a continued need for restricted airspace usage up to 2400 hours in these areas. This modification of the designated time of use does not change the current boundaries or activities conducted in the airspace areas.

DATES: 0901 UTC, February 19, 2004.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On May 30, 2003, the FAA published in the **Federal Register** a notice proposing to amend R–2301, R–2304 and R–2305 (68 FR 14912). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received regarding this rulemaking. Except for editorial changes, this amendment is the same as that proposed in the notice. These rulemaking actions ''are necessary in the interest of national defense,'' as required under 49 U.S.C. 40103(b)(3)(A).

The Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 73 (part 73) to amend the designated time of use for R–2301, R–2304, and R–2305. Specifically, this action changes the designated time of use for R–2301E from ''Monday–Friday, 0630–2230 local time; other times by NOTAM,'' to ''Daily, 0630 to 2400 local time; other times by NOTAM;'' R–2304 from ''0700–2200 local time; other times by NOTAM,'' to ''Monday–Saturday, 0630–2400 local time; other times by NOTAM;'' and R–2305 from ''0700–2300 local time; other times by NOTAM,'' to ''Monday–Saturday, 0630–2400 local time; other times by NOTAM.'' Increased training requirements at Luke AFB have resulted in a continued need for restricted airspace availability until 2400 hours. This modification does not change the current boundaries or activities conducted in the airspace areas.

Section 73.23 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8L dated October 7, 2003.

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 continues to read as follows:

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

§ 73.23 [Amended]

■ 2. § 73.23 is amended as follows:

* * * * *

R–2301E, Ajo East, AZ (Amended)

■ By removing ''Time of designation. Monday–Friday, 0630–2230 local time; other times by NOTAM,'' and substituting ''Time of designation. Daily, 0630–2400 local time; other times by NOTAM.''

* * * * *

R–2304, Gila Bend, AZ (Amended)

■ By removing ''Time of designation. 0700–2200 local time; other times by NOTAM,'' and substituting ''Time of designation. Monday–Saturday, 0630–2400 local time; other times by NOTAM.''

R–2305, Gila Bend, AZ (Amended)

■ By removing ''Time of designation. 0700–2300 local time; other times by NOTAM,'' and substituting ''Time of designation. Monday–Saturday, 0630–2400 local time; other times by NOTAM.''

* * * * *

Issued in Washington, DC, on November 4, 2003.

Paul Gallant,

Acting Manager, Airspace and Rules Division.

[FR Doc. 03–28529 Filed 11–13–03; 8:45 am]

BILLING CODE 4910–13–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest

assumptions for plans with valuation dates in December 2003. Interest assumptions are also published on the PBGC's Web site *http://www.pbgc.gov.*

EFFECTIVE DATE: December 1, 2003.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005, (202) 326–4024. TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to (202) 326–4024.

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in appendix B to part 4044); (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in appendix B to part 4022); and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in appendix C to part 4022).

Accordingly, this amendment (1) adds to appendix B to part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during December 2003, (2) adds to appendix B to part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during December 2003, and (3) adds to appendix C to part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during December 2003.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in appendix B to part 4044) will be 4.70 percent for the first 20 years following the valuation date and 5.25 percent thereafter. These interest assumptions represent an increase (from those in effect for November 2003) of 0.10 percent for the first 20 years following the valuation date and are otherwise unchanged.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in appendix B to part 4022) will be 3.25 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions are unchanged from those in effect for November 2003.

For private-sector payments, the interest assumptions (set forth in appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during December 2003, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. *See* 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

■ In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 122, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4022—Lump Sum Interest Rates For PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_i	n_2
*	*		*	*	*	*	*	
122	12–1–03	1–1–04	3.25	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 122, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_i	n_2
*	*		*	*	*		*	*
122	12–1–03	1–1–04	3.25	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4044—Interest Rates Used To Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
*	*	*	*	*	*	*
December 2003	.0470	1–20	.0525	>20	N/A	N/A

Issued in Washington, DC, on this 10th day of November 2003.

Joseph H. Grant,

Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 03–28542 Filed 11–13–03; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD07–03–144]

RIN 1625–AA00
RIN 1625–AA11

Regulated Navigation Area and Security Zones; Port of Miami, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary regulated navigation area and temporary security zones, from November 16, 2003 through November 21, 2003 during the Free Trade Area of the Americas Conference (FTAA). The temporary regulated navigation area controls the movement of all vessels operating in the Port of Miami in the vicinity of the northwestern entrance of Dodge Island, western section of Government Cut, Main Channel, Lummus Island Cut, Lummus Island Turning Basin, Dodge Island Cut, MacArthur Causeway Bridge, Claughton Island, Bayside Marina and on the Miami River up to the Flagler Street Bridge. The security zones prohibit the entry of all vessels and persons into the waters adjacent to the Intercontinental Hotel and the American Airlines Arena. These regulations are required to provide for the security of the public, the FTAA conference and its participants, and the Port of Miami due to the potential for disturbances and hostile and violent acts from various demonstrators protesting the FTAA conference.

DATES: This rule is effective from 12:01 a.m. on November 16, 2003 until 11:59 p.m. on November 21, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of the docket [CGD07–03–144] and are available for inspection and copying at U. S. Coast Guard, Marine Safety Office, 100 MacArthur Causeway, Miami Beach, FL 33139–6940 between 7:30 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Douglas Tindall, Waterways Management Office, (305) 535–8701.

SUPPLEMENTARY INFORMATION:

Good Cause

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds good cause exists for not publishing an NPRM because it is impracticable and contrary to public interest for the agency to do so. Information and intelligence regarding the potential for disturbances and hostile and violent acts by various protest groups continues to flow in and the Coast Guard expects this flow to increase as the commencement of the FTAA conference approaches. The Coast Guard must analyze the most current information and take appropriate actions to protect the public, the Port of Miami, and the FTAA participants.

For the same reasons under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

Cities that have recently hosted trade conferences similar to the FTAA conference have experienced significant property damage, and their law enforcement officers and public citizens have sustained personal injuries from a segment of protestors engaged in violent demonstrations against those conferences and their agendas. Examples include the September 2003 World Trade Organization (WTO) Ministerial in Cancun, Mexico; the 2003 G–8 Summit in Calgary, Canada; the 2001 G–8 Summit in Genoa; Italy and the 1999 World Trade Organization in Seattle, Washington. These trade conferences experienced an influx of protestors, and in particular protest groups opposing international trade who have a propensity for violence and a desire to engage in hostile acts against, among others, conference attendees, conference venues, the general public, business and municipal buildings, and law enforcement assets. Information and intelligence indicate that there is a high potential for similar acts to be attempted during the upcoming November FTAA conference in Miami, Florida.

This history has heightened the need for the development and implementation of various security measures throughout the Port of Miami, Florida, particularly around venue areas established for the dignitaries and official parties attending the FTAA conference, the primary waterways used by commercial shipping within the Port of Miami and law enforcement staging areas. The Coast Guard has determined from information provided by local, state, and federal law enforcement officials that vessels or persons in close proximity to the FTAA conference may launch hostile or violent acts from the waters adjacent to the FTAA conference. The potential for these acts poses a security threat to the public, the FTAA and its participants, the Port of Miami and the flow of commerce within the Port of Miami. During similar past trade conferences, protestors have used personal watercraft (PWCs) to penetrate physical barriers surrounding conference venues and in attempts to launch various projectiles at conference venues and participants and law enforcement staging areas. They have also used Rigid Hull Inflatable Boats (RHIBs) to facilitate unauthorized boardings of commercial shipping and unauthorized entry into waterfront facilities and buildings, including commercial and government facilities. The use of high speed, highly maneuverable, shallow draft watercraft, such as PWCs and RHIBs, poses a significant security threat to FTAA conference venues, FTAA conference participants, the Port of Miami, commerce within the Port of Miami, the public, and law enforcement officers.

The temporary regulated navigation area and security zones are being established to mitigate these threats and are necessary to protect the public, the FTAA conference and attendees, law enforcement officers, the Port of Miami and commerce within the port from persons attempting hostile and violent acts, while preserving the rights of persons engaging in lawful free speech activities and ensuring that the flow of maritime commerce within the Port of Miami and on the Miami River is not impeded.

Discussion of Rule

The temporary regulated navigation area (RNA) includes all waters encompassed in the following areas: beginning from a mid-point on the Fisher Island coast; thence running along the north shoreline of Fisher Island; thence westerly to a point south of Dodge Island; thence northwesterly to a point near Quick Flashing Green Marker ''15''; thence southwesterly to the northeastern tip of Claughton Island; thence west along the shoreline of Claughton Island; thence southerly along the northern side of Claughton Island; thence westerly along the northern side of the bridge that runs between Claughton Island and Brickell Point; thence northeasterly along the eastern shoreline of Brickell Point; thence encompassing the entire width of the Miami River, from the mouth of the Miami River to the west side of the Flagler Street Bridge; thence along the shoreline to the point that land intersects the MacArthur Causeway Bridge; thence east to the point near the northwestern shore of Watson Island; thence southwest along the shoreline to a point near the southeastern tip of Terminal Island; thence southeasterly back to the original point on Fisher Island.

The temporary RNA is necessary to ensure the safety of the public, the Port of Miami, and the FTAA. All vessels within the temporary RNA are subject to control by the Coast Guard Maritime Operations Center (MOC). The temporary RNA requires all vessels greater than 100 feet to check in with the MOC prior to entering or transiting the temporary RNA via VHF Channel 12. It is recommended that all other vessels check in with the MOC via VHF channel 12 prior to entering or transiting the temporary RNA.

Essentially, the temporary RNA encompasses the waters that make up the two main shipping channels on the north and south side of Dodge Island and the Intracoastal Waterway on the west side of Dodge Island and Watson Island in close proximity to FTAA venues. Information and past experience indicate that FTAA demonstrators may attempt to interfere with commercial shipping, both underway and while moored. Attempts may include unauthorized boardings of vessels while underway or moored in an effort to interrupt commerce and port operations. Additionally, demonstrators may attempt unauthorized entry into or upon commercial and government facilities located along the main shipping channels throughout the Port of Miami for these same reasons. The temporary RNA, by regulating the movement of vessels, imposing a slow speed zone, and excluding personal watercraft and rigid hull inflatable boats, will assist law enforcement officers in ensuring the safety and security of the Port of Miami, the public and the FTAA.

The temporary RNA requires all vessels less than 100 feet within the regulated area to proceed continuously and at slow speed. Slow speed is defined as the speed at which a vessel proceeds when it is fully off plane, completely settled into the water and not creating excessive wake. In no instance should slow speed be interpreted as a speed less than that required to maintain steerageway. Requiring vessels within the temporary RNA to transit at slow speed will allow law enforcement officers to identify, respond to, stop, and query vessels that are suspected of presenting a threat to the public, the Port of Miami, and the FTAA. Specifically, the slow speed requirement will allow the Coast Guard to adequately protect against threats of hostile and violent acts carried out by smaller vessels against commercial vessels transiting within the Port of Miami. The slow speed requirement enhances the ability of the MOC to control the movement of vessels within the temporary RNA which will further provide for the safety of the public, the Port of Miami and the FTAA.

The temporary RNA prohibits all personal watercraft (PWCs) from operating within the regulated area. For purposes of this rule, personal watercraft refers to a vessel(s), less than 16 feet in length, which uses an inboard, internal combustion engine powering a water jet pump as its primary source of propulsion. PWCs are designed to be operated by a person or persons sitting, standing or kneeling on the vessel, rather than within the confines of the hull. The length is measured from end to end over the deck excluding sheer, meaning a straight line measurement of the overall length from the foremost part of the vessel to the aftermost part of the vessel, measured parallel to the centerline. Bowsprits, bumpkins, rudders, outboard motor brackets, and similar fittings or attachments, are not included in the measurement. Length is stated in feet and inches.

The rule prohibits PWCs from operating within the temporary RNA due to their maneuverability, high speed, and minimal draft, characteristics which may allow them to outrun law enforcement vessels, operate in shallow and restricted areas, and hurdle or dive under barriers erected by law enforcement officials. PWCs would thus allow protestors a means of unauthorized entry into restricted areas in which they can carry out hostile and violent acts, such as launching projectiles or throwing other dangerous objects at conference participants. PWCs' unique capabilities make them a preferred watercraft for persons attempting hostile and violent acts against the public, the FTAA conference and attendees, law enforcement officers, the Port of Miami and commerce within the port.

The temporary RNA prohibits Rigid Hull Inflatable Boats (RHIBs) from operating within the RNA, with the exception of RHIBs operated by licensed commercial salvors and RHIBs operated by designated law enforcement officials. RHIBs operated by licensed commercial salvors are excepted from this rule because they provide a vital maritime service that would be impeded if they were prohibited from operating in the RNA and because they present little or no threat of engaging in hostile or violent acts as they are licensed by the Coast Guard and known to the Captain of the Port of Miami.

For purposes of this rule, Rigid Hull Inflatable Boat refers to a vessel(s) that has an inflatable fabric or rubber collar or a foam collar surrounding the hull of the vessel. An RHIB's collar is normally joined to a fiberglass hull on larger models or a fabric hull on smaller models. Fabric hulls are often also themselves inflatable, or have an inflatable keel and sometimes have a soft floor or a reinforced floor slated with wood or other rigid materials. RHIBs are powered by both outboard and inboard-outboard propulsion and because of their light weight can easily be powered by oars as well. RHIBs' light weight and the enormous reserve buoyancy and stability provided by their collars gives them high performance features including speed and maneuverability coupled with large load-carrying capacity and the ability to operate in shallow areas. Additionally, models with inflatable collars can be quickly deflated and stowed in small spaces and even carry bags. The collars are also non-marking, making them a preferred vessel for coming alongside other vessels, piers, docks, or facilities for the purpose of onloading or offloading persons and cargo, including for persons attempting unauthorized boardings of shipping and unauthorized entries into waterfront facilities, or placing unauthorized cargo onto shipping and facilities within the port. RHIBs' unique characteristics make them a preferred vessel for persons attempting hostile and violent acts against the public, the FTAA conference and attendees, law enforcement officers, the Port of Miami and commerce within the port.

Nothing in the temporary RNA relieves vessels or operators from complying with all state and local laws in the area, including manatee slow speed zones.

The temporary security zones prohibit all vessels from entering the waters of Biscayne Bay adjacent to the Intercontinental Hotel and the American Airlines Arena.

The Intercontinental Hotel Security Zone extends from the sea wall along the hotel's property easterly out to the edge of the Intracoastal Waterway channel. This security zone is necessary to ensure the waters surrounding the Intercontinental Hotel, which is the primary venue for the FTAA, are not used by persons attempting hostile and violent acts against the FTAA. Extending the security zone out to the edge of the Intracoastal Waterway is necessary to allow law enforcement officers ample opportunity to identify, stop and query vessels and persons suspected of attempting hostile and violent acts against the FTAA. The waters encompassed by this security zone range from a depth of zero to twelve feet and are subject to shoaling. Law enforcement vessels need a sufficient depth of water in order to operate safely and maneuver effectively. The shallow depth of water and shoaling within certain areas encompassed by the security zone precludes law enforcement vessels from being able to safely operate and maneuver in those areas. Co-locating the eastern boundary of the security zone with the western edge of Intracoastal Waterway is the best means to ensure law enforcement vessels will have sufficient room to operate, maneuver, and respond to shallow-draft vessels such as PWCs to provide effective security within the waters surrounding the FTAA venue.

The American Airlines Arena security zone encompasses all waters, shore to shore, within the American Airlines Arena Basin and extends outward to the intersection of the Intracoastal Waterway and the northern side of the Dodge Island Bridge. This security zone is necessary to ensure that the waters surrounding the American Airlines Arena are not used by persons and vessels attempting hostile and violent acts against the FTAA and law enforcement officers. The American Airlines Arena Basin will be used as law enforcement staging area. Information and intelligence indicates that FTAA protestors may attempt hostile and violent acts against law enforcement staging areas assigned to patrol the FTAA venue(s). Extending the security zone out to the northern side of the Dodge Island Bridge is necessary to allow law enforcement officers ample opportunity to identify, stop and query vessels and persons suspected of attempting hostile and violent acts against the FTAA and law enforcement staging areas and officials. This security zone is necessary to ensure adequate force protection is provided for law enforcement staging areas and law enforcement officers in the vicinity of the American Airlines Arena Basin.

Regulatory Evaluation

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

We expect the economic impact of this temporary rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. The temporary regulated navigation area and security zones encompass a limited area and will be in place for a limited period of time. The temporary regulated navigation area allows all vessels, with the exception of PWCs and RHIBs, to transit through the RNA. RHIBs operated by licensed commercial salvors and designated law enforcement officials are not prohibited from operating within the temporary RNA. Vessels greater than 100 feet, upon checking in with the MOC, may transit through the temporary RNA. The security zones prohibit all vessels from entry; however, these zones are located outside of the navigable channels and will not interfere with commercial or other legitimate maritime interests.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this temporary rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' includes 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 temporary rule will not have a significant economic impact on a substantial number of small entities. The temporary security zones do not encompass waters typically transited by commercial vessels. Additionally, there are alternate routes to transit around the temporary security zones. All vessels are permitted to transit the temporary regulated navigation area, with the exception of PWCs and RHIBs. However, RHIBs operated by licensed commercial salvors

are permitted to operate within the temporary RNA.

This temporary rule may affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit the RNA within the Port of Miami from November 16, 2003 to November 21, 2003. Before the effective period, we will issue maritime advisories widely available to users of the Miami River and the Port of Miami.

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 on them. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small businesses. If you wish to comment on actions by employees of the Coast Guard call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and we have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (34)(g), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 165

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

■ For the reasons discussed in the preamble, the Coast Guard amends 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. 1226, 1231; 50 U.S.C. 191, 195; 46 U.S.C. Chapter 701; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. From 12:01 a.m. on November 16, 2003 until 11:59 p.m. on November 21, 2003, add a new temporary section 165.T07–144 to read as follows:

§ 165.T07–144 Temporary regulated navigation area and temporary security zones, Port of Miami, FL.

(a) *Locations.* (1) *Regulated navigation area.* All waters of the Port of Miami, from surface to bottom, encompassed by a line commencing at the north mid-point of Fisher Island at 25°45.869′N, 080°08.311′W; thence, westerly along the northern shoreline of Fisher Island to 25°45.843′N, 080°08.942′W; thence, westerly to a point south of Dodge Island at 25°45.890′N, 080°10.122′W; thence, northwest to a point near Quick Flashing Green Marker ''15'' at 25°46.153′N, 080°10.223′W; thence, northwesterly to a point at 25°46.316′N, 080°10.604′ (located south of Dodge Island); thence, northwesterly to the northeastern tip of Claughton Island at 25°46.165′N, 080°10.969′W; thence, along the northern shoreline of Claughton Island, southeasterly along the western shoreline to 25°45.950′N, 080°11.163′W at Claughton Island; thence, westerly along the northern side of the bridge that runs between Claughton Island and Brickell Point to 25°45.943′N, 080°11.308′W; thence, northeasterly along the eastern shoreline of Brickell Point; thence, encompassing the entire width of the Miami River, from the mouth of the Miami River to the west side of the Flagler Street Bridge at 25°46.434′N, 080°12.046′W; thence, along the shoreline from the northern

side of the mouth of the Miami River to 25°46.297′N, 080°11.098′W; thence, northerly along the shoreline northeasterly tip of the entrance to Bayside Marina at 25°46.742′N, 080°11.020′W; thence, northwesterly to a point near the west entrance to the Dodge Island Bridge 25°46.786′N, 080°11.113′W; thence, northerly along the shoreline to a point that intersects the MacArthur Causeway Bridge at 25° 47.216′N, 080°11.127′W; thence, easterly to a point near the northwestern shore of Watson Island 25° 47.241′N, 080°10.760′W; thence, southeasterly along the shoreline to a point near the southeastern tip of Terminal Island 25°46.166′N, 080°08.759′W; thence, southeasterly back to the original point 25°45.869′N, 080°08.311′W.

(2) *Security zone; Intercontinental Hotel.* All waters of the Port of Miami, from surface to bottom, adjacent to the Intercontinental Hotel, encompassed by a line commencing from the south Princessa Dock at 25°46.520′N, 080°11.100′W at Bayfront Park; thence, southerly along the shoreline to a point approximately 30 yards southeast of the Intercontinental Hotel at 25°46.290′N, 080°11.100′W; thence, westerly along the shoreline to a point 50 yards southwest of the Intercontinental Hotel at 25°46.210′N, 080°11.300′W; thence, northeasterly to a point in mid-channel at 25°46.348′N, 080°11.017′W; thence, north along the channel to a point 25°46.515′N, 080°11.019′W; thence, northwesterly back to the original point. All coordinates reference Datum NAD: 1983.

(3) *Security zone; American Airlines Arena.* All waters of the Port of Miami, from surface to bottom, adjacent to the American Airlines Arena, and within the American Airlines Arena Basin, encompassed by a line commencing from the shore at 25°47.02′N, 080°11.12′W; thence, east to turning basin marker ''D'' at 25°47.02′N, 80°11.09′W; thence, southeasterly to turning basin marker ''E'' at 25°46.91′N, 080°11.00′W; thence, southeasterly to the tip of the west side fendering system at 25°46.78′N, 080°10.92′W for the Dodge Island Bridge at the Intracoastal Waterway; thence, westerly along the north side of the Dodge Island Bridge to where the bridge intersects the land at American Airlines Arena; thence, north-northwesterly along the shoreline, including all waters from shore to shore within the American Airlines Arena Basin; thence, to 25° 47.02′, 080° 11.12′W back to the original point. All coordinates reference Datum NAD: 1983.

(b) *Definitions.* The following definitions apply to this section:

Designated Representatives. Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels, and federal, state, and local officers designated by or assisting the Commander, Seventh Coast Guard District, the Captain of the Port of Miami and the Coast Guard Maritime Operations Center (MOC) to regulate the movement of vessels within the RNA and restrict vessels and persons from entering the security zones.

Personal watercraft. A vessel, less than 16 feet in length, which uses an inboard, internal combustion engine powering a water jet pump as its primary source of propulsion. The vessel is intended to be operated by a person or persons sitting, standing or kneeling on the vessel, rather than within the confines of the hull. The length is measured from end to end over the deck excluding sheer, meaning a straight line measurement of the overall length from the foremost part of the vessel to the aftermost part of the vessel, measured parallel to the centerline. Bowsprits, bumpkins, rudders, outboard motor brackets, and similar fittings or attachments, are not included in the measurement. Length is stated in feet and inches.

Rigid hull inflatable boat. A vessel that has an inflatable fabric or rubber collar or a foam collar surrounding the hull of the vessel. The collar is normally joined to a fiberglass hull on larger models or a fabric hull on smaller models. Fabric hulls are often also themselves inflatable, or have an inflatable keel and sometimes have a soft floor or reinforced floor slated with wood or other rigid materials.

Slow speed. The speed at which a vessel proceeds when it is fully off plane, completely settled in the water and not creating excessive wake. Due to the different speeds at which vessels of different sizes and configurations may travel while in compliance with this definition, no specific speed is assigned to slow speed. In no instance should slow speed be interpreted as a speed less than that required to maintain steerageway. A vessel is not proceeding at slow speed if it is:

(1) On a plane;

(2) In the process of coming up onto or coming off a plane; or

(3) Creating an excessive wake.

(c) *Regulations.* (1) *Regulated navigation area.* The regulations in this paragraph apply to the area in paragraph (a)(1) of this section.

(i) Vessels less than 100 feet entering and transiting through the regulated navigation area shall proceed continuously and at a slow speed. In no instance should slow speed be interpreted as a speed less than that required to maintain steerageway. Nothing in this rule alleviates vessels or operators from complying with all state and local laws in the area, including manatee slow speed zones.

(ii) All vessels shall comply with orders from the Coast Guard Marine Operations Center (MOC), or the MOC's designated representatives, regulating their speed, course, direction and movements within the RNA. All vessels greater than 100 feet shall check in with the MOC prior to entering or transiting via VHF Channel 12. It is recommended that all other vessels check in with the Coast Guard MOC via VHF channel 12 prior to entering or transiting the RNA.

(iii) No personal watercraft, except those operated by law enforcement officers, are permitted to operate within the RNA.

(iv) No Rigid Hull Inflatable Boats, except those operated by licensed commercial salvors and law enforcement officers, are permitted to operate within the RNA.

(2) *Security zones.* The regulations in this paragraph apply to the zones in paragraph (a)(2) and (a)(3) of this section. Entry into or remaining within the security zones is prohibited unless authorized by the Coast Guard Captain of the Port, Miami, Florida or the Officer in Charge of the Coast Guard Maritime Operations Center (MOC) or that officer's designated representatives. Persons desiring to enter or transit the areas encompassed by the security zones may contact the Coast Guard Maritime Operations Center on VHF channel 12 or via telephone at (305) 535–8701 to seek permission to enter or transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or the Officer in Charge of the Coast Guard Maritime Operations Center (MOC) or that officer's designated representatives.

(d) *Effective period.* This section is effective from 12:01 a.m. on November 16, 2003, until 11:59 p.m. on November 21, 2003.

Dated: November 6, 2003.

Fred M. Rosa,

Captain, U.S. Coast Guard, Commander, Seventh Coast Guard District, Acting.

[FR Doc. 03–28531 Filed 11–13–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KS–192–1192; FRL–7580–6]

Approval and Promulgation of Air Quality Implementation Plans; Kansas Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: EPA is updating the materials submitted by Kansas that are incorporated by reference (IBR) into the state implementation plan (SIP). The regulations affected by this update have been previously submitted by the state agency and approved by EPA. This update affects the SIP materials that are available for public inspection at the Office of the Federal Register (OFR), Office of Air and Radiation Docket and Information Center, and the Regional Office.

EFFECTIVE DATE: This action is effective November 14, 2003.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Environmental Protection Agency, Region VII, 901 North 5th Street, Kansas City, Kansas 66101; Office of Air and Radiation Docket and Information Center, Room B–108, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460, and Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Evelyn VanGoethem at (913) 551–7659, or at *vangoethem.evelyn@epa.gov.*

SUPPLEMENTARY INFORMATION: The SIP is a living document which the state can revise as necessary to address the unique air pollution problems in the state. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference Federally-approved SIPs, as a result of consultations between EPA and the Office of Federal Register (OFR). The description of the revised SIP document, IBR procedures and ''Identification of plan'' format are discussed in further detail in the May 22, 1997, **Federal Register** document.

On February 12, 1999, EPA published a document in the **Federal Register** (64 FR 7091) beginning the new IBR procedure for Kansas. In today's document EPA is updating the IBR material.

EPA is also making minor corrections to the table in § 52.870(c) as follows:

On June 27, 2000 (65 FR 39551), we inadvertently removed a rule heading and K.A.R. 28–19–20 from the table. K.A.R. 28–19–20 had previously been incorporated by reference and was not rescinded by the June 27, 2000, action. We are restoring the heading and K.A.R. 28–19–20 into the table.

On May 18, 1988 (53 FR 17700) we updated K.A.R. 28–19–64. In the table under § 52.870(c) the **Federal Register** page citation for K.A.R. 28–19–64 is shown as being 53 FR 17000, and it is being corrected to 53 FR 17700.

On October 30, 2002 (67 FR 66060) we approved a VOC rule, K.A.R. 28–19–714, and revoked K.A.R. 28–19–75. K.A.R. 28–19–714 was incorrectly located in the table. K.A.R. 28–19–714 should be placed immediately before rule K.A.R. 28–19–717.

EPA has determined that today's rule falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. Under section 553 of the APA, an agency may find good cause where procedures are ''impractical, unnecessary, or contrary to the public interest.'' Public comment is ''unnecessary'' and ''contrary to the public interest'' since the codification only reflects existing law. Immediate notice in the CFR benefits the public by updating citations.

Statutory and Executive Order Reviews

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

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

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 13, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: October 21, 2003.

William Rice,

Acting Regional Administrator, Region 7.

■ Chapter I, title 40, 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 R—Kansas

■ 2. In § 52.870 paragraphs (b), (c), (d) and (e) are revised to read as follows:

§ 52.870 Identification of plan.

* * * * *

(b) *Incorporation by reference.* (1) Material listed in paragraphs (c), (d) and (e) of this section with an EPA approval date prior to October 1, 2003, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c), (d) and (e) of this section with EPA approval dates after October 1, 2003, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region VII certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated state rules/regulations which have been approved as part of the SIP as of October 1, 2003.

(3) Copies of the materials incorporated by reference may be inspected at the Environmental Protection Agency, Region VII, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101; the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.; or at the EPA, Air and Radiation Docket and Information Center, Room B–108, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460.

(c) EPA-approved regulations.

EPA—APPROVED KANSAS REGULATIONS

Kansas citation	Title	State effective date	EPA approval date	Explanation
Kansas Department of Health and Environment Ambient Air Quality Standards and Air Pollution Control				
General Regulations				
K.A.R. 28–19–6	Statement of Policy	1/1/72	5/31/72, 37 FR 10867	Kansas revoked this rule 5/1/82.
K.A.R. 28–19–8	Reporting Required	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–9	Time Schedule for Compliance	5/1/84	12/21/87, 52 FR 48265.	
K.A.R. 28–19–10	Circumvention of Control Regulations	1/1/71	5/31/72, 37 FR 10867.	
K.A.R. 28–19–11	Exceptions Due to Breakdowns or Scheduled Maintenance.	1/1/74	11/8/73, 38 FR 30867.	
K.A.R. 28–19–12	Measurement of Emissions.	1/1/71	5/31/72, 37 FR 10867.	
K.A.R. 28–19–13	Interference with Enjoyment of Life and Property.	1/1/74	11/8/73, 38 FR 30876.	
K.A.R. 28–19–14	Permits Required	1/24/94	7/17/95, 60 FR 36361.	
K.A.R. 28–19–15	Severability	1/1/71	5/31/72, 37 FR 10867.	
Nonattainment Area Requirements				
K.A.R. 28–19–16	New Source Permit Requirements for Designated Nonattainment Areas.	10/16/89	1/16/90, 55 FR 1422.	
K.A.R. 28–19–16a	Definitions	10/10/97	1/11/00, 65 FR 1548.	
K.A.R. 28–19–16b	Permit Required	10/16/89	1/16/90, 55 FR 1422.	
K.A.R. 28–19–16c	Creditable Emissions Reductions	10/16/89	1/16/90, 55 FR 1422	The EPA deferred action on the state's current definition of the terms ''building, structure, facility, or installation''; ''installation ''; and ''reconstruction.''
K.A.R. 28–19–16d	Fugitive Emission Exemption	10/16/89	1/16/90, 55 FR 1422.	

EPA—APPROVED KANSAS REGULATIONS—Continued

Kansas citation	Title	State effective date	EPA approval date	Explanation
K.A.R. 28–19–16e	Relaxation of Existing Emission Limitations.	10/16/89	1/16/90, 55 FR 1422.	
K.A.R. 28–19–16f	New Source Emission Limits	10/16/89	1/16/90, 55 FR 1422.	
K.A.R. 28–19–16g	Attainment and Maintenance of National Ambient Air Quality Standards.	10/16/89	1/16/90, 55 FR 1422.	
K.A.R. 28–19–16h	Compliance of Other Sources	10/16/89	1/16/90, 55 FR 1422.	
K.A.R. 28–19–16i	Operating Requirements	10/16/89	1/16/90, 55 FR 1422.	
K.A.R. 28–19–16j	Revocation and Suspension of Permit	10/16/89	1/16/90, 55 FR 1422.	
K.A.R. 28–19–16k	Notification Requirements	10/16/89	1/16/90, 55 FR 1422.	
K.A.R. 28–19–16l	Failure to Construct	10/16/89	1/16/90, 55 FR 1422.	
K.A.R. 28–19–16m	Compliance with Provisions of Law Required.	10/16/89	1/16/90, 55 FR 1422.	
Attainment Area Requirements				
K.A.R. 28–19–17	Prevention of Significant Deterioration of Air Quality.	11/22/02	02/26/03, 68 FR 8846	K.A.R. 28–19–17a through 28–19–17q revoked. Provision moved to K.A.R. 28–19–350.
Stack Height Requirements				
K.A.R. 28–19–18	Stack Heights	5/1/88	4/20/89, 54 FR 15934	The state requlation has stack height credit. The EPA has not approved that part.
K.A.R. 28–19–18b	Definitons	5/1/88	4/20/89, 54 FR 15934.	
K.A.R. 28–19–18c	Methods for Determining Good Engineering Practice Stack Height.	5/1/88	4/20/89, 54 FR 15934.	
K.A.R. 28–19–18d	Fluid Modeling	5/1/88	4/20/89, 54 FR 15934.	
K.A.R. 28–19–18e	Relaxation of Existing Emission Limitations.	5/1/88	4/20/89, 54 FR 15934.	
K.A.R. 28–19–18f	Notification Requirements	5/1/88	4/20/89, 54 FR 15934.	
Continuous Emission Monitoring				
K.A.R. 28–19–19	Continuous Emission Monitoring	6/8/92	1/12/93, 58 FR 3847.	
Processing Operation Emissions				
K.A.R. 28–19–20	Particulate Matter Emission Limitations	10/16/89	1/16/90, 55 FR 1421.	
K.A.R. 28–19–21	Additional Emission Restrictions	10/16/89	1/16/90, 55 FR 1422.	
K.A.R. 28–19–22	Sulfur Compound Emissions	1/1/72	11/8/73, 38 FR 30876.	
K.A.R. 28–19–23	Hydrocarbon Emissions—Stationary Sources.	12/27/72	11/8/73, 38 FR 30876.	
K.A.R. 28–19–24	Control of Carbon Monoxide Emissions	1/1/72	11/8/73, 38 FR 30876.	
Indirect Heating Equipment Emissions				
K.A.R. 28–19–30	General Provisions	1/1/72	5/31/72, 37 FR 10867.	
K.A.R. 28–19–31	Emission Limitations	11/8/93	10/18/94, 59 FR 52425.	
K.A.R. 28–19–32	Exemptions—Indirect Heating Equipment	11/8/93	10/18/94, 59 FR 52425.	
Incinerator Emissions				
K.A.R. 28–19–40	General Provisions	1/1/71	5/31/72, 37 FR 10867.	
K.A.R. 28–19–41	Restriction of Emission	12/27/72	11/8/73, 38 FR 30876.	
K.A.R. 28–19–42	Performance Testing	1/1/72	11/8/73, 38 FR 30876.	
K.A.R. 28–19–43	Exceptions	1/1/71	5/31/72, 37 FR 10867.	
Air Pollution Emergencies				
K.A.R. 28–19–55	General Provisions	1/1/72	5/31/72, 37 FR 10867.	
K.A.R. 28–19–56	Episode Criteria	10/16/89	1/16/90, 55 FR 1422.	
K.A.R. 28–19–57	Emission Reduction Requirements	1/1/72	5/31/72, 37 FR 10867.	
K.A.R. 28–19–58	Emergency Episode Plans	1/1/72	5/31/72, 37 FR 10867.	
Volatile Organic Compound Emissions				
K.A.R. 28–19–61	Definitions	10/7/91	6/23/92, 57 FR 27936.	
K.A.R. 28–19–62	Testing Procedures	10/7/71	6/23/92, 57 FR 27936.	

EPA—APPROVED KANSAS REGULATIONS—Continued

Kansas citation	Title	State effective date	EPA approval date	Explanation
K.A.R. 28–19–63	Automobile and Light Duty Truck Surface Coating.	11/8/93	10/18/94, 59 FR 52425.	
K.A.R. 28–19–64	Bulk Gasoline Terminals	5/1/88	5/18/88, 53 FR 17700.	
K.A.R. 28–19–65	Volatile Organic Compounds (VOC) Liquid Storage in Permanent Fixed Roof Type Tanks.	5/1/88	5/18/88, 53 FR 17700.	
K.A.R. 28–19–66	Volatile Organic Compounds (VOC) Liquid Storage in External Floating Roof Tanks.	5/1/88	5/18/88, 53 FR 17700.	
K.A.R. 28–19–67	Petroleum Refineries	5/1/86	1/2/87, 52 FR 53.	
K.A.R. 28–19–68	Leaks from Petroleum Refinery Equipment	5/1/86	1/2/87, 52 FR 53.	
K.A.R. 28–19–69	Cutback Asphalt	5/1/88	5/18/88, 53 FR 17700	
K.A.R. 28–19–70	Leaks from Gasoline Delivery Vessels and Vapor Collection Systems.	5/15/98	1/11/00, 65 FR 1548.	
K.A.R. 28–19–71	Printing Operations	5/1/88	5/18/88, 53 FR 17700.	
K.A.R. 28–19–72	Gasoline Dispensing Facilities	5/1/88	5/18/88, 53 FR 17700	
K.A.R. 28–19–73	Surface Coating of Miscellaneous Metal Parts and Products and Metal Furniture.	6/8/92	1/12/93, 58 FR 3847.	
K.A.R. 28–19–74	Wool Fiberglass Manufacturing	5/1/88	5/18/88, 53 FR 17700.	
K.A.R. 28–19–76	Lithography Printing Operations	10/7/91	6/23/92, 57 FR 27936.	
K.A.R. 28–19–77	Chemical Processing Facilities That Operate Alcohol Plants or Liquid Detergent Plants.	10/7/91	6/23/92, 57 FR 27936.	
General Provisions				
K.A.R. 28–19–200	General Provisions; definitions	10/10/97	1/11/00, 65 FR 1548	New rule. Replaces K.A.R. 28–19–7 definitions.
K.A.R. 28–19–201	General provisions; Regulated Compounds List.	10/10/97	1/11/00, 65 FR 1548	New rule. Replaces Regulated Compounds in K.A.R. 28–19–7.
K.A.R. 28–19–204	Permit Issuance and Modification; Public Participation.	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–210	Calculation of Actual Emissions	11/22/93	1/11/00, 65 FR 1548.	
K.A.R. 28–19–212	Approved Test Methods and Emission Compliance Determination Procedures.	1/12/95	7/17/95, 60 FR 36361.	
Construction Permits and Approvals				
K.A.R. 28–19–300	Applicability	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–301	Application and Issuance	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–302	Additional Provisions; Construction Permits.	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–303	Additional Provisions; Construction Approvals.	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–304	Fees	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–350	Prevention of Significant Deterioration of Air Quality.	11/22/02	02/26/03, 68 FR 8846.	
General Permits				
K.A.R. 28–19–400	General Requirements	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–401	Adoption by the Secretary	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–402	Availability of Copies; Lists of Sources to Which Permits Issued.	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–403	Application to Construct or Operate Pursuant to Terms of General Permits.	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–404	Modification, Revocation	1/23/95	7/17/95, 60 FR 36361.	
Operating Permits				
K.A.R. 28–19–500	Applicability	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–501	Emissions Limitations and Pollution Control Equipment for Class I and Class II Operating Permits; Conditions.	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–502	Identical Procedural Requirements	1/23/95	7/17/95, 60 FR 36361.	
Class II Operating Permits				
K.A.R. 28–19–540	Applicability	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–541	Application Timetable and Contents	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–542	Permit-by-Rule	1/23/95	7/17/95, 60 FR 36361.	

EPA—APPROVED KANSAS REGULATIONS—Continued

Kansas citation	Title	State effective date	EPA approval date	Explanation
K.A.R. 28–19–543	Permit Term and Content; Operational Compliance.	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–544	Modification of Sources or Operations	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–545	Application Fee	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–546	Annual Emission Inventory	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–561	Permit-by-Rule; Reciprocating Engines	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–562	Permit-by-Rule; Organic Solvent Evaporative Sources.	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–563	Permit-by-Rule; Hot Mix Asphalt Facilities	1/23/95	7/17/95, 60 FR 36361.	
K.A.R. 28–19–564	Permit-by-Rule; Sources with Actual Emissions Less Than 50 Percent of Major Source Thresholds.	10/04/02	3/26/03, 68 FR 14541.	
Open Burning Restrictions				
K.A.R. 28–19–645	Open Burning Prohibited	3/1/96	10/2/96, 61 FR 51366.	
K.A.R. 28–19–646	Responsibility for Open Burning	3/1/96	10/2/96, 61 FR 51366.	
K.A.R. 28–19–647	Exceptions to Prohibition on Open Burning	3/1/96	10/2/96, 61 FR 51366.	
K.A.R. 28–19–648	Agricultural Open Burning	3/1/96	10/2/96, 61 FR 51366.	
K.A.R. 28–19–650	Emissions Opacity Limits	1/29/99	1/11/00, 65 FR 1548	New rule. Replaces K.A.R. 28–19–50 and 28–19–52.
Volatile Organic Compound Emissions				
K.A.R. 28–19–714	Control of Emissions from Solvent Metal Cleaning.	9/1/02	10/30/02, 67 FR 66060.	
K.A.R. 28–19–717	Control of Volataile Organic Compound (VOC) Emissions from Commercial Bakery Ovens in Johnson and Wyandotte Counties.	12/22/00	12/12/01, 66 FR 64148.	
K.A.R. 28–19–719	Fuel Volatility	4/27/01	2/13/02, 67 FR 6658.	
Conformity				
K.A.R. 28–19–800	General Conformity of Federal Actions	3/15/96	10/2/96, 61 FR 51366.	

(d) EPA-approved State source-specific permits.

EPA-APPROVED KANSAS SOURCE-SPECIFIC PERMITS

Name of source	Permit No.	State effective date	EPA approval date	Explanation
(1) Board of Public Utilities, Quindaro Power Station	2090048	10/20/93	10/18/94, 59 FR 52425.	
(2) Board of Public Utilities, Kaw Power Station	2090049	10/20/93	10/18/94, 59 FR 52425.	

(e) EPA-approved nonregulatory provisions and quasi-regulatory measurers.

EPA—APPROVED KANSAS NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
(1) Implementation Plan for Attainment and Maintenance of the National Air Quality Standards.	Statewide	1/31/72	5/31/72, 37 FR 10867.	
(2) Comments on the Plan in Response to EPA Review	Kansas City	3/24/72	6/22/73, 38 FR 46565..	Correction notice published 3/2/76.
(3) Emergency Episode Operations/Communications Manual.	Kansas City	4/6/72	11/8/73, 38 FR 30876..	Correction notice published 3/2/76.
(4) Emergency Episode Operations/Communications Manual.	Statewide except Kanasa City.	2/15/73	11/8/73, 38 FR 30876..	Correction notice published 3/2/76.

EPA—APPROVED KANSAS NONREGULATORY PROVISIONS—Continued

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
(5) Letter Concerning Attainment of CO Standards	Kansas City	5/29/73	11/8/73, 38 FR 30876..	Correction notice published 3/2/76.
(6) Amendment to State Air Quality Control Law Dealing with Public Access to Emissions Data.	Statewide	7/27/73	11/8/73, 38 FR 30876..	Correction notice published 3/2/76.
(7) Analysis and Recommendations Concerning Designation of Air Quality Maintenance Areas.	Statewide	2/2874	3/2/76, 41 FR 8960.	
(8) Ozone Nonattainment Plan	Kansas City	9/17/79	4/3/81, 46 FR 20165.	
(9) Ozone Nonattainment Plan	Douglas County	10/22/79	4/3/81, 46 FR 20165.	
(10) TSP Nonattainment Plan	Kansas City	3/10/80	4/3/81, 46 FR 20165.	
(11) Lead Plan	Statewide	2/17/81	10/22/81, 46 FR 51742.	
(12) CO Nonattainment Plan	Wichita	4/16/81	12/15/81, 46 FR 61117.	
(13) Air Monitoring Plan	Statewide	10/16/81	1/22/82, 47 FR 3112.	
(14) Letter and Supporting Documentation Relating to Reasonably Available Control Technology for Certain Particulate Matter Sources.	Kansas City	9/15/81	6/18/82, 47 FR 26387.	Correction notice published 1/12/84.
(15) Letter Agreeing to Follow EPA Interim Stack Height Policy for Each PSD Permit Issued Until EPA Revises the Stack Height Regulations.	Statewide	6/20/84	12/11/84, 49 FR 48185.	
(16) Letters Pertaining to Permit Fees	Statewide	3/27/86 9/15/87	12/21/87, 52 FR 48265.	
(17) Revisions to the Ozone Attainment Plan	Kansas City	7/2/86 4/16/87 8/18/87 8/19/87 1/6/88	5/18/88, 53 FR 17700.	
(18) Revised CO Plan	Wichita	3/1/85 9/3/87	10/28/88, 53 FR 43691.	
(19) Letter Pertaining to the Effective Date of Continuous Emission Monitoring Regulations.	Statewide	1/6/88	11/25/88, 53 FR 47690.	
(20) Letters Pertaining to New Source Permit Regulations, Stack Height Regulations, and Stack Height Analysis and Negative Declarations.	Statewide	3/27/86 12/7/87 1/6/88	4/20/89, 54 FR 15934.	
(21) PM_{10} Plan	Statewide	10/5/89 10/16/89	1/16/90, 55 FR 1422.	
(22) Ozone Maintenance Plan	Kansas City	10/23/91	6/23/92, 57 FR 27936.	
(23) Letter Pertaining to PSD NO_x Requirements	Statewide	9/15/92	1/12/93, 58 FR 3847.	
(24) Small Business Assistance Plan	Statewide	1/25/94	5/12/94, 59 FR 24644.	
(25) Letter Regarding Compliance Verification Methods and Schedules Pertaining to the Board of Public Utilities Power Plants.	Kansas City	12/11/92	10/18/94, 59 FR 52425.	
(26) Emissions Inventory Update Including a Motor Vehicle Emissions Budget.	Kansas City	5/11/95	4/25/96, 59 FR 52425.	
(27) Air monitoring plan	Statewide	1/6/02	8/30/02, 67 FR 55728.	

[FR Doc. 03–28307 Filed 11–13–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA261–0420a; FRL–7582–2]

Revisions to the California State Implementation Plan, San Diego County Air Pollution Control District; San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the San Diego County Air Pollution Control District (SDCAPCD) and San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from the metal parts and aerospace coating industries. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on January 13, 2004 without further notice, unless EPA receives adverse comments by

December 15, 2003. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, or e-mail to *steckel.andrew@epa.gov*, or submit comments at *http://www.regulations.gov.*

You can inspect copies of the submitted SIP revisions, EPA's technical support documents (TSDs), and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the submitted SIP revisions by appointment at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460;

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

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123;

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA, 93726.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, EPA Region IX, at either (415) 947–4111, or *wamsley.jerry@epa.gov.*

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

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
SDCAPCD	67.3	Metal Parts and Products	04/09/03	06/05/03
SJVUAPCD	4605	Aerospace Assembly and Component Coating Operations.	12/20/01	02/20/02

On July 18, 2003 for SDCAPCD Rule 67.3 and March 15, 2002 for SJVUAPCD Rule 4605, EPA found these rule submittals met the completeness criteria in 40 CFR Part 51 Appendix V.

B. Are There Other Versions of These Rules?

We approved a version of SDCAPCD Rule 67.3 into the SIP on March 27, 1997 (*see* 62 **Federal Register** (FR) 14639). Similarly, we approved a version of SJVUAPCD Rule 4605 into the SIP on August 17, 1998 (see 63 FR 43884). Between these SIP incorporations and today, CARB has made no intervening submittals of these two rules.

C. What Is The Purpose of the Submitted Rule Revisions?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions.

SDCAQMD Rule 67.3 is designed to reduce volatile organic compound (VOC) emissions at industrial sites engaged in metal parts and product coating operations. VOCs are emitted during the preparation and coating of the metal parts and products, as well as the drying phase of the coating process. Rule 67.3 establishes general emission limits in units of pound of VOC per gallon of coating (lb/gal), and grams of VOC per litre (gr/1) of coating, less water and exempt compounds as applied. Also, the rule allows the use of add-on emission controls whose combined capture and control efficiency must be 85 percent or better and specifies certain operating equipment. The rule also contains provisions for appropriate methods of analysis, exemptions, alternative emission control plans (pursuant to Rule 67.1), record keeping, and emission reduction credits.

SDCAPCD's April 9, 2003 amendments to Rule 67.3 included these significant changes to the May 15, 1996 adopted version within the SIP.

—An exemption was added for specialty sign painting and construction.

—The VOC content definition was deleted and referenced to Rule 2, Subsection (b)(52).

SJVUAPCD Rule 4605 is designed to reduce volatile organic compound (VOC) emissions at industrial sites engaged in manufacturing, assembling, coating, masking, bonding, paint stripping, surface cleaning, service, and maintenance of aerospace components. VOCs are emitted during the preparation, coating, and drying phase of any of the above listed processes. Rule 4605 establishes general emission limits of VOC per liter of coating less water and exempt compounds as applied. It also allows for the use of add-on emission controls with a combined capture/control efficiency of approximately 81 percent.

SJVUAPCD's December 20, 2001 amendments to Rule 4605 included the following significant changes to its 1998 SIP-limited approved/disapproved version.

—The rule's purpose and applicability statements were changed to include organic solvent cleaning as well as the storage and disposal of organic solvents and waste solvent materials derived from coating operations subject to the rule. The majority of changes to the rule stem from adding organic solvent use, disposal, and storage requirements to the rule.

—Eleven new definitions were added to the rule to support the new rule amendments.

—In Table 1, May 1, 2002 emission limits are delayed until May 1, 2003. However, this change affects only Adhesive Bonding Primer requirements. Adhesive Bonding Primer requirements are amended beginning May 1, 2003. First, several sub-categories are deleted and

renamed reducing them from 8 to 6. Of these renamed subcategories of Adhesive Bonding Primer, All Military Aircraft, Remanufactured Commercial Aircraft Parts, and Sonic and Acoustic Applications are given a content requirement of 805 grams per liter (gr/l) where they had been assigned requirement of 250 gr/l.

—A requirement for enclosed equipment cleaning is added at Section 5.2.3.

—High Volume Low Pressure spray application requirements were defined at Section 5.5.3.

—Records must be retained for 5 years.

The respective TSD each rule has more information about each rule and its revisions.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (*see* section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (*see* section 182(a)(2)(A)), and must not relax existing requirements (*see* sections 110(l) and 193). Both the SDCAPCD and SJVUAPCD regulate an ozone nonattainment area (*see* 40 CFR part 81), so each rule must fulfill RACT.

Guidance and policy documents that we used to help evaluate specific enforceability and RACT requirements consistently include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987;

2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook);

3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook);

4. ''Control of Volatile Organic Emissions from Existing Stationary Sources Volume VI: Surface Coating of Miscellaneous Metal Parts and Products,'' USEPA, June 1978, EPA–450/2–78–015; and,

5. ''Control of Volatile Organic Emissions from Coating Operations at Aerospace Manufacturing and Rework Operations,'' USEPA, 1997, EPA–453/R–97–004.

B. Do the Rules Meet the Evaluation Criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. While the revisions to SDCAPCD Rule 67.3 and SJVUAPCD Rule 4605 contain specific rule relaxations, SDCAPCD and SJVUAPCD have provided analyses demonstrating that the added emissions resulting from these rule relaxations are either a de minimis amount in the case of SDCAPCD Rule 67.3, or offset by emission reductions elsewhere in the case of SJVUAPCD Rule 4605. Given these analyses, we find that neither reasonable further progress towards, nor achievement of the air quality standards will be jeopardized.

The respective TSD for each rule has more detailed information on these analyses and our evaluation.

C. EPA Recommendations To Further Improve the Rules

We have no additional rule revisions that do not affect EPA's current action, but are recommended for the next time the local agency modifies the rules.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by December 15, 2003, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on January 13, 2004. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

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

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

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection

burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 13, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 16, 2003.

Debra Jordan,

Acting Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(294)(i)(A)(*5*) and (c)(316)(i)(C) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(294) * * *

(i) * * *

(A) * * *

(*5*) Rule 4605 adopted on December 19, 1991 and amended on December 20, 2001.

* * * * *

(316) * * *

(i) * * *

(C) San Diego County Air Pollution Control District.

(*1*) Rule 67.3 adopted on May 9, 1979 and amended on April 9, 2003.

* * * * *

[FR Doc. 03–28305 Filed 11–13–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE067–1041a; FRL–7586–2]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Revisions to Stage I and Stage II Vapor Recovery at Gasoline Dispensing Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Delaware State Implementation Plan (SIP). The revisions allow existing gasoline dispensing facilities to continue using installed vapor recovery equipment and require new gasoline dispensing facilities to be equipped with the most recently approved system. EPA is proposing to approve these revisions in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on January 13, 2004 without further notice, unless EPA receives adverse written comment by December 15, 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: Comments may be submitted either by mail or electronically. Written comments should be mailed to Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to *morris.makeba@epa.gov* or to *http://www.regulations.gov*, which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in Part III of the Supplementary Information section. 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; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; and Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Catherine L. Magliocchetti, at (215) 814–2174, or by e-mail at *magliocchetti.catherine@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On April 12, 2002, the Delaware Department of Natural Resources and Environmental Control (DNREC) submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of revisions to the State's regulations pertaining to the Control of Volatile Organic Compound Emissions, in particular, Stage I and Stage II vapor recovery at gasoline dispensing stations. The SIP revision went to public hearing on September 24, 2001 and became effective on January 11, 2002.

II. Summary of SIP Revision

The 1990 Clean Air Act Amendments (CAAA) required states to develop regulations requiring owners or operators of certain gasoline dispensing facilities to install systems for recovery of gasoline vapor emissions. These requirements are also known as Stage I and Stage II Vapor Recovery and are required in areas classified as moderate and above ozone nonattainment. Stage I is the control of gasoline vapors when dispensing gasoline from tankers into gasoline storage tanks. Stage II is the control of gasoline vapors when dispensing gasoline into vehicle fuel tanks from the gasoline storage tanks.

The DNREC adopted definitions pertaining to the Control of Volatile Organic Compound Emissions (under Regulation 24, section 2), Stage I regulations (under Regulation 24, section 26) and Stage II regulations (under Regulation 24, section 36) on January 11, 1993 which became immediately effective. These regulations were submitted to EPA as a SIP revision on January 11, 1993. The definitions

and the Stage I regulations were approved as a final rule by EPA on May 3, 1995 (60 FR 21707), and the Stage II regulations were approved as a final rule by EPA on June 10, 1994 (59 FR 29956).

The revisions to Regulation 24, sections 2, 26, and 36, submitted to EPA and the subject of this rulemaking establish:

(a) The requirements for using improved vapor recovery adaptors and connections,

(b) the requirements for annual vapor recovery testing; and,

(c) the minimum requirements applicable to compliance testing companies that perform compliance testing in the State of Delaware. These revisions also adopt by reference, the California Air Resources Board (CARB) executive orders for approved Stage II Vapor Recovery Systems.

EPA has reviewed the revisions to Regulation 24, sections 2, 26, and 36 and has determined that the revisions continue to meet the CAAA requirements for states to have approved Stage I and Stage II Vapor Recovery Systems. In addition, the revisions, in general, strengthen the SIP by providing additional clarification of certain provisions, requiring that records be maintained onsite and by incorporating by reference appropriate test methods for vapor recovery systems.

III. Final Action

EPA is approving the revisions to Delaware's regulations that control VOC emissions, in particular those regulations related to Stage I and Stage II vapor recovery systems, submitted to EPA on April 12, 2002. 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 SIP revision if adverse comments are filed. This rule will be effective on January 13, 2004 without further notice unless EPA receives adverse comment by December 15, 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. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number, DE067–1041, in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. 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. *E-mail.* Comments may be sent by electronic mail (e-mail) to *morris.makeba@epa.gov,* attention DE067–1041. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through Regulations.gov, 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.

ii. *Regulations.gov.* Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to *http://www.regulations.gov,* then select ''Environmental Protection Agency'' at the top of the page and use the ''go'' button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. 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.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in the **ADDRESSES** section of this document. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Written comments should be addressed to the EPA Regional office listed in the **ADDRESSES** section of this document.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (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 the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

Submittal of CBI Comments

Do not submit information that you consider to be CBI electronically to EPA. 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 official public regional rulemaking file. 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 file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please

consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

Considerations When Preparing Comments to 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 regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

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 SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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, Revisions to Delaware's Stage I and Stage II vapor recovery regulations, must be filed in the United States Court of Appeals for the appropriate circuit by January 13, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 5, 2003.

James W. Newsom,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 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 I—Delaware

■ 2. In § 52.420, the table in paragraph (c) is amended by revising the entries under Regulation 24 for sections 2, 26 and 36 to read as follows:

§ 52.420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
Regulation 24		Control of Volatile Organic Compound Emissions		
*	*	*	*	*
Section 2	Definitions	January 11, 2002	November 14, 2003, [Federal Register page citation].	
*	*	*	*	*
Section 26	Gasoline Dispensing Facility Stage I Vapor Recovery.	January 11, 2002	November 14, 2003, [Federal Register page citation].	
*	*	*	*	*
Section 36	Stage II Vapor Recovery	January 11, 2002	November 14, 2003, [Federal Register page citation].	
*	*	*	*	*

[FR Doc. 03–28417 Filed 11–13–03; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–154–1–7590; FRL–7585–8]

Approval and Promulgation of Implementation Plans; Texas; Revisions to Regulations for Permits by Rule, Control of Air Pollution by Permits for New Construction or Modification, and Federal Operating Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is taking final action to approve revisions of the Texas State Implementation Plan (SIP). The plan revisions include changes that Texas adopted to address deficiencies that were identified on January 7, 2002, and other changes adopted by Texas to regulations that include provisions for Permits by Rule (PBR) and Standard Permits. This includes revisions that the Texas Commission on Environmental Quality (TCEQ) submitted to EPA on April 29, 1994; August 17, 1994; September 20, 1995; April 19, 1996; May 21, 1997; July 22, 1998; October 25, 1999; January 3, 2000; September 11, 2000; July 25, 2001; and December 9, 2002. This action is being taken under section 110 of the Federal Clean Air Act (the Act, or CAA).

EFFECTIVE DATE: This rule is effective on December 15, 2003.

ADDRESSES: Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should schedule an appointment with the appropriate office, if possible, two working days in advance of the visit.

Environmental Protection Agency, Region 6, Air Permits Section (6PD–R), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Stanley M. Spruiell of the Air Permits Section at (214) 665–7212, or *spruiell.stanley@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' or ''our'' means EPA.

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I. What Is Being Addressed in This Document?

In today's action we are approving into the Texas SIP revisions to Chapter 106—Permits by Rule, Chapter 116—Control of Air Pollution by Permits for New Construction or Modification, and Chapter 122—Federal Operating Permits. Some of these revisions were made to correct certain deficiencies identified by EPA in a Notice of Deficiency (NOD) for Texas' Title V Operating Permit Program. The EPA issued the NOD on January 7, 2002 (67 FR 732), under its authority at 40 CFR 70.10(b). The NOD was based upon EPA's finding that several State requirements for the Title V operating permits program did not meet the minimum Federal requirements of 40 CFR part 70 and the Act. Texas adopted rule revisions to address the potential to emit (PTE) requirements identified in the January 7, 2002, NOD. Texas submitted parts of these and other rule changes as revisions to its SIP on December 9, 2002, including revisions to section 106.6—Registration of Emissions, section 116.115—General and Special Conditions, section 116.611—Registration to Use a Standard Permit, and section 122.122—Potential to Emit.

The December 9, 2002, submittal also includes revisions to Texas' Title V Operating Permits Program. We will address these and other regulations which revise Texas' Operating Permits Program, in a separate **Federal Register** action.

The December 9, 2002, SIP submittal includes revisions to Texas' regulations for PBR and Texas' regulations for Standard Permits. The EPA is also approving earlier SIP submittals which include the adoption of Texas' programs for PBR and Standard Permits under Chapter 106—Permits by Rule; Chapter 116, Subchapter F—Standard Permits,

section 116.14—Standard Permit Definitions in Chapter 116, Subchapter A—Definitions, and Sections 116.110 and 116.116 in Subchapter B—New Source Review Permits. Furthermore, the approval of the submitted provisions of Chapter 106 would replace the current SIP-approved section 116.6—Exemptions. Accordingly, we are removing section 116.6 from the SIP.

On July 9, 2003 (68 FR 40865), we proposed to approve into the Texas SIP the revisions to Chapter 106, Chapter 116, and Chapter 122, as described above. In response to our proposal, we received no comments.

In today's action, consistent with the following discussion, we are approving these revisions to Chapters 106, 116, and 122, as part of the Texas SIP.

II. Final Action Concerning the Notice of Deficiency Issues

A. What Was the PTE Registration Deficiency Which Required a SIP Revision?

Many stationary source requirements of the Act apply only to major sources, whose emissions of air pollutants exceed a threshold emissions level specified in the Act. However, such sources may legally avoid program requirements by taking Federally-enforceable permit conditions which limit their PTE to a level below the applicable major source threshold. Those permit conditions, if violated, are subject to enforcement by EPA, the State or local agency, or by citizens. Federal enforceability ensures that the conditions placed on emissions to limit a source's PTE are enforceable as both a legal and practical matter.

Texas has adopted regulations which enable a source to register and certify that its PTE is below the applicable major source threshold. These certified registrations contain a description of how the source will limit its PTE below the major source threshold and include appropriate operation and production limitations, appropriate monitoring and recordkeeping which demonstrate compliance with the operation and production limits which the source is certifying to meet.

In the NOD, we informed Texas that section 122.122 was not practicably enforceable because the regulation allowed a facility to keep all documentation of its PTE limitation on site without providing any notification to the State or EPA. Therefore, neither the public, TCEQ, nor EPA could determine the PTE limitation without going to the site. A facility could change its PTE limit several times without the public or TCEQ knowing about the change. Therefore, these limitations were not practically enforceable, and TCEQ has revised this regulation to make it practically enforceable. The NOD required that the revised regulation be approved into the SIP before it and the registrations are Federally enforceable. *See* 67 FR 735.

B. How Did Texas Address This Deficiency?

To address this deficiency, TCEQ amended section 122.122 to require certified registrations of emissions establishing a Federally-enforceable emission limit to be submitted to the Executive Director of TCEQ, the appropriate regional office, and all local air pollution control agencies having jurisdiction over the site. In addition, the Commission submitted the amended section 122.122 to EPA as a revision to the Texas SIP. Section 122.122 states that all representations with regard to emissions, production or operational limits, monitoring, and reporting shall become conditions upon which the stationary source shall operate and shall include documentation of the basis of emission rates (section 122.122(b)–(c)).

C. Do the Changes Correct the PTE Registration Deficiency?

The TCEQ has revised Chapter 122 to require registrations to be submitted to the Executive Director, to the appropriate Commission regional office, and all local air pollution control agencies, and a copy to be maintained on-site at the facility. The rule therefore satisfies the legal requirement for practical enforceability which was cited in the NOD. Accordingly, we are approving section 122.122 as a revision to the Texas SIP and to find that the revision to section 122.122 satisfies Texas' requirement to correct the PTE registration deficiency identified in the January 7, 2002, NOD.

III. Final Action Concerning Chapter 106—Permits by Rule

A. What Are We Approving?

We are approving provisions of Subchapter A (General Requirements) under Chapter 106 which Texas submitted July 25, 2002, and revisions submitted December 9, 2002. This includes the following Sections: section 106.1—Purpose, section 106.2—Applicability, section 106.4—Requirements for Permitting by Rule, section 106.5—Public Notice, section 106.6—Registration of Emissions, section 106.8—Recordkeeping, and section 106.13—References to Standard Exemptions and Exemptions from Permitting.

B. What Is the History of PBR and Chapter 106?

Prior to 1993, Standard Exemptions were addressed in section 116.6 which we approved August 13, 1982 (47 FR 35193). In a SIP submittal dated August 31, 1993, Texas recodified the provisions for Standard Exemptions into Subchapter C of Chapter 116. In 1996, Texas subsequently recodified its provisions for Standard Exemptions into Chapter 106. In 2000, Texas redesignated the Standard Exemptions to PBR.

On July 25, 2002, Texas submitted Subchapter A which includes Sections 106.1, 106.2, 106.4, 106.5, 106.6, 106.8, and 106.13. On December 9, 2002, Texas submitted revisions to section 106.6 which address procedures by which registrations of emissions effectively limit a source's PTE. Because these Sections replace Subchapter C of section 116, as submitted August 31, 1993, there is no need for EPA to act on Subchapter C of section 116.

C. What Is a PBR?

A PBR is a permit which is adopted under Chapter 106. Chapter 106 provides an alternative process for approving the construction of new and modified facilities or changes within facilities which TCEQ has determined will not make a significant contribution of air contaminants to the atmosphere. These provisions provide a streamlined mechanism for approving the construction of certain small sources which would otherwise be required to apply for and receive a permit before commencing construction or modification.

A PBR is available only to sources which belong in categories for which TCEQ has adopted a PBR in Chapter 106. A PBR is available only to a facility that is authorized to emit no more than 250 tons per year (tpy) of carbon monoxide (CO) or nitrogen oxides (NO_X); or 25 tpy of volatile organic compounds (VOC), sulfur dioxide (SO_2), or inhalable particulate matter (PM_{10}); or 25 tpy of any other air contaminant, except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen (section 106.4(a)(1)). A PBR is not available to a facility or group of facilities which undergo a change which constitutes a new major source or major modification under Title I of the Act, part C (Prevention of Significant Deterioration of Air Quality) or part D (Nonattainment Review) (section 106.(a)(2)–(3)). Such major source or major modification must comply with the applicable permitting requirements under Chapter 116, Subchapter B,

which meet the new source review requirements of Title I, part C or part D of the Act. A facility which qualifies for a PBR must also comply with all applicable provisions of section 111 of the Act (Standards of Performance for New Stationary Sources or New Source Performance Standards (NSPS)) and section 112 of the Act (National Emission Standards for Hazardous Air Pollutants (NESHAP)) (section 106.4(a)(6)). Furthermore, a facility which qualifies for a PBR must comply with all rules and regulations of TCEQ (section 106.4(c)).

D. Are Texas' PBR Approvable?

The PBR are approvable as meeting the requirements of 40 CFR part 51, subpart I—Review of New Sources and Modifications (subpart I).[1] Section 106.1 provides that only certain types of facilities or changes within facilities which do not make a significant contribution of air contaminants to the atmosphere are eligible for a PBR. This satisfies the requirements of 40 CFR 51.160(a) which provides that the SIP must include procedures that enable the permitting authority to determine whether the construction or modification will result in a violation of applicable portions of the control strategy or interfere with attainment or maintenance of a national ambient air quality standard.

Section 106.4 further provides additional requirements that a facility must meet to qualify for a PBR. Such requirements include:

- Limiting PBR only to facilities which are authorized to emit no more than 250 tpy of CO or NO_X; or 25 tpy of VOCs, SO_2, or inhalable PM_{10}; or 25 tpy of any other air contaminant, except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen. This meets 40 CFR 51.160(e), which provides that the SIP must identify the types and sizes of facilities which will be subject to review.
- Any facility or group of facilities which constitutes a new major source of major modification under part C or D of Title I of the Act must be permitted under regulations for Nonattainment Review or Prevention of Significant Deterioration of Air Quality. Such sources are not eligible for a PBR. This meets 40 CFR 51.165 (Permit requirements) and 51.166 (Prevention of significant deterioration of air quality).
- Sources qualifying for a PBR must meet all applicable requirements under section 111 of the Act (NSPS) and section 112 of the Act (NESHAP), and must comply with all rules of TCEQ. This satisfies the requirements of 40 CFR 51.160(d) which require that approval of any construction or modification must not affect the responsibility of the owner or operator to comply with applicable portions of the control strategy.
- Subchapter A includes all the administrative requirements which support the issuance and enforcement of PBR. This includes registration of emissions which limit a source's PTE (section 106.6), and Recordkeeping, which requires each source subject to a PBR to maintain records sufficient to demonstrate compliance with all conditions of the applicable PBR (section 106.8). These provisions satisfy the requirements in 40 CFR 51.163, which require the plan to contain the administrative procedures that will be followed in making the determination under 40 CFR 51.160(a). It also meets the requirements of 40 CFR 51.211 which requires the owner or operator to maintain records and to periodically report to the State the nature and amounts of emissions and information necessary to determine whether a source is in compliance.
- All PBR must be adopted or revised through rulemaking to incorporate the PBR into the applicable Subchapters under Chapter 106. Such new or revised PBR must undergo public notice and a 30-day comment period, and TCEQ must address all comments received from the public before finalizing its action to issue or revise a PBR. This meets the requirements of 40 CFR 51.161, which requires the permitting authority to provide for opportunity for public comment on the State's analysis of the effect of construction or modification on ambient air quality.

The TSD contains further information on how Subchapter A of Chapter 106 meets the requirements of subpart I.

E. Why Are We Only Approving Subchapter A of Chapter 106?

Texas submitted Subchapter A because that subchapter contains the process by which TCEQ will issue or modify PBR. Subpart A contains the provisions which apply to all PBR and which ensure that individual PBR meet the requirements of subpart I. The individual PBR are adopted in Subchapters B through X, of Chapter 106.[2] In 1996, Texas codified its existing Standard Exemptions into Subchapters B through X and redesignated them to PBR in 2000. Because these existing Standard Exemptions were adopted under section 116.6, which is currently SIP-approved, they meet the requirements of subpart I. Furthermore, new and amended PBR are adopted in accordance with the general requirements in Subchapter A, which meet the applicable requirements of subpart I as discussed above. Accordingly, our approval of Subchapter A of Chapter 106 is sufficient to assure that the PBR meet the requirements in subpart I.

F. What Other Actions Are We Taking in Relation to PBR?

The provisions for PBR in Chapter 106 replace the former provisions for exemptions from permitting which we had approved in section 116.6—Exemptions. Because Chapter 106 replaced the exemptions previously authorized under section 116.6, we are removing section 116.6 from the SIP.

IV. Final Action Concerning Revisions to Chapter 116—Control of Air Pollution by Permits for New Construction or Modification

A. Subchapter A—Definitions

1. What Are We Approving?

We are approving section 116.14—Standard Permit Definitions. Section 116.14 includes definitions of the following terms as they are used in Chapter 116, Subchapter F—Standard Permits: Off-plant receptor, oil and gas facility, and sulfur recovery unit.

2. Are These Definitions Approvable?

These definitions are approvable based upon their being comparable to corresponding terms defined elsewhere in EPA regulations. Specifically, the definition of ''off-plant receptor'' is consistent with the definition of ''ambient air'' in 40 CFR 50.1(e). The definitions of ''oil and gas facility'' and ''sulfur recovery unit'' are consistent with the terms ''natural gas processing plant'' and ''sulfur recovery plant'' as defined in 40 CFR 60.630 and 60.641 respectively. The TSD contains further information on our basis for approving these definitions. These definitions support the provisions of Subchapter F (Standard Permits) which we are also approving.

B. Subchapter B—New Source Review Permits (for minor sources)

1. What Are We Approving?

We are approving revisions to the following: section 116.110—Applicability; section 116.115—General and Special Conditions, and section 116.116—Changes to Facilities.

[1] Subpart I contains the provisions that a SIP must include to address the construction of new sources and the modification of existing sources. Subpart I includes sections 51.160–51.166.

[2] Subchapters B through X of Chapter 106 were not submitted to EPA approval as SIP revisions.

2. What Is Our Basis for Approving These Changes?

a. Section 116.110—Applicability. We are approving revisions to section 116.110 [3], which Texas submitted April 29, 1994; July 22, 1998; and September 11, 2000. These changes revise section 116.110 to add or revise references to provisions which relate to PBR and Standard Permits, which we are approving elsewhere in this action. We are approving the following:

• Approval of paragraph (2) of section 116.110(a) which incorporates references to conditions of Standard Permits. This meets 40 CFR 51.160(e), which provides that the SIP must identify the types and sizes of facilities which will be subject to review.

• Approval of nonsubstantive revision to section 116.110(a)(4), to change the reference from ''exemptions from permitting'' to ''permits by rule.''

• Approve a nonsubstantive change to section 116.110(b) to remove a reference to flexible permits.

b. Section 116.115—General and Special Conditions. We are approving revisions to section 116.115 [4], which Texas submitted April 29, 1994; August 17, 1994; July 22, 1998; and December 9, 2002; as follows:

• Approval of Subsection (b) to section 116.115 [5], as submitted July 22, 1998; and December 9, 2002; which incorporates the General Provisions that holders of Permits, Special Permits, Standard Permits, and Special Exemptions must meet. Subsection (b) includes provisions relating to notification to the State concerning the progress of construction and start-up, requirements for sampling and recordkeeping, requirements to meet emissions limits specified in the permit, requirements concerning maintenance of emission control, and compliance with rules.

• Approval of paragraph (b)(2)(F)(vi) (submitted December 9, 2002) which requires that a person who certifies and registers a Federally enforceable emission limitation under section 116.611 must retain all records demonstrating compliance for at least five years.

• The above provisions meet the requirements of 40 CFR 51.163, 51.211, 51.212, and 51.230. See the TSD for more information concerning how these requirements are met.

c. Section 116.116—Changes to Facilities. We are approving revisions to section 116.116 [6], which Texas submitted October 25, 1999 [7]; and September 11, 2000; as follows:

• Approve nonsubstantive changes to section 116.116(d) and (d)(1)–(2) to change the existing reference from ''exemptions from permitting'' to ''permits by rule.''

• Approve nonsubstantive changes to section 116.116(c)(4)–(5) to correct a cross reference from section 116.111(3) to section 116.111(a)(2)(C).

C. Subchapter F—Standard Permits

1. What Are We Approving?

We are approving the following Sections in Subchapter F of Chapter 116: section 116.601—Types of Standard Permits, section 116.602—Issuance of Standard Permits, section 116.603—Public Participation in Issuance of Standard Permits, section 116.604—Duration and Renewal of Registrations to Use Standard Permits, section 116.605—Standard Permit Amendment and Revocation, section 116.606—Delegation, section 116.610—Applicability, section 116.611—Registration to Use a Standard Permit, section 116.614—Standard Permit Fees, and section 116.615—General Conditions.

2. What Is a Standard Permit?

A Standard Permit is a permit which is adopted under Chapter 116, Subchapter F. Subchapter F provides an alternative process for approving the construction of certain categories of new and modified sources for which TCEQ has adopted a Standard Permit. These provisions provide for a streamlined mechanism for approving the construction of certain sources within categories which contain numerous similar sources.

A Standard Permit is available to sources which belong in categories for which TCEQ has adopted a Standard Permit under Subchapter F of Chapter 116. A Standard Permit is not available to a facility or group of facilities which undergo a change which constitutes a new major source or major modification under Title I of the Act, part C (Prevention of Significant Deterioration of Air Quality) or part D (Nonattainment Review). Such major source or major modification must comply with the applicable permitting requirements under Chapter 116, Subchapter B, which meet the new source review requirements in Title I, part C or part D of the Act. A facility which qualifies for a Standard Permit must also comply with all applicable provisions of section 111 of the Act (NSPS) and section 112 of the Act (NESHAP). Furthermore, a facility which qualifies for a Standard Permit must comply with all rules and regulations of TCEQ.

3. Are Texas' Provisions for Standard Permits Approvable?

Texas' Standard Permits are approvable as meeting the requirements of subpart I. Subchapter F under Chapter 116 provides the requirements that a facility must meet to qualify for a Standard Permit. Such requirements include:

• Any facility or group of facilities which constitutes a new major source or major modification under part C or D of Title I of the Act must be permitted under regulations for Nonattainment Review or Prevention of Significant Deterioration of Air Quality. Such sources are not eligible for a Standard Permit. This meets 40 CFR 51.165 (Permit requirements) and 51.166 (Prevention of significant deterioration of air quality).

• Sources qualifying for a Standard Permit must meet all applicable requirements under section 111 of the Act (NSPS) and section 112 of the Act (NESHAP), and must comply with all rules of TCEQ. This satisfies the requirements of 40 CFR 51.160(d) which requires that approval of any construction or modification must not affect the responsibility of the owner or operator to comply with applicable portions of the control strategy.

• Subchapter F includes all the administrative requirements which support the issuance and enforcement of a Standard Permit. This includes registration of emissions which limit a source's PTE and Recordkeeping, which requires each source subject to a Standard Permit to maintain records sufficient to demonstrate compliance with all conditions of the applicable Standard Permit. These provisions satisfy the requirements in 40 CFR 51.163 which requires the plan to contain the administrative procedures that will be followed in making the

[3] On September 18, 2002 (67 FR 58709), EPA approved section 116.110, as adopted June 17, 1998. We did not approve Sections 116.110(a)(2), (a)(3), and (c).

[4] On September 18, 2002 (67 FR 58709), EPA approved section 116.115, as adopted June 17, 1998. We did not approve Sections 116.115(b), (c)(2)(A)(i), and (c)(2)(A)(ii)(I).

[5] In this action, we are not approving section 116.115(b)(2)(C)(iii). This provision relates to Mass Emissions Cap and Trade Program and was not adopted in the submittals that we are approving in this action. We will address section 116.115(b)(2)(C)(iii) in a separate action.

[6] On September 18, 2002 (67 FR 58709), EPA approved section 116.116, as adopted June 17, 1998. We did not approve Sections 116.116(b)(3), (e), and (f).

[7] We are approving only the changes to section 116.116, submitted October 25, 1999, which relate to PBR. This includes changes to section 116.116(d) and (d)(1)–(2). We are taking no action on changes to section 116.116(b)(3)–(4), submitted October 25, 1999, because these provisions do not relate to PBR or to Standard Permits. We will address section 116.116(b)(3)–(4) in a separate action.

determination under 40 CFR 51.160(a). These provisions also meet the requirements of 40 CFR 51.211 which require the owner or operator to maintain records and to periodically report to the State the nature and amounts of emissions and information necessary to determine whether a source is in compliance.

• All Standard Permits are adopted or revised through the process described in Sections 116.601–116.605. Such new or revised Standard Permits must undergo public notice and a 30-day comment period, and TCEQ must address all comments received from the public before finalizing its action to issue or revise a Standard Permit. This meets the requirements of 40 CFR 51.161 which requires the permitting authority to provide for opportunity for public comment on the information submitted and the State's analysis of the effect on construction or modification on ambient air quality.

The TSD contains further information on how Subchapter F of Chapter 116 meets the requirements of subpart I.

4. What Sections in Subchapter F Are We Not Approving in This Action?

We are not approving the following Sections in Subchapter F: section 116.617—Standard Permits for Pollution Control Projects, section 116.620—Installation and/or Modification of Oil and Gas Facilities, and section 116.621—Municipal Solid Waste Landfills. Approval of these sections is not necessary for our approval of Texas' PBR and Standard Permits regulations submitted to EPA on December 9, 2002. Sections 116.617, 116.620, and 116.621 will be addressed in a separate action.

As stated previously, we are approving changes which Texas submitted December 9, 2002, some of which address the deficiencies that we identified in our January 7, 2002, NOD. In that submittal, Texas submitted revisions to section 116.611—Registration to Use a Standard Permit. Section 116.611 is part of Subchapter F—Standard Permits. To date, we have not approved the provisions relating to Standard Permits, including the earlier submittals of section 116.611. Section 116.611 is part of, and dependent upon, other provisions of Subchapter F, and consequently section 116.611 cannot stand alone. Therefore, we must approve other provisions of Subchapter F, including the earlier submittals of section 116.611, which contain the process by which Texas issues and modifies Standard Permits when we approve the revisions to section 116.611 which Texas submitted December 9, 2002.

In order to approve section 116.611, we are addressing the provisions of Subchapter F which include the process for issuing and modifying Standard Permits. We are approving the provisions for issuing and modifying Standard Permits which are found in Sections 116.601–116.606, 116.610–116.611, and 116.614–116.615.

Sections 116.617, 116.620, and 116.621 are specific permits that Texas has issued. These Sections do not include any provisions relating to the process by which they (or any Standard Permit) must be issued or modified. The Sections which address the process for issuing and modifying Standard Permits (as identified above) are not dependent on the provisions of Sections 116.617, 116.620, and 116.621, and can be implemented without the approval of Sections 116.617, 116.620, and 116.621. Thus, today's final action does not include action on Sections 116.617, 116.620, and 116.621. We are also taking no action today on section 116.601(a)(1) which contains cross-references to Sections 116.617, 116.620, and 116.621. We will review and take appropriate action on Sections 116.617, 116.620, and 116.621, as well as section 116.601(a)(1), separately.

In addition, we are taking no action on section 116.610(d). Subsection (d) of section 116.610 addresses projects subject to Subchapter C of Chapter 116 (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, § 112(g)). We have not completed our review of the provisions of Subchapter C. We will address Subchapter C and other provisions referring to Subchapter C (including section 116.610(d)) in a separate action.

V. Final Action Concerning Chapter 122—Federal Operating Permits

A. What Are We Approving?

We are approving section 122.122—Potential to Emit, as submitted December 9, 2002.

B. Is Section 122.122 Approvable?

Section 122.122 contains provisions by which a source may register and certify limitations on its production and operation which would limit its PTE below the level of a ''major source'' as defined under 40 CFR 70.2. Texas revised the rule to address a deficiency identified in the NOD. The changes that were made and our evaluation of why the changes are approvable are discussed in section II of this preamble.

VI. Summary of Today's Final Action

We are approving revisions of the Texas SIP to address Texas' SIP submittal dated December 9, 2002. This includes Sections 106.6, revisions to section 116.115, and Sections 116.611 and 122.122. These SIP revisions relate to Texas' programs for PBR, Standard Permits, and Operating Permits.

The regulations allow a source to limit its PTE of a pollutant below the level of a major source defined in the Act. This includes regulations which Texas revised to allow an owner or operator of a source to register and certify restrictions and limitations that the owner or operator will meet to maintain its PTE below the major source threshold. The changes require the owner or operator to submit the certified registrations to the Executive Director of TCEQ, the appropriate TCEQ regional office, and to all local air pollution control agencies having jurisdiction over the site. The changes to section 122.122 satisfactorily address the NOD by making the PTE limits in the certified registrations practically and Federally enforceable.

We are also approving other provisions of Chapters 106 and 116 which incorporate Texas' regulations for PBR and Standard Permits that Texas submitted to EPA on April 29, 1994; August 17, 1994; September 20, 1995; April 19, 1996; May 21, 1997; July 22, 1998; October 25, 1999; January 3, 2000; September 11, 2000; July 25, 2001; and December 9, 2002.

VII. Statutory and Executive Order Reviews

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

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

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 13, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate Matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 5, 2003.

Richard E. Greene,

Regional Administrator, Region 6.

■ 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 SS—Texas

■ 2. The table in § 52.2270(c) entitled ''EPA Approved Regulations in the Texas SIP'' is amended as follows:

■ (a) Under Chapter 101, Subchapter H, immediately following section 101.363, by adding a new centered heading ''Chapter 106—Permits by Rule'' followed by a centered heading ''Subchapter A—General Requirements,'' followed by new entries for Sections 106.1, 106.2, 106.4, 106.5, 106.6, 106.8, and 106.13;

■ (b) Under Chapter 116 (Reg 6), by removing the existing entry for section 116.6, Exemptions;

■ (c) Under Chapter 116 (Reg 6), Subchapter A, immediately following section 116.12, by adding a new entry for section 116.14;

■ (d) Under Chapter 116 (Reg 6), Subchapter B, Division 1, by revising the existing entries for Sections 116.110, 116.115, and 116.116;

■ (e) Under Chapter 116 (Reg 6), Subchapter B, Division 7, immediately following section 116.170, by adding a new centered heading ''Subchapter F—Standard Permits'' followed by new entries for Sections 116.601, 116.602, 116.603, 116.604, 116.605, 116.606, 116.610, 116.611, 116.614, and 116.615; and

■ (f) Under Chapter 118 (Reg 8), immediately following section 118.6, by adding a new centered heading entitled ''Chapter 122—Federal Operating Permits Program'' followed by a new centered heading entitled ''Subchapter B—Permit Requirements'' followed by a new centered heading ''Division 2—Applicability,'' followed by a new entry for section 122.122.

The additions and revisions read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title / Subject	State approval / submittal date	EPA approval date	Explanation
*	*	*	*	*
Section 101.363	Program Audits and Reports ..	09/26/01	11/04/01, 66 FR 57260	
Chapter 106—Permits by Rule				
Subchapter A—General Requirements				
Section 106.1	Purpose	08/09/00	11/14/03 [and page number] ..	

EPA-APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title / Subject	State approval / submittal date	EPA approval date	Explanation
Section 106.2	Applicability	08/09/00	11/14/03 [and page number]	
Section 106.4	Requirements for Permitting by Rule.	03/07/01	11/14/03 [and page number]	
Section 106.5	Public Notice	09/02/99	11/14/03 [and page number]	
Section 106.6	Registration of Emissions	11/20/02	11/14/03 [and page number]	
Section 106.8	Recordkeeping	10/10/01	11/14/03 [and page number]	
Section 106.13	References to Standard Exemptions and Exemptions from Permitting.	08/09/00	11/14/03 [and page number]	
*	*	*	*	*
Chapter 116 (Reg 6)—Control of Air Pollution by Permits for New Construction or Modification				
Subchapter A—Definitions				
*	*	*	*	*
Section 116.12	Nonattainment Review Definitions.	02/24/99	07/17/00, 65 FR 43994	
Section 116.14	Standard Permit Definitions	06/17/98	11/14/03 [and page number]	
Subchapter B—New Source Review Permits				
Division 1—Permit Application				
Section 116.110	Applicability	08/09/00	11/14/03 [and page number]	The SIP does not include sections 116.110(a)(3), (a)(5), and (c).
*	*	*	*	*
Section 116.115	General and Special Conditions.	11/20/02	11/14/03 [and page number]	The SIP does not include sections 116.115(b)(2)(C)(iii) and (c)(2)(B)(ii)(I).
Section 116.116	Changes to Facilities	08/09/00	11/14/03 [and page number]	The SIP does not include sections 116.116(b)(3), (b)(4), (e), and (f).
*	*	*	*	*
Section 116.170	Applicability of Reduction Credits.	06/17/98	09/18/02, 67 FR 58709	The SIP does not include section 116.170(2).
Subchapter F—Standard Permits				
Section 116.601	Types of Standard Permits	12/16/99	11/14/03 [and page number]	The SIP does not include section 116.170(a)(1).
Section 116.602	Issuance of Standard Permits	12/16/99	11/14/03 [and page number]	
Section 116.603	Public Participation in Issuance of Standard Permits.	08/09/00	11/14/03 [and page number]	
Section 116.604	Duration and Renewal of Registrations to Use Standard Permits.	12/16/99	11/14/03 [and page number]	
Section 116.605	Standard Permit Amendment and Revocation.	12/16/99	11/14/03 [and page number]	
Section 116.606	Delegation	12/16/99	11/14/03 [and page number]	
Section 116.610	Applicability	12/16/99	11/14/03 [and page number]	The SIP does not include section 116.610(d).
Section 116.611	Registration to Use a Standard Permit.	11/20/02	11/14/03 [and page number]	
Section 116.614	Standard Permit Fees	12/16/99	11/14/03 [and page number]	
Section 116.615	General Conditions	06/17/98	11/14/03 [and page number]	
*	*	*	*	*
Section 118.6	Texas Air Pollution Episode Contingency Plan and Emergency Management Center.	03/05/00	07/26/00	
Chapter 122—Federal Operating Permits Program				
Subchapter B—Permit Requirements				
Division 2—Applicability				
Section 122.122	Potential to Emit	11/20/02	11/14/03 and page number	

[FR Doc. 03–28416 Filed 11–13–03; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7586–9]

Colorado: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Colorado has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization and is authorizing the State's changes through this immediate final action. We are publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial. Unless we receive written comments which oppose this authorization during the comment period, the decision to authorize Colorado's changes to their hazardous waste program will take effect. If we receive comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect, and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

DATES: This Final authorization will become effective on January 13, 2004 unless EPA receives adverse written comment by December 15, 2003. If EPA receives such comment, it will publish a timely withdrawal of this Immediate Final Rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Copies of the Colorado program revision applications and the materials which EPA used in evaluating the revisions are available for inspection and copying at the following locations: EPA Region 8, from 7 AM to 3 PM, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, contact: Kris Shurr, phone number: (303) 312–6139, e-mail: *shurr.kris@epa.gov* or CDPHE, from 8 AM to 4 PM, 4300 Cherry Creek Drive South, Denver, Colorado 80222–1530, contact: Randy Perila, phone number (303) 692–3364. Send written comments to Kris Shurr, 8P–HW, U.S. EPA, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, phone number: (303) 312–6139 or electronically to *shurr.kris@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Kris Shurr, 8P–HW, U.S. EPA, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, phone number: (303) 312–6139 or *shurr.kris@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received Final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

We conclude that Colorado's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Colorado Final authorization to operate its hazardous waste program with the changes described in the authorization applications. Colorado has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders, except in Indian Country, and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Colorado, including issuing permits, until Colorado is authorized to do so.

C. What Is the Effect of Today's Authorization Decision?

This decision means that a facility in Colorado subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Colorado has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Conduct inspections; require monitoring, tests, analyses, or reports;
- Enforce RCRA requirements; suspend or revoke permits; and,
- Take enforcement actions regardless of whether Colorado has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which Colorado is being authorized by today's action are already effective and are not changed by today's action.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change. We are providing an opportunity for the public to comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

E. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment, therefore, if you want to comment on this authorization, you must do so at this time.

If we receive comments that oppose only the authorization of a particular change to the Colorado hazardous waste program, we will withdraw that part of this rule but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective and which part is being withdrawn.

F. What Has Colorado Previously Been Authorized for?

Colorado initially received Final authorization on October 19, 1984,

effective November 2, 1984 (49 FR 41036) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on October 24, 1986, effective November 7, 1986 (51 FR 37729); May 15, 1989, effective July 14, 1989 (54 FR 20847); May 10, 1991, effective July 9, 1991 (56 FR 21601); and April 7, 1994, effective June 6, 1994 (59 FR 16568).

G. What Changes Are We Authorizing With Today's Action?

Colorado submitted a final complete program revision applications on December 31, 2002, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that Colorado's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we grant Colorado Final authorization for the following program changes (the Federal Citation followed by the analog from the Code of Colorado Regulations (6 CCR 7007–3), revised through *September 1, 2002*): Delisting [54 FR 27114, 6/27/89] (Checklist 17B.1)/260.22(b); Listing of Spent Pickle Liquor (K062) [52 FR 28697, 8/3/87] (Checklist 26.2)/261.32; Corrective Action for Injection Wells [52 FR 45788, 12/1/87] (Checklist 44C) 265.1(c)(2) and 100.21(b)(3)(i); Identification and Listing of Hazardous Waste; Technical Correction [53 FR 27162, 7/19/88] (Checklist 47)/261.5(e) and 261.5(f)(2); Farmer Exemptions; Technical Corrections [53 FR 27164, 7/19/88] (Checklist 48)/262.10(b), 262.10(d), 264.1(g)(4), 265.1(c)(8), and 100.10(a)(2); Identification and Listing of Hazardous Waste; Treatability Studies Sample Exemption [53 FR 27290, 7/19/88] (Checklist 49)/260.10 and 261.4(e) & (f); Identification and Listing of Hazardous Waste; Removal of Iron Dextran from the List of Hazardous Wastes Identification and Listing of Hazardous Waste [53 FR 43878, 10/31/88] (Checklist 56)/261.33(f) and Part 261, Appendix VIII; Identification and Listing of Hazardous Waste; Removal of Strontium Sulfide the List of Hazardous Wastes [53 FR 43881, 10/31/88] (Checklist 57)/261.33(e) and Part 261, Appendix VIII; Testing & Monitoring Activities [54 FR 40260, 9/29/89] (Checklist 67)/260.11(a) and Part 261, Appendix III; Reportable Quantity Adjustment Methyl Bromide Production Wastes [54 FR 41402, 10/6/89] (Checklist 68)/261.32 and Part 261, Appendices III & VII; Reportable Quantity Adjustment [54 FR 50968, 11/11/89] (Checklist 69)/261.31 and Part 261, Appendices VII & VIII; Changes to Part 124 Not Accounted for by Present Checklists [48 FR 14146, 4/1/83; 48 FR 30113, 6/30/83; 53 FR 28118, 7/26/88; 53 FR 37396, 9/26/88; and 54 FR 00246, 1/4/89] (Checklist 70)/100.12(a) & (c), 100.500(a), 100.60(a), (c)(1) & (3), & (d), and 100.502(c); Modification of F019 Listing [55 FR 05340, 2/14/90] (Checklist 72)/261.31; Testing & Monitoring Activities; Technical Corrections [55 FR 08948, 3/9/90] (Checklist 73)/260.11(a) and Part 261, Appendix III/Tables 2 & 3; Listing of 1,1-Dimethylhydrazine Production Wastes [55 FR 18496, 5/2/90] (Checklist 75)/261.32 and Part 261, Appendices III & VII; Criteria for Listing Toxic Wastes; Technical Amendment [55 FR 18726, 5/4/90] (Checklist 76)/261.11(a)(3); HSWA Codification Rule, Double Liners; Correction [55 FR 19262, 5/9/90] (Checklist 77)/264.221(c) and 264.301(c); Organic Air Emission Standards for Process Vents & Equipment Leaks [55 FR 25454, 6/21/90] (Checklist 79)/260.11(a), 261.6(c) & (d), 264.13(b)(6), 264.15(b)(4), 264.73(b), 264.77(c) & (d), 264.1030–1079, 265.13(b)(6), 265.15(b)(4), 265.73(b)(3) & (6), 265.77(d) & (e), 265.1030–1079, and 100.41(a) & (b); Toxicity Characteristic; Hydrocarbon Recovery Operations [55 FR 40834, 10/5/90; 56 FR 03978, 2/1/91; and 56 FR 13406, 4/2/91] (Checklists 80, 80.1, and 80.2)/261.4(b)(11); Petroleum Refinery Primary & Secondary Oil/Water/Solids Separation Sludge Listings (F037 & F038) [55 FR 46354, 11/2/90 and 55 FR 51707, 12/17/90] (Checklists 81 & 81.1)/261.31(a) & (b) and Part 261, Appendix VII; Toxicity Characteristic: Chlorofluorocarbon Refrigerants [56 FR 05910, 2/13/91] (Checklist 84)/261.4(b)(12); Removal of Strontium Sulfide from the List of Hazardous Wastes; Technical Amendment [56 FR 07567, 2/25/91] (Checklist 86)/261.33(e) and Part 261, Appendix VIII; Organic Air Emission Standards for Process Vents & Equipment Leaks; Technical Amendment [56 FR 19290, 4/26/91] (Checklist 87)/264.1030(a) & (b), 264.1033(f)(3), 264.1035(f)(3), 264.1035(b)(4)(ii), 264.1052(b)(1), 265.13(b)(6), 265.73(b)(3), 265.1030(b), 265.1034(c)(1)(vi), 265.1035(b)(4)(ii), 265.1035(c)(5), 265.1052(e)(3), 265.1064(c), 100.41(b)(11)(iv)(B), and 100.41(b)(12)(v)(B); Administrative Stay for K069 Listing [56 FR 19951, 5/1/91] (Checklist 88)/261.32; Revision to the Petroleum Refining Primary & Secondary Oil/Water/Solids Separation Sludge Listings (F037 & F038) [56 FR 21955, 5/13/91] (Checklist 89)/261.31(e); Exports of Hazardous Waste; Technical Correction [56 FR 43704, 9/4/91] (Checklist 97)/262.53(b) and 262.56(b); Liners & Leak Detection Systems for Hazardous Waste Land Disposal Units [57 FR 03462, 1/29/92] (Checklist 100)/260.10, 264.15(b)(4), 264.19, 264.73(b)(6), 264.221(c), (d), (f) & (g)–(i), 264.222(a) & (b), 264.223(a)–(c), 264.226(d), 264.228(b), 264.251(c)–(k), 264.252(a) & (b), 264.253(a)–(c), 264.254(c), 264.301(c), (d), & (f)–(k), 264.302(a)–(c), 264.304(a)–(c), 264.310(b), 265.15(b)(4), 265.19(a)–(d), 265.73(b)(6), 265.221(a), (c), (f) & (g), 265.222(a)–(c), 265.224(a)–(c), 265.226(b), 265.228(b), 265.254, 265.255(a)–(c), 265.259(a)–(c), 265.260, 265.301(a), (c) & (f)–(i), 265.302(a)–(d), 265.303(a)–(c), 265.304(a)–(c), 265.310(b), 100.46(a), 100.41(b), and 100.63, Appendix I; Hazardous Debris Case-by-Case Capacity Variance [57 FR 20766, 5/15/92] (Checklist 103)/268.35(e); Used Oil Filter Exclusion [57 FR 21524, 5/20/92] (Checklist 104)/261.4(b)(13); Recycled Coke By-Product Exclusion [57 FR 27880, 6/22/92] (Checklist 105)/261.4(a)(11); Lead-bearing Hazardous Materials Case-by-Case Capacity Variance [57 FR 28628, 6/26/92] (Checklist 106)/268.35(c); Used Oil Filter Exclusion: Technical Corrections [57 FR 29220, 7/1/92] (Checklist 107)/261.4(b)(13); Toxicity Characteristics Revisions; Technical Corrections [57 FR 30657, 7/10/92] (Checklist 108)/261.4(b)(6)(ii), 261.4(b)(9), and 265.301(d)(1); Coke By-Products Listings [57 FR 37284, 8/18/92] (Checklist 110)/261.4(a)(11), 261.32, and Part 261, Appendix VII; Chlorinated Toluene Production Waste Listing [57 FR 47376, 10/15/92] (Checklist 115)/261.32 and Part 261, Appendix VII; Hazardous Soil Case-by-Case Capacity Variance [57 FR 47772, 10/20/92] (Checklist 116)/268.35(c)–(e); Toxicity Characteristic Amendment [57 FR 23062, 6/1/92] (Checklist 117B)/261.3(a)(2)(i); Liquids in Landfills II [57 FR 54452, 11/18/92] (Checklist 118)/264.13(c)(3), 264.314(a), 264.314(c)(1)(ii), 264.314(e), 264.316(b) & (c), 265.13(c)(3), 265.314(a), 265.314(b)(1)(ii), 265.314(f), and 265.316(b) & (c); Toxicity Characteristic Revision; TCLP Correction [57 FR 55114, 11/24/92 & 58 FR 06854, 2/2/93] (Checklists 119 & 119.1)/Part 261, Appendix II; Wood Preserving; Revisions to Listings & Technical Requirements [57 FR 61492, 12/24/92] (Checklist 120)/261.31(a)/table, 264.570(a) & (c), 264.571(a) & (b), 264.572 thru 264.572(b), 264.573(a), (b), & (i), 265.440(a) & (c), 265.441(a) & (b), 265.442 thru (b), and 265.443(a), (b), & (i); Land Disposal Restrictions: Renewal

of the Hazardous Waste Debris Case-by-Case Capacity Variance [58 FR 283506, 5/14/93] (Checklist 123)/268.35(e); Land Disposal Restrictions for Ignitable & Corrosive Characteristic Wastes Whose Treatment Standards Were Vacated [58 FR 29860, 5/24/93] (Checklist 124)/264.1(g)(6), 265.1(c)(10), 268.1(e)(4) & (5), 268.2(i), 268.7(a) & (b), 268.9(a), 268.37(a) & (b), 268.40(b), 268.41(a)/table CCWE, 268.42(a)/table 2, 268.43(a)/table CCW, and 100.64, Appendix I; Testing & Monitoring Activities [58 FR 46040, 8/31/93 and 59 FR 47980, 9/19/94] (Checklists 126 and 126.1)/260.11(a), 260.22(d)(1)(i), 261.22(a), 261.24(a), Part 261, Appendices II, III, & X, 264.190(a), 264.314(d), 265.190(a), 265.314(d), 268.7(a), 268.40(a), 268.41(a), Part 268, Appendices I & IX, 100.47(a), 100.41(b)(5)(iii)(3) & (4), and 100.22(c)(2)(ii)(A)(3) & (4); Wastes From the Use of Chlorophenolic Formulations in Wood Surface Protection [59 FR 00458, 1/4/94] (Checklist 128)/260.11(a) and Part 261, Appendix VIII; Revision of Conditional Exemption for Small Scale Treatability Studies [59 FR 08362, 2/18/94] (Checklist 129)/261.4(e)(2) & (3), and 261.4(f)(3), (4), & (6); Recordkeeping Instructions: Technical Amendment [59 FR 13891, 3/24/94] (Checklist 131)/Part 264, Appendix I/tables 1 & 2 and Part 265, Appendix I/table 1 & 2; Wood Surface Protection; Correction [59 FR 28484, 6/2/94] (Checklist 132)/260.11(a); Letter of Credit Revision [59 FR 29958, 6/10/94] (Checklist 133)/266.18(e) & (l); Correction of Beryllium Powder (P015) Listing [59 FR 31551, 6/20/94] (Checklist 134)/261.33(e), Part 261, Appendix VIII, 268.42(a)/table 2, 261.3(c)(2)(ii)(B), 261.4(a)(13), 261.6(a)(3)(iii), (v) & (vi), and 267.30(b)(2); Recovered Oil Exclusion [59 FR 38536, 7/28/94] (Checklist 135)/261.3(c)(2)(ii)(B), 261.4(a)(13), 261.6(a)(3)(iv)–(vi), and 267.30(b)(2); Universal Treatment Standards & Treatment Standards for Organic Toxicity Characteristic Wastes & Newly Listed Wastes [59 FR 47982, 9/19/94 and 60 FR 00242, 3/3/95] (Checklists 137 & 137.1)/260.30 intro & (b), 260.31(a) & (b), 260.32 intro, 260.33 intro-(b), 261.2(e)(1)(iii), 264.1(g)(6), 265.1(c)(10), 267.23(a), 268.1(e)(4) & (6), 268.2(g) & (i), 268.7(a), 268.7(b)(4)(ii) & (5)(iv), 268.7(d) & (d)(1), 268.9(a), 268.9(d), 268.38(a)–(e), 268.40(a)–(f), 268.40/table, 268.41 & table CCWE, 268.42, 268.42(a), 268.42(a)/tables 1–3, 268.42(c)(2), 268.42(d), 268.43, 268.43/table CCW, 268.45(b)(2), 268.46, 268.48(a), 268.48/table UTS, and Part 268 Appendix IV, V, & X; Testing & Monitoring Activities Amendment I [60 FR 03089, 1/13/95] (Checklist 139)/260.11(a); Carbamate Production Identification & Listing of Hazardous Waste [60 FR 07824, 2/9/95; 60 FR 19165, 4/17/95; and 60 FR 25619, 5/12/95] (Checklists 140–140.2)/261.3(a)(2)(iv)(E)–(G), 261.3(c)(2)(ii)(D), 261.32, 261.33(e) & (f), and Part 261, Appendix VII & VIII; Testing & Monitoring Activities Amendment II [60 FR 17001, 4/4/95] (Checklist 141)/260.11(a); Universal Waste: General Provisions [60 FR 25492, 5/11/95] (Checklist 142A)/260.10, 261.5(c), (f) & (g), 261.9, 262.10(b)–(g), 262.11(d), 264.1(g)(11), 265.1(c)(14), 268.1(f), 100.10(a)(14), 273.1(a) & (b), 273.5(a) & (b), 273.6, 273.10–273.12, 273.15–273.20, 273.30–273.32, 273.34–273.40, 273.50–273.56, 273.60–273.62, and 273.70; Universal Waste Rules: Specific Provisions for Batteries [60 FR 25492, 5/11/95] (Checklist 142B)/260.10, 261.6(a)(3)(ii)–(vi), 261.9(a), 264.1(g)(11)(i), 265.1(c)(14)(i), 267.80(a) & (b), 268.1(f)(1), 100.10(a)(14)(i), 273.1(a), 273.6, 273.13 & 273.14, and 273.33 & 273.34; Universal Waste Rules: Specific Provisions for Pesticides [60 FR 25492, 5/11/95] (Checklist 142C)/260.10, 261.9(b), 264.1(g)(11)(ii), 265.1(c)(14)(ii), 268.1(f)(2), 100.10(a)(14)(ii), 273.1(a)(2), 273.2(b), 273.6, 273.13(b) & 273.14(b) & (c), 272.32(a)(1) & (3), 273.33(b), and 273.34(b) & (c); Universal Waste Rules: Specific Provisions for Thermostats [60 FR 25492, 5/11/95] (Checklist 142D)/260.10, 261.9(c), 264.1(g)(11)(iii), 265.1(c)(14)(iii), 268.1(f)(3), 100.10(a)(14)(iii), 273.1(a)(3), 273.2(c), 273.6, 273.13(c), 273.14(d), 273.33(c), and 273.34(d); Liquids in Landfills III [60 FR 35703, 7/11/95] (Checklist 145)/264.314(e)(2)(ii) & (iii) and 265.314(f)(2)(ii) & (iii); Amendments to the Definition of Solid Waste; Amendment II [61 FR 13103, 3/26/96] (Checklist 150)/261.4(a)(13); Consolidated Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers [59 FR 62896, 12/6/94; 60 FR 26828, 5/19/95; 60 FR 50426, 9/29/95; 60 FR 56952, 11/13/95; 61 FR 04903, 2/9/96; 61 FR 28508, 6/5/96; 61 FR 59932, 11/25/96] (Checklists 154 thru 154.6)/260.11, 261.6(c)(1), 262.34(a)(1)(i) & (ii), 262.34(d)(2), 264.13(b), 264.15(b)(4), 264.73(b)(3) & (6), 264.77(c), 264.179, 264.200, 264.232, 264.601, 264.1030(b) & note, 264.1033(a)(2), 264.1033(f)(2)(vi)(B), 264.1033(k)–(o), 264.1034(b), 264.1035(c)(9) & (10), 264.1035(d), 264.1050(b), (f) & note, 264.1055(a)–(c), 264.1058(e), 264.1064(g)(6), 264.1080(a)–(d), 264.1081, 264.1082(a)–(d), 264.1083(a)–(d), 264.1084(a)–(l), 264.1085(a)–(g), 264.1086(a)–(h), 264.1087(a)–(c), 264.1088(a) & (b), 264.1089(a)–(i), 264.1090(a)–(d), 264.1091, 265.1(b), 265.13(b)(6) & (8), 265.15(b)(4), 265.73(b)(3) & (6), 265.77, 265.178, 265.202, 265.232, 265.1030(b) & note, 265.1033(a)(2), 265.1033(f)(2)(vi)(B), 264.1033(j)–(n), 265.1034(b), 264.1035(c)(3),(9) & (10), 265.1035(d), 265.1050(b), (e) & note, 265.1055(a)–(c), 265.1058(e), 265.1064(g)(6), 265.1080(a)–(d), 265.1081, 265.1082(a)–(c), 265.1083(a)–(d), 265.1084(a)–(d), 265.1085(a)–(l), 265.1086(a)–(g), 265.1087(a)–(h), 265.1088(a)–(c), 265.1089(a) & (b), 265.1090(a)–(j), 265.1091, Part 265, Appendix VI, 100.46(a)(2)–(4), 100.41(a)(5), 100.41(b)(1)(v), 100.41(b)(2)(xi), 100.41(b)(3)(x), and 100.41(b)(13)(i); Land Disposal Restrictions Phase III—Emergency Extension of the K088 Capacity Variance [62 FR01992, 1/14/97] (Checklist 155)/268.39(c); Land Disposal Restrictions Phase IV—Treatment Standards for Wood Preserving Wastes, Paperwork Reduction and Streamlining, Exemptions from RCRA for Certain Processed Materials, and Miscellaneous Hazardous Waste Provisions [62 FR 25998, 5/12/97] (Checklist 157)/261.1(c)(9)–(12), 261.2(c)/table 1, 261.4(a)(14) & (15), 261.6(a)(3)(ii), 268.1(e) intro–(e)(4), 268.4(a)(2)(iv), 268.4(a)(4), 268.7(a)–(c), 268.9(d)(1)(ii), 268.30(a)–(e), 268.32–268.36, 268.40/table of treatment standards, 268.42/table 1, 268.44(o), and Part 268, Appendices I, II, III, VI, VII, VIII, & X; Testing & Monitoring Activities Amendment III [62 FR 32452, 6/13/97] (Checklist 158)/260.11(a), 264.1034(d)(1)(iii), 264.1034(f), 264.1063(d)(2), Part 264, Appendix IX, footnote 5, 265.1034(d)(1)(iii), 265.1034(f), and 265.1063(d)(2); Conformance with the Carbamate Vacatur [62 FR 32974, 6/17/97] (Checklist 159)/261.32/table, 261.33(f), Part 261, Appendices VII and VIII, 268.39(a) & (d), and 268.40/table; Land Disposal Restrictions Phase III—Emergency Extension of the K088 National Capacity Variance, Amendment [62 FR 37694, 7/14/97] (Checklist 160)/268.39(c); Emergency Revision of the Carbamate Land Disposal Restrictions [62 FR 45568, 8/28/97] (Checklist 161)/268.40(g) and 268.48(a)/table; Consolidated Checklist for the Wood Preserving Listings as of June 30, 1992 [55 FR 50450, 12/6/90; 56 FR 27332, 6/13/91; 56 FR 30192, 7/1/91; 57 FR 05859, 2/18/92] (Checklists 82, 91, 92, and 101)/260.10, 261.4(a)(10), 261.31(a), 261.35(a)–(c), Part 261,

Appendix III/table 1, Part 261, Appendices VII & VIII, 262.34(a)(1) & (2), 264.190, 264.190(d), 264.570(a) & (b), 264.571(a)–(d), 264.572, 264.573(a)–(o), 264.574(a) & (b), 264.575(a)–(c), 265.190, 265.190(d), 265.440(a) & (b), 265.441(a)–(d), 265.442, 265.443(a)–(m) & (o), 265.444(a) & (b), 265.445(a)–(c), and 100.41(b)(9); Consolidated Checklist for the Recycled Used Oil Management Standards as of June 30, 1994 [57 FR 41566, 9/10/92; 58 FR 26420, 5/3/93; 58 FR 33341, 6/17/93; 59 FR 10550, 3/4/94] (Checklists 112, 122, 122.1, and 130)/260.10, 261.3(a)(2)(v)–(v)(B), 261.4(b)(13) & (14), 261.5(j), 261.6(a)(2)(iii) & (iv), 261.6(a)(3)(iii)–(iv), (vii) & (ix), 261.6(a)(4), 264.1(g)(2), 265.1(c)(6), Part 267, subpart E, 267.30(b)(1), and Chapter 279; Sharing of Information with the Agency for Toxic Substances and Disease Registry [Statutory Provision, 7/15/85] (Non-checklist SI)/C.R.S. 25–15–307, C.R.S. 25–1–122(4), C.R.S. 24–72–201, and 6 CCR 1007–3, Part 2.

We also grant Colorado Final authorization for the following program changes (the Federal Citation followed by the analog from the Code of Colorado Regulations (6 CCR 7007–3), revised through *September 30, 2003*): Amendments to Interim Status Standards for Downgradient Ground-Water Monitoring Well Locations [56 FR 66365, 12/23/91] (Checklist 99)/260.10 and 265.91(a); Land Disposal Restrictions Phase IV—Hazardous Soils Treatment Standards & Exclusions [63 FR 28556, 5/26/98] (Checklist 167B)/268.2(k), 268.7(a), (b), & (e), 268.44(h)(3)–(5), and 268.49; Mineral Processing Secondary Materials Exclusion [63 FR 28556, 5/26/98] (Checklist 167D)/261.2(c)(3), 261.2(c)(4)/table, 261.2(e)(1)(iii), and 261.4(a)(17); Bevill Exclusion Revisions & Clarifications [63 FR 28556, 5/26/98] (Checklist 167E)/261.3(a)(2)(i) & (iii) and 261.4(b)(7) intro–(iii); Exclusion of Recycled Wood Preserving Wastewaters [63 FR 28556, 5/26/98] (Checklist 167F)/261.4(a)(10)(iii)–(iii)(E); Petroleum Refining Process Wastes [63 FR 42110, 8/6/98 & 63 FR 54356, 10/9/98] (Checklists 169 & 169.1)/261.3(a)(2)(iv)(C), 261.3(c)(2)(ii)(B) & (E), 261.4(a)(13)(i) & (ii), 261.4(a)(18) & (19), 261.6(a)(3)(iv)(C), 261.6(a)(3)(v), 261.31(a), 261.32, Part 261, Appendix VII, 268.35(a)–(c),and 268.40/table Emergency Revision of the Land Disposal Restrictions (LDR) Treatment Standards for Listed Hazardous Wastes from Carbamate Production [63 FR 47410, 09/04/98] (Checklist 171)/268.40(g), 268.40(j), 268.40/table, and 268.48(a)/table; Land Disposal Restrictions—Treatment Standards for Spent Potliners from Primary Aluminum Reduction (K088)—Final Rule [63 FR 51254, 9/24/98] (Checklist 173)/268.39(c) and 268.40/table; Post-Closure Permit Requirement & Closure Process [63FR 56710, 10/22/98] (Checklist 174)/264.90(e) & (f)–(f)(2), 264.110(c), 264.112(b)(8), 264.112(c)(2)(iv), 264.118(b)(4), 264.118(d)(2)(iv), 266.10(d) & (d)(2), 265.90(f), 265.110(c) & (d), 265.112(b)(8), 265.112(c)(1)(iv), 265.118(c)(4) & (5), 265.118(d)(1)(iii), 265.121(a) & (b), 100.10 intro & (d) [includes ''state-initiated'' changes that have been determined to be equivalent], and 100.41 intro & (b)(14); HWIR-Media [63 FR 65874, 11/30/98] (Checklist 175)/260.10 intro, ''CAMU'', ''facility'', ''miscellaneous unit'', ''remediation waste'', ''remediation waste management site'', ''staging pile'', 261.4(g), 264.1(j), 264.73(b)(17), 264.101(d), 264.552(a), 264.553(a), 264.554(c) intro–(m), 265.1(b), 268.2(c), 268.50(g), 260.10, 100.12(d)(1) & (2), 100.63, Appendix I, 100.20(c)(1), 100.27, 100.27(a)–(f); Universal Waste Rule—Technical Amendments [63 FR 71225, 12/24/98] (Checklist 176)/267.80(a) & table, 267.80(b), and 273.9 ''small quantity handler of universal waste''; Petroleum Refining Process Wastes—Leachate Exemption [64 FR 06806, 2/11/99] (Checklist 178)/261.4(b)(15); Land Disposal Restrictions Phase IV—Technical Corrections and Clarifications to Treatment Standards [64 FR 25408, 05/11/99] (Checklist 179)/261.2(c)(3), 261.2(c)(4)/table, 261.2(e)(1)(iii), 261.4(a)(16) (1st Paragraph), 261.4(a)(17) intro & (v), 261.4(b)(7)(iii) & (iii)(A), 262.34(d)(4), 268.2(h) & (k), 268.7(a)(4)/table, 268.7(b)(3)(iii)/table, 268.7(b)(4)(iv), 268.9(d)(2) intro, 268.9(d)(2)(i), 268.40(j), 268.40/table, 268.48(a)/table, 268.49(c)(3) intro–(ii); Test Procedures for the Analysis of Oil & Grease and Non-Polar Material [64 FR 26315, 05/14/99] (Checklist 180)/260.11(a)(11) & (16); Land Disposal Restrictions Phase IV—Technical Corrections [64 FR 56469, 10/20/99] (Checklist 183)/261.32, 262.34(a)(4), 268.7(a)(3)(iii), 268.40(j), and 268.40/table; Accumulation Time for Waste Water Treatment Sludges [65 FR 12378, 03/08/2000] (Checklist 184)/262.34(a)(4) and 262.34(h)–(j); Petroleum Refining Process Wastes—Clarification [64 FR 36365, 06/08/00] (Checklist 187)/261.31(a)/table and Part 268, Appendix VII; and Exceptions to the Burning and Blending of Hazardous Waste [Statutory Provision, 11/8/84] (Non-Checklist BB)/261.4(a)(13)(i) & (ii).

The following rules/checklists were previously approved, but were inadvertently omitted from the **Federal Register** publications as noted (the Federal Citation followed by the analog from the Code of Colorado Regulations (6 CCR 7007–3): Permit Rules; Settlement Agreement [48 FR 39611, 9/1/83] (Checklist 2)/100.12(c)(1) & (3), 100.12(d), and 100.42(d); Interim Status Standards; Applicability [48 FR 52718, 11/22/83] (Checklist 3)/265.1(b); National Uniform Manifest [49 FR 10490, 3/20/84] (Checklist 5)/260.10, 260.20(a), 260.21, 262.50(b)(3) & (4), 262.50(d) & (e), Part 262, Appendix; Permit Rules; Settlement Agreement [49 FR 17716, 4/24/84] (Checklist 6)/no State analog; Definition of Solid Waste Corrections 1 & 2 [50 FR 14216, 4/11/85 and 50 FR 33541, 8/20/85] (Checklist 13.1 & 13.2)/260.30(a), 261.2(c)(1) & (2), 261.3(c)(2), 261.4(a)(8), 261.5(c), 261.6(c), 267.30(b), and 267.80(a) & (b); Listing of Spent Solvents Correction 1 [51 FR 02702, 1/21/86] (Checklist 20.1)/261.31; and Listing of Spent Pickle Liquor (K062) Correction 1 [51 FR 33612, 9/22/86] (Checklist 26.1)/261.32 were omitted from 54 FR 20847, 5/15/89, *authorization effective July 14, 1989.* Amendments to Part B Information Requirements Land Disposal Facilities, Correction 1 [52 FR 33936, 9/9/87] (Checklist 38.1) was omitted from 56 FR 21601, 5/10/91, *authorization effective July 9, 1991.*

H. Where Are the Revised State Rules Different From the Federal Rules?

Colorado has requirements that are more stringent than the Federal rules at (references are to the Code of Colorado Regulations, except where there is no State analog. Then the reference is to the Federal citation): 100.27(d)(5)(ii), 100.27(f)(1)(iv)(C), 100.60(d); 261.4(f)(1), (5), (8)(i), (10)(viii), (13), & (14); 261.5(f)(3) intro–(iv); 261.5(g)(3) intro–(iv); 264.113(e)(5); 264.251(g)–(k); 264.301(g)–(k); 264.314(a); 264.552(a)(3); 264.573(a)(5), 264.573(b)(2)(iii); 264.573(m) & (m)(1); 265.77(e); 265.113(e)(5); 265.221(g); 265.314(a); 265.443(b)(2)(iii); 265.443(m) & (m)(1); 268.1(c)(3)(ii) & (iii) (no State analogs); 268.39(c), 270.70(b) (no State analog); and 273.32(a) & (a)(2) (no State analogs);

Colorado is broader-in-scope than the Federal rules at: 261.32 (K140) and 268.40/table (K140 & U408).

Colorado is in the process of adopting the Federal regulations regarding Boilers & Industrial Furnaces (BIFs). Until the State is authorized for BIF regulations, some of the above approved rules do not include references to these type of facilities at this time.

In the State regulations entry for K088, at the 268.40 Table, the spelling for Acenaphthene is incorrect. The entry for the CAS Number for K111 should be ''121–1–2''. Colorado is aware of these errors and will correct both in its next rulemaking. We are authorizing the State for the correct spelling and CAS Number.

The entry in the sixth column for K156, Acetonitrile, in the Federal 268.40 Table should be ''38 mg/kg'' rather than ''1.8 mg/kg''. Colorado has made the correction in the State 268.40 Table.

I. Who Handles Permits After the Authorization Takes Effect?

Colorado will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which were issued prior to the effective date of this authorization until Colorado has equivalent instruments in place. We will not issue any new permits or new portions of permits for the provisions listed in Item G after the effective date of this authorization. EPA previously suspended issuance of permits for other provisions on the effective date of Colorado's Final Authorization for the RCRA base program and each of the revisions listed in Item F. EPA will continue to implement and issue permits for HSWA requirements for which Colorado is not yet authorized.

J. How Does Today's Action Affect Indian Country (18 U.S.C. 1151) in Colorado?

Colorado is not authorized to carry out its RCRA program in ''Indian country'' as defined in 18 U.S.C. 1151. This includes: (1) Lands within the exterior boundaries of the following Indian reservations located within or abutting the State of Colorado, (a) Southern Ute Indian Reservation and (b) Ute Mountain Ute Indian Reservation; (2) any land held in trust by the United States for an Indian tribe, and (3) any other areas which are ''Indian country'' within the meaning of 18 U.S.C. 1151.

K. What Is Codification and Is EPA Codifying Colorado's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing a State's statutes and regulations that comprise the State's authorized hazardous waste program into the CFR. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart G for the codification of Colorado's updated program until a later date.

L. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes 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). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action 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 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. 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.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document 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 in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This action will be effective January 13, 2004.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: November 5, 2003.

Robert E. Roberts,

Regional Administrator, Region VIII.

[FR Doc. 03–28578 Filed 11–13–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3442]

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on these channels. This action is taken pursuant to *Revision of Section 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment, 4 FCC Rcd 2413 (1989), and Amendment of the Commission's Rules to permit FM Channel and Class Modifications by Applications*, 8 FCC Rcd 4735 (1993).

DATES: Effective November 14, 2003.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, adopted October 29, 2003, and released October 31, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 12th Street, SW, Room CY–B402, Washington, DC 20554.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 261C2 and adding Channel 261C1 at Flagstaff.

■ 3. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by removing Channel 268C1 and adding Channel 268B at Carbondale.

■ 4. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by removing Channel 268A and adding Channel 268C3 at Iola and by removing Channel 279C1 and adding Channel 279C0 at Wichita.

■ 5. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by removing Channel 254C2 and adding Channel 253C1 at Hancock.

■ 6. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by removing Channel 241A and adding Channel 241C3 at Albert Lea.

■ 7. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 292C3 and adding Channel 292C2 at Petal.

■ 8. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 256C and adding Channel 256C0 at Clayton and by removing Channel 255A and adding Channel 255C3 at Saint Robert.

■ 9. Section 73.202(b), the Table of FM Allotments under Montana, is amended by removing Channel 278C1 and adding Channel 278C0 at Bozeman.

■ 10. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by removing Channel 248A and adding Channel 248C3 at Lawrenceburg.

■ 11. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 241C3 and adding Channel 242C1 at Dalhart, by removing Channel 300C2 and adding Channel 300C3 at Johnson City, and by removing Channel 298C and adding Channel 298C0 at San Antonio.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–28465 Filed 11–13–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3443, MM Docket No. 99–322, RM–9762]

Radio Broadcasting Services; Ashville and Chillicothe, OH

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial of petition for reconsideration.

SUMMARY: This document denies a Petition for Reconsideration Jointly filed by Franklin Communications, Inc., North American Broadcasting Co. and WLCT Radio Incorporated directed to the *Report and Order* in this proceeding which reallotted Channel 227B from Chillicothe to Ashville, Ohio, and modified the Station WFCB to specify Ashville as the community of license. *See* 67 FR 67568, November 20, 2002. With this action, the proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* in MM Docket No. 99–322, adopted October 29, 2003, and released October 31, 2003. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals ll,CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualixint@aol.com.*

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–28464 Filed 11–13–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Part 204 and Appendix G to Chapter 2

[DFARS Case 2003–D005]

Defense Federal Acquisition Regulation Supplement; DoD Activity Address Codes in Contract Numbers

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to prescribe the use of DoD activity address codes in the first six positions of solicitation and contract numbers. This change provides consistency in the method of identifying DoD activities and eliminates the need for maintenance of the list of DoD activity address numbers in DFARS appendix G.

EFFECTIVE DATE: November 14, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Euclides Barrera, (703) 602–0296.

SUPPLEMENTARY INFORMATION:

A. Background

This rule amends DFARS subpart 204.70 to prescribe the use of a contracting office's DoD activity address code in the first six positions of a solicitation or contract number, instead of the DoD activity address number found in DFARS appendix G. DoD activity address codes are maintained by the Defense Logistics Agency and are available at *http://www.daas.dla.mil/daashome/.*

This rule removes appendix G from the DFARS, as there is no longer a need for maintenance of DoD activity address numbers. The two-position codes in appendix G, that contracting offices use when placing an order against another activity's contract or agreement, are now available at a separate location on the Defense Acquisition Regulations Web page *(http://www.acq.osd.mil/dp/dars/dfars.html).* For reference purposes, archived versions of appendix G are available in the HTML version of the DFARS on the Defense Acquisition Regulations Web page, by using the ''Prior Version'' option shown at the beginning of each appendix G part.

DoD published a proposed rule at 68 FR 34879 on June 11, 2003. Four sources submitted comments on the proposed rule. A discussion of the comments is provided below. Differences between the proposed and final rules are addressed in the DoD Response to Comments 1 and 5 below. In addition, DoD has made editorial changes at 204.7005 to update address information.

1. *Comment:* The text at 204.7000(b) should be revised to clarify that the numbering requirements of DFARS subpart 204.70 do not apply to solicitations and orders that precede issuance of communication service authorizations.

DoD Response: Concur. The text at 204.7000(b) has been revised to incorporate this clarification.

2. *Comment:* Some of the DoDAACs are not six characters. Will the remaining characters be filled in with zeros? Will this result in duplicate DoDAACs for two different locations?

DoD Response: DFARS subpart 204.70 prescribes use of only those DoDAACs assigned to contracting activities, which are all six characters in length.

3. *Comment:* The rule should retain the existing language at 204.7000(b) that allows for optional procedures when assigning numbers to solicitations, contracts, and related instruments that will be completely administered by the purchasing office or the consignee.

DoD Response: Optional procedures are no longer permitted, as a result of the interim FAR rule published at 68 FR 56679 on October 1, 2003 (FAC 2001–16, Item III), which requires agencies to assign a unique identifier to every procurement instrument.

4. *Comment:* DFARS 204.7001(b) requires that the basic procurement instrument identification number be unchanged for the life of the instrument. To prevent duplication of call and/or order numbers, this policy should be changed to allow contracting officers to re-issue contracts with new identification numbers for administrative purposes.

DoD Response: The comment is outside the scope of this case. However, DoD is considering this concept under a separate case (DFARS Case 2003–D052).

5. *Comment:* DFARS 204.7002(c) requires that the major elements of a contract number be separated by dashes. This policy is reflective of a paper-based environment and should provide an exception for instances where the contract number is transmitted electronically.

DoD Response: Concur. The final rule amends 204.7002(c) to clarify that use of dashes is unnecessary in electronic transmission of contract numbers.

6. *Comment:* Does DoD plan to change the numbers of any existing contracts? We presume modifications to long-term contracts would be required to continue to carry the basic contract number. If contract numbers are not changed, the maintenance of DFARS appendix G could not be eliminated.

DoD Response: The rule does not require change to the numbers of existing contracts. This final rule removes appendix G from the DFARS. However, an archived version of appendix G is available through the Defense Acquisition Regulations web page for reference purposes.

7. *Comment:* Some military bases have multiple DoDAACs. We assume DoD will publish a list of the ones that will be used to identify contracts.

DoD Response: Each DoD component listed in DFARS 204.7005(c) will maintain a list of the DoDAACs it uses for contracts and will provide this information upon request.

8. *Comment:* DoDAACs should be maintained with the same rigor as the DoDAANs to ensure that shipments and payments are not delayed.

DoD Response: The DoD Activity Address File, which contains all DoDAACs, is updated on a daily basis.

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

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because assignment of solicitation and contract numbers is an administrative function performed by the Government. The rule makes no change to the number of characters in a solicitation or contract number and, therefore, will not have a significant effect on the operation of automated systems.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Part 204

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR part 204 and appendix G to chapter 2 are amended as follows:

■ 1. The authority citation for 48 CFR part 204 and appendix G to subchapter I continues to read as follows:

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

PART 204—ADMINISTRATIVE MATTERS

■ 2. Section 204.7000 is revised to read as follows:

204.7000 Scope.

This subpart—

(a) Prescribes policies and procedures for assigning numbers to all solicitations, contracts, and related instruments; and

(b) Does not apply to solicitations or orders for communication service authorizations issued by the Defense Information Technology Contracting Organization of the Defense Information Systems Agency in accordance with 239.7407–2.

204.7002 [Amended]

■ 3. Section 204.7002 is amended in paragraph (c) in the second sentence by adding, before the final period, the parenthetical ''(not necessary in electronic transmission)''.

■ 4. Section 204.7003 is amended by revising paragraph (a)(1) to read as follows:

204.7003 Basic PII number.

(a) * * *

(1) *Positions 1 through 6.* The first six positions identify the department/agency and office issuing the instrument. Use the DoD Activity Address Code (DoDAAC) assigned to the issuing office. DoDAACs can be found at *https://www.daas.dla.mil/daashome/.*

* * * * *

■ 5. Section 204.7004 is amended in paragraph (d)(2)(i) by revising the second sentence to read as follows:

204.7004 Supplementary PII numbers.

* * * * *

(d) * * *

(2) * * *

(i) * * * The first and second positions contain the call/order code assigned to the ordering office in accordance with 204.7005. * * *

* * * * *

■ 6. Section 204.7005 is added to read as follows:

204.7005 Assignment of order codes.

(a) The Defense Logistics Agency, Acquisition Policy Branch (J–3311), Fort Belvoir, VA 22060–6221, is the executive agent for maintenance of code assignments for use in the first two positions of an order number when an activity places an order against another activity's contract or agreement (see 204.7004(d)(2)). The executive agent distributes blocks of two-character order codes to department/agency monitors for further assignment.

(b) Contracting activities submit requests for assignment of or changes in two-character order codes to their respective monitors in accordance with department/agency procedures. Order code monitors—

(1) Approve requests for additions, deletions, or changes; and

(2) Provide notification of additions, deletions, or changes to—

(i) The executive agent; and

(ii) The executive editor, Defense Acquisition Regulations, OUSD(AT&L)DPAP(DAR), 3062 Defense Pentagon, Washington, DC 20301–3062.

(c) Order code monitors are—

Army: Army Contracting Agency, Attn: SFCA–IT, 5109 Leesburg Pike, Suite 302, Falls Church, VA 22041–3201

Navy and Marine Corps: Office of the Assistant Secretary of the Navy (RD&A), 1000 Navy Pentagon, Room BF992, Washington, DC 20350–1000

Air Force: SAF/AQCX, 1060 Air Force Pentagon, Washington, DC 20330–1060

Defense Logistics Agency: Defense Logistics Agency, Acquisition Policy Branch (J–3311), John J. Kingman Road, Fort Belvoir, VA 22060–6221

Other Defense Agencies: Army Contracting Agency, Attn: SFCA–IT 5109 Leesburg Pike, Suite 302, Falls Church, VA 22041–3201

(d) Order code assignments can be found at *http://www.acq.osd.mil/dp/dars/dfars.html.*

Appendix G to Chapter 2 [Removed and Reserved]

■ 7. Appendix G to chapter 2 is removed and reserved.

[FR Doc. 03–28439 Filed 11–13–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Parts 204, 212, 213, and 252

[DFARS Case 2003–D040]

Defense Federal Acquisition Regulation Supplement; Central Contractor Registration

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove policy on Central Contractor Registration (CCR) that duplicates policy added to the Federal Acquisition Regulation (FAR) on October 1, 2003. This rule also addresses requirements for use of Commercial and Government Entity (CAGE) codes to accommodate DoD payment systems.

DATES: *Effective date:* November 14, 2003.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before January 13, 2004, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* As an alternative, respondents may e-mail comments to: *dfars@osd.mil.* Please cite DFARS Case 2003–D040 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Angelena Moy, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2003–D040.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf.*

FOR FURTHER INFORMATION CONTACT: Ms. Angelena Moy, (703) 602–1302.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule supplements the final FAR rule published at 68 FR 56669 on October 1, 2003 (FAC 2001–16; Item I). The FAR rule contained requirements for contractors to register in the CCR database prior to award of any contract or agreement. Similar policy had been in the DFARS since March 31, 1998 (63 FR 15316). Since the DFARS policy has been superseded by the FAR policy, this interim rule removes most DFARS policy pertaining to CCR. However, there is still a need to address requirements for CAGE code information to accommodate DoD payment systems. Therefore, this interim rule retains DoD requirements for inclusion of CAGE codes on contracts and in the CCR database.

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

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule adds no new requirements for DoD contractors. The rule removes DFARS text that has become obsolete as a result of policy that has been added to the FAR, and retains existing DoD requirements for use of CAGE codes. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003–D040.

C. Paperwork Reduction Act

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

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense

that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule removes DFARS text that has become obsolete as a result of policy on Central Contractor Registration that was added to the FAR on October 1, 2003. In addition, this rule addresses DoD requirements for inclusion of CAGE codes on contracts and in the CCR database. The FAR does not address CAGE code requirements, and DoD payment offices cannot match to CCR without CAGE code information. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 204, 212, 213, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR parts 204, 212, 213, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 204, 212, 213, and 252 continues to read as follows:

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

PART 204—ADMINISTRATIVE MATTERS

■ 2. Section 204.203 is revised to read as follows:

§ 204.203 Taxpayer identification information.

(b) The procedure at FAR 4.203(b) does not apply to contracts that include the clause at FAR 52.204–7, Central Contractor Registration. The payment office obtains the taxpayer identification number and the type of organization from the Central Contractor Registration database.

§ 204.603 [Removed]

■ 3. Section 204.603 is removed.

■ 4. Section 204.904 is amended by revising paragraph (2) introductory text and paragraph (2)(ii) to read as follows:

§ 204.904 Reporting payment information to the IRS.

* * * * *

(2) Unless an exception in paragraph (1) of this section applies, provide as the last page of the copy of the contract sent to the payment office—

* * * * *

(ii) The contractor's Taxpayer Identification Number and type of organization, if the contract does not include the clause at FAR 52.204–7, Central Contractor Registration.

§ 204.905 [Removed]

■ 5. Section 204.905 is removed.

■ 6. Subpart 204.11 is added to read as follows:

Subpart 204.11—Central Contractor Registration

Sec.

204.1103 Procedures.

204.1104 Solicitation provision and contract clauses.

§ 204.1103 Procedures.

(e) On contractual documents transmitted to the payment office, also provide the Commercial and Government Entity code in accordance with agency procedures.

§ 204.1104 Solicitation provision and contract clauses.

When using the clause at FAR 52.204–7, Central Contractor Registration, use the clause with 252.204–7004, Alternate A.

■ 7. Section 204.7202–1 is amended by revising paragraph (b)(1) to read as follows:

§ 204.7202–1 Cage codes.

* * * * *

(b)(1) If a prospective contractor located in the United States must register in the Central Contractor Registration (CCR) database (*see* FAR Subpart 4.11) and does not have a CAGE code, DLIS will assign a CAGE code when the prospective contractor submits its request for registration in the CCR database. Foreign registrants must obtain a North Atlantic Treaty Organization CAGE (NCAGE) code in order to register in the CCR database. NCAGE codes may be obtained from the Codification Bureau in the foreign registrant's country. Additional information on obtaining NCAGE codes is available at *http://www.dlis.dla.mil/Forms/Form_AC135.asp.*

* * * * *

■ 8. Section 204.7207 is amended by revising paragraph (a) to read as follows:

§ 204.7207 Solicitation provision.

* * * * *

(a) The solicitation does not include the clause at FAR 52.204–7, Central Contractor Registration; and

* * * * *

Subpart 204.73—[Removed]

■ 9. Subpart 204.73 is removed.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

§ 212.301 [Amended]

■ 10. Section 212.301 is amended as follows:

■ a. By removing paragraphs (b)(2) and (f)(iv); and

■ b. By redesignating paragraphs (f)(v) and (vi) as paragraphs (f)(iv) and (v) respectively.

PART 213—SIMPLIFIED ACQUISITION PROCEDURES 213.106–3 [Removed]

■ 11. Section 213.106–3 is removed.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 12. Section 252.204–7004 is revised to read as follows:

§ 252.204–7004 Alternate A.

Alternate A (Nov 2003)

As prescribed in 204.1104, substitute the following paragraph (a) for paragraph (a) of the clause at FAR 52.204–7:

(a) *Definitions.* As used in this clause—

''Central Contractor Registration (CCR) database'' means the primary Government repository for contractor information required for the conduct of business with the Government.

''Commercial and Government Entity (CAGE) code'' means—

(1) A code assigned by the Defense Logistics Information Service (DLIS) to identify a commercial or Government entity; or

(2) A code assigned by a member of the North Atlantic Treaty Organization that DLIS records and maintains in the CAGE master file. This type of code is known as an ''NCAGE code.''

''Data Universal Numbering System (DUNS) number'' means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities.

''Data Universal Numbering System +4 (DUNS+4) number'' means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see Subpart 32.11 of the Federal Acquisition Regulation) for the same parent concern.

''Registered in the CCR database'' means that—

(1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database;

(2) The Contractor's CAGE code is in the CCR database; and

(3) The Government has validated all mandatory data fields and has marked the records ''Active.''

[FR Doc. 03–28441 Filed 11–13–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Parts 208, 210, 219, and 252

[DFARS Case 2002–D003]

Defense Federal Acquisition Regulation Supplement; Competition Requirements for Purchases From a Required Source

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 811 of the National Defense Authorization Act for Fiscal Year 2002 and section 819 of the National Defense Authorization Act for Fiscal Year 2003. Sections 811 and 819 address requirements for conducting market research before purchasing a product listed in the Federal Prison Industries (FPI) catalog, and for use of competitive procedures if an FPI product is found to be noncomparable to products available from the private sector. Section 819 also addresses limitations on an inmate worker's access to information and on use of FPI as a subcontractor.

EFFECTIVE DATE: December 15, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0311; facsimile (703) 602–0350. Please cite DFARS Case 2002–D003.

SUPPLEMENTARY INFORMATION:

A. Background

Section 811 of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107–107) added 10 U.S.C. 2410n, providing that (1) before purchasing a product listed in the FPI catalog, DoD must conduct market research to determine whether the FPI product is comparable in price, quality, and time of delivery to products available from the private sector; (2) if the FPI product is not comparable in price, quality, and time of delivery, DoD must use competitive procedures to acquire the product; and (3) in conducting such a competition, DoD must consider a timely offer from FPI for award in accordance with the specifications and evaluation factors in the solicitation.

DoD published an interim rule at 67 FR 20687 on April 26, 2002, to implement section 811 of Public Law 107–107. On December 2, 2002, section 819 of the National Defense Authorization Act for Fiscal Year 2003 (Pub. L. 107–314) amended 10 U.S.C. 2410n to (1) clarify requirements for conducting market research before purchasing a product listed in the FPI catalog; (2) specify requirements for use of competitive procedures or for making a purchase under a multiple award contract if an FPI product is found to be noncomparable to products available from the private sector; (3) specify that a contracting officer's determination, regarding the comparability of an FPI product to products available from the private sector, is not subject to the arbitration provisions of 18 U.S.C. 4124(b); (4) specify that a DoD contractor may not be required to use FPI as a subcontractor; and (5) prohibit the award of a contract to FPI that would allow an inmate worker access to classified or sensitive information.

DoD published a proposed rule at 68 FR 26265 on May 15, 2003, to further implement the requirements of section 811 of Public Law 107–107, to implement section 819 of Public Law 107–314, and to address public comments received in response to the interim rule published on April 26, 2002. A discussion of the comments received in response to the proposed rule published on May 15, 2003, is provided below. DoD has adopted the proposed rule as a final rule without change.

1. *Comment:* FPI is not a small business concern and should not be permitted to participate in small business set-asides.

DoD Response: Concur that FPI is not a small business concern. The small business set-aside procedures in the rule apply only when an FPI product is found to be noncomparable to private sector products. In these situations, competitive procedures *must* be used and FPI *must* be given an opportunity to compete. Because the definition of competitive procedures in 10 U.S.C. 2410n includes procurements conducted in furtherance of the Small Business Act, the DFARS rule permits restriction of the competition to FPI and small business concerns.

2. *Comment:* The rule should prohibit a Federal contractor from being required to specify FPI products in the designs, specifications, or standards it develops for DoD.

DoD Response: Concur. Section 208.670 of the rule prohibits such an action.

3. *Comment:* The rule should clarify that DoD contracts, particularly architect-engineer contracts, should specify that FPI goods must be used to supply DoD unless excepted by 208.602. For example, DoD would not be permitted by law to procure office furniture as part of a consolidated or prime contract for the construction or renovation of a building if such a contracting method is used to preclude the necessity for a comparability determination or competitive procedures under sections 811 and 819.

DoD Response: Concur that consolidation of requirements merely to avoid a comparability determination or competitive procedures would be improper, as would any other action taken to circumvent statutory or regulatory requirements. However, consolidation where appropriate appears to be consistent with 10 U.S.C. 2410(e), which addresses the issue of subcontracting and specifically prohibits DoD from requiring a contractor to use FPI as a subcontractor or supplier. The provisions of 10 U.S.C. 2410(e) are reflected in the rule at 208.670.

4. *Comment:* A paragraph should be added to 208.670 to state that nothing in that section prohibits FPI from voluntarily entering into a subcontract with, or from being accepted as a subcontractor by, any prime contractor doing business with a DoD component.

DoD Response: Nothing in the rule precludes FPI from acting as a subcontractor. Specific mention of this subject in the rule is unnecessary.

5. *Comment:* The rule should clarify that use of multiple award schedule contracts is a legitimate competitive procedure.

DoD Response: This point is clear from the definition of ''competitive procedures'' at 208.601–70, which permits use of the procedures in FAR 6.102, to include the use of multiple award schedule contracts.

6. *Comment:* The first sentence of 208.602(a)(i) should make it clear that it is mandatory for contracting officers to conduct market research before purchasing a product listed in the FPI Schedule.

DoD Response: The first sentence of 208.602(a)(i) is an imperative statement and is clearly mandatory.

7. *Comment:* The way the rule is written, if FPI's product is found to be noncomparable in price, quality, and delivery time, FPI is given a second chance to meet these criteria through the competition phase. The rule should

be revised to eliminate the second redundant step.

DoD Response: Do not concur. The two-step process is consistent with 10 U.S.C. 2410n(b), which clearly establishes an ''if-then'' situation, *i.e.*, if DoD makes a noncomparability determination, then competitive procedures must be used.

8. *Comment:* The rule should emphasize the two-step nature of the procedures, add a definition of ''comparable'' to 208.601–70, and clarify that DoD purchasers may request waiver if an FPI product has been determined to be comparable.

DoD Response: The rule is clear with regard to the two-step nature of the procedures. A definition of ''comparable'' is unnecessary, as this term is already used throughout the FAR and DFARS with its common dictionary meaning. If an FPI product is determined to be comparable to a private sector product, the rule requires use of the procedures in FAR subpart 8.6, which addresses clearance/waiver provisions. It is unnecessary to repeat these provisions in the DFARS.

9. *Comment:* The requirement for a written comparability determination takes discretion away from the contracting officer and should be eliminated.

DoD Response: Do not concur. It is common business practice to document the decision-making process.

10. *Comment:* The ''unilateral decision'' language at 208.602(a) should be removed. It does not provide any guidance to contracting officers in exercising their discretion.

DoD Response: Do not concur. This language clarifies the contracting officer's role in the determination process and is consistent with the provisions of 10 U.S.C. 2410n(d).

11. *Comment:* The rule should include language requiring FPI to adhere to its contractual obligations to the same extent as any other DoD contractor.

DoD Response: Concur that FPI should be held accountable for its performance. In accordance with FAR 8.607, the Government may collect past performance information for use in supporting a clearance request for future purchases. However, it is unnecessary to address this issue in this DFARS rule.

12. *Comment:* The rule overlooks the statutory requirement to give NIB second priority, behind FPI, for sales of products to the Government. The language at 208.602(a)(iv) should be revised to state that in the event that FPI is found to be non-comparable, JWOD products would be given first priority; if the product is not on the JWOD Procurement List, then competitive procedures may be used.

DoD Response: Do not concur. In accordance with 41 U.S.C. 48, NIB is given priority only if the required supplies or services are not available from FPI. If FPI can fulfill the requirement, even though it is determined to be noncomparable, 10 U.S.C. 2410n requires use of competitive procedures that include FPI.

13. *Comment:* The requirement in 208.602(a)(iv)(C)(1), to ''Establish and communicate to FPI the requirements and evaluation factors that will be used as the basis for selecting a source, so that an offer from FPI can be evaluated on the same basis as the schedule holder'' is too solicitous of FPI, exceeds the requirements of the law, and should be removed.

DoD Response: Do not concur. Since a formal solicitation will not be issued for purchases made using multiple award schedules, there must be a means of communicating this information to enable FPI to compete in accordance with 10 U.S.C. 2410n.

14. *Comment:* The language at 208.602(a)(iv) should specify how FPI will be notified of a solicitation.

DoD Response: Do not concur. This level of detail is more appropriately left to the discretion of the contracting officer.

15. *Comment:* The FPI Board of Directors adopted a resolution that directs FPI to grant waivers in all cases where the private sector provides a lower price for a comparable product that FPI does not meet. The rule should clarify that, because of sections 811 and 819, DoD contracting officers are exempt from this resolution and are therefore not required to obtain a waiver from FPI.

DoD Response: Section 208.606 of the rule provides a blanket exception from FPI clearance requirements, to apply when a contracting officer determines that an FPI product is not comparable to private sector products and the procedures at 208.602(a)(iv) are used. A specific exemption from the Board of Directors resolution is unnecessary.

16. *Comment:* The initial regulatory flexibility analysis concluded that the rule could benefit small business concerns that offer products comparable to FPI. The analysis should also consider and include the impact on FPI and the small business concerns that support FPI.

DoD Response: Concur. The final regulatory flexibility analysis addresses FPI and the small business concerns that provide supplies and services to FPI.

This rule was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule will permit small entities to compete with FPI for DoD contract awards under certain conditions. A final regulatory flexibility analysis has been prepared and is summarized as follows:

This rule amends DoD policy pertaining to the acquisition of products from FPI. The rule implements 10 U.S.C. 2410n. The net effect of the rule is unknown at this time. The rule is expected to benefit small business concerns that offer products comparable to those listed in the FPI catalog, by permitting those concerns to compete for DoD contract awards. The rule could also have a negative impact on small business concerns that provide supplies or services to FPI in support of its products. There are no known significant alternatives to the rule that would meet the requirements of 10 U.S.C. 2410n.

A copy of the analysis may be obtained from the point of contact specified herein.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 208, 210, 219, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Accordingly, the interim rule amending 48 CFR parts 208 and 210 which was published at 67 FR 20687 on April 26, 2002, is adopted as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 208, 210, 219, and 252 continues to read as follows:

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

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 2. Section 208.601–70 is added to read as follows:

208.601–70 Definitions.

As used in this subpart—

Competitive procedures includes the procedures in FAR 6.102, the set-aside procedures in FAR subpart 19.5, and competition conducted in accordance with FAR part 13.

Market research means obtaining specific information about the price, quality, and time of delivery of products available in the private sector and may include techniques described in FAR 10.002(b)(2).

■ 3. Sections 208.602 and 208.606 are revised to read as follows:

208.602 Policy.

(a)(i) Before purchasing a product listed in the FPI Schedule, conduct market research to determine whether the FPI product is comparable to products available from the private sector that best meet the Government's needs in terms of price, quality, and time of delivery (10 U.S.C. 2410n). This is a unilateral determination made at the discretion of the contracting officer. The procedures of FAR 8.605 do not apply.

(ii) Prepare a written determination that includes supporting rationale explaining the assessment of price, quality, and time of delivery, based on the results of market research comparing FPI products to those available from the private sector.

(iii) If the FPI product is comparable, follow the policy at FAR 8.602(a).

(iv) If the FPI product is not comparable in one or more of the areas of price, quality, and time of delivery—

(A) Acquire the product using—

(1) Competitive procedures; or

(2) The fair opportunity procedures in FAR 16.505, if placing an order under a multiple award task or delivery order contract;

(B) Include FPI in the solicitation process and consider a timely offer from FPI for award in accordance with the requirements and evaluation factors in the solicitation, including solicitations issued using small business set-aside procedures; and

(C) When using a multiple award schedule issued under the procedures of FAR subpart 8.4—

(1) Establish and communicate to FPI the requirements and evaluation factors that will be used as the basis for selecting a source, so that an offer from FPI can be evaluated on the same basis as the schedule holder; and

(2) Consider a timely offer from FPI.

208.606 Exceptions.

For DoD, FPI clearances also are not required when—

(1) The contracting officer makes a determination that the FPI product is not comparable to products available from the private sector that best meet the Government's needs in terms of price, quality, and time of delivery; and

(2) The procedures at 208.602(a)(iv) are used.

■ 4. Sections 208.670 and 208.671 are added to read as follows:

208.670 Performance as a subcontractor.

Do not require a contractor, or subcontractor at any tier, to use FPI as a subcontractor for performance of a contract by any means, including means such as—

(a) A solicitation provision requiring a potential contractor to offer to make use of FPI products or services;

(b) A contract specification requiring the contractor to use specific products or services (or classes of products or services) offered by FPI; or

(c) Any contract modification directing the use of FPI products or services.

208.671 Protection of classified and sensitive information.

Do not enter into any contract with FPI that allows an inmate worker access to any—

(a) Classified data;

(b) Geographic data regarding the location of—

(1) Surface and subsurface infrastructure providing communications or water or electrical power distribution;

(2) Pipelines for the distribution of natural gas, bulk petroleum products, or other commodities; or

(3) Other utilities; or

(c) Personal or financial information about any individual private citizen, including information relating to such person's real property however described, without the prior consent of the individual.

PART 219—SMALL BUSINESS PROGRAMS

■ 5. Section 219.502–70 is added to read as follows:

219.502–70 Inclusion of Federal Prison Industries, Inc.

When using competitive procedures in accordance with 208.602(a)(iv), include Federal Prison Industries, Inc. (FPI), in the solicitation process and consider a timely offer from FPI.

■ 6. Section 219.508 is added to read as follows:

219.508 Solicitation provisions and contract clauses.

(c) Use the clause at FAR 52.219–6, Notice of Total Small Business Set-Aside, with 252.219–7005, Alternate A, when the procedures of 208.602(a)(iv) apply to the acquisition.

(d) Use the clause at FAR 52.219–7, Notice of Partial Small Business Set-Aside, with 252.219–7006, Alternate A, when the procedures of 208.602(a)(iv) apply to the acquisition.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 7. Sections 252.219–7005 and 252.219–7006 are added to read as follows:

252.219–7005 Alternate A.

Alternate A (Dec 2003)

As prescribed in 219.508(c), substitute the following paragraph (b) for paragraph (b) of the clause at FAR 52.219–6:

(b) *General.* (1) Offers are solicited only from small business concerns and Federal Prison Industries, Inc. (FPI). Offers received from concerns that are not small business concerns or FPI shall be considered nonresponsive and will be rejected.

(2) Any award resulting from this solicitation will be made to either a small business concern or FPI.

252.219–7006 Alternate A.

Alternate A (Dec 2003)

As prescribed in 219.508(d), add the following paragraph (d) to the clause at FAR 52.219–7:

(d) Notwithstanding paragraph (b) of this clause, offers will be solicited and considered from Federal Prison Industries, Inc., for both the set-aside and non-set-aside portion of this requirement.

[FR Doc. 03–28440 Filed 11–13–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 216

[DFARS Case 2001–D013]

Defense Federal Acquisition Regulation Supplement; Provisional Award Fee Payments

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to address the use of provisional award fee payments under cost-plus-award-fee contracts. The rule provides for successfully performing contractors to receive a portion of award fees within an evaluation period prior to a final evaluation for that period.

DATES: *Effective date:* January 13, 2004.

Applicability date: The DFARS changes in this rule apply to solicitations issued on or after January

13, 2004. Contracting officers may, at their discretion, apply the DFARS changes to solicitations issued before January 13, 2004, provided award of the resulting contract(s) occurs on or after January 13, 2004. Contracting officers may, at their discretion, apply the DFARS changes to any existing contract with appropriate consideration.

FOR FURTHER INFORMATION CONTACT: Mr. Ted Godlewski, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–2022; facsimile (703) 602–0350. Please cite DFARS Case 2001–D013.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule provides for the payment of provisional award fees within an evaluation period prior to a final evaluation for that period. The provisional payments would be based on (1) successful evaluations for prior evaluation periods, and (2) the expectation that payment of provisional fee amounts will not reduce the overall effectiveness of the award fee incentive. A training module on the use of provisional award fee payments is available on the Defense Acquisition University Web site at *http://www.dau.mil,* under ''Continuous Learning.''

DoD published a proposed rule at 67 FR 70388 on November 22, 2002. Seven respondents submitted comments on the proposed rule. A discussion of the comments is provided below. Differences between the proposed and final rules are explained in the DoD Response to Comments 5 and 10.

1. *Comment:* The proposed policy appears to conflict with the Defense Finance and Accounting Service (DFAS) DFAS-IN Regulation 37–1, Table 8–1, which states that award fee must not be obligated until its amount is determined. If provisional award fee is allowed, the DFAS regulation should be revised to preclude confusion.

DoD Response: Concur that DFAS may need to review its regulations to determine if revisions are required based on this DFARS rule.

2. *Comment:* It is not clear what the difference is between doing provisional award fee determinations and simply doing more frequent final award fee determinations. Presumably, the process for doing a provisional award fee payment would not be as formal as that for doing a final award fee determination. Suggest that the policy state that the agency should use a streamlined process for doing a provisional award fee determination.

DoD Response: DoD concurs with using a streamlined process for doing a provisional award fee determination, but this approach (*i.e.*, the payment of part of available award fee without using all the formalities of a full-scale award fee determination) is already implied by the wording of the rule. The rule provides a framework, with the flexibility for contracting officers to implement the rule using processes that best fit their particular business needs.

3. *Comment:* It may be advisable to establish a ceiling on the amount that may be given as a provisional award fee.

DoD Response: Concur that there should be a ceiling; however, the rule already establishes a ceiling at 216.405–2(b)(3)(B)*(1)* and *(2).* The rule states that provisional award fee payments may not exceed 50 percent of the award fee available for the initial award fee period, and may not exceed 80 percent of the evaluation score for the prior evaluation period times the award fee available for the current period. Contracting officers are free to establish lower provisional award fee amounts if they deem it to be in the Government's best interests.

4. *Comment:* The policy should recognize that provisional award fees might not be feasible or appropriate in all situations. The agency may need to consider the ability of the vendor to provide data on incurred costs. It is common for a vendor with subcontractors to be several months behind in billing. Thus, a provisional determination linked to the value of work performed might be inaccurate. Or if the award fee is based on achievement of a milestone by a particular date, the argument could be made that giving a provisional award fee payment would actually reduce the effectiveness of the incentive. Therefore, the policy should cite examples of situations in which a provisional award fee payment would be appropriate.

DoD Response: Partially concur. DoD agrees that provisional award fee payments may not be feasible or appropriate in all situations and, therefore, should be optional. The rule provides contracting officers the flexibility to determine where and how provisional award fee payments can best be employed. The rule reflects this position at DFARS 216.405–2(b)(3), which states ''The CPAF contract *may* include provisional award fee payments.'' (emphasis added) However, it is not prudent to cite examples of situations in which a provisional award fee payment would be appropriate, because examples may be misinterpreted as the only situations in which this type of payment may be used.

5. *Comment:* If the provisional award fee payment process is too informal, it would be subject to abuse or misapplication, *e.g.*, if given without adequate justification or if given based on inaccurate data. This could lead to overpayment of award fee. Therefore, the policy should address recovery of any overpayment (*e.g.*, by setoff or reduction in future award fee payments).

DoD Response: Concur that the rule should address recovery of an overpayment. The proposed rule, at 216.405–2(b)(3)(C), required the contractor to either credit any overpayment on the next payment voucher or refund any overpayment, in accordance with directions from the contracting officer. Since the overpayment is actually a debt due the Government, the final rule contains a change in this paragraph to require the contracting officer to collect the debt in accordance with FAR 32.606, Debt determination and collection.

6. *Comment:* The rule defeats the purpose of an award fee contract. By giving the contractor provisional payments on a monthly basis, you are in a sense turning an award fee contract into a fixed fee contract. The award fee pool is supposed to be tied to contractor performance, and provisional payments circumvent that by paying out a large percentage of the pool prior to the end of the evaluation period. Where is the incentive to perform? Furthermore, how can a contractor, deemed to have an adequate accounting system to support a cost-type contract, experience cash flow problems, especially when a large business can voucher for allowable costs every two weeks. In addition, has DoD considered the administrative burden of monthly provisional payments on the Government, *i.e.*, monthly modifications?

DoD Response: Provisional award fee payments do not turn an award fee contract into a fixed fee contract. The issue of entitlement is significantly different from the issue of timing. Provisional award fee payments only change the timing of the payments, not the entitlement to those payments. The contractor is incentivized, since the contractor must earn the award fee in exactly the same way as if there were no provisional award fee payments, *i.e.*, entitlement to the award fee continues to be tied to contractor performance. Should the Government determine that the contractor is not entitled to the award fee, the contractor must return the provisional payments to the Government.

As to the observation that contractors can voucher for all allowable costs on cost-type contracts every two weeks, it should be noted that not all unallowable costs are unavoidable. Contractors normally rely on the partial payment of fee for work accomplishment to cover unallowable costs, and to keep them out of a loss position on the contract as a whole. In particular, on high-dollar award fee contracts, the amount of award fee that is being held pending a formal award fee determination can be significant. As such, a standard award fee structure, instead of motivating and rewarding outstanding performance, can be a financial negative for a contractor. Without provisional award fee payments, some contractors may well prefer a smaller fixed fee that they know will arrive on a monthly basis to an award fee that, while possibly larger in amount, will be paid less frequently (*e.g.*, not paid until the end of the award fee period).

The use of provisional award fee payments is entirely optional. Contracting officers may choose to not employ provisional award fee payments when they believe such use would dilute the effectiveness of the award fee in a particular contract, would be an undue administrative burden, or would otherwise not be in the Government's best interests.

7. *Comment:* Award fee administration is a very time consuming process. In accomplishing performance evaluations, great care is taken to adequately support awarding or withholding of award fee. This effort is done in a very careful, concise, and professional manner to avoid any appearance of arbitrary or capricious application of award fee criterion and to ensure that the contractor receives appropriate consideration for performance efforts.

The ''Background'' information in the **Federal Register** notice of the proposed rule stated, ''Cost-reimbursement contracts containing award fees typically provide for an award fee payment no more frequently than every 6 months.'' However, the respondent's experience in working with cost-reimbursement contracts is that ''no more frequently'' is more appropriately ''no less frequently.'' Many of these contracts begin with 6-month evaluation periods. As complexity or dollar value increase, evaluation periods are reduced to as low as 3-months (quarterly).

Prior to awarding cost-reimbursement contracts, audits are requested to ensure that the contractor has a financial system in place to support adequately identifying cost and that the company has the financial capability to perform the contract. Normally the proposed award fee periods are identified in a solicitation, putting the contractor on notice of the Government's intent for award fee evaluation. Also, there is no prohibition against a contractor requesting contracting officer consideration for reducing the length of award fee periods should the contractor begin experiencing ''an undue financial burden.''

If a contracting officer implements this rule, it would result in an arbitrary determination of potential award fee earnings based on past performance. This practice would not only increase Government administration of the process, but could potentially allow a contractor the use of Government funds prior to a true determination of actual earnings with no consideration (such as interest) being afforded the Government, should the funds ultimately be credited back to the Government following a proper performance evaluation. Award fee should always be earned, not paid on a credit or assumptive basis in order to fulfill the intended purpose of award fee, which is to incentivize a contractor's performance. Unless the provisional payment is tied to some performance period, it could be construed as a form of advance payment. Also, since other remedies are available should a contractor (probably a large business) experience ''undue financial burden,'' no need exists for this provision.

DoD Response: Do not concur. Provisional award fee payments do not result in an arbitrary determination of potential award fee earnings based on past performance. The issues of entitlement, administrative burden, incentive to perform, and contractor cash flow are addressed in the DoD Response to Comment 6. With respect to the issue of interest on overpayments, as explained in the DoD Response to Comment 5, the final rule requires contractors to return any overpayment in accordance with FAR 32.606. FAR 32.610, Demand for payment of contract debt, states that any amounts not paid within 30 days from the date of the demand for payment will bear interest.

Furthermore, provisional award fee payments are different from advance payments, since the amount of the payment for periods subsequent to the first evaluation period is based on performance in the prior evaluation period.

8. *Comment:* The pitfalls associated with this proposal are greater than whatever benefits there may be for either party. The concept of award fees was established to provide incentive for performance such that if performance was provided in excess of certain thresholds, an award fee determining official would so declare after review of findings from an award fee board. The proposed change negates the concept of award fee to provide incentive for performance and, instead, establishes a means of cash payment to contractors for reasons other than incentive. In fact, this proposed change does nothing other than to establish cash flow expectations on the part of contractors that bear no relationship to fee earned in current periods until well after such determinations could be made AND related outlays have already been made.

The Government assumes a greater share of risk when using cost-reimbursable contracts, and compensates for this by providing the contractor with frequent billing provisions to cover all aggregated costs and fees incurred in each billing period (usually on a monthly basis). Therefore, contractor cash flow considerations are NOT factors in deciding whether or not to have award fee provisions in the first place, and they are also NOT factors in determinations of performance in award fee periods.

The proposed change, if adopted, would pressure program managers to incorporate these provisions into existing contracts, especially those large systems contracts involving millions of dollars. Such adoption would subsequently give rise to the inherent presumption of entitlement during current award fee periods, even though actual entitlement determinations would not take place until after funds have been disbursed. As a result, additional administrative burdens on top of those already created by award fee provisions would be placed on program managers and contracting officers. This would be especially true in instances cited in proposed DFARS 216.405–2(b)(3)(C).

This change would also create potential legal problems, especially in instances where DFARS 216.405–2(b)(3)(D) would be imposed. How does one protect the contracting officer determination from being appealed as being ''arbitrary and capricious,'' and how would such disputes alter or hinder ongoing contract performance until such matters are resolved?

DoD Response: Do not concur. With respect to the comments on the incentive for performance, cash flow, entitlement, and administrative burden considerations, see the DoD Response to Comment 6.

With respect to the comment on modifying existing contracts to include the requirement for provisional award fee payments, such modification could

only be considered if the contracting officer obtained adequate consideration. For future contracts, the rule relies upon agency procedures and contracting officer business judgment to determine if provisional award fee payments are appropriate for a particular contracting environment, rather than a ''one size fits all'' requirement.

As to the respondent's perceived legal problems, the provisional award fee payment requirement falls within the award fee provisions of the contract, including the requirements in the FAR. FAR 16.405–2(a) states ''* * * The amount of the award fee to be paid is determined by the Government's judgmental evaluation of the contractor's performance in terms of the criteria stated in the contract. This determination and the methodology for determining the award fee are unilateral decisions made solely at the discretion of the Government.'' Although the determinations are unilateral, the United States Court of Appeals in *Burnside-Ott Aviation Training Center* v. *Dalton, Secretary of the Navy,* 107F.3d 854 (Fed. Cir. 1997), held that disputes concerning the amount of the award fee are subject to the Contract Disputes Act. The Court also held that award fee determinations could continue to be committed to the discretion of contracting officers under the terms of the contract and would be upheld as long as they were not arbitrary or capricious. Therefore, the rule cannot state that provisional award fee payments are or are not disputable, since that determination may depend on other factors.

This rule does not impose any significant additional risk of litigation. For periods subsequent to the initial evaluation period, the payments are based on the evaluation for the prior period. Thus, provided the prior evaluations are not arbitrary and capricious, there would be little, if any, basis for determining the provisional award fee payments to be arbitrary and capricious.

However, should a dispute arise, such dispute would not alter or hinder ongoing contract performance. Paragraph (i) of the clause at FAR 52.233–1, Disputes, states ''The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.''

9. *Comment.* There is a need for an initial assessment of contractor performance by the fee determining official before the contracting officer pays any provisional award fees. This initial assessment can be done during the first interim evaluation. In return (for the initial wait), recommend up to 80% (vice proposed 50%) be awarded. In addition, also recommend that provisional award fee payments apply to fixed-price contracts with award fees.

DoD Response: Do not concur. The role of the fee determining official in the provisional award fee payment process should be determined by the DoD department or agency based on the particular contracting environment. Accordingly, there is no standard guidance on the role of the fee determining official or even a standard award fee clause used throughout DoD. Buying activities may provide implementing guidance to the extent they deem it necessary to provide additional information regarding the role of the fee determining official in the payment of provisional award fees.

Since the contractor's ''track record'' of performance on the contract will be limited for the initial award fee evaluation, it may be difficult to conclude that the contractor's performance for the initial contract period reflects a reasonable expectation of the performance for subsequent periods. Thus, it would not be prudent to build a higher limitation (*i.e.*, 80 percent) for the initial period.

Although DoD does not concur with increasing the ceiling for the initial period, a DoD department or agency may consider granting an individual, one-time deviation to this requirement if the department or agency believes that a specific contract is essentially a continuation of prior contracts for the same item or service and, hence, the 50 percent limitation on the initial provisional payment is not really needed to protect the Government's interests.

As to the use of provisional award fees in fixed-price-award-fee contracts, it should be noted that FAR 16.404(a)(1) indicates that a fixed-price-award-fee contract is a fixed-price contract that already has a normal profit included in the fixed price, which is paid for satisfactory performance. When other types of incentives cannot be used, a separate award fee provision can be added to a fixed-price contract to provide additional motivation and reward to a contractor for various achievements. The rationale that a provisional payment of award fee is necessary in order to allow the contractor to receive some profit or fee on work accomplished is greatly diminished, because a normal profit is already included within the fixed-price-award-fee contract structure. However, it is within a DoD department's or agency's deviation authority, on a one-time basis, to permit the use of provisional award fee payments under a fixed-price-award-fee contract if it is in the best interests of DoD.

10. *Comment:* The following sentence from the rule (DFARS 216.405–2(b)(3)) is misleading: ''A provisional award fee payment is a payment made within an evaluation period prior to an interim or final evaluation for that period.''

The fee determining official must make a determination that contractor performance warrants payment of the interim award fee amount. This ''interim evaluation'' may be confused with any interim performance evaluations called out in the award fee plan that are not linked to periodic billings (and which may or may not occur before a periodic award fee billing).

Suggest changing the sentence in the rule to read: ''A provisional award fee payment is a payment made within an evaluation period prior to the final determination for that period.''

DoD Response: Concur that the rule may not be clear as to the timing of a provisional award fee payment. The rule was intended to define a provisional award fee payment as any payment made prior to an evaluation for the period. The language in the proposed rule could be misinterpreted to mean that, when provisional payments are used, they must provide for payments prior to any interim evaluation period. The rule is intended to provide flexibility to contracting officers in determining when to permit provisional payments, rather than requiring such payments prior to interim evaluation periods. Therefore, the sentence has been revised to read: ''A provisional award fee payment is a payment made within an evaluation period prior to a final evaluation for that period.''

11. *Comment:* Recommend DFARS address the following:

a. Contractor's performance must be commensurate with the provisional award fee payment.

b. Contractor shall liquidate the debt as prescribed in FAR 32.6, Contract Debts, for overpayments made to the contractor by the Government.

c. Provisional award fee payment determinations are/are not disputable.

d. Role of the fee determining official in the provisional award fee payment process.

DoD Response:

a. Concur. The proposed rule already contained language at 216.405–2(b)(3)(D) that ties the payment of provisional award fees to the contracting officer's determination that the contractor is performing at an

appropriate level commensurate with the proposed provisional award fee payment. This language has been retained in the final rule.

b. Concur. DoD has added a reference to FAR 32.606 in the final rule at 216.405–2(b)(3)(C). Also see the DoD Response to Comment 5.

c. Do not concur. See the DoD Response to Comment 8.

d. Do not concur. See the DoD Response to Comment 9.

12. *Comment:* The proposed change should not be incorporated as drafted. The reason stated for the change is that cost-reimbursement award fee contracts typically provide for an award fee payment no more frequently than every 6 months and that this may place an undue financial burden on a contractor. This premise seems unfounded. It is hard to rationalize that a contractor faces an undue financial burden under a contract arrangement that provides for the Government to reimburse all allowable contract costs as frequently as every two weeks (FAR 52.216–7, Allowable Cost and Payment). In cost-reimbursement contracts, it is the Government that assumes a greater share of the risk and compensates for this by providing the contractor with frequent billing provisions. Furthermore, contractor cash flow considerations are not factors in determining whether or not to have award fee provisions in the first place and are not factors in determinations of performance in award fee periods.

DoD Response: Do not concur. See the DoD Response to Comment 6.

13. *Comment:* This change would have the unintended consequence of defeating a prime benefit of an award fee contract. In an award fee type contract, the Government is able to hold the contractor's motivation and focus, since the contractor knows the award fee is not a given and is only obtained through successful performance each and every period. The proposed change diminishes this performance incentive concept and instead establishes a means of cash payment to contractors for reasons other than incentive. In fact, the proposed change does nothing other than to establish cash flow expectations on the part of contractors that bear no relationship to fee earned in current periods until well after such formal determinations and related outlays have been made. Also, there is no mention of base fee in this proposed change. Recommend, if this change is incorporated, that the provisional award fee payment only be used in cost-plus-award-fee contracts with zero base fee.

DoD Response. Do not concur. See the DoD Response to Comment 6 for a discussion of performance incentive and cash flow. Regarding the recommendation that provisional award fee payments only be employed in contracts with zero base fees, the rule leaves that determination to the management discretion of DoD departments and agencies.

14. *Comment:* Although there are procedures in the proposed rule for reimbursing the Government if the actual award fee determination is less than the provisional payment, the reality is that once received, the contractor is not going to be motivated to give the money back, thus leading to increased probability of disputes and potentially requiring significant additional time and effort to resolve. This type of ''tug of war'' will not add value to the contract administration process or to Government/contractor relationships.

DoD Response: Do not concur. The maximum amount permitted for provisional payments (after the initial payment) is calculated at 80 (not 100) percent of the evaluation score for the prior evaluation period times the award fee available for the current period. Therefore, it is anticipated that a very limited number of provisional award fee payments will be more than the actual award fee determinations for the current period. However, for those limited situations in which there are overpayments, see the DoD Response to Comment 5, which addresses Government procedures for collecting debt, and to Comment 8 for a discussion of contractor disputes.

15. *Comment:* The change could create potential legal problems when the instances of DFARS 216.405–2(b)(3)(D) are imposed, whereby the contracting officer reduces or discontinues the provisional payment. Since this is proposed as a contracting officer determination, without mention of the award fee board or fee determining official, how does one protect the contracting officer's determination from being appealed as being arbitrary and capricious, and how would such disputes alter or hinder ongoing contract performance until such matters are resolved?

DoD Response: As indicated in the DoD Response to Comment 14, it is anticipated that the overpayment of a provisional award fee payment will happen in a limited number of circumstances. However, when it does occur, it is expected that the contracting officer will have a reasonable basis for making such a decision. When the decision is based on a probability that the contractor is not going to earn the award fee, the contracting officer almost certainly will have obtained input from the award fee board or the fee determining official. However, there could be other instances, such as pending bankruptcy proceedings, which may make it necessary for the contracting officer to act without first consulting the award fee board or the fee determining official. In any case, it is anticipated that the contracting officer will use sound business judgment and will not make an ''arbitrary and capricious'' decision. If there is a dispute, the dispute would not alter or hinder ongoing contract performance, as explained in the DoD Response to Comment 8.

16. *Comment:* The need for additional documentation and funding tracking will put an additional burden on program offices and may discourage the use of award fee arrangements, since the Government may not believe that the expected benefits are sufficient to warrant the additional effort and cost involved with managing and administering a more resource demanding award fee process. Program offices may also believe that the process of giving the contractor part of the award fee without having the payment tied to an interim evaluation (based on the award fee plan's criteria) dilutes the effectiveness of interim evaluations as motivators for increased performance.

DoD Response: Partially concur. Although this type of payment may be administratively burdensome, its use is entirely optional. However, as explained in the DoD Response to Comment 6, DoD does not concur that provisional award fee payments will dilute the effectiveness of the interim evaluations.

17. *Comment:* This proposed change blurs the line between a cost-plus-award-fee and a cost-plus-fixed-fee type contract. A cost-plus-award-fee contract should not be used when a cost-plus-fixed-fee contract is more appropriate, but since there is a 15% statutory fee limitation on a cost-plus-fixed-fee contract, but not on a cost-plus-award-fee contract, contractors may use this change as an increased opportunity for optimal fee by pushing the Government to use a cost-plus-award-fee contract when a more appropriate type would be cost-plus-fixed-fee. Because the contract types are distinctively different, the payment of fee on a cost-plus-award-fee contract was not intended to be handled the same way it is handled on a cost-plus-fixed-fee contract. This proposed change moves award fee payment from the realm of subjective evaluation of fee earned to a type of numerical calculation (which is based on projected performance). A policy of interim payments based on assessments of

contractor performance and fee determining official concurrence provides a much better framework than that set forth in the DFARS language.

DoD Response: Do not concur. Provisional award fee payments do not change the contract from a cost-plus-award-fee to a cost-plus-fixed-fee contract. As explained in the DoD Response to Comment 6, provisional award fee payments only change the timing of the payments, not the entitlement to those payments.

Payment of a provisional award fee is not based purely on a numerical calculation. The numerical calculation merely establishes the maximum amount that might be paid as a provisional award fee. The actual amounts of provisional award fee payments are based on the assumption that the contracting officer has determined that those provisional payment amounts are commensurate with the contractor's performance.

The rule does not provide specific procedures or rigid requirements. Thus, contracting officers have significant flexibility to implement provisional award fee payments as they deem appropriate for their particular contracting environments, *e.g.*, using interim payments based on assessments of contractor performance and fee determining official concurrence.

18. *Comment:* There are some differences between one DoD department's guidance and the proposed DFARS language. For example, DFARS—

a. Does not restrict provisional award fee payments to cost-plus-award-fee contracts with zero base fee;

b. Does not prescribe a monthly payment option;

c. Treats provisional payments almost as a normal business practice, which is appropriate since provisional payments benefit both the contractor and the Government. The contractor gets increased cash flow and the Government gets an increase in expenditures;

d. Does not reference FAR Subpart 32.6 with respect to overpayments;

e. Permits a smaller percentage (*i.e.*, 50 percent) for the initial period;

f. Does not say the contracting officer has the unilateral right to reduce or suspend, but does say payments may be reduced or discontinued; and

g. Does not prescribe provisional award fee payments for fixed-price-award-fee contracts.

DoD Response: Concur that there may be differences between guidance issued by DoD departments and agencies, and the DFARS. DoD departments and agencies will be able to continue using their guidance, provided such guidance does not fall outside the general framework of this DFARS rule. Since the DFARS rule does not provide specific procedures or rigid requirements, DoD departments and agencies have significant flexibility to implement provisional award fee payments as they deem appropriate for their particular contracting environments. This includes specifying when provisional award fee payments are appropriate (*e.g.*, only when there is zero based fee) and the frequency of payments (*e.g.*, monthly, every two months). Zero based fee is also addressed in the DoD Response to Comment 13.

DoD concurs with adding a reference to FAR Subpart 32.6 (see the DoD Response to Comment 5), and that the contracting office has certain unilateral rights (see the DoD Response to Comment 8). DoD does not concur with permitting the use of a percentage rate higher than 50 percent for the initial period (see DoD Response to Comment 9), or to the use of provisional award fee payments for fixed-price-award-fee contracts (see DoD Response to Comment 9).

19. *Comment:* The Financial Management Regulation and paragraphs 4.1 and 45.2 of the Air Force Material Command Award Fee guide may need to be revised to be consistent with the DFARS rule. Will the DFARS be revised to allow provisional award fee payments and interim payments on fixed-price-award-fee contracts also?

DoD Response: Other regulations and department/agency guidance may need to be revised based on implementation of this DFARS rule. However, as indicated in the DoD Response to Comment 18, DoD departments and agencies will be able to continue using their guidance, provided such guidance does not fall outside of the general framework of this rule.

Regarding the use of provisional award fee payments for fixed-price-award-fee contracts, as noted in the DoD Response to Comment 9, DoD does not concur with revising the DFARS to permit this type of payment under fixed-price-award-fee contracts.

20. *Comment:* There is concern that the financial incentive/motivation for outstanding performance will decrease if the contractor is paid a percentage of the potential award fee on a monthly basis prior to any type of formal evaluation/determination. What was once a true incentive contract is now a highbred cost-plus-fixed-fee type contract (with minimum incentive to control costs) with no financial tie into any type of performance based criteria (or at least not until much later in the award fee period).

DoD Response: Do not concur. See the DoD Response to Comment 6.

21. *Comment:* This puts the Government in a position to deal with additional administrative burden (*i.e.*, modifications to add funding to a contract—as well as documentation to confirm that the contractor is performing successfully on a monthly basis) to pay the contractor a percentage of the award fee on a frequent basis. The intent is to use provisional award fee payments on a case-by-case basis, but will this really be true?

Will the contracting officer authorize the monthly payments unilaterally or will the fee determining official have input on the decision (along with documentation)? If it is a contracting officer determination, what will happen if the contracting officer discontinues the payments and the contractor disputes it? There are also serious concerns over the potential situation of having to collect overpayments if the contractor does not earn the fee determining official's final determination for the period. What happens if the contract is terminated? Or if the contractor files bankruptcy? How will the fiscal year rules apply to overpayments?

The Government is being placed in a position to relieve the financial burden (on a cost contract?) of a contractor. FAR 52.216–7 permits payments on reimbursable costs as frequently as every two weeks. It is difficult to believe that a contractor would be put into an undue financial burden when in this position. Will the contractor be required to provide justification to the Government on their undue financial burden?

If it has been determined that reducing the length of time between award fee periods is not feasible due to contract restraints, recommend that, if any type of partial payment is authorized, it should be tied directly to the interim evaluation based on the contractor successfully completing the evaluated performance criteria (*i.e.*, one-time interim evaluation payment). This could be done approximately mid-point through the award fee period with the remainder of the potential award fee paid to the contractor at the end of the period, based on the fee determining official's final determination.

DoD Response: Do not concur. The use of provisional award fee payments is entirely optional. DoD departments and agencies may choose not to employ provisional award fee payments when they believe such use would dilute the effectiveness of the award fee in a

particular contract, is an undue administrative burden, or is otherwise not in the Government's best interests.

Under the rule, provisional award fee payments can be discontinued or reduced as deemed appropriate by the contracting officer. In applying this rule, it is anticipated that the contracting officer will have a reasonable basis for making such a decision. When the decision is based on a probability that the contractor is not going to earn the award fee, the contracting officer almost certainly will have obtained input from the award fee board or fee determining official. However, there could be other instances, such as pending bankruptcy proceedings, which may require the contracting officer to act without first consulting the award fee board or fee determining official. In any case, it is anticipated that the contracting officer will use sound business judgment and not make an arbitrary and capricious decision.

For further information, see the DoD Response to Comment 6 (administrative and financial burden), Comment 9 (role of the fee determining official), Comment 8 (contractor disputes), Comment 5 (overpayments), and Comment 10 (timing of provisional payments).

22. *Comment:* The incentive effect and cash flow benefits of provisional award fee payments will be achieved only if the provisional award fee payment provision is introduced as a customary practice. Fee is paid during performance on cost-plus-fixed-fee and cost-plus-incentive-fee contracts, and it should be the same for cost-plus-award-fee contracts. Since the Government is protected from risk by the terms included in the provisional award fee payment provision, there should be no hesitancy in making its use a customary and desirable incentive feature. Successfully performing contractors should be able to benefit from the improved cash flow that provisional award fee payments facilitate. Establishing criteria that standardize use of the provisional award fee payment, subject to the contracting officer's determination of continued successful performance, will encourage use of this important new provision, while not diminishing the ability of the contracting officer to discontinue or reduce the provisional award fee payment if the contractor's performance warrants a reduction. Recommend changing the last sentence in 216.405–2(b)(3) of the proposed rule to read: ''The contracting officer should include provisional award fee payments in a cost-plus-award-fee contract when the period of performance for the contract exceeds 12 months, provided those payments * * *.''

DoD Response: Do not concur. As indicated in the DoD Response to Comment 4, the rule is optional, because a mandatory requirement to use provisional award fee payments could result in such payments being applied in situations where they would be inappropriate.

23. *Comment:* DoD should strive to establish parity in how fee is billed for cost-plus-award-fee contracts, compared to how fee is billed under other incentive arrangements. Cost-plus-incentive-fee and fixed-price-incentive contracts both include provisions for billing target fee or profit at a rate consistent with contractor performance. Just as contemplated in the provisional award fee payment approach, there is a provision for adjusting the fee or profit if the contractor's performance is above or below the projected target. In the case of the cost-plus-award-fee contract, where there is no pre-set formula, the best indication of projected performance is the contractor's performance evaluation from prior periods. Successfully performing contractors should continue receiving provisional award fee payments at the level they have demonstrated in prior periods, similar to the target with appropriate adjustments made in cost-plus-incentive-fee and fixed-price-incentive-fee contracts. This approach poses no risk to the Government, since the contracting officer can reduce or eliminate the provisional award fee payment when performance is not commensurate with the provisional payment, and any overpayment is fully recoverable. Such an approach will also simplify administration of the provisional award fee payments. Recommend replacing paragraph 216.405–2(b)(3)(B)*(1)* of the proposed rule with the following: ''For subsequent award fee periods, the evaluation score for the prior evaluation period shall be used as the provisional award fee payment rate.''

DoD Response: Do not concur. The rule establishes a reasonable outside boundary, *i.e.*, not to exceed 80 percent of the evaluation score for the prior evaluation period, assuming continued contractor performance at current levels of performance. The rule is not intended to create an automatic entitlement to award fee at the same level as that previously earned for the prior evaluation period. In addition, as indicated in the DoD Response to Comment 14, a ceiling of 80 percent should reduce the number of overpayments.

24. *Comment:* Follow-on contracts represent a continuation of effort from the prior contract. Assuming successful performance on the prior contract, continuation of provisional award fee payments at the same rate experienced on the prior contract is appropriate, instead of reducing the rate to 50% for the first period of the follow-on contract. Suggest the following language be added to 216.405–2(b)(3)(B)*(3)*: ''*(3)* For follow-on contracts, the rate for the initial period will be the same as that awarded in the last period of the immediately preceding contract.''

DoD Response: Do not concur. See the DoD Response to Comment 9.

25. *Comment:* The training of the acquisition workforce and industry counterparts is essential for success and for achieving the desired result.

DoD Response: Concur that training is important. A training module on the use of provisional award fee payments is available on the Defense Acquisition University Web site at *http://www.dau.mil,* under ''Continuous Learning.''

26. *Comment:* Recommend that DoD initiate the process to make these provisions applicable on a Governmentwide basis through FAR revisions.

DoD Response: Do not concur, since individual agencies (*e.g.*, the National Aeronautics and Space Administration) craft their own versions of award fee provisions, and their own guidance for the use of those provisions. Governmentwide application of this coverage would only be appropriate if it is someday deemed advisable to create a single award fee provision and policy for use by all Government agencies.

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

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule applies only to cost-plus-award-fee contracts. Most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Part 216

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR Part 216 is amended as follows:

■ 1. The authority citation for 48 CFR Part 216 continues to read as follows:

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

PART 216—TYPES OF CONTRACTS

■ 2. Section 216.405–2 is amended by adding paragraph (b)(3) to read as follows:

216.405–2 Cost-plus-award-fee contracts.

* * * * *

(b) * * *

(3) The CPAF contract may include provisional award fee payments. A provisional award fee payment is a payment made within an evaluation period prior to a final evaluation for that period. The contracting officer may include provisional award fee payments in a CPAF contract on a case-by-case basis, provided those payments—

(A) Are made no more frequently than monthly;

(B) Are limited to no more than—

(1) For the initial award fee evaluation period, 50 percent of the award fee available for that period; and

(2) For subsequent award fee evaluation periods, 80 percent of the evaluation score for the prior evaluation period times the award fee available for the current period, *e.g.*, if the contractor received 90 percent of the award fee available for the prior evaluation period, provisional payments for the current period shall not exceed 72 percent (90 percent × 80 percent) of the award fee available for the current period;

(C) Are superceded by an interim or final award fee evaluation for the applicable evaluation period. If provisional payments have exceeded the payment determined by the evaluation score for the applicable period, the contracting officer shall collect the debt in accordance with FAR 32.606; and

(D) May be discontinued, or reduced in such amounts deemed appropriate by the contracting officer, when the contracting officer determines that the contractor will not achieve a level of performance commensurate with the provisional payment. The contracting officer shall notify the contractor in writing of any discontinuance or reduction in provisional award fee payments.

* * * * *

[FR Doc. 03–28442 Filed 11–13–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 579

[Docket No. NHTSA 2001–8677; Notice 7]

RIN 2127–AJ21

Reporting of Information and Documents About Potential Defects

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Correcting amendment.

SUMMARY: This document corrects a provision in the early warning reporting regulation under the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act. As noted in a petition for reconsideration, the due date for one-time historical reports was extended to a date that is not consistent with schedules of many of the manufacturers that must provide the reports. This corrects the reporting date from December 31, 2003 to January 15, 2004.

DATES: This final rule is effective November 14, 2003.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, contact Jonathan White, Office of Defects Investigation, NHTSA (phone: 202–366–5226). For legal issues, contact Andrew DiMarsico, Office of Chief Counsel, NHTSA (phone: 202–366–5263).

SUPPLEMENTARY INFORMATION:

I. Background

On July 10, 2002, the National Highway Traffic Safety Administration (NHTSA) published a final rule implementing the early warning reporting (EWR) provisions of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, 49 U.S.C. 30166(m) (67 FR 45822).

We received a number of petitions for reconsideration of the final rule, and have responded to most of them in three separate rulemaking notices. These notices were published on April 15, 2003 (Notice 4, 68 FR 18136), and on June 11, 2003 (Notice 5, 68 FR 35132; Notice 6, 68 FR 35145). Notice 6 amended the EWR reporting dates. In response, we received one petition for reconsideration of the due date for the filing of the one-time historical report. We now make a technical correction in light of that petition.

II. Extension of Due Date for the One-Time Historical Report

Notice 6 deferred the initial reporting dates of EWR information for a calendar quarter and the date for submitting the one-time historical report required by 49 CFR 579.28(c), 68 FR 35148. Currently, the latter report must be filed no later than December 31, 2003. On July 28, 2003, the Alliance of Automobile Manufacturers (Alliance) petitioned for reconsideration of this date, asking that it be changed to January 15, 2004. The Alliance asserted that the December 31 date ''falls during a traditional winter holiday period, during which most Alliance member offices in the United States are closed.'' This request does not affect the initial due date for filing of the initial quarterly report, which remains December 1, 2003.

At the time that we published Notice 6, we were primarily concerned with deferring reporting by one quarter and with adopting a schedule that staggered the submission of field reports and one-time historical reports to dates later than the reports of incidents and statistical data. We did not specifically consider whether a December 31 due date would pose any problems. If we had taken into account the practices noted by the Alliance, we would not have adopted that date. We do not believe that safety will be compromised by deferring the reporting date of historical information by two weeks in order to accommodate the practice of members of the Alliance, as well as other vehicle and child restraint system and tire manufacturers, and are amending the introductory text of subsection 579.28(c) accordingly.

IV. Privacy Act Statement

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://dms.dot.gov.*

V. Rulemaking Analyses

This notice extends, by 15 days, a reporting date adopted in Notice 6. The changes made to the EWR regulation by this notice do not alter the burdens and impacts discussed in the Regulatory Analyses of Notice 6. To the extent that

Regulatory Analyses may be relevant to this minor technical change, the Analyses of Notice 6 (68 FR at 35147) are hereby incorporated by reference.

List of Subjects in 49 CFR Part 579

Imports, Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble, 49 CFR part 579 is amended as follows:

PART 579—REPORTING OF INFORMATION AND COMMUNICATIONS ABOUT POTENTIAL DEFECTS

■ 1. The authority citation for part 579 continues to read as follows:

Authority: Sec. 3, Pub. L. 106–414, 114 Stat. 1800 (49 U.S.C. 30102–103, 30112, 30117–121, 30166–167); delegation of authority at 49 CFR 1.50.

Subpart C—Reporting of Early Warning Information

■ 2. The introductory text to § 579.28(c)(1) is revised to read as follows:

§ 579.28 Due dates of reports and other miscellaneous provisions.

* * * * *

(c) One-time reporting of historical information. (1) No later than January 15, 2004:

* * * * *

Issued on: November 6, 2003.

Jeffrey W. Runge,

Administrator.

[FR Doc. 03–28480 Filed 11–13–03; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 68, No. 220
Friday, November 14, 2003

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB90

Common Crop Insurance Regulations; Processing Tomato Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Common Crop Insurance Regulations, Processing Tomato Crop Insurance Provisions (7 CFR 457.160). The intended effect of this action is to: Clarify that producers who have production contracts with tomato brokers are eligible for insurance; allow the Special Provisions statements to provide a replant payment amount that more adequately reflects the regional cost of replanting tomatoes, and restrict the effect of the current processing tomato crop provisions to the 2004 and prior crop years.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business on January 13, 2004, and will be considered when the rule is to be made final. The comment period for information collections under the Paperwork Reduction of 1995 continues through January 13, 2004.

ADDRESSES: Interested persons are invited to submit written comments to the Director, Product Development Division, Risk Management Agency, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO. 64133–4676. Comments titled Processing Tomatoes may also be sent via the Internet to *DirectorPDD@rm.fcic.usda.gov.* A copy of each response will be available for public inspection and copying from 7 a.m. to 4:30 p.m., CST Monday through Friday, except holidays, at the above address.

FOR FURTHER INFORMATION CONTACT: Pam Culver, Risk Management Specialist, Research and Development, Product Development Division, Risk Management Agency, at the Kansas City, MO address listed above, telephone (816) 926–7176.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, it has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information for this rule have been previously approved by OMB under control number 0563–0053 through February 28, 2005.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any action taken by FCIC under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC proposes to amend § 457.160 Processing Tomato Crop Insurance Provisions of the Common Crop Insurance Regulations by adding a definition of ''broker'' and adding provisions to clarify producers who have production contracts with tomato brokers are eligible for insurance. Current provisions specify that producers who have production contracts with tomato processors, and tomato producers who also process tomatoes, can be eligible for insurance. The proposed rule requires the tomato

broker to have all licenses and permits required by the state in which it operates, and to have a written contract with a processor to purchase processing tomatoes on behalf of the processor and to deliver such tomatoes to the processor. Additionally, the proposed rule allows Special Provision statements to provide a replant payment amount that more adequately reflects the regional cost of replanting tomatoes. The replant payment amount remains limited to the producer's actual costs as provided in the Basic Provisions.

List of Subjects in 7 CFR Part 457

Crop insurance, processing tomatoes, reporting and record keeping requirements.

Proposed Rule

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 457 Common Crop Insurance Regulations effective for the 2005 and succeeding crops years, to read as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1), and 1506(p).

2. Amend 457.160 as follows:

a. Revise the heading and the introductory text.

b. Amend section 1 by adding a definition for ''broker''.

c. Amend section 1 by revising the definition of ''processor contract''.

d. Revise section 8(c).

e. Revise section 12(b).

The revisions read as follows:

§ 457.160 Processing tomato crop insurance provisions.

The Processing Tomato Crop Insurance Provisions for the 2005 and succeeding crop years are as follows:

* * * * *

1. Definitions

* * * * *

Broker. An enterprise in the business of selling and buying tomatoes possessing all the licenses and permits required by the state in which it operates, and that has a written contract with a processor to purchase processing tomatoes on behalf of the processor and to deliver such tomatoes to the processor.

* * * * *

Processor contract. A written agreement between the producer and a processor, or between the producer and a broker, containing at a minimum:

(a) The producer's commitment to plant and grow processing tomatoes, and to deliver the tomato production to the processor or broker;

(b) The processor's, or broker's, commitment to purchase all the production stated in the processor contract; and

(c) A price per ton that will be paid for the production.

* * * * *

8. Insured Crop

* * * * *

(c) A tomato producer who is also a processor or broker may establish an insurable interest if the following requirements are met:

(1) The processor or broker, as applicable, must comply with these Crop Provisions;

(2) Prior to the sales closing date, the Board of Directors or officers of the processor or the broker must execute and adopt a resolution that contains the same terms as an acceptable processor contract. (Such resolution will be considered a processor contract under this policy); and

(3) As applicable, our inspection reveals that the processing facilities comply with the definition of a processor contained in these Crop Provisions.

* * * * *

12. Replanting Payment

* * * * *

(b) The maximum amount of the replanting payment per acre will be determined as follows:

(1) the amount if shown on the Special Provisions; or

(2) if an amount is not contained in the Special Provisions, the lesser of 20 percent of the production guarantee or three tons, multiplied by your third stage (final) price election, multiplied by your share; and

(3) in no event will the replanting payment per acre exceed your actual cost of replanting.

* * * * *

Signed in Washington, DC, on November 4, 2003.

Ross J. Davidson,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 03–28219 Filed 11–13–03; 8:45 am]

BILLING CODE 3410–08–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 110, 113, 9004, and 9034

[Notice 2003–21]

Mailing Lists of Political Committees

AGENCY: Federal Election Commission.

ACTION: Notice of disposition; termination of rulemaking.

SUMMARY: On September 4, 2003, the Commission issued a Notice of Proposed Rulemaking seeking comment on proposed rules that addressed the rental, sale, and exchange of political committee mailing lists, and the treatment and use of proceeds from such transactions. The Commission is not amending its current rules and is terminating this rulemaking at this time for several reasons, including the lack of perceived need by political committees for guidance beyond what has been presented in Commission advisory opinions. Further information is provided in the supplementary information that follows.

FOR FURTHER INFORMATION CONTACT: Ms. Mai T. Dinh, Acting Assistant General Counsel, or Mr. Jonathan M. Levin, Senior Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On September 4, 2003, the Commission issued a Notice of Proposed Rulemaking (''NPRM''), 68 FR 52531 (Sept. 4, 2003). The proposed rules would have set forth the conditions under which the proceeds from the sale, rental, or exchange of a political committee's mailing list would not be contributions to that political committee. The proposed rules would also have prohibited the conversion of an authorized committee's mailing list, or any proceeds from the rental or sale of the list, to the personal use of the candidate or any other person. In addition, the proposed rules would have addressed the sale or rental of mailing lists owned by the authorized committee of a publicly funded presidential candidate. The NPRM sought comments on these rules generally and asked for comments as to specific aspects of mailing list transactions. In particular, the Commission asked for comment on whether the final rules should list specific factors to determine the usual and normal charge for the mailing lists involved in the transactions, and what those factors should be.

The Commission received nine comments in response to the NPRM. These were from: (1) Charles R. Spies on behalf of the Republican National Committee; (2) Stephen M. Hoersting on behalf of the National Republican Senatorial Committee; (3) Donald F. McGahn II, on behalf of the National Republican Congressional Committee; (4) Joseph E. Sandler and Robert F. Bauer on behalf of the Democratic National Committee, the Democratic

Senatorial Campaign Committee, and the Democratic Congressional Campaign Committee; (5) William W. Hall, on behalf of the Libertarian National Committee; (6) Lawrence Noble and Paul Sanford on behalf of the Center for Responsive Politics and FEC Watch; (7) Glen Shor on behalf of the Campaign Legal Center; (8) Lisa J. Danetz on behalf of the National Voting Rights Institute; and (9) the law firm of Ryan, Phillips, Utrecht & MacKinnon. At the public hearing on October 1, 2003, testimony was given by Messrs. Bauer, Hoersting, Shor, McGahn, and Spies, and Marc E. Elias of Perkins, Coie, LLP. The Commission received no written comments or testimony from list brokers or other persons whose business primarily involves the sale or leasing of mailing lists. Copies of the comments and the transcript of the hearing are available on the Commission's Web site at *www.fec.gov.*

On November 6, 2003, the Commission voted to close the rulemaking on mailing lists of political committees. The Commission made this decision for several reasons. The written comments and oral testimony of a number of the commenters indicate that the regulated community does not perceive a need for further regulation of political committee mailing list transactions. In general, a number of the commenters believe that Commission advisory opinions, particularly Advisory Opinion 2002–14 (issued with respect to the rental of mailing lists of the Libertarian National Committee to other entities), have provided clear enough guidance on the conditions under which the proceeds from the sale or rental of mailing lists are not considered contributions to the political committee. The commenters expressed broad opposition to the proposed rules and questioned the need for such rules at this time.

In addition, a number of commenters asserted that there are a significant number of factors that must be considered in determining the usual and normal charge and whether the transaction is commercially reasonable. As several commenters stated, appropriate factors may vary considerably depending upon the circumstances. Because the Commission is not currently in possession of a factual record adequate to conclude that a particular test is sufficiently flexible and comprehensive to address all circumstances to which the proposed rules would apply, the Commission has decided not to proceed with final rules at this time, and to terminate this rulemaking.

Dated: November 7, 2003.

Bradley A. Smith,

Vice Chairman, Federal Election Commission.

[FR Doc. 03–28473 Filed 11–13–03; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–330–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145 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 EMBRAER Model EMB–135 and EMB–145 series airplanes. This proposal would require relocating the pitot 1 and pitot 2 drain valves from the nose landing gear (NLG) compartment to the forward electronic compartment, and accomplishing follow-on actions. This action is necessary to prevent ice from damaging the pitot drain valves, which could cause airspeed indication errors, resulting in display of erroneous or misleading information to the flight crew. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by December 15, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–330–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–330–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), PO Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone 425–227–1175; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–330–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the

FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–330–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–135 and –145 series airplanes. The DAC advises that water accumulates in the pitot 1 and pitot 2 drain valves in the nose landing gear (NLG) compartment where they are subjected to freezing temperatures. Frozen water in the drain valve can expand and cause the pitot drain valves to fail so that the airspeed indication system tubing is open to ambient pressure. This condition, if not corrected, could result in ice damage to the pitot drain valves, which could cause airspeed indication errors, resulting in display of erroneous or misleading information to the flight crew.

Explanation of Relevant Service Information

EMBRAER has issued Service Bulletin 145–34–0070, Change 03, dated July 16, 2003, and Service Bulletin 145LEG–34–0002, dated September 23, 2002, which describe procedures for relocating the pitot 1 and pitot 2 drain valves from the NLG compartment to the forward electronic compartment so that water will not accumulate in the valves and the valves are less susceptible to freezing temperatures. The procedures also include installing a plug, washers, and a nut to close the hole from which the drain valve is removed; replacing an existing placard with a new placard; and applying sealant on the placard. Accomplishment of the actions specified in the applicable service bulletin is intended to adequately address the identified unsafe condition. The DAC classified these service bulletins as mandatory and issued Brazilian Airworthiness Directive 2002–06–01R1, dated November 8, 2002, to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

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

Cost Impact

The FAA estimates that 374 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Required parts would cost approximately between $301 and $304 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be between $161,194 and $162,316, or between $431 and $434 per airplane.

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

EMBRAER: Docket 2002–NM–330–AD.

Applicability: Model EMB–135 and –145 series airplanes; as listed in EMBRAER Service Bulletin 145–34–0070, Change 03, dated July 16, 2003; and EMBRAER Service Bulletin 145LEG–34–0002, dated September 23, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent ice from damaging the pitot drain valves, which could cause airspeed indication errors, resulting in display of erroneous or misleading information to the flight crew, accomplish the following:

Relocation

(a) Within 2,000 flight hours or 12 months after the effective date of this AD, whichever occurs first: Relocate the pitot 1 and pitot 2 drain valves from the nose landing gear (NLG) compartment to the forward electronic compartment; and install a plug, washers, and a nut to close the hole in the structure where the pitot 1 and pitot 2 drain valves were removed; per the Accomplishment Instructions of EMBRAER Service Bulletin 145–34–0070, Change 03, dated July 16, 2003; or EMBRAER Service Bulletin 145LEG–34–0002, dated September 23, 2002; as applicable.

Installation

(b) After accomplishment of paragraph (a) of this AD but prior to further flight: Install a new placard and apply sealant on the placard per the Accomplishment Instructions of EMBRAER Service Bulletin 145–34–0070, Change 03, dated July 16, 2003; or EMBRAER Service Bulletin 145LEG–34–0002, dated September 23, 2002; as applicable.

Actions Accomplished Per Previous Issue of Service Bulletin

(c) Actions accomplished before the effective date of this AD per EMBRAER Service Bulletin 145–34–0070, original issue, dated April 23, 2002; EMBRAER Service Bulletin 145–34–0070, Revision 01, dated September 23, 2002; and EMBRAER Service Bulletin 145–34–0070, Revision 02, dated December 2, 2002; are considered acceptable for compliance with the corresponding action specified in this AD.

Alternative Methods of Compliance

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

Note 1: The subject of this AD is addressed in Brazilian airworthiness directive 2002–06–01R1, dated November 8, 2002.

Issued in Renton, Washington, on November 7, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–28495 Filed 11–13–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

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

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

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

DATES: Comments must be received on or before December 15, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–16359 Airspace Docket No. 03–ASO–18, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–16359/Airspace Docket No. 03–ASO–18.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the Superintendent of Document's web page at *http://www.access.gpo.gov/nara.* Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class D airspace at Hilton Head Island, SC. Class D airspace designations for airspace areas extending upward from the surface of the earth are published in Paragraph 5000 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designations listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace.

* * * * *

ASO SC D Hilton Head Island, SC [NEW]

Hilton Head Airport, SC
(Lat. 32°13′28″ N, long. 80°41′51″ W)

That airspace extending upward from the surface to and including 2,000 feet MSL within a 3.9-mile radius of the Hilton Head Airport. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on October 29, 2003.

Walter R. Cochran,

Acting Manager, Air Traffic Division Southern Region

[FR Doc. 03–28539 Filed 11–13–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16119; Airspace Docket No. 03–AEA–13]

Proposed Amendment to Class E Airspace; Erie, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Erie, PA. The development of a Standard Instrument Approach Procedure (SIAP) based on area navigation (RNAV) to serve flights into Life Star Base Heliport, Harbor Creek, PA, under Instrument Flight Rules (IFR) has made this proposal necessary. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain aircraft executing the approach. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before December 15, 2003.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–16119/Airspace Docket No. 03–AEA–13 at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520, Eastern Region, 1 Aviation Place, Jamaica, NY 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–16119/Airspace Docket No. 03–AEA–13.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Documents web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers of this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class E airspace area at Erie, PA. The development of a SIAP to serve flights operating IFR into Life Star Base Heliport make this action necessary. Controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in paragraph 6005 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not ''significant regulatory action'' under Executive Order 12866; (2) is not

a ''significant rule'' under DOT Regulatory Policies and Procedrues (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

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

* * * * *

AEA PA E5 Erie, PA (Revised)

Erie International/Tom Ridge Field Airport, PA
(Lat. 42°04′55″ N, long. 80°10′34″ W)
Life Star Base Heliport
(Lat. 42°10′19″ N, long. 79°56′34″ W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Erie International/Tom Ridge Field Airport and within 4.4 miles each side of the 054° bearing from the airport extending from the 6.7-mile radius to 14 miles northeast of the airport and within a 6-mile radius of Life Star Base Heliport.

* * * * *

Issued in Jamaica, New York, on September 15, 2003.

John G. McCartney,

Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 03–28534 Filed 11–13–03; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA261–0420b; FRL–7582–3]

Revisions to the California State Implementation Plan, San Diego County Air Pollution Control District; San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the San Diego County Air Pollution Control District (SDCAPCD) and San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from metal parts and aerospace coating industries. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by December 15, 2003.

ADDRESSES: Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, or e-mail to steckel.andrew@epa.gov, or submit comments at *http://www.regulations.gov.*

You can inspect copies of the submitted SIP revisions, EPA's technical support documents (TSDs), and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the submitted SIP revisions by appointment at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814;
San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123; and,
San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA, 93726.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, EPA Region IX, at either (415) 947–4111, or Wamsley.Jerry@epa.gov.

SUPPLEMENTARY INFORMATION: This proposal addresses SDCAPCD Rule 67.3—Metal Parts and Products and SJVUAPCD Rule 4605—Aerospace Assembly and Component Coating Operations. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: October 16, 2003.

Debra Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 03–28306 Filed 11–13–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE067–1041b; FRL–7586–3]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Revisions to Stage I and Stage II Vapor Recovery at Gasoline Dispensing Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Delaware for the purpose of amending the regulations pertaining to Stage I and Stage II Vapor Recovery at gasoline dispensing facilities. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal 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. 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 December 15, 2003.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to *morris.makeba@epa.gov* or to *http://www.regulations.gov*, which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in the Supplementary Information section. 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 the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware.

FOR FURTHER INFORMATION CONTACT: Catherine L. Magliocchetti, at (215) 814–2174, or by e-mail at *magliocchetti.catherine@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.

You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number, DE067–1041, in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. 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. *E-mail.* Comments may be sent by electronic mail (e-mail) to *morris.makeba@epa.gov,* attention DE067–1041. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through Regulations.gov, 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.

ii. *Regulations.gov.* Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to *http://www.regulations.gov,* then select ''Environmental Protection Agency'' at the top of the page and use the ''go'' button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. 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.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in the **ADDRESSES** section of this document. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. By Mail. Written comments should be addressed to the EPA Regional office listed in the **ADDRESSES** section of this document.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (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 the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

Submittal of CBI Comments

Do not submit information that you consider to be CBI electronically to EPA. 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 official public regional rulemaking file. 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 file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

Considerations When Preparing Comments to 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 regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of these revisions to Delaware's Regulation 24, Sections 2, 26 and 36 and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: November 5, 2003.

James W. Newsom,

Acting Regional Administrator, Region III.

[FR Doc. 03–28418 Filed 11–13–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7586–8]

Colorado: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to grant Final authorization to the hazardous waste program changes submitted by Colorado. In the ''Rules'' section of this **Federal Register**, we are authorizing the State's program changes as an immediate final rule without a prior proposed rule because we believe this action is not controversial. Unless we receive written comments opposing this authorization during the comment period, the immediate final rule will become effective and the Agency will not take further action on this proposal. If we receive comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect. EPA will address public comments in a later final rule based on this proposal. EPA may not provide further opportunity for comment. Any parties interested in commenting on this action must do so at this time.

DATES: We must receive your comments by December 15, 2003.

ADDRESSES: Send written comments to Kris Shurr, 8P–HW, U.S. EPA, Region VIII, 999 18th St, Ste. 300, Denver, Colorado 80202–2466, phone number: (303) 312–6139, e-mail: *shurr.kris@epa.gov.* You can view and copy Colorado's application at the following addresses: CDPHE, from 8 a.m. to 4 p.m., 4300 Cherry Creek Drive South, Denver, Colorado 80222–1530, contact: Randy Perila, phone number (303) 692–3364 and EPA Region VIII, from 8 a.m. to 3 p.m., 999 18th Street, Suite 300, Denver, Colorado 80202–2466, contact: Kris Shurr, phone number: (303) 312–6139, e-mail: *shurr.kris@epa.gov*.

FOR FURTHER INFORMATION CONTACT: Kris Shurr, EPA Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, phone number: (303) 312–6139, e-mail: *shurr.kris@epa.gov*.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the ''Rules'' section of this **Federal Register**.

Dated: November 5, 2003.

Robert E. Roberts,

Regional Administrator, Region VIII.

[FR Doc. 03–28577 Filed 11–13–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3535, MB Docket No. 03–229, RM–10795]

Digital Television Broadcast Service; Anniston, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by TV Alabama, Inc., licensee of station WJSU-TV, Anniston, Alabama, proposing the substitution of DTV channel 9 for DTV channel 58. DTV Channel 9 can be allotted to Anniston at reference coordinates 33–36–24 N. and 86–25–03 W. with a power of 15.6, a height above average terrain HAAT of 359 meters.

DATES: Comments must be filed on or before December 29, 2003, and reply comments on or before January 13, 2004.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceedings involving petitions for rule making (except in broadcast allotment proceedings). *See Electronic Filing of Documents in Rule Making Proceedings,* GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–229, adopted November 4, 2003, and released November 7, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document 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.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Alabama is amended by removing DTV channel 58 and adding DTV channel 9 at Anniston.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–28463 Filed 11–13–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3534, MB Docket No. 03–230, RM–10816]

Digital Television Broadcast Service; Bloomington, IN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Tribune Broadcast Holdings, Inc., licensee of station WTTV-TV, Bloomington, Indiana, proposing the substitution of DTV channel 48 for DTV channel 53 at Bloomington. DTV Channel 48 can be allotted to Bloomington at reference coordinates 39–24–27 N. and 86–08–52 W. with a power of 840, a height above average terrain HAAT of 357 meters. Since the community of Bloomington is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian must be obtained for this allotment.

DATES: Comments must be filed on or before December 29, 2003, and reply comments on or before January 13, 2004.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceedings involving petitions for rule making (except in broadcast allotment proceedings). *See Electronic Filing of Documents in Rule Making Proceedings,* GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Thomas P. Van Wazer, Sidley, Austin, Brown & Wood LLP, 1501 K Street, NW., Washington, DC 20005 (Counsel for Tribune Broadcast Holdings, Inc.).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–230, adopted November 4, 2003, and released November 7, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document 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*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Indiana is amended by removing DTV channel 53 and adding DTV channel 48 at Bloomington.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–28462 Filed 11–13–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 648

[Docket No. 031104274–3274–01; I.D. 101603A]

RIN 0648–AQ83

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries

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

ACTION: Proposed rule, 2004 initial specifications; request for comments.

SUMMARY: NMFS proposes initial specifications for the 2004 fishing year for Atlantic mackerel, squid, and butterfish (MSB). Regulations governing these fisheries require NMFS to publish proposed specifications for the upcoming fishing year and to provide an opportunity for public comment. The

intent of this action is to fulfill this requirement and to promote the development and conservation of the MSB resources. This action also proposes an increase in the Illex squid catch limit for squid/butterfish incidental catch permit holders from 5,000 lb (2.27 mt) to 10,000 lb (4.54 mt). In addition, this action would correct the regulations implementing the MSB Fishery Management Plan (FMP) by reinserting regulatory text that was incorrectly removed in the final rule that implemented measures contained in the Atlantic Herring FMP, which was published on December 11, 2000.

DATES: Public comments must be received no later than 5 p.m., Eastern Standard Time, on December 15, 2003.

ADDRESSES: Copies of supporting documents used by the Mid-Atlantic Fishery Management Council, including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from: Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790. The EA/RIR/IRFA is accessible via the Internet at *http:/www.nero.noaa.gov*.

Comments on the proposed specifications should be sent to: Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. Please mark the envelope, ''Comments–2004 MSB Specifications.'' Comments also may be sent via facsimile (fax) to 978–281–9135. Comments will not be accepted if submitted via e-mail or Internet.

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

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP), prepared by the Mid-Atlantic Fishery Management Council (Council), appear at 50 CFR part 648, subpart B. Regulations governing foreign fishing appear at 50 CFR part 600, subpart F. These regulations, at §§ 600.516(c) and 648.21, require that NMFS, based on the maximum optimum yield (Max OY) of each fishery as established by the regulations, annually publish a proposed rule specifying the initial amounts of the initial optimum yield (IOY), as well as the amounts for allowable biological catch (ABC), domestic annual harvest (DAH), domestic annual processing (DAP), total allowable level of foreign fishing (TALFF), and JVP for the affected species managed under the FMP. In addition, these regulations allow Loligo squid specifications to be specified for up to 3 years, subject to annual review. The regulations found in § 648.20 also specify that IOY for squid is equal to the combination of research quota and DAH, with no TALFF specified for squid. For butterfish, the regulations specify that a butterfish bycatch TALFF will be specified only if TALFF is specified for Atlantic mackerel. Procedures for determining the initial annual amounts are found in § 648.21.

In addition, the regulations at § 648.21(g) allow the specification of research set-asides (RSA) to be used for research purposes. For 2004, the Council recommended RSAs of up to 2 percent of IOY for Atlantic mackerel and butterfish; and of up to 3 percent of IOY for squids. The RSAs would fund research and data collection for those species. A Request for Research Proposals was published to solicit proposals for 2004 based on research priorities previously identified by the Council (68 FR 3864, January 27, 2003). The deadline for submission was March 28, 2003. On July 19, 2003, NOAA Fisheries convened a Review Panel to review the comments submitted by technical reviewers on proposed research projects that would be funded using RSAs. Based on discussions among participants on the Review Panel, one Loligo squid project proposal was recommended for approval and will be forwarded to the NOAA Grants Office for award. Consistent with the Council's recommendations, the quotas in this proposed rule have been adjusted to reflect the project recommended for approval. If the awards are not made by the NOAA Grants Office for any reason, NMFS will publish a notice in the **Federal Register** to restore the unused RSA amount to the annual quota.

Table 1 contains the proposed initial specifications for the 2004 Atlantic mackerel, *Loligo* and *Illex* squids, and butterfish fisheries.

TABLE 1. PROPOSED INITIAL ANNUAL SPECIFICATIONS, IN METRIC TONS (MT), FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE FISHING YEAR JANUARY 1 THROUGH DECEMBER 31, 2004

Specifications	*Loligo*	*Illex*	Atlantic Mackerel	Butterfish
Max OY	26,000	24,000	[1]N/A	16,000
ABC	17,000	24,000	347,000	7,200
IOY	[4]16,872.4	24,000	[3]170,000	5,900
DAH	16,872.4	24,000	[3]170,000	5,900
DAP	16,872.4	24,000	150,000	5,900
JVP	0	0	5,000	0
TALFF	0	0	0	0

[1] Not applicable.
[2] IOY may be increased during the year, but the total ABC will not exceed 347,000 mt
[3] Includes 15,000 mt of Atlantic mackerel recreational allocation.
[4] Excludes 127.6 mt for RSA.

2004 Proposed Specifications

Atlantic Mackerel

Overfishing for Atlantic mackerel is defined by the FMP to occur when the catch associated with a threshold fishing mortality rate (F) of F_{MSY} (the F that produces MSY (maximum sustainable yield)) is exceeded. When spawning stock biomass (SSB) is greater than 890,000 mt, the maximum F threshold is F_{MSY} (0.45), and the target F is 0.25. To avoid low levels of recruitment, the FMP contains a control rule whereby the threshold F decreases linearly from 0.45 at 890,000 mt SSB to zero at 225,000 mt SSB (1/4 of the biomass level that would produce MSY on a continuing basis (B_{MSY})), and the target F decreases linearly from 0.25 at 890,000 mt SSB to zero at 450,000 mt SSB (1/2 B^{MSY}). Annual quotas are specified that correspond to the target F resulting from this control rule.

Since SSB is currently above 890,000 mt, the target F for 2004 is 0.25. The yield associated with that target F at the estimated stock size is 369,000 mt. The ABC recommendation of 347,000 mt represents an adjustment to the yield estimate of 369,000 mt, derived by subtracting the estimated Canadian catch of 22,000 mt from the yield estimate. The proposed IOY for the 2004 Atlantic mackerel fishery is 170,000 mt, which is equal to the proposed DAH. The specification of DAH is computed by totaling the estimated recreational catch, the proposed DAP, and the proposed JVP. The 170,000–mt proposed DAH is comprised of 15,000 mt recreational, 150,000 mt DAP, and 5,000 mt JVP.

The JVP of 5,000 mt that the Council recommends, and NMFS proposes, is a reduction from the amount specified for 2003 (10,000 mt, with the Administrator, Northeast Region, NMFS (Regional Administrator) authorized to increase it to 20,000 mt). The DAP and JVP components of DAH were historically estimated using the Council's annual processor survey, which was intended to obtain estimates of processing capacity in the domestic and joint venture (JV) fisheries. However, from 1994 through 2002, response to this voluntary survey was incomplete and did not contain projections from some large processors. For 2003 and 2004, in place of the survey, the Council relied on testimony concerning their current and projected shoreside processing capacity for Atlantic mackerel in 2003 and 2004 presented by domestic processors during its annual specification meetings. While domestic processing capacity is increasing, the Council believes, based on the best data available, that the capacity of the domestic fleet to harvest mackerel still exceeds the domestic processors' capacity to process mackerel. Therefore, the Council has recommended, and NMFS proposes, a specification of 5,000 mt of JVP for the 2004 fishery. In previous years, to expedite an inseason adjustment to JVP, the Council specified in advance that NMFS could implement a specified inseason increase in JVP. This year there is no recommendation to expedite an inseason adjustment. However, if additional applications for JVP are received, § 648.21(e) authorizes inseason adjustments by the Regional Administrator, in consultation with the Council, during the fishing year by publishing a notification in the **Federal Register** and providing a 30–day comment period.

The Council also recommended, and NMFS proposes to maintain, a TALFF of zero. The Council believes that the development of the domestic mackerel fishery results in the greatest resource benefits to the nation. With DAP set at 150,000 mt, the Council was concerned that the perceived competition TALFF represents to U.S. processors could impede the future expansion of domestic mackerel processing facilities.

As authorized by §§ 600.501 and 600.520(b)(2)(ii), the Council recommended, and NMFS proposes, that several special conditions be imposed on the 2004 Atlantic mackerel fishery, as follows: (1) JVs would be allowed south of 37°30′ N. lat., but river herring bycatch may not exceed 0.25 percent of the over-the-side transfers of Atlantic mackerel; (2) the Regional Administrator should ensure that impacts on marine mammals are reduced in the prosecution of the Atlantic mackerel fishery; (3) the mackerel optimum yield (OY) may be increased during the year, but the total should not exceed 347,000 mt; and (4) applications from a particular nation for an Atlantic mackerel JV allocation for 2004 may be based on an evaluation by the Regional Administrator of that nation's performances relative to purchase obligations for previous years.

Atlantic Squids

Loligo

The FMP defines overfishing for *Loligo* squid as occurring when the catch associated with a threshold of the fishing mortality that produces the maximum sustainable level of yield per recruit (F_{MAX}) is exceeded (F_{MAX} is a proxy for F_{MSY}). When an estimate of F_{MSY} becomes available, it will replace the current overfishing proxy, F_{MAX}. Max OY is specified as the catch associated with FMAX. The biomass target is specified as B_{MSY}.

The most recent stock assessment for *Loligo* squid (the 34th Northeast Regional Stock Assessment Workshop, 2002 (SAW–34)) concluded overfishing is not occurring and recommended that the Council maintain the catch of 20,000 mt (to include both landings and discards). Based on that advice and the assumption that the stock will be at or near B_{msy} in 2004, the Council recommended no changes from the 2003 quota level. The 2004 quota is specified as the yield associated with 75 percent of F_{msy} at B_{msy}, or 17,000 mt, based on projections from SAW–34. The regulations continue to specify Max OY as the yield associated with F_{max}, or 26,000 mt. Thus, the 2004 proposed Max OY for *Loligo* squid is 26,000 mt and the recommended ABC for the 2004 fishery is 17,000 mt.

The FMP does not authorize the specification of JVP and TALFF for the *Loligo* squid fishery, because of the domestic industry's capacity to harvest and process the OY for this fishery; therefore, JVP and TALFF are zero.

Distribution of the Annual *Loligo* Squid Quota

Since 2001, the annual DAH for Loligo squid has been allocated into quarterly periods. The Council and NMFS recommend no change from the 2003 quarterly distribution system. Due to the recommendation of one research project that would utilize *Loligo* squid RSA, this proposed rule would adjust the quarterly allocations from those that were proposed, based on formulas specified in the FMP. The 2004 quarterly allocations would be as follows:

TABLE 2. *Loligo* SQUID QUARTERLY ALLOCATIONS

Quarter	Percent	Metric tons[1]	Research set-aside
I (Jan-Mar)	33.23	5,606.7	N/A
II(Apr-Jun)	17.61	2,971.2	N/A
III(Jul-Sep)	17.3	2,918.9	N/A
IV(Oct-Dec)	31.86	5,375.6	N/A
Total	100	16,872.4	127.6

[1]Quarterly allocations after 127.5 mt RSA deduction.

Also unchanged from 2003, the Council recommended that the 2004 directed fishery be closed in Quarters I-III when 80 percent of the period allocation is harvested, with vessels restricted to a 2,500–lb (1,134–kg) *Loligo*

squid trip limit per single calender day until the end of the respective quarter. The directed fishery would close when 95 percent of the total annual DAH has been harvested, with vessels restricted to a 2,500–lb (1,134–kg) *Loligo* squid trip limit per single calender day for the remainder of the year. Quota overages from Quarter I would be deducted from the allocation in Quarter III, and any overages from Quarter II would be deducted from Quarter IV. By default, quarterly underages from Quarters II and III carry over into Quarter IV, because Quarter IV does not close until 95 percent of the total annual quota has been harvested. Additionally, if the Quarter I landings for *Loligo* squid are less than 80 percent of the Quarter I allocation, the underage below 80 percent is applied to Quarter III.

Illex

The overfishing definition for *Illex* squid states that overfishing for *Illex* squid occurs when the catch associated with a threshold fishing mortality rate of F_{MSY} is exceeded. Max OY is specified as the catch associated with a fishing mortality rate of F_{MSY}, while DAH is specified as the level of harvest that corresponds to a target fishing mortality rate of 75 percent F_{msy}. The biomass target is specified as B_{MSY}. The minimum biomass threshold is specified as ½ B_{MSY}.

The Council recommended annual measures for the *Illex* fishery at its June 2003 meeting. At that time, the most recent stock assessment information dated from 1999 (the 29th Stock Assessment Workshop; SAW 29). SAW 29 concluded that the stock was not in an overfished condition and that overfishing was not occurring. Due to the lack of adequate data, the estimate of yield at Fmsy was not updated in the assessment so there were no yield estimates corresponding to the target fishing mortality rate. However, an upper bound on annual fishing morality was computed for the US EEZ portion of the stock based on a model which incorporated weekly landings, relative fishing effort, and mean squid weights during 1994–1998. These estimates of the fishing mortality rate were well below the biological reference points. Therefore, the Council recommended that DAH should continue to be specified at 24,000 mt.

In September 2003, subsequent to the Council action, the results of an updated assessment of the *Illex* squid stock (the 37th Northeast Regional Stock Assessment Workshop; SAW–37) were released. SAW–37 concluded that overfishing was not likely to have occurred during the period 1992–2002. SAW–37 found that it was not possible to evaluate the current biomass status for *Illex* squid relative to B_{msy} because the size of the stock could not be reliably estimated. SAW 37 noted that since 1999, NEFSC autumn survey abundance indices have been below the 1982–2002 average, but that it could not determine whether this trend is due to low abundance, low availability or both. The assessment noted that surface and bottom water temperatures in the mid-Atlantic Bight have been warmer than average during recent years, and that *Illex* abundance and biomass indices from the autumn surveys were significantly negatively correlated with bottom water temperature anomalies from the autumn surveys. SAW 37 concluded that this likely indicates an environmental effect on productivity. While landings have been below the 1982–2002 average since 1998, SAW 37 found that this could be due to the reduced effort observed during the time period, low biomass or both factors.

SAW 37 cautioned that, under current stock conditions, a DAH of 24,000 mt, which assumes a stock at B_{msy}, may not be sufficient to prevent overfishing. It also cautioned that the existing overfishing definition, which is based on F_{msy}, is not only difficult to estimate given the available information, but may also perform poorly given the stock's production dynamics. In addition, SAW 37 recommended that, given uncertainties in the stock distribution and population biology, the fishery should be managed in relation to the proportion of the stock on the continental shelf and available to U.S. fisheries. However, SAW 37 did not recommend specific action, and the assessment also noted that more knowledge of *Illex* is necessary to respond to these concerns. While cooperative research efforts are underway, there is currently no information to use to construct an alternative recommendation.

Despite the cautions within SAW 37, the assessment also concluded that it was unlikely that overfishing occurred during 1999–2002 for several reasons. Many of these reasons remain applicable to the proposal to maintain DAH at 24,000 mt for 2004. The reasons are: (1) The current small fleet size and effort levels make it unlikely that the fishery could exert the very high fishing mortality rate required to exceed the level recommended in the assessment ($F_{50\%}$), (2) the short fishing season makes high annual average fishing mortality rates unlikely, (3) the restricted geographical distribution of the fishery makes high annual average fishing mortality rates for the entire stock unlikely, (4) relative exploitation indices have declined considerably since 1999 and have been below the 1982–2002 median since then, and (5) preliminary model results indicate that fishing mortality rates as high as $F_{50\%}$ are unlikely to have occurred even during 1999, when relative fishing mortality was the highest in recent years.

Therefore, NMFS proposes that the annual specifications for *Illex* squid should remain unchanged for 2004, agreeing with the Council that there is no basis for concluding that the specification are likely to result in overfishing. The specification of Max OY, ABC and DAH would remain unchanged from 2003 at 24,000 mt. As the Council noted, the management program for *Illex* requires the directed fishery to be closed when 95 percent of the quota is harvested (22,800 mt). While incidental landings are allowed following this closure, the amount of *Illex* caught incidentally by vessels targeting other species is limited due to the specialized nature of the *Illex* fishery. *Illex* is harvested offshore near the edge of the continental shelf during the summer. The species spoils quickly, so freezing or refrigerated seawater equipment must be utilized to prevent spoilage. Similar to *Loligo* squid, when a trip limit is in effect, vessels are prohibited from possessing or landing more than the specified amount in a single calendar day. Few vessels are expected to invest in the necessary equipment to pursue *Illex* under the the incidental catch allowance.

The FMP does not authorize the specification of JVP and TALFF for the *Illex* squid fishery because of the domestic fishing industry's capacity to harvest and to process the OY from this fishery.

Increase in the *Illex* Squid Catch Limit for Squid/Butterfish Incidental Catch Permit Holders

The Council has also recommended, and NMFS proposes, to increase the *Illex* squid catch limit for squid/butterfish incidental catch permit holders from 5,000 lb (2.27 mt) to 10,000 lb (4.54 mt). This also represents the trip limit in effect when the directed fishery is closed. *Illex* squid is a high volume, low value species, which is taken offshore near the edge of the continental shelf during the summer. The species also spoils rapidly, so either freezing or refrigerated seawater equipment is necessary to hold the catch and deliver it shoreside in a marketable condition. Given the substantial capital investment required to prosecute this fishery, the Council

does not expect that squid/butterfish incidental catch permit holders will target *Illex* squid as result of the increase in the bycatch allowance. Rather, this measure will provide some positive economic benefit by allowing these incidental catch permit holders to retain more of the *Illex* squid taken as bycatch in other directed fisheries.

Butterfish

The FMP set OY for butterfish at 16,000 mt. Based on the most current stock assessment, the Council recommends, and NMFS proposes, an ABC of 7,200 mt for the 2004 fishery. This represents no change in the specifications since 1996. Commercial landings of butterfish have been low, at 1,964 mt, 2,116 mt, 1,432 mt, 4,373 mt and 841 mt for the 1998 through 2002 fisheries, respectively. Lack of market demand and the difficulty in locating schools of market-sized fish have constrained this fishery.

For the 2004 fishing year, the Council recommended, and NMFS proposes, an IOY for butterfish of 5,900 mt. The IOY is composed of a DAH of 5,900 mt and a bycatch TALFF that is equal to zero. The regulations found in § 648.20 authorize the specification of JVP or TALFF specifications for butterfish only for a bycatch TALFF specification if TALFF is specified for Atlantic mackerel. Because the Council did not recommend TALFF for Atlantic mackerel, TALFF for butterfish is set at zero.

Correcting Amendment

On December 11, 2000, NMFS published a final rule at 65 FR 77450 to implement management measures contained in the Atlantic Herring FMP. However, the final rule removed § 648.6 (a)(2), because the measures were thought to also pertain to Atlantic herring vessels and, therefore, were thought to be redundant with the Atlantic herring processing permit provisions specified at § 648.4(a)(10)(ii). The text previously codified at § 648.6 (a)(2) allowed any Atlantic mackerel vessel that exceeded the size or horsepower restrictions specified at § 648.4 (a)(5)(iii), to be issued an at-sea processor permit to receive over the side, possess and process Atlantic mackerel harvested in or from the Exclusive Economic Zone. However, this measure does not pertain to Atlantic herring vessels and is not redundant with the provision that was established under § 648.4(a)(10)(ii). Therefore, this rule would reinsert § 648.6 (a)(2), which was incorrectly removed on December 11, 2000.

Classification

This action is authorized by 50 CFR part 648 and has been determined to be not significant for purposes of E.O. 12866.

The Council prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act, in section 3.0 of the RIR that describes the economic impacts this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the **SUPPLEMENTARY INFORMATION** section of this proposed rule. This proposed rule does not duplicate, overlap, or conflict with other Federal rules. There are no new reporting or recordkeeping requirements contained in the Preferred Alternatives or any of the alternatives considered for this action. A copy of the IRFA can be obtained from the Council or NMFS (*see* **ADDRESSES**) or via the Internet at *http:/www.nero.noaa.gov*. A summary of the analysis follows:

The number of potential fishing vessels in the 2003 fisheries are 381 for *Loligo* squid/butterfish, 72 for *Illex* squid, 2,407 for Atlantic mackerel, and 2,119 vessels with incidental catch permits for squid/butterfish. All of the vessels are considered small entities. Many vessels participate in more than one of these fisheries; therefore, the numbers are not additive. The proposed DAH specifications of 170,000 mt for Atlantic mackerel, 24,000 mt for *Illex* squid, and 5,900 mt for butterfish represent no constraint on vessels in these fisheries. The level of landings in the proposed specifications for 2004 have not been achieved by vessels in these fisheries in recent years. Absent such a constraint, no impacts on revenues are expected as a result of the proposed action.

From 1998–2002, *Loligo* squid landings averaged 16,631 mt. If the 2004 proposed DAH specification of 17,000 mt for *Loligo* squid is achieved, there would be an increase in catch and revenue in the *Loligo* squid fishery relative to the average landings from 1998–2002. NMFS also proposes to increase the *Illex* squid catch limit for squid/butterfish incidental catch permit holders from 5,000 lb (2.27 mt) per trip to 10,000 lb (4.54 mt) per trip. This measure would provide some positive economic benefit by allowing these incidental catch permit holders to retain more of the *Illex* squid taken as bycatch in other directed fisheries. *Illex* squid is a high volume, low value species, which is taken offshore near the edge of the continental shelf during the summer. The species spoils rapidly, so either freezing or refrigerated seawater equipment is necessary to hold the catch and deliver it shoreside in a marketable condition. Therefore, given the substantial capital investment required to prosecute this fishery, the Council does not expect that squid/butterfish incidental catch permit holders will target *Illex* squid as a result of the increase in the bycatch allowance. Since this measure is not expected to increase fishing effort in the *Illex* squid fishery, no overall change in revenue is expected.

One alternative considered for the Atlantic mackerel fishery was to specify the 2004 specifications at the same level as 2003. This option would set JVP at 10,000 mt. The Council rejected this option because of concerns it could negatively impact the potential for expansion of the shore-side processing sector of this industry in 2003. Preliminary 2003 commercial landings through June 2003, (30,347 mt) have exceeded the total landing for 2002 (26,192 mt) and are almost three times the average commercial landings for 1997–2001 (11,583 mt). The Council felt that specifying JVP at 10,000 mt was unnecessary and could result in negative economic and/or social impacts to the U.S. mackerel industry. Some or all of the vessel owners, crews, dealers, processors or fishing communities associated with the Atlantic mackerel fishery could be adversely affected by maintaining the 2003 annual specifications for Atlantic mackerel in 2004. Maintaining a JVP allocation of 5,000 mt allows JVP operations to continue at recent levels, as JVP landings in recent years have been less than 5,000 mt. A second alternative considered for Atlantic mackerel was to set ABC at the long-term potential catch (LTPC), or 134,000 mt. This alternative was found inconsistent with the status of the stock. The current adult stock was recently estimated to exceed 2.1 million mt. The specification of ABC at LTPC would effectively result in an exploitation rate of only about 6 percent, well below the optimal level of exploitation. The Council considered the level of foregone yield under this alternative unacceptable because population modeling of the Atlantic mackerel stock dynamics indicate that the safe level of removals from the current mackerel stock size is considerably higher than the level proposed under this alternative.

For *Loligo* squid, one alternative that was considered was to set the ABC, DAH, DAP, and IOY at 13,000 mt, or a 20.1–percent reduction from the 2002 level. If the 13,000–mt alternative was

adopted for the 2004 fishing year, 110 of the 426 impacted vessels would experience a total gross revenue reduction (all species combined) of greater than 5 percent. The remaining 316 vessels would experience a less than 5–percent reduction in revenue or an increase in revenue.

A second alternative would have set ABC, DAH, DAP, and IOY at 18,300 mt. Under this alternative, the quota would be specified at a level that is 1,300 mt higher than is specified by the overfishing definition control rule in the FMP. Since the stock is technically not protected from overfishing, some negative economic and social impacts could be expected from this alternative in the long term, if the stock did become overfished. The vessel owners, crews, dealers, processors and fishing communities associated with these ports would be expected to be affected the most by this alternative when compared to the proposed 2004 annual specifications for *Loligo*.

For *Illex* squid, one alternative considered would have set Max OY, ABC, IOY, DAH, and DAP at 30,000 mt, and a second alternative would have set Max OY at 24,000 mt and ABC, IOY, DAH, and DAP at 19,000 mt. The first alternative would allow harvest far in excess of recent landings in this fishery. Therefore, there would be no constraints and, thus, no revenue reductions, associated with these specifications. However, the Council considered the first alternative unacceptable because an ABC specification of 30,000 mt may not prevent overfishing in years of moderate to low abundance of *Illex* squid. Conversely, the second alternative, an ABC of 19,000 mt would not allow the fishery to perform at its optimal exploitation level during a year of relatively high abundance, and was therefore rejected as having unnecessary negative economic impacts.

For butterfish, the Council considered two alternatives; the first set a Max OY of 16,000 mt and an ABC, IOY, DAH, and DAP of 7,200 mt, and the second set a Max OY of 16,000 mt and a ABC, IOY, DAH, and DAP at 10,000 mt. These specifications both exceed recent harvests in the butterfish fishery and would not constrain or impact the industry; however, they could lead to overfishing of the stock and, thus, were rejected by the Council.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 8, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.4, the first sentence of paragraph (a)(5)(ii) is amended to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(5) * * *

(ii) *Squid/butterfish incidental catch permit.* Any vessel of the United States may obtain a permit to fish for or retain up to 2,500 lb (1.13 mt) of Loligo squid or butterfish, or up to 10,000 lb (4.54 mt) of Illex squid, as an incidental catch in another directed fishery. * * *

* * * * *

3. In § 648.6, paragraph (a)(2) is added to read as follows:

§ 648.6 Dealer/processor permits.

(a) * * *

(2) *At-sea processors.* Notwithstanding the provisions of § 648.4 (a)(5), any vessel of the United States must have been issued and carry on board a valid at-sea processor permit issued under this section to receive over the side, possess and process Atlantic mackerel harvested in or from the EEZ by a lawfully permitted vessel of the United States.

* * * * *

4. In § 648.22, paragraph (c) is added to read as follows:

§ 648.22 Closure of the fishery.

* * * * *

(c) *Incidental catches.* During the closure of the directed fishery for mackerel, the possession limit for mackerel is 10 percent by weight of the total amount of fish on board. During a period of closure of the directed fishery for *Loligo*, *Illex*, or butterfish, the possession limit for Loligo and butterfish is 2,500 lb (1.13 mt) each, and the possession limit for *Illex* is 10,000 lb (4.54 mt). Vessels may not land more than these limits during any single calendar day, which is defined as the 24–hour period beginning at 0001 hours and ending at 2400 hours.

[FR Doc. 03–28548 Filed 11–13–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 68, No. 220

Friday, November 14, 2003

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–100–1]

Public Meeting; Veterinary Biologics

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of public meeting and request for suggested agenda topics.

SUMMARY: We are issuing this notice to inform producers and users of veterinary biological products, and other interested individuals, that we will be holding our 12th public meeting to discuss regulatory and policy issues related to the manufacture, distribution, and use of veterinary biological products. We are planning the meeting agenda and are requesting suggestions for topics of general interest to producers and other interested individuals.

DATES: The public meeting will be held from Wednesday, April 7, through Friday, April 9, 2004, from 1 p.m. to approximately 5 p.m. on Wednesday, 8:30 a.m. to approximately 5 p.m. on Thursday, and from 8:30 a.m. to approximately noon on Friday.

ADDRESSES: The public meeting will be held in the Scheman Building at the Iowa State Center, Iowa State University, Ames, IA.

FOR FURTHER INFORMATION CONTACT: For further information on agenda topics, contact Dr. Richard E. Hill, Jr., Director, Center for Veterinary Biologics, Veterinary Services, APHIS, 510 South 17th Street, Suite 104, Ames, IA 50010–8197; phone (515) 232–5785, fax (515) 232–7120, or e-mail *CVB@aphis.usda.gov.* For registration information, contact Ms. Kathy Clark at the same address and fax number; phone (515) 232–5785 extension 128; or e-mail *Kathryn.K.Clark@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION: Since 1989, the Animal and Plant Health Inspection Service (APHIS) has held 11 public meetings in Ames, IA, on veterinary biologics. The meetings provide an opportunity for the exchange of information between APHIS representatives, producers and users of veterinary biological products, and other interested individuals. APHIS is in the process of planning the agenda for the 12th such meeting, which will be held April 7 through April 9, 2004.

The agenda for the meeting is not yet complete. Topics that have been suggested include: (1) Vaccine use and role in emergency management; (2) vaccine development; (3) current Center for Veterinary Biologics activities; (4) regulatory initiatives; (5) animal care; and (6) international harmonization. Before finalizing the agenda, APHIS is seeking suggestions for additional meeting topics from the interested public.

We would also like to invite interested individuals to use this meeting to present their ideas and suggestions concerning the licensing, manufacturing, testing, and distribution of veterinary biologics.

Please submit suggested meeting topics and proposed presentation titles to Dr. Richard E. Hill (*see* **FOR FURTHER INFORMATION CONTACT** above) on or before December 19, 2003. For proposed presentations, please include the name(s) of the presenter(s) and the approximate amount of time that will be needed for each presentation.

After the agenda is finalized, APHIS will announce the agenda topics in the **Federal Register**.

Done in Washington, DC, this 7th day of November, 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–28513 Filed 11–13–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

McKean County, Pennsylvania; Intent To Prepare an Environmental Impact Statement; Proposed Martin Run Project

AGENCY: Forest Service, USDA.

SUMMARY: The Forest Service, Allegheny National Forest, Bradford Ranger District, will prepare a Draft Environmental Impact Statement to disclose the environmental consequences of the proposed Martin Run Project. The Forest Service is proposing actions that would move the Martin Run Project Area from the existing condition towards the Desired Future Condition (DFC) and would maintain the DFC in situations where it has been attained. The DFC is described in the Allegheny National Forest Land and Resource Management Plan (Forest Plan).

Proposed activities to meet the Desired Future Condition fall into four main categories.

(1) *Timber harvest and reforestation treatments* consist of: Shelterwood seedcut/removal cut, shelterwood removal cut, salvage removal cut, salvage shelterwood seed cut/removal cut, single tree selection, group selection, commercial thinning, salvage intermediate thinning, intermediate thinning, pre-commercial thinning, improvement cutting, manual site preparation and release, herbicide application, fertilization, fencing, controlled burning, scarification, and tree planting.

(2) *Wildlife habitat improvement treatments* consist of: Noncommercial thinning, oak/hickory/shrub underplanting, pruning and release of apple trees, release of white pine trees, hawthorn release, constructing new openings, opening reconditioning, planting/fencing shrubs in openings, mowing, topdressing, seeding with wildflowers and grass, constructing bat boxes, bluebird boxes and vernal ponds.

(3) *Recreation treatments* consist of: trail relocation and decomissioning, trail improvement, interpretation upgrades.

(4) *Transportation treatments* consist of: road decommissioning, road repair, road construction, road resurfacing, obtaining a right-of-way from an adjacent property owner, expanding stone pits, and changing road access.

DATES: Comments and suggestions concerning the scope of the analysis should be submitted (postmarked) by December 15, 2003 to ensure timely consideration.

ADDRESSES: Submit written, oral, or e-mail comments by: (1) Mail ''Martin Run Project,'' ID Team Leader, 29 Forest

Service Dr., Bradford, PA 16701; (2) phone: 814–362–4613; (3) e-mail: *anf/r9_allegheny@fs.fed.us* (please note: when commenting by e-mail be sure to list Martin Run EIS in the subject line and include a U.S. Postal Service address so we may add you to our mailing list). For further information contact Jason A. Rodrigue, project team leader, Bradford Ranger District, at 814–362–4613 or mail/e-mail correspondence to addresses listed above.

SUPPLEMENTARY INFORMATION: The Allegheny National Forest Land and Resource Management Plan (Forest Plan) sets site-specific goals for the management of forest resources. The Martin Run Project includes portions of Management Area (MA) 3.0, which emphasizes timber harvesting as a means to make desired changes to forest vegetation and satisfy the public demand for wood products. The project area also includes portions of MA 6.1, which emphasizes providing habitat for wildlife, attractive scenery, and opportunities for semi-primitive motorized recreation. Finally, the project area includes portions of MA 8.0, which emphasizes protection of unique ecosystems for scientific purposes and dispersed recreation.

Preliminary Issues were identified based on past projects in the area (environmental assessments), issues developed for similar projects, and site-specific concerns raised by the resource specialists. These issues, listed below, will provide a framework that the Forest Service will use to analyze a range of alternatives, including No Action for the Project Area.

(1) *Road management*—The Martin Run project area contains a network of National Forest (NF) system, public, and private roads. The road system (in total) provides access for resource management, recreational opportunities for the public, access for private mineral owners, and forest research. Changes in the current National Forest road system will be supported by some people and opposed by others.

(2) *Old growth connectivity and its management*—Within the Martin Run project area, management conditions (*i.e.* Management Area designations) and on the ground investigations suggest managed old growth possibilities may center around connectivity on NF lands, riparian habitat, and social goals. The topic of old growth and its management has been an issue of previous concern within this project area and across the forest.

(3) *Even-Aged/Uneven-Aged Management*—Previous environmental analyses have shown that many members of the public have a strong interest in the silvicultural system used on National Forest lands. Forest Plan direction for the Martin Run Project area does not emphasize uneven-aged management. The Martin Run proposed action contains silvicultural prescriptions dominated by even-aged management with a few stands receiving uneven-aged prescriptions where favorable species composition prevails.

(4) *Tionesta Scenic and Research Natural Area (TSRNA)*—A recent Citizens' Wilderness Proposal (for review during forest plan revision) by the Friends of the Allegheny Wilderness includes seeking a wilderness designation for lands surrounding the TSRNA (approximately 14,960 acres in total). The proposed action for the Martin Run Project will continue with Forest Plan direction in this area.

Comment Requested: This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. Your comments will help the Forest Service refine and enhance the list of issues that are considered when analyzing alternatives to the proposed action. When this analysis is nearly complete, the Draft EIS will be filed with the Environmental Protection Agency and become available for public review (expected by October 2004). At that time the Environmental Protection Agency will publish a Notice of Availability of the document in the **Federal Register** (this will begin the 45-day comment period on the Draft EIS). After the comment period ends on the Draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The Final EIS is scheduled for release in March 2005.

Comments received, including names and addresses of those who comment, will be considered part of the public record and may be subject to public disclosure. Any person may request the Agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519 553 (1978)). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement stage may be waived or dismissed by the courts (*City of Angoon* v. *Hodel*, 803 F.2nd 1016, 1022 [9th Cir. 1986] and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)).

Because of the above rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments are made available to the Forest Service at a time when they can be meaningfully considered and responded to in the final environmental impact statement. Comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages, sections, or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages, sections, or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to Council on Environmental Quality *Regulations for implementing the procedural provisions of the National Environmental Policy Act* at 40 CFR 1503.3 in addressing these points.

This decision will be subject to appeal under 36 CFR part 215. The responsible official is Nancy S. Larson, Deputy District Ranger, Bradford Ranger District, 29 Forest Service Way, Bradford, PA 16701.

Kevin B. Elliott,

Forest Supervisor.

[FR Doc. 03–28161 Filed 11–13–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Southwest Idaho Resource Advisory Committee, Boise, ID, Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393), the Boise and Payette National Forests' Southwest Idaho Resource Advisory Committee will conduct a business meeting. The meeting is open to the public.

DATE: Wednesday, November 19, 2003 beginning at 10:30 a.m.

ADDRESSES: Idaho Counties Risk Management Program Building, 3100 South Vista Avenue, Boise, Idaho.

SUPPLEMENTARY INFORMATION: Agenda topics will include review and approval of project proposals and an open public forum.

FOR FURTHER INFORMATION CONTACT: Randy Swick, Designated Federal Officer, at (208) 634–0400.

Dated: November 6, 2003.

Mark J. Madrid,

Forest Supervisor.

[FR Doc. 03–28488 Filed 11–13–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Ouachita-Ozark Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Meeting Notice for the Ouachita-Ozark Resource Advisory Committee under Section 205 of the Secure Rural Schools and Community Self Determination Act of 2000 (Pub. L. 106–393).

SUMMARY: This notice is published in accordance with section 10(a)(2) of the Federal Advisory Committee Act. Meeting notice is hereby given for the Ouachita-Ozark Resource Advisory Committee pursuant to Section 205 of the Secure Rural Schools and Community Self determination Act of 2000, Public Law 106–393. Topics to be discussed include: General information, possible Title Ii projects, and next meeting dates and agendas.

DATES: The meeting will be held on December 11, 2003, from 6 p.m. and end at approximately 9 p.m.

ADDRESSES: The meeting will be held at the Scott County Courthouse, 100 W. First Street, Waldron, AR 71958.

FOR FURTHER INFORMATION CONTACT: Caroline Mitchell, Committee Coordinator, USDA, Ouachita National Forest, P.O. Box 1270, Hot Springs, AR 71902. (501–321–5318).

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff, Committee members, and elected officials. However, persons who wish to bring matters to the attention of the committee may file written statements with the Committee staff before or after the meeting. A public input session will be provided and individuals who made written requests by December 10, 2003, will have the opportunity to address the committee at that session. Individuals wishing to speak or propose agenda items must send their names and proposals to Bill Pell, DFO, P.O. Box 1270, Hot Springs, AR 71902.

Dated: November 7, 2003.

Bill Pell,

Designated Federal Office.

[FR Doc. 03–28489 Filed 11–13–03; 8:45 am]

BILLING CODE 3410–52–M

DEPARTMENT OF AGRICULTURE

NATURAL RESOURCES CONSERVATION SERVICE

Taylor Creek-Nubbin Slough Watershed, Okeechobee, Martin and St. Lucie Counties, FL

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of a finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an Environmental Impact Statement is not being prepared for the Taylor Creek-Nubbin Slough Watershed, Okeechobee, Martin and St. Lucie counties, Florida.

FOR FURTHER INFORMATION CONTACT: T. Niles Glasgow, State Conservationist, Natural Resources Conservation Service, P.O. Box 141510, Gainesville, Fl 32614, (352) 338–9500.

SUPPLEMENTARY INFORMATION: The Environmental Assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Niles Glasgow, State Conservationist, has determined that the preparation and review of an Environmental Impact Statement is not needed for this project.

Proposed is the implementation of conservation practices on cow/calf farms and dairies in order to reduce phosphorus loads in the watershed and assist in achieving the Total Maximum Daily Load (TMDL) for Lake Okeechobee.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and other interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. basic data developed during the Environmental Assessment are on file and may be reviewed by contacting Jessica Bertine, Agricultural Economist, Gainesville, FL, (352) 338–9513.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

T. Niles Glasgow,

State Conservationist.

[FR Doc. 03–28503 Filed 11–13–03; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by January 13, 2004.

FOR FURTHER INFORMATION CONTACT: Richard C. Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., Stop 1522, Room 5170 South Building, Washington, DC 20250–1522. Telephone: (202) 720–0737. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an

opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for extension.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Richard C. Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, Room 5170, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202) 720–4120.

Title: Wholesale Contracts for the Purchase and Sale of Electric Power.

OMB Control Number: 0572–0089.

Type of Request: Extension of a currently approved information collection.

Abstract: Most RUS financed electric systems are cooperatives and are organized in a two-tiered structure. Retail customers are members of the distribution system that brings electricity to their homes and business. Distribution cooperatives, in turn, are members of power supply cooperatives, also known as generation and transmission cooperatives (G&T's) that generate or purchase power and transmit the power to the distribution systems.

For a distribution system a lien on the borrower's assets generally represents adequate security. However, since most G&T revenues flow from its distribution members, RUS requires, as a condition of a loan or loan guarantee to a G&T that long-term requirements wholesale power contract to purchase their power from the G&T at rates that cover all the G&T's expenses, including debt service and margins.

RUS Form 444 is the standard form of the wholesale power contract. Most borrowers adapt this form to meet their specific needs. The contract is prepared and executed by the G&T and each member and by RUS.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 6 hours per response.

Respondents: Small business or other for-profit; not-for-profit organizations.

Estimated Number of Respondents: 110.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 660 hours.

Copies of this information collection can be obtained from MaryPat Daskal, Program Development and Regulatory Analysis, at (202) 720–7853; FAX: (202) 720–4120.

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

Dated: November 5, 2003.

Curtis M. Anderson,

Deputy Administrator as Acting Administrator, Rural Utilities Service.

[FR Doc. 03–28460 Filed 11–13–03; 8:45 am]

BILLING CODE 3410–15–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletion from procurement list.

SUMMARY: This action adds to the Procurement List products to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List a service previously furnished by such agencies.

EFFECTIVE DATE: December 14, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

Additions

On August 8, September 12, and September 19, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (68 FR 47292, 53710, and 45886) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and impact of the additions on the current or most recent contractors, the Committee has determined that the products listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.

2. The action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products are added to the Procurement List:

Products

Product/NSN: Can Opener M.R. 1841
Product/NSN: Vegetable Peeler M.R. 1842
NPA: Cincinnati Association for the Blind, Cincinnati, Ohio
Contract Activity: Defense Commissary Agency (DeCA), Ft. Lee, Virginia
Product/NSN: Professional LYSOL Brand II Aerosol Disinfectant Spray 6840–00–NIB–0039—Original Scent; 6840–00–NIB–0040—Fresh Scent; 6840–00–NIB–0041—Country Scent;

6840–00–NIB–0042—Crisp Linen Scent; 6840–00–NIB–0043—Spring Waterfall Scent; 6840–00–NIB–0044—Plus Fabric Refresher
NPA: L.C. Industries for the Blind, Inc., Durham, North Carolina
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York
Product/NSN: Safety Armband M.R. 1756—Medium; M.R. 1759—Large
NPA: L.C. Industries for the Blind, Inc., Durham, North Carolina at its facility in Hazlehurst, Mississippi
Contract Activity: Defense Commissary Agency (DeCA), Ft. Lee, Virginia
Product/NSN: Slimline Workstation Clocks 6645–00–NIB–0102—6″ Brown Case; 6645–00–NIB–0103—6″ Black Case; 6645–00–NIB–0104—6″ Brown Case—Federal Logo 6645–00–NIB–0105—12″ Wall Clock—Putty Case; 6645–00–NIB–0106—6″ Black Case—Federal Logo

6645–00–NIB–0107—12″ Wall Clock—Putty Case—Federal Logo;
NPA: The Chicago Lighthouse for People Who Are Blind or Visually Impaired, Chicago, Illinois
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York, Product/NSN: Wobble Wedges M.R. 1835
NPA: West Texas Lighthouse for the Blind, San Angelo, Texas
Contract Activity: Defense Commissary Agency (DeCA), Ft. Lee, Virginia

Deletions

On September 19, 2003 the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (68 FR 54887) of proposed deletion to the Procurement List. After consideration of the relevant matter presented, the Committee has determined that the services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service deleted from the Procurement List.

End of Certification

Accordingly, the following service is deleted from the Procurement List:

Service

Service Type/Location: Grounds Maintenance, Vacant Family Housing Quarters, Fort Campbell, Kentucky
NPA: Progressive Directions, Inc., Clarksville, Tennessee
Contract Activity: Department of the Army, Fort Campbell, Kentucky

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–28522 Filed 11–13–03; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed Addition to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments must be received on or before: December 14, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments of the proposed actions. If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. If approved, the action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following service is proposed for addition to Procurement List for production by the nonprofit agencies listed:

Service

Service Type/Location: Virtual Call Center Services, Internal Revenue Service, Oxon Hill, Maryland.
NPA: National Telecommuting Institute, Inc., Boston, Massachusetts.
Contract Activity: U.S. Treasury, IRS Headquarters, Oxon Hill, Maryland.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–28523 Filed 11–13–03; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–813]

Notice of Request for Information and Extension of Time for Initiation: Antidumping Duty Petition on Certain Processed Hazelnuts from Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 14, 2003.

FOR FURTHER INFORMATION CONTACT: Michael Ferrier at (202) 482–1394 or Ann Barnett-Dahl at (202) 482–3833, Fax: (202) 482–0613, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. In addition, inquiries regarding any information on this notice may be sent via email to the following address: *Michael_Ferrier@ita.doc.gov* or *Ann_Barnett-Dahl@ita.doc.gov.*

The Petition

On October 21, 2003, the Department of Commerce (''Department'') received an antidumping duty petition (''Petition'') filed in proper form by Westnut LLC, Northwest Hazelnut Company, Hazelnut Growers of Oregon, Williamette Filbert Growers, Evergreen Orchards, and Evonuk Orchards (collectively, ''Petitioners''). The Petitioners are domestic producers of processed hazelnuts.

Scope of the Petition

The scope of this Petition covers certain processed hazelnuts, including kernels, and kernels that have been roasted, blanched, sliced, diced, chopped, or in the following other forms: paste, meal, flour, croquant, and

butter. Harmonized Tariff Schedule of the United States (''HTS'') categories 0802.22 and 2008.19.20 should cover these imports. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise is dispositive. In-shell hazelnuts are excluded from this scope.

Domestic Like Product

The Petitioners maintain that, pursuant to section 771(10) of the Tariff Act of 1930, as amended (''the Act''), the product that is, ''like, or in the absence of like, most similar in characteristics and uses'' with the article subject to the Petition for an antidumping duty investigation is processed hazelnuts.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method to poll the industry.

Request for Information

Because the Department has been unable to locate a reliable source of information upon which to rely for purposes of determining industry support, we are now requesting additional information.

In accordance with section 732(c)(4)(D) of the Act and in order to determine whether the petition establishes support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, we are hereby requesting that all domestic producers/manufacturers of processed hazelnuts submit responses to the Department on company letterhead. These questions are attached as an Appendix to this notice. The questions attached to this notice are also on file in B–099 of the Commerce Department's building at 14th St. and Constitution Ave., NW., Washington DC. In addition, a complete version of the questions and this notice can be accessed directly on the World Wide Web at *http://www.ia.ita.doc.gov.*

Filing Requirements

Given the very short period in which we must determine industry support, the number of potential responses, and the fact that industry support may not be re-examined after initiation, we are waiving the filing requirements set forth in 19 CFR 351.303 for certain parties submitting information on industry support. This waiver of the filing requirements will not apply to: (1) the submission of documents that are not in response to the information requested in this notice, or (2) parties that are familiar with the conduct of antidumping and countervailing proceedings through prior involvement in such proceedings (*e.g.*, parties represented by law firms that are involved in other AD/CVD cases).

This limited waiver is applicable only until November 20, 2003, the deadline for submitting the information requested in this notice. This waiver is intended to expedite the receipt of information that is essential to our analysis of industry support by providing information on the production of the domestic like product by petitioning and non-petitioning companies. By avoiding delays in the receipt of such information, we will have more time to analyze whether the statutory requirements concerning industry support for the above-referenced petitions have been met.

All parties submitting any information must include the following statement in their response: ''I, (name and title), currently employed by (person), certify that (1) I have read the attached submission, and (2) based on the information made available to me by (person), I have no reason to believe that this submission contains any material misrepresentation or omission of fact.'' In addition, note that all proprietary documents received by the Department in response to this notice will be served to those individuals with access to business proprietary information under the Administrative Protective Order (''APO''). All company names will be treated as public information. All public documents may be made available to those parties on the public service list. The APO service lists and the public service lists are available on Import Administration's Web site: *http://www.ia.ita.doc.gov.*

Therefore, information submitted to the Department in response to this notice should be faxed to the following number: 202–482–0613. All information received by the Department will be treated as proprietary information as outlined under our regulations (19 CFR 351.304–306), unless otherwise noted in the response. Furthermore, all such information will be placed on the official record of the proceeding. Responses to this notice are due no later than November 20, 2003. Responses after this date may not be reviewed by the Department and therefore, not included in the analysis.

Extension of Time

Section 732(c)(1)(A)(ii) of the Act provides that within 20 days of the filing of an antidumping duty petition, the Department will determine, *inter alia*, whether the petition has been filed by or on behalf of the U.S. industry producing the domestic like product. Section 732(c)(1)(B) provides that the deadline for the initiation determination can be extended by 20 days in any case in which the Department must ''poll or otherwise determine support for the petition by the industry. * * *''

We will require additional information from the Petitioners and the domestic producers of processed hazelnuts in order to make our determination regarding industry support and/or time to analyze the Petitioners' responses to our requests for information. *See Memorandum to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, Group III from Richard O. Weible, Office Director, Group III, Office 8 regarding Antidumping Duty Petition on Certain Processed Hazelnuts from Turkey: Extension of Deadline for Determining Industry Support*, dated November 10, 2003. Therefore, it is necessary to extend the deadline for decision on initiation for a period not to exceed 40 days from the filing of the petition. As a result, the initiation determination is now due no later than December 1, 2003.

International Trade Commission Notification

Because the Department has extended the deadline for the initiation determination, the Department will contact the Commission and will make

this extension notice available to the Commission.

Dated: November 10, 2003.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

Appendix—Petition on Processed Hazelnuts from Turkey

All of the information you provide on this sheet will be entered on the record of this investigation as business proprietary information.

1. Please provide the following information about your company:

_____
Company name

_____
Name and title of the company president, director or manager

_____
Your name and title

_____
Business address

_____
Phone number

_____
Facsimile number

2. Please check all that apply to describe the business activities of your company:

Processing of hazelnut kernels ..... ☐
Importation of hazelnut kernels ..... ☐
Sales of hazelnut kernels ..... ☐
Other hazelnut kernel activities (please explain) ..... ☐

3. If your company imported hazelnut kernels between October 2002 and September 2003 and sold the imported kernels as is without any further processing, please provide the quantity imported in the hazelnut kernel equivalent in pounds.

Yes: _____ (Skip to question #5)
Quantity: _____ Lbs.
No: _____ (Please answer question #4)

4. If your company processed hazelnuts during the period October 2002 to September 2003, please provide the quantity of hazelnuts processed from domestic and imported sources in the hazelnut kernel equivalent:

Type of product	Quantity in lbs. (Imports)	Quantity in lbs. (Domestic Sources)
Raw or natural ..	.....	.....
Shelled	.....	.....
Roasted	.....	.....
Blanched	.....	.....
Diced	.....	.....
Sliced	.....	.....
Meal	.....	.....
Flour	.....	.....
Butter	.....	.....
Paste	.....	.....
Croquant	.....	.....
Other (please explain)	.....	.....

Note: Make sure that you report only production quantity of the final marketed product. Please make sure that you do not double count the quantity of intermediate hazelnut products.

5. Is your company affiliated with a Turkish producer, manufacturer or exporter of hazelnuts?

Yes _____
No _____

6. Does your company (please check one):

A. Support this petition? _____
B. Oppose this petition? _____
C. Have no opinion? _____

[FR Doc. 03–28662 Filed 11–13–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing the First Symposium on Building Trust and Confidence in Voting Systems

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice of public symposium.

SUMMARY: The Help America Vote Act of 2002 (''HAVA'') tasks the National Institute of Standards and Technology with assisting the Election Assistance Commission in the development of voluntary voting system guidelines. The First Symposium on Building Trust and Confidence in Systems offers the election community an opportunity to initiate collaboration prior to the implementation of HAVA. Four panel discussions will focus on the following key issues for improving voting systems: Specification, testability and qualification; security and openness; usability and accessibility; next steps/consensus issues. A draft agenda and invited panelists for the Symposium will be available at the NIST Web site at: *http://vote.nist.gov* by November 15, 2003.

DATES: The Symposium will be held on December 10 and 11, 2003, from 8:30 a.m. to 5:30 p.m.

ADDRESSES: The Symposium will be held in the Red Auditorium, Building 101 at the National Institute of Standards and Technology, 100 Bureau Drive, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Additional information and electronic registration is available at the NIST Web site *http://vote.nist.gov* or by contacting Kimberly Snouffer on 301–975–2776. Because of NIST security regulations, advance registration is required. There will be no same day, on-site registration.

Dated: November 5, 2003.

Arden L. Bement, Jr.,

Director.

[FR Doc. 03–28552 Filed 11–13–03; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Fire Codes: Request for Proposals for Revision of Codes and Standards

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Fire Protection Association (NFPA) proposes to revise some of its fire safety codes and standards, and requests proposals from the public to amend existing, or begin the process of developing new, NFPA fire safety codes and standards. The purpose of this request is to increase public participation in the system used by NFPA to develop its codes and standards. The publication of this notice of request for proposals by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: Interested persons may submit proposals on or before the dates listed with the standards.

ADDRESSES: Casey C. Grant, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02269–9101.

FOR FURTHER INFORMATION CONTACT: Casey C. Grant, Secretary, Standards Council, at above address, (617) 770–3000.

SUPPLEMENTARY INFORMATION:

Background

The National Fire Protection Association (NFPA) develops building, fire, and electrical safety codes and standards. Federal agencies frequently use these codes and standards as the basis for developing federal regulations concerning fire safety. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR part 51.

Request for Proposals

Interested persons may submit proposals, supported by written data, views, or arguments to Casey C. Grant, Secretary, Standards Council, NFPA, 1

Batterymarch Park, Quincy, Massachusetts 02269–9101. Proposals should be submitted on forms available from the NFPA Codes and Standards Administration Office or on NFPA's Web site at *www.nfpa.org*.

Each person must include his or her name and address, identify the document, and give reasons for the proposal. Proposals received before or by 5 p.m. local time on the closing date indicated would be acted on by the Committee. The NFPA will consider any proposal that it receives on or before the date listed with the code or standard.

At a later date, each NFPA Technical Committee will issue a report, which will include a copy of written proposals that have been received, and an account of their disposition of each proposal by the NFPA Committee as the Report on Proposals. Each person who has submitted a written proposal will receive a copy of the report.

Document-edition	Document title	Proposal closing date
NFPA 1–2003	Uniform Fire Code	1/5/2004
NFPA 10–2002	Standard for Portable Fire Extinguishers	6/25/2004
NFPA 13–2002	Standard for the Installation of Sprinkler Systems	11/5/2004
NFPA 13D–2002	Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes.	11/5/2004
NFPA 13R–2002	Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height.	11/5/2004
NFPA 15–2001	Standard for Water Spray Fixed Systems for Fire Protection	12/31/2004
NFPA 18–1995	Standard on Wetting Agents	1/5/2004
NFPA 24–2002	Standard for the Installation of Private Fire Service Mains and Their Appurtenances	11/5/2004
NFPA 52–2002	Compressed Natural Gas (CNG) Vehicular Fuel Systems Code	1/5/2004
NFPA 54–2002	National Fuel Gas Code	1/5/2004
NFPA 57–2002	Liquefied Natural Gas (LNG) Vehicular Fuel Systems Code	1/5/2004
NFPA 72–2002	National Fire Alarm Code®	11/5/2004
NFPA 73–2000	Electrical Inspection Code for Existing Dwellings	1/5/2004
NFPA 79–2002	Electrical Standard for Industrial Machinery	6/25/2004
NFPA 80–1999	Standard for Fire Doors and Fire Windows	1/5/2004
NFPA 90A–2002	Standard for the Installation of Air-Conditioning and Ventilating Systems	1/5/2004
NFPA 90B–2002	Standard for the Installation of Warm Air Heating and Air-Conditioning Systems	1/5/2004
NFPA 160–2001	Standard for Flame Effects Before an Audience	1/5/2004
NFPA 170–2002	Standard for Fire Safety Symbols	1/5/2004
NFPA 230–2003	Standard for the Fire Protection of Storage	1/5/2004
NFPA 251–1999	Standard Methods of Tests of Fire Endurance of Building Construction and Materials	1/5/2004
NFPA 253–2000	Standard Method of Test for Critical Radiant Flux of Floor Covering Systems Using a Radiant Heat Energy Source.	1/5/2004
NFPA 255–2000	Standard Method of Test of Surface Burning Characteristics of Building Materials	1/5/2004
NFPA 257–2000	Standard on Fire Test for Window and Glass Block Assemblies	1/5/2004
NFPA 269–2000	Standard Test Method for Developing Toxic Potency Data for Use in Fire Hazard Modeling	1/5/2004
NFPA 285–1998	Standard Method of Test for the Evaluation of Flammability Characteristics of Exterior Non-Load-Bearing Wall Assemblies Containing Combustible Components Using the Intermediate-Scale, Multistory Test Apparatus.	1/5/2004
NFPA 286–2000	Standard Methods of Fire Tests for Evaluating Contribution of Wall and Ceiling Interior Finish to Room Fire Growth.	1/5/2004
NFPA 291–2002	Recommended Practice for Fire Flow Testing and Marking of Hydrants	11/5/2004
NFPA 303–2000	Fire Protection Standard for Marinas and Boatyards	1/5/2004
NFPA 307–2000	Standard for the Construction and Fire Protection of Marine Terminals, Piers, and Wharves	1/5/2004
NFPA 312–2000	Standard for Fire Protection of Vessels During Construction, Repair, and Lay-Up	1/5/2004
NFPA 318–2002	Standard for the Protection of Semiconductor Fabrication Facilities	1/5/2004
NFPA 484–2002	Standard for Combustible Metals, Metal Powders, and Metal Dusts	1/5/2004
NFPA 495–2001	Explosive Materials Code	1/5/2004
NFPA 498–2001	Standard for Safe Havens and Interchange Lots for Vehicles Transporting Explosives	1/5/2004
NFPA 505–2002	Fire Safety Standard for Powered Industrial Trucks Including Type Designations, Areas of Use, Conversions, Maintenance, and Operation.	1/5/2004
NFPA 654–2000	Standard for the Prevention of Fire and Dust Explosions from the Manufacturing, Processing, and Handling of Combustible Particulate Solids.	1/5/2004
NFPA 730–P*	Guide for Electronic Premises Security	1/5/2004
NFPA 731–P*	Standard for the Installation of Electronic Premises Security Systems	1/5/2004
NFPA 750–2003	Standard on Water Mist Fire Protection Systems	6/25/2004
NFPA 1000–2000	Standard for Fire Service Professional Qualifications Accreditation and Certification Systems	1/5/2004
NFPA 1071–2000	Standard for Emergency Vehicle Technician Professional Qualifications	1/5/2004
NFPA 1123–2000	Code for Fireworks Display	1/5/2004
NFPA 1124–2003	Code for the Manufacture, Transportation, Storage and Retail Sales of Fireworks and Pyrotechnic Articles.	1/5/2004
NFPA 1126–2001	Standard for the Use of Pyrotechnics before a Proximate Audience	1/5/2004
NFPA 1145–2000	Guide for the Use of Class A Foams in Manual Structural Fire Fighting	1/5/2004
NFPA 1221–2002	Standard for the Installation, Maintenance, and Use of Emergency Services Communications Systems	1/5/2004
NFPA 915–2000	Standard for Fire Apparatus Preventative Maintenance Program	1/5/2004
NFPA 1982–1998	Standard on Personal Alert Safety Systems (PASS)	6/25/2004
NFPA 1983–2001	Standard on Fire Service Life Safety Rope and System Components	1/9/2004
NFPA 2010–P*	Standard on Aerosol Fire Extinguishing Systems	1/5/2004

P* Proposed NEW drafts are available from NFPA's Web site—*www.nfpa.org* or may be obtained from NFPA's Codes and Standards Administration, 1 Batterymarch Park, Quincy, Massachusetts 02169–7471.

Dated: November 5, 2003.

Arden L. Bement, Jr.,

Director.

[FR Doc. 03–28553 Filed 11–13–03; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Fire Codes: Request for Comments on NFPA Technical Committee Reports

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Fire Protection Association (NFPA) revises existing standards and adopts new standards twice a year. At its November meeting or its May meeting, the NFPA acts on recommendations made by its technical committees.

The purpose of this notice is to request comments on the technical reports that will be presented at NFPA's 2004 November meeting. The publication of this notice by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: Forty-three reports are published in the 2004 November Meeting Report on Proposals and will be available on January 23, 2004. Comments received on or before April 2, 2004, will be considered by the respective NFPA Committees before final action is taken on the proposals.

ADDRESSES: The 2004 November Meeting Report on Proposals is available and downloadable from NFPA's Web site—*http://www/nfpa.org* or by requesting a copy from the NFPA, Fulfillment Center, 11 Tracy Drive, Avon, Massachusetts 02322. Comments on the report should be submitted to Casey C. Grant, Secretary, Standards Council, NFPA, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101.

FOR FURTHER INFORMATION CONTACT: Casey C. Grant, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02269–9101, (617) 770–3000.

SUPPLEMENTARY INFORMATION:

Background

The National Fire Protection Association (NFPA) develops building, fire, and electrical safety codes and standards. Federal agencies frequently use these codes and standards as the basis for developing federal regulations concerning fire safety. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR part 51.

Revisions of existing standards and adoption of new standards are reported by the technical committees at the NFPA's November meeting or at the May meeting each year. The NFPA invites public comment on its Report on Proposals.

Request for Comments

Interested persons may participate in these revisions by submitting written data, views, or arguments to Casey C. Grant, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02269–9101. Commenters may use the forms provided for comments in the Reports on Proposals. Each person submitting a comment should include his or her name and address, identify the notice, and give reasons for any recommendations. Comments received on or before April 2, 2004, for the 2004 November Meeting Report on Proposals will be considered by the NFPA before final action is taken on the proposals.

Copies of all written comments received and the disposition of those comments by the NFPA committees will be published as the 2004 November Meeting Report on Comments by September 24, 2004, prior to the November meeting.

A copy of the Report on Comments will be sent automatically to each commenter. Action on the reports of the Technical Committees (adoption or rejection) will be taken at the November meeting, November 13–17, 2004, in Miami Beach, Florida, by NFPA members.

2004 NOVEMBER MEETING—REPORT ON PROPOSALS

NFPA 11	Standard for Low-, Medium-, and High-Expansion Foam Systems	C
NFPA 11A	Standard for Medium- and High-Expansion Foam Systems	W
NFPA 12	Standard on Carbon Dioxide Extinguishing Systems	C
NFPA 13E	Recommended Practice for Fire Department Operations in Properties Protected by Sprinkler and Standpipe Systems	C
NFPA 35	Standard for the Manufacture of Organic Coatings	C
NFPA 50	Standard for Bulk Oxygen Systems at Consumer Sites	W
NFPA 50A	Standard for Gaseous Hydrogen Systems at Consumer Sites	W
NFPA 50B	Standard for Liquefied Hydrogen Systems at Consumer Sites	W
NFPA 55	Standard for the Storage, Use, and Handling of Compressed Gases and Cryogenic Fluids in Portable and Stationary Containers, Cylinders, and Tanks.	C
NFPA 76	Recommended Practice for the Fire Protection of Telecommunications Facilities	P
NFPA 92B	Guide for Smoke Management Systems in Malls, Atria, and Large Areas	C
NFPA 99	Standard for Health Care Facilities	P
NFPA 99B	Standard for Hypobaric Facilities	C
NFPA 99C	Standard on Gas and Vacuum Systems	P
NFPA 110	Standard for Emergency and Standby Power Systems	P
NFPA 111	Standard on Stored Electrical Energy Emergency and Standby Power Systems	C
NFPA 214	Standard on Water-Cooling Towers	C
NFPA 225	Model Manufactured Home Installation Standard	N
NFPA 326	Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair	C
NFPA 329	Recommended Practice for Handling Releases of Flammable and Combustible Liquids and Gases	C
NFPA 501	Standard on Manufactured Housing	P
NFPA 501A	Standard for Fire Safety Criteria for Manufactured Home Installations, Sites, and Communities	P
NFPA 520	Standard on Subterranean Spaces	C
NFPA 600	Standard on Industrial Fire Brigades	C
NFPA 601	Standard for Security Services in Fire Loss Prevention	C
NFPA 720	Recommended Practice for the Installation of Household Carbon Monoxide (CO) Warning Equipment	C
NFPA 850	Recommended Practice for Fire Protection for Electric Generating Plants and High Voltage Direct Current Converter Stations.	C

2004 NOVEMBER MEETING—REPORT ON PROPOSALS—Continued

NFPA 851	Recommended Practice for Fire Protection for Hydroelectric Generating Plants	C
NFPA 909	Code for the Protection of Cultural Resources	C
NFPA 1003	Standard for Airport Fire Fighter Professional Qualifications	C
NFPA 1035	Standard for Professional Qualifications for Public Fire and Life Safety Educator	C
NFPA 1192	Standard on Recreational Vehicles	P
NFPA 1194	Standard for Recreational Vehicle Parks and Campgrounds	P
NFPA 1410	Standard on Training for Initial Emergency Scene Operations	C
NFPA 1452	Guide for Training Fire Service Personnel to Conduct Dwelling Fire Safety Surveys	C
NFPA 1561	Standard on Emergency Services Incident Management System	C
NFPA 1581	Standard on Fire Department Infection Control Program	C
NFPA 1936	Standard on Powered Rescue Tool Systems	C
NFPA 1951	Standard on Protective Ensemble for USAR Operations	C
NFPA 1977	Standard on Protective Clothing and Equipment for Wildland Fire Fighting	C
NFPA 1991	Standard on Vapor-Protective Ensembles for Hazardous Materials Emergencies	C
NFPA 1992	Standard on Liquid Splash-Protective Ensembles and Clothing for Hazardous Materials Emergencies	C

(P = Partial revision; W = Withdrawal; R = Reconfirmation; N = New; C = Complete Revision)

Dated: November 5, 2003.

Arden L. Bement,

Director.

[FR Doc. 03–28554 Filed 11–13–03; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Hawaiian Islands Humpback Whale National Marine Sanctuary (HIHWNMS) is seeking applicants for the following vacant seats on its Sanctuary Advisory Council (Council): Maui County Alternate, Kaua'i County Alternate, Education Alternate, Fishing Alternate, Native Hawaiian Member, and Native Hawaiian Alternate. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in Hawaii. Applicants who are chosen as members should expect to serve two-year terms, pursuant to the Council's Charter.

DATES: Applications are due by December 5, 2003.

ADDRESSES: Application kits may be obtained from Keeley Belva (888) 55–WHALE, or via e-mail at: *Keeley.Belva@noaa.gov*. Applications are also available on line at *http://hawaiihumpbackwhale.noaa.gov*. Completed applications should be mailed to the Hawaiian Islands Humpback Whale National Marine Sanctuary, 6700 Kalaniana'ole Highway, Suite 104, Honolulu, Hawaii 96825, faxed to (808) 397–2650, or returned via e-mail.

FOR FURTHER INFORMATION CONTACT: Keeley Belva (see above for contact information).

SUPPLEMENTARY INFORMATION: The HIHWNMS Advisory council was established in March 1996 to assure continued public participation in the management of the Sanctuary. Since its establishment, the Council has played a vital role in the decisions affecting the Sanctuary surrounding the main Hawaiian Islands.

The Council's twenty-four voting members represent a variety of local user groups, as well as the general public, plus ten local, state and Federal governmental jurisdictions.

The Council is supported by three committees: a Research Committee chaired by the Research Representative, an Education Committee chaired by the Education Representative, and a Conservation Committee chaired by the Conservation Representative, each respectively dealing with matters concerning research, education and resource protection.

The Council represents the coordination link between the Sanctuary and the state and Federal management agencies, user groups, residents, educators, policy makers, and other various groups that help to focus efforts and attention on the humpback whale and its habitat around the main Hawaiian Islands.

The Council functions in an advisory capacity to the Sanctuary Manager and is instrumental in helping to develop policies and program goals, and to identify education, outreach, research, long-term monitoring, resource protection and revenue enhancement priorities. The Council works in concert with the Sanctuary Manager by keeping him or her informed about issues of concern throughout the Sanctuary, offering recommendations on specific issues, and aiding the Manager in achieving the goals of the Sanctuary program within the context of Hawaii's marine program and policies.

Authority: 16 U.S.C. 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary program)

Dated: November 7, 2003.

Richard W. Spinrad,

Assistant Administrator, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 03–28467 Filed 11–13–03; 8:45 am]

BILLING CODE 3570–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Monterey Bay National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary) is seeking applicants for the following seats on its Sanctuary Advisory Council: Agriculture, Business/Industry, Conservation, Fishing, Recreation, Research and At-Large (two seats). Applicants chosen for

these seats should expect to serve until February 2007. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the Sanctuary.

DATES: Applications are due by December 5, 2003.

ADDRESSES: Application kits may be obtained from Nicole Capps at the Monterey Bay National Marine Sanctuary, 299 Foam Street, Monterey, California 93940. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Nicole Capps at (831) 647–4206, or *Nicole.Capps@noaa.gov.*

SUPPLEMENTARY INFORMATION: The MBNMS Advisory Council was established in March 1994 to assure continued public participation in the management of the Sanctuary. Since its establishment, the Advisory Council has played a vital role in decisions affecting the Sanctuary along the central California coast.

The Advisory Council's twenty voting members represent a variety of local user groups, as well as the general public, plus seven local, State and Federal Government jurisdictions. In addition, the respective managers or superintendents for the four California National Marine Sanctuaries (Channel Islands National Marine Sanctuary, Cordell Bank National Marine Sanctuary, Gulf of the Farallones National Marine Sanctuary and the Monterey Bay National Marine Sanctuary) and the Elkhorn Slough National Estuarine Research Reserve sit as non-voting members.

Four working groups support the Advisory Council: The Research Activity Panel (''RAP'') chaired by the Research Representative, the Sanctuary Education Panel (''SEP'') chaired by the Education Representative, the Conservation Working Group (''CWG'') chaired by the Conservation Representative, and the Business and Tourism Activity Panel (''BTAP'') chaired by the Business/Industry Representative, each dealing with matters concerning research, education, conservation and human use. The working groups are composed of experts from the appropriate fields of interest and meet monthly, or bi-monthly, serving as invaluable advisors to the Advisory Council and the Sanctuary Superintendent.

The Advisory Council represents the coordination link between the Sanctuary and the State and Federal management agencies, user groups, researchers, educators, policy makers, and other various groups that help to focus efforts and attention on the central California and coastal and marine ecosystems.

The Advisory Council functions in an advisory capacity to the Sanctuary Superintendent and is instrumental in helping develop policies, program goals, and identify education, outreach, research, long-term monitoring, resource protection, and revenue enhancement priorities. The Advisory Council works in concert with the Sanctuary Superintendent by keeping him or her informed about issues of concern throughout the Sanctuary, offering recommendations on specific issues, and aiding the Superintendent in achieving the goals of the Sanctuary program within the context of California's marine programs and policies.

Authority: 16 U.S.C. 1431, *et.seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: November 7, 2003.

Richard W. Spinrad,

Assistant Administrator, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 03–28468 Filed 11–13–03; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110801C]

Taking of Marine Mammals Incidental to Specified Activities; Construction of the East Span of the San Francisco-Oakland Bay Bridge

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

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) has been issued to the California Department of Transportation (CALTRANS) to take small numbers of California sea lions, Pacific harbor seals, and gray whales, by harassment, incidental to construction of a replacement bridge for the East Span of the San Francisco-Oakland Bay Bridge (SF-OBB) in California.

DATES: This authorization is effective from November 10, 2003, through November 9, 2004.

ADDRESSES: A copy of the application and/or a list of references used in this document may be obtained by writing to the Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, NMFS, (301) 713–2322, ext 128.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.”

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Under section 18(A), the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing

disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On September 14, 2001, NMFS received a request from CALTRANS requesting an IHA for the possible harassment of small numbers of California sea lions (*Zalophus californianus*), Pacific harbor seals (*Phoca vitulina richardsii*), and gray whales (*Eschrichtius robustus*) incidental to construction of a replacement bridge for the East Span of the SF-OBB, in San Francisco Bay (SFB, or the Bay), California.

Project Description

The SF-OBB is an important transportation component of the Bay area that provides regional access between the San Francisco Peninsula and the East Bay. An average of 272,000 vehicles currently use the SF-OBB, a part of Interstate 80, each day. The East Span Project will provide a seismically upgraded vehicular crossing for current and future users. The existing East Span must be replaced or retrofitted because it is not expected to withstand a maximum credible earthquake on the San Andreas (Richter 8) or Hayward (Richter 7.25) faults, it does not meet lifeline criteria for providing emergency relief access following a maximum credible earthquake, and it does not meet current operational and safety design standards.

The new bridge will be constructed north of the existing East Span and will be approximately 3,514 meters (m) (2.18 mi) long and approximately 70 m (230 ft) wide, including a 15.3 m (50 ft) minimum space between the east and westbound bridge decks. The bridge decks will be side-by-side, except for the double deck portion between the existing Yerba Buena Island (YBI) tunnel and the transition structures where the double deck structure becomes two parallel structures. Each deck will consist of five traffic lanes and inside and outside shoulders and a bicycle/pedestrian path will be constructed on the south side of the eastbound structure. The East Span Project would also replace the eastbound on-ramp on YBI. The existing ramp needs to be dismantled to construct the new bridge. The ramp would be rebuilt and would meet current design and safety standards.

The foundations for the piers of the replacement East Span will consist of large diameter steel pipe piles that will be driven into the Bay floor. Current plans anticipate driving a total of 189 2.5 m (8.2 ft) diameter piles and 70 1.8 m (5.9 ft) diameter steel pipe piles. Each pile is expected to consist of two or more segments; the first segment will be driven to an established depth, then the next segment(s) will be welded on and driven in succession until the pile is driven to its final or ''tip'' depth (or elevation). However, the contractor could choose to drive the piles in one piece. Some piles will be battered, meaning that they will be driven in at an angle, essentially splaying out from the pier to provide additional stability. The rest would be vertical piles. The larger piles will support the skyway and main span sections of the replacement bridge; they will be driven to depths ranging from about -66 m to about -108 m (-256 ft to -358 ft), with most being driven to about -95 m (-312 ft). The smaller diameter piles will support the Oakland Touchdown structures; they will be driven to ''tip'' depth ranging from about -41 m to about -65 m (-135 ft to 213 ft).

Due to the untested nature of large hammers and piles in SFB, a pile installation demonstration was conducted in the central SFB between October 23 and December 12, 2000, to evaluate engineering and environmental factors associated with installing large steel piles to support the replacement East Span. The Pile Installation Demonstration Project (PIDP) involved driving three steel piles, using two types of hydraulic hammers, one with a maximum energy rating of 500 kilojoules (kJ) and one with a maximum rating of 1,700 kJ. Each pile had four segments, which were welded together on site. In addition to driving one pile without the use of any sound attenuation devices, the PIDP tested two different types of in-water sound attenuating equipment: (1) An air bubble curtain (using approximately 1.6 cubic-feet-per minute per linear foot of air flow) and (2) a proprietary fabric barrier system with an aerating mechanism. The PIDP was conducted to investigate construction requirements, identify potential problems, make modifications to equipment, and examine the potential effectiveness of sound attenuation devices during pile driving activity. Additional discussion on the PIDP and the results of its monitoring program is contained throughout this document.

CALTRANS obtained an IHA from NMFS for the PIDP (65 FR 35047, June 1, 2000), which established a safety zone around each pile driving site where underwater sound pressure levels (SPLs) were anticipated to equal or exceed 190 decibels (dB) re 1 micro-Pascal (micro-Pa) with a maximum root mean square (RMS) sound pressure level averaged over a 35–millisecond time frame (Harris, n.d.; DOT, 2001)). This IHA also included several other stipulations about pile driving operations and requirements for marine mammal monitoring and reporting. During the PIDP, 3 large steel piles each required approximately 5 hours total driving time to reach the specified ''tip'' depth.

Based on the PIDP experience, it is expected that the 259 in-Bay piles could require about 1,300 hours of total pile driving time or approximately 5 hours total for each pile to reach the specified tip depth. However, the contractor will be allowed to drive simultaneously at multiple locations. Furthermore, it is possible that piles necessary for the YBI portion, the skyway, and the Oakland approach structures would be driven simultaneously. Pile driving will be allowed to begin only from 7 a.m. to 8 p.m., 7 days a week. Pile driving that is underway at 8 p.m. will continue until driving of that pile segment is complete. If the contractor uses piles consisting of multiple segments, it is expected that the first segments driven will take less energy and drive faster than subsequent segments because the top Bay sediments are soft, with hard mud and soft rock at deeper levels. If the contractor uses a pile that is driven in one piece, early driving will take less energy and progress faster than later driving. While the total time that the hammer is operating will be the same in both cases, the total placement time for multiple segments will be longer.

In a typical pile-driving scenario, the first pile segment would require about 1 hr of driving time. The next segment would then be welded to the driven segment. This process takes 2 to 3 days. After welding is complete, 3 to 4 hours would be required to drive the pile to tip elevation. The actual time would depend on local substrate conditions.

In addition to in-Bay pile driving, the East Span Project will include pile driving on YBI for construction of the YBI transition structures on the northeastern side of the island. These piles will be steel-driven piles, which are conventionally used in building construction. Unlike in-Bay pile driving which may require hammer energy

levels up to 1,700 kJ, pile driving activity on YBI will require hammer energy levels less than 100 kJ. A total of approximately 2,950 piles will be needed to support the YBI transition structures. Each pile will require about 30 minutes of driving time; therefore, it is estimated that the East Span Project will include a total of about 1,500 hours of driving time for piles on YBI.

To construct all permanent structures, contractors will also install piles to found temporary structures, supports, falsework, a barge dock and trestles. These temporary structures are required to facilitate construction and support the permanent structures until they are self-supporting. Since the temporary structures will be designed by the contractor, their exact nature (size, type, quantity, etc.) will not be known until the contractors submit their plans to CALTRANS. While the number of piles placed to found the structures will be large, it is expected that they will be of a smaller size than the permanent structures since they are temporary and are not designed for traffic or seismic loading. There may be 1,000 to 2,000 temporary piles. These piles are expected to be 0.5 m (18 in) to 0.9 m (36 in) in diameter and 12 m (40 ft) to 30 m (100 ft) long. A vibratory driver/extractor will be used to install and remove these temporary piles, with energy levels less than 100 kJ. Driving time for each pile is likely to be 3 to 5 hours; therefore, the estimated range for driving time for the temporary structures varies from 3,000 to 10,000 hours.

The East Span Project would take 7 years to complete, plus 2 years to remove the existing East Span. Seismic safety and lifeline criteria would be achieved for westbound traffic 4 years after the start of construction and, for eastbound traffic, 5 years after the start of construction. The eastbound structure of the Skyway will be built first. Once all the piles supporting the piers for the eastbound structure are driven, construction will start for the westbound structure of the Skyway.

Construction will begin at the Oakland Approach and progress towards YBI, from Pier E16 to Pier E–3. Piers E–16 through E–7 for the eastbound and westbound structures of the Skyway will be surrounded by sheet-pile cofferdams that will be dewatered before the start of pile-driving. The sheet-pile sections for the cofferdam will be driven by a vibratory hammer. Cofferdam dimensions are approximately 84 ft (25 m) by 63–68 ft (19–20 m).

Construction began in early 2002. For more detailed description on the work proposed by CALTRANS and potential environmental impacts, please refer to the CALTRANS application and/or the Final Environmental Impact Statement (Final EIS) prepared by the Federal Highway Administration (FHWA).

Comments and Responses

A notice of receipt and request for 30–day public comment on the application and proposed authorization was published on November 26, 2001 (66 FR 59001). During the 30–day public comment period, comments were received from the Marine Mammal Commission (the Commission) and CALTRANS. After the end of public comment period, letters were received from the Natural Resources Defense Council (NRDC), Campbell, George, and Strong, L.L.P. (CG&S) on behalf of Gunderboom, Inc., and an individual member of the public. These late comments are a part of this Administrative Record and were given full consideration in making a final determination in this matter (and are addressed within the text of this document). However, late comments that simply reference and either support or contradict comments that were submitted within the public comment period are not discussed in this document. In addition, because some public comments raised issues that needed resolution prior to NMFS making its determinations under section 101(a)(5)(D) of the MMPA, NMFS has incorporated into this document additional information that it requested from CALTRANS in reference to the statements submitted by the commenters. Finally, because the issue under consideration here is the issuance of an IHA to CALTRANS for the taking of marine mammals incidental to the activity, and because an IHA to CALTRANS does not authorize the CALTRANS' activity as such authorization is not within the jurisdiction of the Secretary of Commerce, comments that were submitted regarding subjects other than marine mammals, such as water quality concerns, have not been addressed in this document.

Activity Concerns

Comment 1: The Commission notes that the **Federal Register** notice does not address noise and other issues associated with destruction and removal of existing structures. The Commission recommends that NMFS consult with the applicant regarding any planned demolition activities, and provide authorization for potential takings of marine mammals that may occur as a result of such activities.

Response: Bridge demolition activities will not take place until after completion of construction of the new span. Those issues will be addressed in a future incidental take application and potential authorization action. As mentioned, this activity will take several years to complete. During this IHA, CALTRANS expects to conduct the following activities: (1) Complete construction of eastbound pier E7 (in cofferdam), (2) construct eastbound pier E6 (using bubble curtain), (3) start westbound Pier 16E (in cofferdam), (4) complete westbound pier 7E (in cofferdam), (5) start construction westbound pier 6E (in bubble curtain), and (6) possibly begin construction on pier E2. Presumably under a new IHA issued around October, 2004, CALTRANS will continue work on westbound piers E16 through E7 (in cofferdams) and E6 through E3 (using bubble curtains).

Comment 2: CALTRANS notes several minor technical corrections to the proposed authorization document. These corrections include that the 31–millisecond (ms) time frame should be 35 ms.

Response: NMFS has made several minor recommended changes as appropriate in this document without further reference. Use of the 35–ms time frame will allow CALTRANS to monitor sound with standard noise-meters with ''real-time'' results. Otherwise, CAlTRANS notes, it would need to post-process the data. From the calibrated audio tapes made during the PIDP, the 31–ms (1.32–sec) RMS level of a pile strike was originally measured and found to be the same as the impulse (35 ms). There was zero dB difference between the 31–ms impulse RMS from the 35–ms sound level meter and that measured with the 31–ms RMS time constant. The 35ndash;ms rise-time constant has been adopted in national and international standards as design goals for measurements of impulse sound level, the ''RMS'' Impulse (Harris, n.d.). Based on the data collected for the PIDP, averaging over 35 ms is a conservative measure of the maximum RMS SPL with respect to the Greenridge analysis (Greenridge, Appendix G in Illingworth and Rodkin, 2002) for pile 1D at 103 m (338 ft) distant and 6 m (20 ft) deep the Greenridge-measured SPL is 195 dB, and the RMS impulse (31 and 35 ms) is 196 dB.

Marine Mammal Impact Concerns

Comment 3: CALTRANS questioned the statement made by NMFS in the proposed authorization notice that both permanent in-Bay pile driving and pile driving on YBI has the potential to

harass harbor seals. CALTRANS notes that land-based pile driving will involve hammers with less than 100 kJ of energy. CALTRANS believes that marine mammals are unlikely to be harassed by land-based pile driving and therefore, monitoring should apply only to in-Bay pile driving.

Response: NMFS agrees. During site visits, NMFS noted that a large hill (Yerba Buena Hill) was located between the YBI construction site and the YBI haulout. Therefore, with the combination of this permanent acoustic barrier and the low energy level for this pile driving activity, no impacts are anticipated at the YBI haulout and therefore monitoring by the SF-OBB monitoring team is not warranted.

However, the YBI haulout has been a pinniped control site for the monitoring program under CALTRANS' IHA for the Richmond San Rafael Bridge (see 67 FR 61323, September 30, 2002) for several years. Therefore this site will continue to be monitored by CALTRANS and any changes in harbor seal activity will be noted.

Comment 4: CG&S states that the source level of acoustic wave energy that will be generated in the water of SFB will be approximately 265 dB, and possibly greater. CG&S also states, that instantaneous lethal effects (rupturing of internal organs such as eyes and swim bladders) for aquatic organisms are well documented for energy levels of 204 dB, with delayed lethal effects occurring with energy levels down to 180 dB, and sub-lethal effects beginning as low as 170 dB.

Response: The PIDP had a measured pile-driver energy of 900 kJ with a measured underwater peak pressure of 207 dB (re 1 uPa) at a distance of 103 m (338 ft) and 191 dB at a distance of 358 m (1174.5 ft). Greene (2001) corrected for the larger hammer size expected to be used at SF-OBB and calculated excess attenuation of approximately 30 dB per tenfold increase in distance and, after applying the spreading loss formula, estimated that the pile driving source level (at 1 m (3.3 ft)) would be 268.5 dB (re 1 microPa) for the 1,700 kJ hammer. This 30–dB level is close to the 28–dB change observed at a Hong Kong refueling facility.

However, the estimated 268.5 dB (re 1 microPa) for the 1700 kJ hammer is made by taking measurements made in the far-field and extrapolating those measurements to the near-field. Estimating a source level from the far-field assumes that the sound emanates from a single point, and that the level reported is measured 1 m (3 ft) from that point. This method is useful for comparing sound sources against each other. However, the 1700–kJ hammer is not a point source; there is no hypothetical location one meter from it where measurements could be made. Because of the dispersed nature of the sound, the procedure used in estimating a source level from the far-field gives a poor prediction of the levels an animal could actually receive in the near-field. Near-field received levels are expected to be considerably less than the far-field estimates predict.

Based on a formula provided by Greenridge Sciences, CALTRANS has made a rough extrapolation of the measurements made in the farfield back to 1 m (3.3 ft) that would put the source level at about 233 dB re 1 microPascal and an unmitigated underwater SPL for the 1700 kJ hammer to the 190–dB isopleth is estimated to be approximately 100 m (328 ft). This 190–dB isopleth is where current NMFS policy conservatively holds that onset of Level A harassment occurs for pinnipeds. Therefore, to the extent practicable, activities should avoid exposing pinnipeds to sound pressure levels exceeding this value in order to limit Level A harassment (injury). This does not mean that pinnipeds would be injured at the 190–dB isopleth distance, only that the 190–dB SPL is the point above which some potentially serious problems in the hearing capability of marine mammals could start to occur. We note that the 190 dB (re 1 uPa (rms)) criterion was established as an interim criterion that is still evolving. Newer information indicates that 190 dB is extremely conservative and that Level A harassment is unlikely to occur at that level.

Also, NMFS does not concur with the commenter that SPLs of 180 to 204 dB would necessarily result in lethal effects for fish. Studies suggest that intense sound may result in damage to the sensory hair cells in the ears of fish. Hastings *et al.* (1995, 1996) studied the effects of intense sound stimulation on the inner ear and lateral line of the oscar (*Astronotus ocellatus*) and Cox *et al.*(1986a, 1986b, 1987) exposed goldfish (*Carassius auratus*) to pure tones at 250 and 500 Hz at 204 and 197 dB, respectively. They found some indications of sensory hair cell damage. Enger (1981) determined that some ciliary bundles (the sensory part of the hair cell) on sensory cells of the inner ear of the cod (*Gadus morhua*) were destroyed when exposed to sounds at several frequencies from 50 to 400 Hz at 180 dB for 1–5 hours. In reviewing the results of their study and that of the previous studies, Hastings *et al.*(1996) suggested that sounds 90 to 140 dB above a fish's hearing threshold may potentially injure the inner ear of a fish. This suggestion was supported in the findings of Enger (1981) in which injury occurred only when the stimulus was 100 to 110 dB above threshold at 200 to 250 Hz for the cod. Hastings *et al.* (1996) derived the values of 90 to 140 dB above threshold by examining the sound levels that caused minimal injury in the oscar, and then hypothesizing that extensive injury would require more energy. They conservatively suggest that received levels (RLs) of 200 dB to 240 dB would potentially cause damage to sensory hair cells in non-hearing specialist fishes. Calculations for hearing specialist fish using the Hastings (1996) values (i.e., 90 to 140 dB above threshold) conservatively indicate RLs of 140 to 190 dB continuously for at least one hour would be necessary to induce hearing damage. Also Hastings *et al.* (1995) showed that the oscars recovered within 1 day, suggesting that the impairment was not permanent.

In addition, the primary potential for non-auditory impact to fishes would be resonance of fish swim bladders. Studies show that the resonant frequency of the swim bladder is considerably above the frequency of best hearing. It is not expected, therefore, that resonance of the swim bladder would play a significant role in response to low-frequency sound, especially since only larger fish would have swim bladders large enough to resonate. While NMFS does not believe the evidence supports a finding that instantaneous lethal effects are likely for energy levels of 180 to 204 dB, it does believe that mitigation measures implemented to reduce the impacts to marine mammals and threatened/endangered species will have benefits for other marine life as well.

Mitigation Concerns

Comment 5: The Commission believes that NMFS' preliminary determinations are reasonable provided all reasonable measures will be taken to ensure the least practicable adverse impact on affected species of marine mammals. In that regard, the Commission notes that CALTRANS indicates that a fabric barrier sound attenuation system proved effective in reducing SPLs generated during the PIDP. It is unclear however, whether this method will be employed during the proposed pile-driving operations, or, in the alternative, that CALTRANS has made a showing that using such a system is not practical.

Response: An explanation of the PIDP findings and CALTRANS analysis are provided here, followed in later comments and responses with

additional commenter concerns and NMFS determination on mitigation.

The PIDP study involved driving three piles, with two different sizes of hammers and the use of two different methods of underwater sound attenuation. The test piles, Piles 1, 2 and 3, were made of steel and were 2.4 m (8 feet) in diameter. Pile 1 was driven straight down and did not use any sound attenuation. Pile 2 was a battered pile angled 1h:6v to the east and used an air bubble curtain. The single-ring air-bubble curtain provided a curtain of air around the pile to attenuate noise from driving activities. Bubbles emerged from a submerged piping system that surrounded the pile template (used to hold the hammer/pile in place). The piping system was comprised of three 10.2–cm (4–in) diameter perforated polyvinyl chloride (PVC) pipes attached to a steel frame, forming a 30.5–m (100–ft) diameter octagonal ring. Two rows of 0.1–centimeter (0.04–inch) diameter holes were drilled into the PVC pipes. The bubble curtain system was fabricated and assembled off-site, then transported to the pile-driving site using a barge-mounted crane. The piping system ring was then submerged to the Bay floor to encircle the pile template. Air was supplied from a 1,600 ft^3/min (cfm; 45.3 m^3/min) compressor located on the PIDP barge. Though Pile 2 was driven at an angle, the bubbles streamed straight up to the water surface, potentially providing less attenuation near the surface than at greater depths. A similar system was used by Wursig e*t al.* (2000) for attenuating noise received by dolphins during pile driving activities for an airport expansion.

Pile 3 was a battered pile angled 1h:6v to the west and was surrounded by a proprietary method of sound attenuation referred to as a fabric barrier system with an aerating mechanism. The fabric barrier system consisted of an in-water, double-layer fabric curtain with a single 7.6–cm (3–in) diameter pipe between the two fabric sheets and three 7.6–cm (3–in) diameter pipes between the inner fabric layer and the pile. The fabric curtain was made of water-permeable material which enclosed the pile template. The top of the curtain attached to the pile template at a level a few meters above the surface of the water. The bottom was attached with beams to the bottom of the template. The fabric barrier system with aerating mechanism had a 10.7–m by 22.9–m (35–ft by 75–ft) rectangular footprint. This proprietary fabric barrier system with aerating mechanism was assembled and attached to the template off-site. The template/air bubble and fabric barrier was transported by barge to the Pile 3 location. Air was supplied from the same 1,600–cfm compressor that was used on Pile 2; however, air was supplied to four pipes which were arranged in a smaller footprint than for the air bubble curtain, thereby providing a higher density of air bubbles around the pile.

Each pile was made up of four 33–m (108–ft) long sections which were driven and welded together in succession until the full length of the pile was achieved. Two types of Menke hydraulic hammers were employed to drive the piles; a small hammer rated at 500 kJ, and a large hammer rated at 1,700 kJ.

Sound measurements were taken during pile driving, and marine mammals were monitored at the project site and at harbor seal haul-out site on YBI. Problems were encountered with the collection of data about sound pressure levels. As a result, the information about sound pressure levels that CALTRANS has obtained to date is limited. Based on the available data, the distances to the 190 dB contour for the large hammer without attenuation was estimated for each test pile driven. (The underwater sound level boundary for the pinniped safety zone was specified by the IHA as 190 dB re 1 mPa RMS (impulse) to protect pinniped hearing). Field measurements indicated that this 190 dB re 1 microPa RMS (impulse) contour would be between 100 and 350 m (328 and 1,148 ft) for the unattenuated pile (Pile 1) and the bubble curtain pile (Pile 2) and less than 100 m (328 ft) for the fabric barrier system with aerating mechanism (Pile 3).

The PIDP Report (CALTRANS, 2001) determined that:

> the air bubble curtain is effective and adaptable to a seafloor with either a sloping or flat bottom. The air bubble curtain has a disadvantage in that fast currents in deep water may divert the air bubbles at an angle thereby reducing the effectiveness of the curtain. However, even with strong currents during the PIDP, the bubbles always surrounded Pile 2. Assembly of the bubble ring must typically be done off-site where sufficient land area is available for construction. For repeated use during the proposed East Span Project, this system could be redesigned to better withstand the pressures of being repeatedly raised to the surface. When compared to the fabric barrier system with aerating mechanism, there would be a larger economy of scale if it were designed for multiple reuse. The air bubble curtain is advantageous in that it does not need to be attached to the pile template itself, and marine construction equipment can easily maneuver around and over the site without any hindrance from the air bubble curtain. Marine construction equipment does not appear to affect the operation of the air bubble curtain. For reuse, the air bubble system's lack of bulk reduces the deployment logistics of relocating it to other pile locations. Once deployed, this system requires minimal inspection. With easier deployment maneuverability, and minimal inspection, the chances for time consuming delays would likely be decreased. For the PIDP, the bid cost was $120,000 for one installation.
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> The fabric barrier system with aerating mechanism would be most effective in an area where a flat or consistently level bottom exists. Differences in bottom contour would result in a gap between the bottom of the curtain and the seafloor where sound would not be attenuated. For the proposed East Span Project, this system might be redesigned to be smaller for a single pile or much larger for a whole pier system. When compared with the air bubble curtain, there would be a smaller economy of scale if this system were designed for multiple reuse. Designing this system for reuse may include moving the template off-site, fitting different length curtain to it, and returning the refitted template back out to the project site. This could reduce the possibility of a gap between the bottom of the curtain and the sloping seafloor bottom. Costs would increase if the system needed to be redesigned for varying bottom elevations. Strain on the system from currents is less of a problem with this device than with the air bubble curtain alone, as the weight of the (fabric) curtain typically keeps the system nearly vertical. For the PIDP, the fabric barrier system was attached to the pile template by the proprietor of the system. In future applications, this can be expected to be performed off-site. The bulkiness of this arrangement makes movement to the project site and movement between piles to be driven very difficult. The first attempt to deploy this system at the PIDP had to be postponed because in windy weather the (fabric) curtain and template effectively acted as a sail. The height of this system and having it welded to the template does not allow for easy maneuverability for the marine equipment. For example, a derrick barge cannot maneuver over it, and equipment on the barge must reach over the barrier to the pile being driven. Once deployed, this system requires inspection of the condition of the zippers in the fabric and the bottom alignment. Any damage to the fabric barrier system would likely require removing the template and barrier from the water to conduct repairs. This would cause time-consuming delays to the pile driving operations. For the PIDP, the bid plus change order cost was $580,000 for one installation at Pile 3. This included an additional bubble ring between the curtain and the pile, which was not in the project specifications, but likely aided in sound attenuation.

CALTRANS believes that an air bubble curtain is preferable to the fabric curtain in that the air bubble curtain does not need to be attached to the pile template itself and the marine equipment needed on site can easily maneuver around and over the site without any hindrance. The air bubble

system also results in lower deployment logistics when moving it around to other piles to be driven. Once deployed, the air bubble system requires minimal inspection. With easier deployment, maneuverability, and minimal inspection, the chances for costly project delays will be decreased. In addition, a fabric barrier/air bubble system would have to be designed to surround the entire template and pile cap (4 or 6 pile group of piles driven through sleeves in the pile cap). This would require the use of larger or more compressors to the extent that it may require multiple barges for support. This could cause significant congestion around the footing and additional delays related to installing and moving the bubble curtain, installing the piles, and completing construction of the footing.

In order to adjust the fabric barrier/air bubble system for the varying bathymetry in the Bay, the system would have to be removed from the Bay and reconfigured to meet the bathymetric conditions at each pier. An air bubble curtain will allow for a consistent close fit of the bottom of the curtain to the bay mud.

A fabric barrier/air bubble system would require a complete redesign and construction of a new system of false work for the support of the pile cap-footing box due to the large lateral forces that would be applied to this structure by the flow of Bay currents against the fabric. The placement of the fabric barrier/air bubble curtain can be expected to only be possible at slack tides, with very low winds due to the sail effect of the fabric barrier. This too, will cause delays in placement of the system and the driving of the piles.

As a result of this analysis, NMFS determined that the air bubble curtain had the potential to provide the means for effecting the least practicable adverse impact on the affected species and stocks of marine mammals, but wanted CALTRANS to provide another demonstration of the air bubble curtain's effectiveness in water currents than was shown at the PIDP. Subsequent testing of the air bubble curtain has indicated that it will effectively attenuate sound (see Response to Comment 6).

Comment 6: CG&S states that based on the PIDP “the unconfined air bubble system provided little or no attenuation of harmful energy levels; however, CALTRANS is proposing this type system for the entire East Bay project. CG&S believes that the use of the confined air bubble system with fabric curtain would not only reduce energy levels but also serve as a physical barrier to exclude (marine mammal) entry into the project area.

Response: CALTRANS has proposed to use the air bubble curtain to construct eastbound and westbound piers E6 through E3. CALTRANS would also construct eastbound and westbound piers E16 through E7 (in cofferdams, not using an air bubble curtain). Work done within cofferdams would use a 500–kJ hammer whenever possible, but switching to the 1700 kJ hammer only if stiffer sub-bottom sediments are encountered.

NMFS believes that the PIDP did not provide an accurate assessment of the capability of the air bubble curtain due to the failure to compensate for the currents in the area. One of the problems noted during the PIDP was that the air bubbles did not completely enclose the piles during periods with tidal currents. As a result, CALTRANS redesigned the air bubble curtain system and tested that system in 2002 and again in 2003 so that the new design of the bubble curtain completely enclosed all permanent in-water piles/pile groups during the pile driving process. One reason for the delay in issuing this IHA was our review of the redesigned air bubble curtain to ensure that marine mammals would be protected to the greatest extent practicable. That report was released on July 23, 2003. In summary, the effectiveness of a bubble curtain consisting of two or more rings over the single-bubble curtain used in the PIDP for reducing underwater sound pressures during marine pile driving was assessed through underwater sound pressure measurements. This was conducted when the three 108–m long, 2.4 m diameter piles driven in 2000 as part of the PIDP, were restruck in December, 2002. During the measurements, the bubble curtain system was turned on and off. The restrike involved driving the piles at refusal with the hammer at maximum energy (1600–1740 kJ).

The reduction in sound pressures provided by the bubble curtain system ranged considerably. The direct reduction in sound pressures for piles 1 and 2 was 6 to 17 dB for peak pressures and 3 to 10 dB for RMS SPLs. Piles 1 and 2 were next to each other. SPL reductions at Pile 3, which was in shallower water, were over 20 dB for both peak pressures and RMS SPLs on the north side. However, reductions on the south side were much less. Close to pile 3 on the south side, the reductions were on the order of 5 to 7 dB. Further away at about 450 m (1476 ft) south, the reductions were only about 2 dB. Uneven bottom topography around pile 3, which could have compromised the bubble curtain performance near the bay bottom is suspected to have resulted in lower reductions to the south.

Analysis of individual pile strike impulses indicates that the bubble curtain reduced sound pressure at all measurement positions at frequencies above 1 kHz. There was a reduction in sound pressures below 500 Hz where the bubble curtain worked particularly well.

Measurements of peak pressures made at about 100 m (328 ft) were consistent with the measurements made during the PIDP in 2000. Those measurements were the basis for predictions of the maximum peak pressures during the SF-OBB east span construction. With the exception of the 450 m (1476 ft) south position, predicted peak pressures used in the NMFS October 30, 2001 Biological Opinion on the effects of construction of the East Span of the SFOBB on listed species were lower than those measured. At 450 m (1476 ft) south, measured peak pressures were 5 to 8 dB higher than predicted. Conversely, peak pressures at 450 m (1476 ft) to 500 m (1640 ft) north were 0 to 6 dB lower than predicted.

RMS SPLs did not exceed 190 dB at any of the measurement positions (between 65 and 500 m) when the bubble curtain was operating. SPLs of 180 dB RMS did not extend out to the 450 m (1476 ft) south for pile 1, but did not exceed 172 dB at 450 m (1476 ft) north. With the bubble curtain off, the 190–dB RMS SPLs extended out to somewhere between 200 m (656 ft) to 300 m (984 ft) for piles 1 and 2, and less than 100 m (328 ft) for pile 3.

Comment 7: On December 17, 2001, CALTRANS requested that the paragraph in the proposed authorization notice regarding barrier systems be removed since the marine pile-driving attenuator system that will be installed by CALTANS is to protect fish and is not intended to protect marine mammals.

Response: While the CALTRANS application did not indicate that a sound-attenuating device would be installed during pile driving at SF-OBB, by the time the proposed authorization notice was published on November 26, 2001, the NMFS Biological Opinion on CALTRANS' construction of a replacement bridge for the East Span of the SF-OBB had been issued. That document notes that ''application of an air bubble curtain to attenuate sound is expected to restrict th[e] area of direct mortality [i.e., for fish], a radius of approximately 69 meters and the proposed monitoring program will allow for confirmation of the bubble curtain's effectiveness '' Therefore,

while NMFS agrees that the term ''barrier systems'' was incorrect, in accordance with the Biological Opinion, some method to decrease the SPLs would be necessary to protect listed fish species. In addition, this would serve as a practical marine mammal mitigation measure. Therefore, the information provided in that paragraph of the proposed **Federal Register** notice has been expanded in this document to include NMFS determination on effective mitigation.

Comment 8: CALTRANS requests the following clarifications be made if NMFS intends to require the pile-driving attenuator in the IHA: (1) although the attenuator planned for use is similar in concept to the one that was used in the PIDP, it will have a substantially enhanced performance; (2) use of the attenuator is only for driving the large in-Bay piles, not for the smaller, temporary in-Bay piles nor for any land-based piles; and (3) NMFS should clarify its intent (for requiring the attenuator to protect marine mammals).

Response: NMFS agrees. In reviewing the Administrative Record on this IHA application, NMFS has determined that deployment of an improved air bubble curtain would effectively reduce impacts to marine mammals at the SF-OBB to the lowest level practicable. For example, at the Benicia-Martinez Bridge in California an unconfined air bubble curtain system was developed that used vertically-stacked air bubble rings and large volumes of air to reduce sound pressures. Findings indicate that this system resulted in sound pressure reductions of 19 to 33 dB re 1 microPascal and 17 to 29 dB on an rms basis. At most measurement positions, peak sound pressures were reduced by over 22 dB and RMS SPLs were reduced by over 25 dB. The measurement results and discussion can be found in the report (Reyff, 2003) which is available upon request.

Therefore, as a result of the findings made during the PIDP restrike and the investigation at the Benicia-Martinez Bridge, NMFS has determined that CALTRANS must install an air bubble curtain for pile driving for the in-Bay piles located at the SF-OBB. Based on CALTRANS redesign, this air bubble curtain system will consist of concentric layers of perforated aeration pipes stacked vertically and spaced no more than five vertical meters apart in all tide conditions. To address, in part, the issue of currents, CALTRANS has determined that the number of layers of pipe must be in accordance with water depth at the subject pile: 0-<5 m = 2 layers (1263 cfm); 5-<10 m = 4 layers (2526 cfm), 10-<15 m = 7 layers (4420 cfm); 15-<20 m = 10 layers (6314 cfm); 20-<25 m= 13 layers (8208 cfm). The lowest layer of perforated aeration pipes must be designed to ensure contact at all times and tidal conditions with the mudline without sinking into the bay mud. Pipes in any layer must be arranged in a geometric pattern, which will allow for the pile driving operation to be completely enclosed by bubbles for the full depth of the water column and for a radial dimension of at least 2 m (6.6 ft) as measured from the outside surface of the pile.

To provide a uniform bubble flux, each aeration pipe must have four adjacent rows of air holes along the pipe. Air holes must be 1.6-mm diameter air holes spaced approximately 20 mm apart. The bubble curtain system will provide a bubble flux of at least three cubic meters per minute, per linear meter of pipeline in each layer. Air holes must be placed in 4 adjacent rows. The air bubble curtain system must be in a frame to facilitate transport and placement of the system, keeping the aeration pipes stable, and providing ballast to counteract the buoyancy of the aeration pipes in operation.

Comment 9: On April 23, 2002, CALTRANS informed NMFS that, with some modifications, the description of ''barrier systems'' should remain in the final IHA **Federal Register** notice as it provides information about the sound attenuating device to be used during the project. CALTRANS suggested the following language: ''The bubble curtain system will be used only when driving the permanent in-Bay piles. While the bubble curtain is required specifically as a method to reduce impacts to endangered and threatened fish species in SFB, it may also provide some benefit for marine mammals. The NMFS' Biological Opinion and the California Department of Fish and Game's (CDFG) 2001 Incidental Take Permit also allow for the use of other equally effective methods, such as cofferdams, as an alternative to the air bubble curtain system to attenuate the effects of sound pressure waves on fish during driving of permanent in-Bay piles (NMFS 2001; CDFG, 2001). Piers E–16 through E–7 for both the eastbound and westbound structures of the Skyway will be surrounded by sheet-pile cofferdams, which will be dewatered before the start of pile-driving. De-watered cofferdams are effective sound attenuation devices. For Piers E3 through E6 of the Skyway and Piers 1 and E2 of the Self-Anchored Suspension span, it is anticipated that cofferdams will not be used: therefore, a bubble curtain will surround the piles.''

Response: NMFS agrees and has inserted the recommended text as it clarifies where CALTRANS is required to install the air bubble curtain (see Mitigation). It should be noted that NMFS has determined that installation of the redesigned bubble curtain (described in response to comment 8) along with additional mitigation measures described later in this document (see Mitigation) will reduce marine mammal impacts to the lowest level practicable. Therefore, NMFS has determined that the piles for Piers E3, E4, E5, and E6 of the Skyway, as well as for Piers 1 and E2 of the Self-Anchored Suspension span, which will not be surrounded by cofferdams, must have an air bubble curtain system surrounding each pile driven to attenuate peak underwater sound pressure levels.

Comment 10: GC&S states that ''it appears that CALTRANS has not considered the potential for marine mammals to wander into the project area during nocturnal periods of no activity. If this happens (and there is not a physical barrier to prevent this), the individuals that remain in the area during initial startup of the pile-driving activity could experience death or serious bodily injury. The use of the confined air bubble system (with fabric curtain) would not only reduce energy levels, but also serve as a physical barrier to exclude entry into the project area.''

Response: NMFS has determined that the marine mammal monitoring program will effectively locate all pinnipeds in the vicinity of the pile-driving activity prior to beginning the driving of each pile. The IHA requires trained observers to conduct observations at least 30 minutes prior to the start of all in-water, permanent pile-driving. If any marine mammals are observed, pile-driving cannot begin until the animals leave the 190–dB safety zone or until 15 minutes after the animal was last seen. In addition to monitoring, requirements for the installation of an improved air bubble curtain and to incorporate ''soft-start'' of the hammer will ensure that no pinnipeds (or cetaceans) will be injured or killed incidental to placement of piles at SF-OBB.

Comment 11: The CG&S and others believe that the MMPA provides NMFS with the authority to require CALTRANS ensure the least practicable impact to marine mammals by the project.

Response: NMFS agrees and believes that requiring CALTRANS to install and use the air-bubble curtain, as redesigned after the re-strike and described in

response to comment 6, will result in the least practicable adverse impact to the affected species or stocks of seals or sea lions that might be in the area prior to starting pile driving.

Comment 12: CG&S submitted additional documentation on June 18, 2002, regarding the efficacy of a gravel-filled cofferdam for sound attenuation. CG&S concludes that dewatering the cofferdam by filling it with solid material may, at best, provide little to no reduction of noise levels and may actually intensify sound levels in some applications, rendering this technique ineffective for sound attenuation. The CG&S' supporting documentation provides a summary of the finding: ''A basic estimate of the sound propagation for the driven pile in the sand-filled cofferdam is made. The first order calculation for the geometry presented indicates about 10 dB loss due to this construction. This loss has reduced significance when considering the potential need for more hammer energy to drive the pile through the sand. The acoustic conditions could potentially be no better and even could become worse.''

Response: CALTRANS plans to construct the eastbound and westbound piers E16 through E7 in dewatered cofferdams using a 500–kJ hammer, not a 1,700–kJ hammer unless resistence is met. However, as detailed in CALTRANS (2002b), the cofferdam is not simply dewatered and filled with sand. Instead, the bottom is dredged, a base-rock blanket is placed on the bottom of the cofferdam and a pile cap is placed in the cofferdam. After the cofferdam is dewatered to the extent practicable, the battered piles are driven through sleeves in the pile cap, not through the sand or rock (except for the 1.5 m (4.9 ft) of base rock under the pile cap). Figure 2–3 of CALTRANS (2002b) provides a good illustration of the expected decoupling of the airborne sounds from the pile driver into the water column when pile driving is conducted in the relatively shallow water between piers E16 and E7. Essentially, it does not matter even if there is water between the voids of the rock fill inside the cofferdam during pile driving. This is because the rock fill starts at the mudline and continues down to the bottom of the excavated coffer cell. Therefore, little or no energy is transmitted to the Bay water through the locking fill or the water in the voids of the locking fill. The pile is not surrounded by Bay waters and little or no energy is transmitted to the Bay waters. As a result, NMFS has concluded that the use of cofferdams is an effective method to reduce the sound pressure level of pile driving into the water environment.

Comment 13: CALTRANS comments that the restriction on start-up of pile driving until marine mammals have moved out of the area should be revised to include an alternative of a time period of 15 minutes. CALTRANS is concerned that costly delays of up to $38,000/hour could result from a delay.

Response: Both the proposed and final documents make clear that pile driving cannot begin until marine mammals have left the respective safety zone for their appropriate taxa, no matter how long the period. This is appropriate since CALTRANS did not request the taking of marine mammals by Level A harassment, which becomes a potential means of take if animals are still within the safety zone when pile driving commences. However, as noted in the IHA, if an animal dives below the water surface and does not reappear within the safety zone within 15 minutes, then the animal may be presumed to have left the safety zone and pile driving can begin. If the presence of seals or California sea lions within the safety zone seriously compromises CALTRANS' activity, CALTRANS will need to contact the Regional Administrator, NMFS, for appropriate resolution.

Monitoring and Reporting Concerns

Comment 14: CALTRANS proposed that approval of a monitoring plan prior to any construction activity would unnecessarily delay construction of the first project-related activity, a fill surcharge contract on land and in intertidal sand flats at the Oakland Touchdown, which is scheduled to start before the IHA is issued. This contract would be delayed if this requirement were to remain in place. CALTRANS notes that such a plan was not required in advance of the IHA for the PIDP.

Response: The fill contract work is on land and in intertidal sand flats at the Oakland Touchdown and is therefore not expected to have a potential for marine mammal harassment. Since this work does not include any pile-driving and the location of the work is far from the YBI haulout site, it was proper for CALTRANS to proceed with this work prior to issuance of an IHA. Work began in early March, 2002 and included monitoring for herring spawn in the area five times a week for about 6 weeks (late February through March). No seals were observed during monitoring.

CALTRANS submitted a site-specific monitoring plan to NMFS for review in May, 2002. That plan has been reviewed by NMFS and is discussed in more detail in this document. The monitoring program associated with the PIDP was contained in the CALTRANS application for an IHA; a separate report was not necessary to establish the monitoring requirements contained in the IHA.

Comment 15: CALTRANS notes that the proposed authorization notice proposes safety zone monitoring before the entire East Span Project begins. This is not feasible since the safety zones are located around specific pile sites. CALTRANS proposes baseline monitoring of the general project areas rather than monitoring safety zones for which locations will not have been defined by then. The fill surcharge contract (see previous comment) is scheduled to begin construction before the marine mammal monitoring will take place. The nature of this work and its distance from marine mammal haulouts and foraging areas suggests that this work will not result in the harassment of marine mammals. CALTRANS therefore proposes to begin baseline monitoring 14 days prior to construction of the second project contract, the Skyway contract, which will involve pile driving and other major in-Bay construction activities. CALTRANS believes that this will meet the intent of this requirement to collect background data about marine mammal behavior prior to the beginning of construction work that has the potential to incidentally harass marine mammals.

Response: NMFS concurs. A detailed description of the visual monitoring program recommended by CALTANS and accepted by NMFS is provided later in this document (see Monitoring).

Comment 16: CALTRANS recommends that in several places in the proposed authorization notice, NMFS substitute ''permanent in-Bay pile-driving'' in place of ''all pile driving'' since only in-Bay pile driving will be monitored by marine mammal observers.

Response: While NMFS agrees to the modification, it must point out that in-Bay, land-based, and temporary pile driving activities all have some monitoring associated with it. However, only the in-Bay pile driving has the requirement for monitoring during all pile-driving activities.

Comment 17: CALTRANS recommends that, similar to the PIDP monitoring, monitoring be required for a minimum of 30 minutes prior to the initiation of each pile-driving episode. Also, CALTRANS recommends having one team of observers to observe the safety zone at each in-Bay pile-driving site. Therefore, multiple teams would be required if pile driving is occurring at multiple sites at any one time.

Response: NMFS agrees, noting that these proposed requirements were also contained in CALTRANS May, 2002 monitoring plan.

Comment 18: CALTRANS notes that no offsite monitoring sites (i.e. haul-outs) offer comparable conditions for use as a control site. Mowry Slough, for example, is quite different from the YBI haul-out as it is a pupping site, is located in a different environment, and has far less ambient human disturbance. If it is included as a comparison site, CALTRANS proposes that the frequency of monitoring at YBI be conducted twice a week during driving permanent in-Bay piles.

Response: In order to evaluate whether harbor seals use alternative hauling-out areas as a result of construction work at SF-OBB, CALTRANS is required to monitor at least one additional harbor seal haul-out within the Bay. Since Mowry Slough has been designated as a control site for the Richmond-San Rafael Bridge seismic retrofit work, NMFS recommends that this site continue to be monitored using the same protocol designed by researchers for that project.

Comment 19: CALTRANS notes that land-based pile driving will involve hammer energy less than 100 kJ and believes that marine mammals are not likely to be harassed by land-based pile driving. Therefore, CALTRANS believes that monitoring should apply only to in-Bay pile driving.

Response: The piles on YBI for construction of the YBI Transition structures are on the northeastern side of YBI and will be conventional steel-driven piles requiring hammer energy levels less than 100 kJ. With each pile requiring about 30 minutes of driving time, the 2,950 piles will require about 1,500 hours at YBI. However, the YBI harbor seal haul-out site is located about 450 m (1,476 ft) from the closest planned piledriving activity and is separated from the activity by a large hill. Therefore, monitoring is unnecessary for this land-based pile-driving but monitoring will be conducted by the bi-weekly monitoring team from the Richmond Bridge project.

Comment 20: The Commission believes that NMFS' preliminary determinations are reasonable provided that the visual monitoring of the safety zone to be conducted prior to and during pile driving operations is adequate to detect all marine mammals within the safety zone. According to CALTRANS, since pile driving is scheduled to occur from 7 a.m. to 7 p.m., visual monitoring in the late afternoon and early evening would be compromised during the winter months. The Commission recommends that this issue should be addressed in CALTRANS' detailed marine mammal monitoring plan to ensure that visual monitoring is effective during all periods in which pile driving activities are conducted.

Response: On December 13, 2001, and April 23, 2002, CALTRANS notified NMFS that there was a discrepancy between the time period for pile driving activities in the IHA application and the construction specifications and that the time period provided in the IHA application was not accurate. The construction specification states: “No pile-driving activities are to be conducted between the hours of 8 p.m. and 7 a.m. Therefore, CALTRANS requested the change be made in this document. In addition, CALTRANS clarified, on December 17, 2001, that he specification also states that if a pile driving episode has started before 8 p.m., and is not completed by that time, it can be finished. Finally, CALTRANS' May, 2002 Marine Mammal Monitoring Plan notes that marine mammal observers will have night-time infra-red (IR) scopes or other tools to conduct monitoring during low light conditions.

As noted by the Commission, night-time conditions may exist which will limit observations. In addition, IR-scopes have indicated limited usefulness. Marine mammal observers in other activities recently have employed Bushnell/ITT F5000 binocular night-vision devices (NVDs) (Lawson, 2000). Therefore, NMFS recommends that NVDs be available for use by each team as needed and, if not, additional work site lighting be provided to enhance visibility whenever NVD-trained observers are not available. It should be recognized that the safety zone needs to be visible only during the 30–minute period prior to the start of driving a pile segment, not at other times.

Visual monitoring has two purposes: (1) to monitor the safety zone, and (2) to conduct marine mammal behavioral observations. Since pile driving, whether a single pile or a segment of a pile, cannot be stopped once started until the pile reaches its predetermined depth, and because sufficient opportunities exist during daylight period to make behavioral observations, stopping pile driving during periods of darkness (or fog) is not warranted, provided the entire safety zone can be effectively monitored for the entire 30–minute period prior to startup of each pile segment being driven. Therefore, NMFS is requiring CALTRANS to conduct monitoring and detailed reporting on activities during periods of darkness. NMFS will review this information prior to processing any subsequent requests for renewal of this IHA to determine if additional mitigation measures are necessary.

MMPA Concerns

Comment 21: The Commission believes that, in situations where a temporary threshold shift (TTS) may lead to biologically significant behavior effects (e.g., an increased risk of natural predation or ship strikes), the activity should be considered as having a potential for injury (Level A harassment).

Response: NMFS has addressed the issue of second order impact assessment in several previous small take authorizations, and without new scientific documentation on this issue, a detailed response is not warranted here. For reviewers interested in this discussion, refer to the small take authorizations for the USS WINSTON S. CHURCHILL shock trial (66 FR 22450, May 4, 2001) and the Surveillance Towed Array Sensor System Low Frequency Active sonar (67 FR 46712, July 16, 2002).

Comment 22: The Commission believes that an across-the-board reclassification of TTS from Level A harassment to Level B harassment raises questions both in terms of the activities that involve the potential for repeated TTS harassment and, in general, cumulative effects.

Response: First, whether TTS is Level B harassment or Level A harassment is irrelevant for this IHA since mitigation and monitoring requirements under the IHA should prevent TTS. While there is some recent published research to the contrary, the general state of knowledge indicates that a permanent shift in hearing threshold (PTS) can occur with repeated exposures of TTS without allowing animals to completely recover. However, in order for this to occur, the marine mammal would need to remain within a safety zone and not be detected by the marine mammal observer team for a significant period of time in order to incur repeated TTS sufficient to result in PTS injury from pile-driving source. Therefore, NMFS believes that, considering the previously observed behavior of pinnipeds in the vicinity of the PIDP, the monitoring and mitigation measures imposed and the transitory nature of those marine mammal species likely to be impacted, it would be very unlikely a marine mammal would incur a TTS impairment and virtually impossible for a marine mammal to incur a PTS injury. For proposed authorizations other than SF-OBB, NMFS will review each of these as

appropriate to determine whether there is a significant potential for TTS and whether that impact could lead to PTS.

Other Concerns

Comment 23: One commenter asked what in-air noise mitigation was recommended.

Response: Previously (see 68 FR 52332, September 2, 2003), NMFS determined that Level B disturbance in the air for California sea lions and northern elephant seals began at approximately 100 dBA, and for Pacific harbor seals at approximately 90 dBA. Based on airborne measurements made during the PIDP, airborne SPLs will be significantly below these levels within the safety zones that have been established under this IHA in order to prevent injury. Therefore, NMFS does not believe that in-air noise mitigation measures are needed to protect pinnipeds from injury. In addition, airborne acoustic measurements will be made during this IHA to determine whether Level B harassment is occurring on the nearest pinniped haulout.

Description of the Marine Mammals Potentially Affected by the Activity

General information on California sea lions, Pacific harbor seals, gray whales and other marine mammal species found in California waters can be found in Caretta *et al.* (2002, 2001), which are available at the following URL: *http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html.* Refer to those documents for information on these species. The marine mammals most likely to be found in the SF-OBB area are the California sea lion and Pacific harbor seal. From December through May gray whales may also be present in the SF-OBB area.

California Sea Lions

While there is evidence that California sea lions historically used the Bay, they are rarely observed hauled out in the Bay (Bauer, 1999). However, since at least 1987, sea lions have been observed occupying the docks near Pier 39 in San Francisco, approximately 5.7 km (3.5 mi) from the project site. Pier 39 has now become a regular haul-out site for California sea lions. Currently, no other California sea lion haul-out sites have been identified in the Bay. Approximately 85 percent of the animals hauled out at the Pier 39 site are males, and no pupping has been observed at this site or any other site in the Bay (Lander pers. comm. to CALTRANS, 1999).

The number of California sea lions hauled out at Pier 39 ranged from 63 to 737 in 1998 and from 5 to 906 in 1997 (Marine Mammal Center, Sausalito data). For both years, the lows occurred in June and the highs occurred in August. In October 1999, 831 sea lions were observed on K dock at Pier 39. The trend in annual movement is for sea lions to first appear at the site after returning from the Channel Islands breeding area (over 483 km or 300 mi to the southwest) at the beginning of August (Bauer, 1999). Around late winter, the sea lions travel south to the breeding grounds, and numbers at the Bay haul-out site decline. The lowest numbers of sea lions at the Pier 39 haul-out are usually observed from May through July. However, the number of sea lions at the haul-out site fluctuates quite a bit throughout the year and even from one week to the next. For example, in June of 1998, a maximum of 574 sea lions was observed on June 7th while a low count of 63 was observed on June 25th (Lander pers. comm. to CALTRANS, 1999).

While little information is available on the foraging patterns of California sea lions in the Bay, individual sea lions have been observed feeding in the shipping channel to the south of YBI on a fairly regular basis (Grigg pers. comm. to CALTRANS, 1999). Foraging by sea lions that utilize the Pier 39 haul-out site primarily occurs in the Bay, where they feed on prey items such as Pacific herring, northern anchovy and sardines (Hanni, 1995).

Pacific Harbor Seals

Pacific harbor seals are the only species of marine mammal that breed and bear young in the Bay (Howorth and Abbott, 1999). There are 12 haul-out sites and rookeries in the Bay and of those, only eight are used by more than a few animals at a time. Only three sites in the Bay are regularly used by more than 40 harbor seals at any one time; these are Mowry Slough, located in the South Bay, YBI, and Castro Rocks, located in the Central Bay (Spencer, 1997). The three closest haul-out sites to the project location are at YBI, Angel Island, and Castro Rocks. A recent aerial harbor seal count, conducted by D. Hanan of the California Department of Fish and Game, found 477 individuals in the Bay (Greene, pers. comm. to CALTRANS, 1999). It is important to note that not all harbor seals were counted, as some may have been under water during the survey.

Harbor seals are present in the Bay year-round and use it for foraging, resting and reproduction. Peak numbers of hauled-out harbor seals vary by haul-out site depending on the season. Results of a study of 39 radio-tagged harbor seals in the Bay found that most active diving occurred at night and a majority of the diving time was spent in seven feeding areas in the Bay. The two feeding areas located closest to the project site are just to the south of YBI and north of Treasure Island. This study also found that the seals dove for a mean time of 0.50 minutes to 3.33 minutes. Mean surface intervals or the mean time the seals spent at the surface between dives ranged from 0.33 minutes to 1.04 minutes. Mean haul-out periods ranged from 80 minutes to 24 hours (Harvey and Torok, 1994).

Pupping season in the Bay begins in mid-March and continues until about mid-May. Pups nurse for only 4 weeks and mating begins after pups are weaned. In the Bay, mating occurs from April to July and molting season is from June until August (Schoenherr, 1995; Kopec and Harvey, 1995).

Pacific Harbor Seal Haul-Out Sites in the Vicinity of the East Span Project

YBI is located in the Central Bay, adjacent to man-made Treasure Island. The SF-OBB passes through a tunnel on YBI. An important harbor seal haul-out is located on a rocky beach on the southwest side of YBI (Kopec and Harvey, 1995). Harbor seal re-sightings at the YBI haul-out site indicate long-term usage of the site (Spencer, 1997). Pile driving activity for the East Span Project will be performed on the northeast side of YBI and in the San Francisco Bay, between the northeast side of the island to the Oakland Touchdown area. The harbor seal haul-out site is located about 450 m (1,476 ft) from the closest planned pile driving activity on land and about 950 m (3,117 ft) from the closest planned pile driving activity in the Bay.

Harbor seals haul out year-round on YBI, but it is not considered a pupping site as no births have been observed there. Occasionally, pups have been seen at an average of 1 pup per year, though more recently, 7 pups were observed at one time in May, 1999 (San Francisco State University unpublished records, 1998–9). In a study of the haul-out site conducted between 1989 and 1992, males comprised 83.1 percent of the seals whose gender could be determined (Spencer, 1997). Peak numbers of harbor seals at this haul-out site have been observed from November to February. The maximum reported number of seals hauled out at one time is 344, counted in January 1992 (Kopec and Harvey, 1995). More recently, the number of seals counted at YBI ranged from 0 to 296 for the period May 1998

to January 1999. Mean monthly counts for the same period range from approximately 15 in September 1998 to 107 in June 1999 (San Francisco State University, unpublished records 1998–1999). The abundance of harbor seals at this site during the winter months likely coincides with the presence of spawning Pacific herring near the island.

Angel Island is a small haul-out site located approximately 7.4 km (4.6 mi) from the project site. A maximum count of 15 seals was observed in the 1980s and most recently, six harbor seals were seen in 1989. No pupping has been observed at the site.

The next closest haul-out site in the Bay is approximately 14 km (8.7 mi) away at Castro Rocks, near the Richmond end of the Richmond-San Rafael Bridge. The Castro Rocks haul-out site is a recognized pupping site. A maximum of 176 harbor seals were observed at Castro Rocks in October 1999 (San Francisco State University unpublished records, 1998–9).

Gray Whales

The vast majority of all gray whales are found in the Pacific Ocean along the western coastline of North America. Here, they spend their winters in the waters off Baja California and migrate more than 9,000 kilometers (5,600 miles) north to spend their summers north of Alaska. They are typically seen off the California coastline from December through May as they migrate northward to the Bering and Chukchi Seas, and again in the return trip to Baja California.

Gray whales have been sighted more frequently in recent years in San Francisco Bay. Reduced food supply in the Bering Sea has been suspected as the most probable cause. Gray whales have been sighted in the Bay in areas off Sausalito in Richardson Bay and the tip of the Tiburon Peninsula (approximately 11 km or 7 mi northwest of the project area) and as far south as the San Bruno Shoals area (approximately 23 km or 14 mi southwest of the project area). Gray whales have been observed foraging in these areas. Sightings in the Bay have typically been made from December through May, during the whales' coastal migration. Calves may be expected during the migration north with mothers in March and May. Most recently, in February 2001, a pod of gray whales was observed near the Dumbarton Bridge in the South Bay.

Gray whales heading to the San Bruno Shoals area would pass beneath the SF-OBB. It is likely that some of the whales that enter the Bay would swim through the two deep-water shipping channels beneath the West Spans of the bridge. Though the number of sightings of gray whales to the east of YBI and in the immediate vicinity of the SF-OBB is low, they are not precluded from swimming there to reach the San Bruno Shoals area or foraging near or in these areas.

Potential Effects on Marine Mammals and Their Habitat

At this time, NMFS considers that underwater SPLs above 190 dB re 1 micro-Pa RMS (impulse) could cause hearing injury to harbor seals and sea lions and SPLs above 180 dB re 1 micro-Pa RMS (impulse) could cause hearing injury to whales. In addition, the effects of elevated SPLs on marine mammals have the potential to cause annoyance, disruption of echolocation, masking, avoidance of an area, habitat abandonment, aggression, pup/calf abandonment, tissue rupture and hearing loss. Therefore, CALTRANS has determined that in-water pile driving outlined in the project description has the potential to harass California sea lions, Pacific harbor seals, and gray whales that may be swimming, foraging, or resting in the project vicinity.

As indicated by monitoring elsewhere, the use of vibratory hammers for installing sheet-pile sections for the dam and the vibratory driver/extractor used to install and remove temporary piles are not expected to produce noise levels sufficient to result in a significant behavioral response in pinnipeds.

During the 2–month PIDP construction period, sound measurements were taken during pile driving of three piles, and marine mammals were monitored at the project site and at the harbor seal haul-out site on YBI. Results of observable effects of the PIDP on marine mammals have been summarized previously in this document and also provided in the Marine Mammal Impact Assessment Report prepared by CALTRANS in August 2001 (CALTRANS 2001). More specifically, the demonstration provided CALTRANS an opportunity to measure resulting SPLs both in air and under water, record impacts to marine mammals and experiment with measures to reduce harm to marine mammals. Sixty-eight pinnipeds (55 harbor seals and 13 sea lions) were sighted during monitoring activities. Of this total, 57 pinnipeds (47 harbor seals and 10 sea lions) were seen during non-pile driving activities. Only eight harbor seals and three sea lions were observed near the PIDP site during actual pile driving, which totaled 12 hours and 51 minutes. In addition, up to 85 harbor seals per monitoring period hauled out at the semi-protected cove on the southwestern side of YBI, approximately 1,500 m (4,920 ft) from the pile-driving area. No gray whales were observed.

The East Span Project is not expected to result in any significant impacts to marine mammal habitat. Short-term impacts will include the minimal disturbance of the sediment where the channels are dredged for barge access and where individual bridge piers are constructed. Long-term impacts to marine mammal habitat will be limited to the footprint of the piles and the obstruction they will create following installation. However, this impact is not considered significant as the marine mammals can easily swim around the piles of the new bridge, as they currently swim around the existing bridge piers.

California Sea Lions

Of the 13 total sea lions observed during the PIDP construction period, three individual sea lions were observed in the PIDP construction site within and beyond the 500–m (1,640–ft) safety zone during the actual driving of piles. The three sea lions rapidly swam and porpoised out of the area when pile driving began, indicating possibly: (1) increased sensitivity to the pile driving noise in air and/or water, (2) less conditioning to anthropogenic noise, or (3) a difference of the level of sound received by the sea lions resulting from varying human, environmental (ambient) and hammer magnitude or conditions at the time of pile driving. Alternatively, since the three sea lions were present at the start of pile driving, their response could indicate that they were startled by the noise (SRS Technologies, 2001). The frequency and duration of the noise and whether underwater or airborne sounds start suddenly or gradually, creating a ramping effect (as usually performed for the PIDP), may also influence the behavior of these mammals. However, none of these factors could be explored in detail within the scope of the demonstration project.

Noise levels from the East Span project are not expected to result in harassment of the sea lions hauled out at Pier 39 as airborne and waterborne SPLs would attenuate to below harassment levels by the time they reach the haul-out site, 5.7 kilometers (3.5 miles) from the project site.

Pacific Harbor Seals

The Richmond Bridge Harbor Seal Survey continues to gather data on harbor seals at the Castro Rocks and YBI

haul-out sites as part of the San Rafael-Richmond Bridge Seismic Retrofit Project monitoring program (see 66 FR 49165, September 26, 2001, 67 FR 61323, September 30, 2002). A total of 55 harbor seals were observed in the vicinity of the PIDP site during the 2 1/2–month construction period. Of this total, 47 were observed during non-pile driving activities and eight harbor seals were observed during actual pile driving. The eight harbor seals, which were sighted within the 500 m (1,640 ft) safety zone, seemed to observe the activities around the barge during pile driving while swimming in and out of the safety zone, but did not show any avoidance response during pile driving. Additional observations during the PIDP showed that harbor seals at YBI increased in number during low tide, and responded to activities unrelated to pile driving activities such as helicopter noise, boat traffic and kayakers, with head alerts or flushing of the site when startled or disturbed.

Pile driving could potentially harass those harbor seals that are in the water close to the project site, whether their heads are above or below the surface. Since no response was observed from harbor seals in the water at YBI during the PIDP except for initial reaction from airborne noise during driving of unattenuated Segment A of Pile 1, it is likely that underwater SPLs resulting from pile driving activity at a distance of about 1,500 m (4,920 ft) or greater would be sufficiently attenuated at the haul-out site. It is estimated that only a fraction of the seals hauled out at YBI would potentially be in the water and close to the project site during pile driving activities.

The impact of land-based pile-driving activities have been evaluated with respect to airborne noise generated by the PIDP. During the PIDP, driving Pile 1D generated an SPL of 97 dBA (Lmax-fast) at a distance of 100 m (328 ft). The noise level at 30.5 m (100 ft) for this pile was calculated to be 110 dBA. This was assumed to be the loudest section of the entire pile and similar results were obtained for other piles at similar distances. Measurements at Treasure Island (about 1,400 m (4593 ft) from pile driving) and the YBI Coast Guard Station (about 1,350 m (4429 ft), indicated the loudest noise levels were about 68 to 69 dBA. Modeling indicates that noise levels at the YBI haulout from the PIDP would have amaximum A-weighted noise level of 63 dBA (Lmax-fast). CALTRANS measured ambient noise conditions near the haulout and found typical noise levels to be about 60 to 65 dBA, due to existing traffic on the West Span of the Bridge. Therefore, noise levels generated by the PIDP would have been audible to harbor seals, but would be significantly less than the 90 dBA SPL presumed to cause harbor seal beach flushing as recorded on San Nicolas Island, CA (see 68 FR 52132, September 2, 2003).

Typical land-based pile driving are expected to produce a noise level of 100 dBA at 31 m (100 ft). Land-based piles could be driven at distances of 300 to 700 m (984 to 2296 ft) from the haul-out site. However, there is not a direct acoustic path from the site to the haulout. As a result, modeling indicates that noise levels from the land-based pile driving would be 60 dBA or less (i.e., lower than typical ambient) and therefore would not result in incidental harassment.

As a result, potential harassment would be expected only during those times when in-Bay piles are being hammered, which will be a total of approximately 1,300 hours over the 9–year construction period. The number of harbor seals that could potentially be harassed during the East Span Project therefore would vary based on the location of pile driving activity and the proximity of the in-water seals to the pile driving site.

Finally, it should be noted that harbor seals on the YBI haul-out site are commonly subjected to high levels of disturbance, primarily from water craft. This is particularly true during the summer, when the numbers of small boats, jet skis, kayaks, etc., in the Bay increase (San Francisco State University, 1999b). Abandonment or disturbance of the YBI haul-out site is not anticipated as low-energy sound levels from pile driving, both in water and in air, are expected to attenuate sufficiently by the time they reach the site. Although harbor seal pups have been observed at the YBI haul-out site, it is not a recognized pupping site. Therefore, no impact on species recruitment or survival are anticipated.

Gray Whales

No gray whales were observed during the PIDP. However, gray whales can be expected in the Bay in increasing numbers from December through May during their winter migration to and from Alaska. Noise from the pile driving activities therefore may affect gray whales swimming toward the southern San Bruno Shoals region.

Behavioral responses of gray whales to noise can include avoidance, startle response, and complete abandonment of an area. Noise may elicit short-term disruptions of normal activities similar to seals, such as startle response, agitation, stress, and cessation of foraging activities. Most evidence suggests that whales will avoid loud noises, which may result in a temporary displacement of the animal from typical foraging or traveling areas. Although it is uncertain whether gray whales will be affected by SPLs generated by pile driving during the East Span Project, observations and research from the past 3 years (1999–2001) indicate that fewer than 10 gray whales have been sighted in the Bay on any particular day (Oliver personal communication, 2001). The number of gray whales present in the Bay may increase in the future, since in recent years there have been more frequent sightings of gray whales in the Bay during their migration period. Whether these whales will be in close proximity to the construction area for any period of time is unknown at this time. The primary concern is for whales passing by YBI on the west or east sides while traveling to San Bruno Shoals.

Mitigation

Barrier Systems

A bubble curtain system is required to be used only when driving the permanent in-Bay piles. While the bubble curtain is required specifically as a method to reduce impacts to endangered and threatened fish species in SFB, it may also provide some benefit for marine mammals. The NMFS' Biological Opinion and the California Department of Fish and Game's (CDFG) 2001 Incidental Take Permit also allow for the use of other equally effective methods, such as cofferdams, as an alternative to the air bubble curtain system to attenuate the effects of sound pressure waves on fish during driving of permanent in-Bay piles (NMFS 2001; CDFG, 2001). Piers E–16 through E–7 for both the eastbound and westbound structures of the Skyway will be surrounded by sheet-pile cofferdams, which will be dewatered before the start of pile-driving. De-watered cofferdams are effective sound attenuation devices. For Piers E3 through E6 of the Skyway and Piers 1 and E2 of the Self-Anchored Suspension span, it is anticipated that cofferdams will not be used: therefore, a bubble curtain will surround the piles.

Sound Attenuation

As a result of the determinations made during the PIDP restrike and the investigation at the Benicia-Martinez Bridge, NMFS has determined that CALTRANS must install an air bubble curtain for pile driving for the in-Bay piles without cofferdams located at the SF-OBB. This air bubble curtain system will consist of concentric layers of perforated aeration pipes stacked

vertically and spaced no more than five vertical meters apart in all tide conditions. The minimum number of layers must be in accordance with water depth at the subject pile: 0-<5 m = 2 layers (1263 cfm); 5-<10 m = 4 layers (2526 cfm), 10-<15 m = 7 layers (4420 cfm); 15-<20 m = 10 layers (6314 cfm); 20-<25 m= 13 layers (8208 cfm). The lowest layer of perforated aeration pipes must be designed to ensure contact at all times and tidal conditions with the mudline without sinking into the bay mud. Pipes in any layer must be arranged in a geometric pattern, which will allow for the pile driving operation to be completely enclosed by bubbles for the full depth of the water column.

To provide a uniform bubble flux, each aeration pipe must have four adjacent rows of air holes along the pipe. Air holes must be 1.6–mm diameter air holes spaced approximately 20 mm apart. The bubble curtain system will provide a bubble flux of at least two cubic meters per minute, per linear meter of pipeline in each layer. Air holes must be placed in 4 adjacent rows.

The air bubble curtain system must be composed of the following: (1) an air compressor(s), (2) supply lines to deliver the air, (3) distribution manifolds or headers, (4) perforated aeration pipes, and (5) a frame. The frame facilitates transport and placement of the system, keeps the aeration pipes stable, and provides ballast to counteract the buoyancy of the aeration pipes in operation. Meters are required to monitor the operation of the bubble curtain system. Pressure meters will be installed at all inlets to aeration pipelines and at points of lowest pressure in each branch of the aeration pipeline. Flow meters will be installed in the main line at each compressor and at each branch of the aeration pipelines at each inlet. Gauges will be installed above the water line at the supply barge for engineer's access. A manual recording device will be used to plot variations in meter readings every 30 minutes. If the pressure or flow rate in any meter falls below 90 percent of its operating value, the contractor will cease pile-driving operations until the problem is corrected and the system is tested to the satisfaction of the CALTRANS resident engineer.

Establishment of Safety/Buffer Zones

A safety zone is to be established and monitored to include all areas where the underwater SPLs are anticipated to equal or exceed 190 dB re 1 μPa RMS (impulse) for pinnipeds. Also, a 180–dB re 1 μPa RMS (impulse) safety zone for gray whales must be established for pile driving occurring during the gray whale migration season from December through May. Prior to commencement of any pile driving, a preliminary 500–m (1,640–ft) radius safety zone for pinnipeds (California sea lions and Pacific harbor seals) will be established around the pile driving site, as it was for the PIDP. Once pile driving begins, either new safety zones can be established for the 500 kJ and 1700 kJ hammers or the 500 m (1,640 ft) safety zone can be retained. If new safety zones are established based on SPL measurements, NMFS requires that each new safety zone be based on the most conservative measurement (i.e., the largest safety zone configuration). SPLs will be recorded at the 500–m (1,640–ft) contour. The safety zone radius for pinnipeds will then be enlarged or reduced, depending on the actual recorded SPLs.

Observers on boats will survey the safety zone to ensure that no marine mammals are seen within the zone before pile driving of a pile segment begins. If marine mammals are found within the safety zone, pile driving of the segment will be delayed until they move out of the area. If a marine mammal is seen above water and then dives below, the contractor will wait 15 minutes and if no marine mammals are seen by the observer in that time it will be assumed that the animal has moved beyond the safety zone. This 15–minute criterion is based on scientific evidence that harbor seals in San Francisco Bay dive for a mean time of 0.50 minutes to 3.33 minutes (Harvey and Torok, 1994). However, due to the limitations of monitoring from a boat, there can be no assurance that the zone will be devoid of all marine mammals at all times.

Once the pile driving of a segment begins it cannot be stopped until that segment has reached its predetermined depth due to the nature of the sediments underlying San Francisco Bay. If pile driving stops and then resumes, it would potentially have to occur for a longer time and at increased energy levels. In sum, this would simply amplify impacts to marine mammals, as they would endure potentially higher SPLs for longer periods of time. Pile segment lengths and wall thickness have been specially designed so that when work is stopped between segments (but not during a single segment), the pile tip is never resting in highly resistant sediment layers. Therefore, because of this operational situation, if seals or sea lions enter the safety zone after pile driving of a segment has begun, pile driving will continue and marine mammal observers will monitor and record marine mammal numbers and behavior.

Compliance with Equipment Noise Standards

To mitigate noise levels and, therefore, impacts to California sea lions, Pacific harbor seals, and gray whales, all construction equipment will comply as much as possible with applicable equipment noise standards of the U.S. Environmental Protection Agency, and all construction equipment will have noise control devices no less effective than those provided on the original equipment.

Soft Start

It should be recognized that although marine mammals will be protected from Level A harassment by establishment of an air-bubble curtain and marine mammal observers monitoring a 190–dB safety zone for pinipeds and 180–dB safety zone for gray whales, mitigation may not be 100 percent effective at all times in locating marine mammals. Therefore, in order to provide additional protection to marine mammals near the project area by allowing marine mammals to vacate the area prior to receiving a potential injury, CALTRANS will also ''soft start'' the hammer prior to operating at full capacity. A ''soft start'' occurs when the hammer's initial single strikes occur at 10 second intervals for 3–5 minutes, an action which produces approximately 50 percent of the maximum in-air noise level, or 45–55 dB (re 20 microPascal-m). Similar levels of noise reduction is expected underwater. Therefore, contractor will initiate hammering of both the 500–kJ and the 1,700–kJ hammers with this procedure in order to allow pinnipeds in the area to voluntarily move from the area and should expose fewer animals to loud sounds both underwater and above water noise. This would also ensure that, although not expected, any pinnipeds that are missed during safety zone monitoring will not be injured.

Monitoring

Visual Observations

Safety zone monitoring will be conducted during driving of all in-Bay, permanent piles without cofferdams. In addition, area-wide baseline monitoring will be conducted prior to commencement of work that has a potential to result in marine mammal harassment. Monitoring of the pinniped and cetacean safety zones will be conducted by a minimum of three qualified NMFS-approved observers for each safety zone. One three-observer team will be required for the safety zones around each pile-driving site, so that multiple teams will be required if

pile-driving is occurring at multiple locations at the same time. The observers will begin monitoring at least 30 minutes prior to startup of the pile driving. Observers will likely conduct the monitoring from small boats, as observations from a higher vantage point (such as the SF-OBB) may not be practical. Pile driving will not begin until the safety zone is clear of marine mammals. However, as described in the Mitigation section, once pile driving of a segment begins, operations will continue uninterrupted until the segment has reached its predetermined depth. Monitoring will continue through the pile-driving period and will end approximately 30 minutes after pile-driving has been completed.

Biological observations will be made using binoculars during daylight hours. In addition to monitoring from boats, monitoring of the YBI haul-out may be conducted during open-water pile driving activity, in coordination with the Richmond Bridge Harbor Seal survey team. At least one control site (harbor seal haul-out sites and the waters surrounding such sites not impacted by the East Span Project's pile driving activities, i.e. Mowry Slough) will be designated and monitored for comparison. Monitoring will be conducted twice a week at both YBI and the control site. Data on all observations will be recorded and will include items such as species, numbers, behavior, details of any observed disturbances, time of observation, location, and weather. The reactions of marine mammals will be recorded based on the following classifications (consistent with the Richmond Bridge Harbor Seal survey methodology): (1) no response, (2) head alert (looks toward the source of disturbance), (3) approach water (but not leave), and (4) flush (leaves haul-out site). The number of marine mammals under each disturbance reaction will be recorded, as well as the time when seal re-haul after a flush.

Baseline monitoring will be conducted for a period of 14 days prior to the beginning of in-Bay work for the Skyway contract. Baseline monitoring will be conducted in the general project area (before pile driving begins) and at the YBI haul-out site. The 14–day monitoring period is expected to be an appropriate time frame to assess baseline conditions in the project area and to account for the potential variability in environmental factors that may influence the presence and activity of marine mammals. The information collected from baseline monitoring will be compared with results from monitoring during pile-driving activities.

Aerial surveys will be conducted during the baseline monitoring to help determine if the boat observers are missing any marine mammals within a simulated safety zone. A fixed-wing airplane equipped with a high-resolution camera will take five photos of the safety zone (about 1 km^2 or 0.3 mi^2) and the surrounding area (about 4 km^2 or 1.5 mi^2) from each of three aircraft elevations (610 m/2000 ft, 305 m/1000 ft and 152 m/500 ft).

It is anticipated that installation of small, temporary piles for the temporary structures at each of the piers and for the temporary trestles near the Oakland Touchdown area will not affect marine mammals in the area, since a vibratory hammer will be used with energy levels less than 100 kJ. To verify this assumption, marine mammal monitoring will be conducted when driving the temporary in-Bay piles at Pier E16E, during the start of the Skyway contract. Based on the results of these initial observations, CALTRANS will consult with NMFS to confirm that further monitoring when driving temporary piles will not be needed or to develop an appropriate program for further monitoring temporary piles.

Acoustical Observations

Both airborne and underwater environmental noise levels will be measured as part of the East Span Project.

The purpose of the underwater sound monitoring is to establish the safety zone of 190 dB re 1 micro-Pa RMS (impulse) for pinnipeds and the safety zone of 180 dB re 1 micro-Pa RMS (impulse) for gray whales. Monitoring will be conducted during the driving of the last half (deepest pile segment) for any given in-Bay pile. One pile in every other pair of pier groups will be monitored. One reference location will be established at a distance of 100 m (328 ft) from the pile driving. Sound measurements will be taken at the reference location at two depths (a depth near the mid-water column and a depth near the bottom of the water column but at least 1 m (3 ft) above the bottom) during the driving of the last half (deepest pile segment) for any given pile. Two additional in-water spot measurements will be conducted at appropriate depths (near mid water column), generally 500 m (1,640 ft) in two directions either west, east, south or north of the pile-driving site will be conducted at the same two depths as the reference location measurements. In cases where such measurements cannot be obtained due to obstruction by land mass, structures or navigational hazards, measurements will be conducted at alternate spot measurement locations. Measurements will be made at other locations either nearer or farther as necessary to establish the approximate distance for the safety zones. Each measuring system shall consist of a hydrophone with an appropriate signal conditioning connected to a sound level meter and an instrument grade digital audiotape recorder (DAT). Overall SPLs shall be measured and reported in the field in dB re 1 micro-Pa RMS (impulse). An infrared range finder will be used to determine distance from the monitoring location to the pile. The recorded data will be analyzed to determine the amplitude, time history and frequency content of the impulse.

Airborne sound levels will be measured at times and locations that are coincidental to the underwater measurement sites. Each system will consist of a type 1 integrating sound level meter connected to a DAT. In addition, airborne sound will also be measured at the YBI haul-out site. Real time amplitude measurement of airborne sound levels will be reported. Linear Peak and RMS impulse SPLs will be reported. Microphones will be fitted with windscreens and calibration will be verified before and after each measurement session. The recorded data will be analyzed to determine the amplitude, time history and frequency content of the impulse.

Reporting

NMFS' Southwest Regional Administrator will be notified prior to the initiation of the East Span Project, and coordination with NMFS will occur on a weekly basis, or more often as necessary. NMFS will be informed of the initial SPL measurements taken at the 500–m (1,640–ft) contour and the final safety-zone radius established. Monitoring reports will be faxed to NMFS on a monthly basis during open-water pile driving activity. The monthly report will include a summary of the previous month's monitoring activities and an estimate of the number of seals and sea lions that may have been disturbed as a result of pile driving activities.

Because the East Span Project is expected to continue beyond the date of expiration of this IHA (under a new IHA or under regulations pursuant to section 101(a)(5)(A) of the MMPA), CALTRANS will provide NMFS' Southwest Regional Administrator with a draft final report before 90 days after expiration of this IHA. This report should detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed

due to pile driving. If comments are received from the Regional Administrator on the draft final report, a final report must be submitted to NMFS within 30 days thereafter. If no comments are received from NMFS, the draft final report will be considered to be the final report.

National Environmental Policy Act (NEPA)

NMFS has prepared an EA and made a Finding of No Significant Impact (FONSI). Therefore, preparation of an environmental impact statement on this action is not required by section 102(2) of the NEPA or its implementing regulations. A copy of the EA and FONSI are available upon request (see **ADDRESSES**).

Endangered Species Act (ESA)

On October 30, 2001, NMFS completed consultation under section 7 of the ESA with the FHWA on the CALTRANS' construction of a replacement bridge for the East Span of the SF-OBB in California. The finding contained in the Biological Opinion was that the proposed action at the East Span of the SF-OBB is not likely to jeopardize the continued existence of listed anadromous salmonids, or result in the destruction or adverse modification of designated critical habitat for these species. Listed marine mammals are not expected to be in the area of the action and thus would not be affected. However, issuance of this IHA to CALTRANS constitutes an agency action that authorizes an activity that may affect ESA-listed species and, therefore, is subject to section 7 of the ESA. However, as the effects of the activities on listed salmonids were analyzed during a formal consultation between the FHWA and NMFS, and as the underlying action has not changed from that considered in the consultation, the discussion of effects that are contained in the Biological Opinion issued to the FHWA on October 30, 2001, pertains also to this action. In conclusion, NMFS has determined that issuance of an IHA does not lead to any effects to listed species apart from those that were considered in the consultation on FHWA's action.

Determinations

For the reasons discussed in detail in this document, NMFS has determined that the impact of pile driving and other activities associated with construction of the East Span Project, (described in this document), should result, at worst, in the Level B harassment of small numbers of California sea lions, Pacific harbor seals and potentially gray whales that inhabit or visit SFB in general and the vicinity of the SF-OBB in particular. While behavioral modifications, including temporarily vacating the area around the construction site, may be made by these species to avoid the resultant visual and acoustic disturbance, the availability of alternate areas within SFB and its haul-out sites (including pupping sites) and feeding areas within the Bay has led NMFS to determine that this action will have a negligible impact on California sea lion, Pacific harbor seal, and gray whale populations along the California coast.

In addition, no take by level A harassment (injury) or death is anticipated and harassment takes should be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously in this document.

Authorization

For the reasons previously discussed, NMFS has issued an IHA for a 1–year period, for the incidental harassment of harbor seals, California sea lions and California gray whales by the construction of a replacement bridge for the East Span of the San Francisco-Oakland Bay Bridge in California, provided the previously mentioned mitigation, monitoring and reporting requirements are incorporated.

November 4, 2003.

Laurie K. Allen,

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

[FR Doc. 03–28549 Filed 11–13–03; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110603A]

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

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

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

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator) has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. The Assistant Regional Administrator has also made a preliminary determination that the activitiesauthorized under the EFP would be consistent with the goals and objectives of the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Assistant Regional Administrator proposes to recommend that an EFP be issued that would allow two vessels to conduct fishing operations that areotherwise restricted by the regulations governing the fisheries of the Northeastern United States. The EFP would allow for exemptions from the FMP as follows: Minimum mesh size in the southern Gear Restricted Area (GRA) for fishing for Loligo squid with a 1 7/8–inch (4.8–cm) diamond mesh codend net; and scup landing limits for Winter I period.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this document must be received on or before December 1, 2003.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on Loligo Gear Modification Study EFP Proposal.'' Comments may also besent via facsimile (fax) to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Brian Hooker, Fishery Management Specialist, phone 978–281–9220.

SUPPLEMENTARY INFORMATION: The NMFS Northeast Fisheries Science Center submitted a complete application for an EFP on October 23, 2003. The experimental fishing application requests authorization to allow the quantitative assessment of the effectiveness of a 5 3/4–inch (14.6–cm) square mesh cylinder, installed as an extension of a Loligo squid net, in reducing scup bycatch and in retaining commercial quantities of Loligo squid. The study would be conducted during the month of January 2004. Sampling would be conducted in the northern portion of the Southern GRA, approximately between 39° 20′ N lat. and 38° 00' N lat., at locations where scup and Loligo co-occur. The depth range within the GRA sampling area is approximately 40 to 100 fathoms (73 to 183 m). Stations would be located

across a range of depths to test the efficiency of the gear across a range of scup-Loligo densities. Samples would be within close proximity of one another to minimize steam time between stations. Estimated catch for the study period are as follows: Loligo squid, 96,000 lb (43,545 kg); scup, 13,000 lb (6,078 kg); butterfish, 9,600 lb (4,354 kg); Illex squid, 2,800 lb (1,270 kg); summer flounder, 2,600 lb (1,179 kg); monkfish, 1,900 lb (862 kg); smooth dogfish, 1,000 lb (454 kg); spiny dogfish, 700 lb (318 kg); white hake, 600 lb (272 kg); john dory, 200 lb (91 kg); black sea bass, 100 lb (45 kg); silver hake, 100 lb (45 kg); and tilefish, 10 lb (5 kg). Squid and fish caught during the study would be sold by the vessel owners, in accordance with the requirements of the permits issued to them (with the exception of the requested exemption to the scup landing limit). The sale of fish is necessary to offset the costs of chartering the vessels for the study. The participating vessels would be required to comply with applicable state landing laws and report all landings on the Federal Fishing Vessel Trip Report.

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

Dated: November 7, 2003.

Bruce C. Morehead,

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

[FR Doc. 03–28547 Filed 11–13–03; 8:45 am]

BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

Public Meeting Concerning Petition for Rule Declaring Natural Rubber Latex a Strong Sensitizer

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of public meeting.

SUMMARY: The Consumer Product Safety Commission (''CPSC'' or ''Commission'') will conduct a public meeting on December 10, 2003, to receive comments concerning Petition HP 00–2, which requested that the Commission declare natural rubber latex (''NRL'') to be a strong sensitizer under the Federal Hazardous Substances Act (''FHSA''). The CPSC staff's briefing package recommends that the Commission deny the petition. The Commission invites oral presentations from members of the public with information or comments related to the petition or the staff's briefing package. The Commission will consider these presentations as it decides what action to take on the petition.

DATES: The meeting will begin at 10 a.m. on December 10, 2003. Requests to make oral presentations, and 10 copies of the text of the presentation, must be received by the CPSC Office of the Secretary no later than December 3, 2003. Persons making presentations at the meeting should provide an additional 25 copies for dissemination on the date of the meeting.

The Commission reserves the right to limit the number of persons who make presentations and the duration of their presentations. To prevent duplicative presentations, groups will be directed to designate a spokesperson.

Written submissions, in addition to, or instead of, an oral presentation may be sent to the address listed below and will be accepted until January 10, 2003.

ADDRESSES: The meeting will be in room 420 of the Bethesda Towers Building, 4330 East-West Highway, Bethesda, MD. Requests to make oral presentations, and texts of oral presentations should be captioned ''Latex Petition Briefing'' and be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Requests and texts of oral presentations may also be submitted by facsimile to (301) 504–0127 or by e-mail to *cpsc-os@cpsc.gov*.

FOR FURTHER INFORMATION CONTACT: For information about the purpose or subject matter of this meeting contact Suzanne Barone, Ph.D., Directorate for Health Sciences, U.S. Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–7256; e-mail: *sbarone@cpsc.gov*. For information about the schedule for submission of requests to make oral presentations and submission of texts of oral presentations, contact Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–6833; fax (301) 504–0127; e-mail *rhammond@cpsc.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

The Commission received a petition from Debi Adkins, editor of Latex Allergy News, requesting that the Commission issue a rule declaring natural rubber latex (''NRL'') to be a strong sensitizer under the Federal Hazardous Substances Act (''FHSA'') and that consumer products containing NRL be labeled. The petitioner asserts that a portion of the population has developed an allergy to NRL that can cause serious allergic reactions, even death. NRL may be in such consumer products as gloves, adhesives, shoes, balloons, pacifiers, and carpet backing, as well as many medical products.

The Commission published a notice in the **Federal Register** on March 21, 2000, requesting comments on the petition. 65 FR 15133. The Commission extended the comment period 30 days. 65 FR 33525. The Commission received a total of 85 comments on the petition.

The staff reviewed the petition, comments and other relevant available information. The staff then forwarded a briefing package to the Commission, which is available on the Commission's Web site *www.cpsc.gov* or from the Commission's Office of the Secretary. The staff recommends that the Commission deny the petition. The staff concludes that available data do not support that NRL is a strong sensitizer as that term is defined in the FHSA. Current scientific information about the development of NRL allergy from consumer products that contain NRL is limited, and it does not appear that the information will be developed in the near future.

The FHSA defines the term ''strong sensitizer'' as a ''substance which will cause on normal living tissue through an allergic or photodynamic process a hypersensitivity which becomes evident on reapplication of the same substance'' and which the Commission declares to be a strong sensitizer. 15 U.S.C. 1261(k). The FHSA definition further states that before making such a declaration, and ''upon consideration of the frequency of occurrence and severity of the reaction, [the Commission] shall find that the substance has a significant potential for causing hypersensitivity.'' *Id.*

B. The Public Meeting

The purpose of the public meeting is to provide a forum for oral presentations on the NRL petition and the CPSC staff briefing package.

Participation in the meeting is open. See the **DATES** section of this notice for information on making requests to give oral presentations at the meeting and on making written submissions.

Dated: November 7, 2003.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 03–28458 Filed 11–13–03; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 13, 2004.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 7, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: National Longitudinal Study of No Child Left Behind (NCLB).

Frequency: Two years 2004 and 2006.

Affected Public: State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 9,240.

Burden Hours: 10,494.

Abstract: This study will examine the implementation of the No Child Left Behind Act provisions for the Title I and Title II programs in a nationally-representative sample of schools and districts. The study will include four components focused on particular provisions of the law: (1) Accountability; (2) teacher quality; (3) expanding options for parents and students; and (4) targeting and resource allocation. The study will collect data in the 2004–05 and 2006–07 school years.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2410. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Katrina Ingalls at her e-mail address *Katrina.Ingalls@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–28476 Filed 11–13–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Surplus Plutonium Disposition Program

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Amended Record of Decision.

SUMMARY: The U.S. Department of Energy/National Nuclear Security Administration (DOE/NNSA) is amending its January 11, 2000 Record of Decision (ROD) (65 FR 1608) to allow for the fabrication of mixed oxide (MOX) fuel lead assemblies in France on a one-time basis. The January 2000 ROD stated that DOE would fabricate a limited number of lead assemblies at Los Alamos National Laboratory (LANL). However, because of cost and schedule impacts and programmatic considerations, lead assembly fabrication at LANL is no longer feasible.

The environmental impacts of fabricating lead assemblies in Europe were first evaluated in the Storage and Disposition of Weapons-Usable Fissile Materials Final Programmatic Environmental Impact Statement (Storage and Disposition PEIS) (DOE/EIS–0229, December 1996). In accordance with DOE National Environmental Policy Act (NEPA) Implementing Procedures at Title 10, § 1021.314(c), DOE/NNSA has prepared a Supplement Analysis (SA) for the Fabrication of Mixed Oxide Fuel Lead Assemblies in Europe (DOE/EIS–0229–SA3). This SA updates the environmental impacts of fabricating lead assemblies in France using plutonium oxide from LANL. The SA concludes that the proposed fabrication of lead assemblies in France would not result in impacts significantly different from or significantly greater than those described in previous DOE NEPA documents. Therefore, DOE/NNSA will now pursue the fabrication of up to four lead assemblies in France at the existing Cadarache and MELOX facilities, using surplus plutonium from LANL. The lead assemblies will be returned to the United States for irradiation at Catawba Nuclear Station (Catawba)[1] in South Carolina.

FOR FURTHER INFORMATION CONTACT: For further information concerning the fabrication of lead assemblies in France, the Supplement Analysis entitled Fabrication of Mixed Oxide Fuel Lead Assemblies in Europe, or this amended ROD, contact Hitesh Nigam, NEPA Compliance Officer, Office of Fissile Materials Disposition, National Nuclear Security Administration, 1000 Independence Avenue, SW., Washington, DC 20585; or leave a message at 800–820–5134.

For further information concerning DOE's NEPA process, contact Ms. Carol Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW.,

[1] Because the plants' refueling schedules determine the availability for lead assembly use, Duke Power Company has submitted a license amendment request to the NRC to allow irradiation of MOX lead assemblies at Catawba. The SA also analyzes the use of the McGuire Nuclear Station (McGuire) in North Carolina, which could be used in lieu of Catawba, if a license amendment request were submitted and approved.

Washington, DC 20585, telephone 202–586–4600, or leave a message at 800–472–2756. Additional information regarding the DOE NEPA process and activities is also available on the Internet through the NEPA home page at *http://tis.eh.doe.gov/nepa.*

SUPPLEMENTARY INFORMATION:

I. Background

The Storage and Disposition PEIS evaluated the potential environmental consequences of alternative strategies for the long-term storage of weapons-usable plutonium and highly enriched uranium and the disposition of weapons-usable plutonium that has been or may be declared surplus to national security needs. As part of this evaluation, the Storage and Disposition PEIS analyzed the environmental impacts of fabricating lead assemblies (and some initial MOX batch assemblies) in existing facilities in Europe in the event that it would be necessary to begin production more quickly than could be accomplished in the United States. The fabrication of lead assemblies (small quantities of nuclear fuel used by a commercial nuclear power plant to confirm that a new fuel design will perform safely and predictably) involves the same basic process as full-scale fabrication of MOX fuel and is required to support Nuclear Regulatory Commission (NRC) licensing activities and fuel qualification efforts. The Storage and Disposition PEIS evaluated transport of plutonium oxide from a storage facility at an existing DOE site to a U.S. port (Sunny Point, NC); port handling at the U.S. port; ocean transport to the European ports of Barrows, United Kingdom, and Cherbourg, France; ocean transport of MOX fuel back to the United States; and safe, secure trailer (SST) transport of MOX fuel from the U.S. port to either an existing commercial reactor site or a storage site in the United States. The shipping schedule projected two shipments of plutonium oxide per year and a maximum of four shipments of fresh (unirradiated) MOX fuel assemblies per year. The Storage and Disposition PEIS also discussed the potential effect of ocean transport on the global commons.

Although the Storage and Disposition PEIS indicated that fabrication in Europe, if it occurred at all, would only be an interim measure, the PEIS analysis included not only the annual transportation impacts of shipments to and from Europe, but also the overall transportation impacts of performing all fuel fabrication work for the entire 50-metric-ton surplus plutonium inventory in Europe. These analyses indicate that total transportation fatalities resulting from both radiological and nonradiological risk to the public and workers for both routine and accident conditions associated with European MOX fuel fabrication for the entire inventory would range from 1.69 to 4.62 fatalities, depending on the hypothetical one-way distance to be traveled (*i.e.*, 1,000 km to 4,000 km). Port handling impacts were also analyzed in the PEIS. The analysis determined that annual accident risks from exporting two shipments of plutonium oxide and importing four shipments of MOX fuel would not result in any latent cancer fatalities (LCFs) among workers or the general public. The analysis also indicates that the probability that these shipments would be involved in a maritime accident of sufficient severity to cause release of radioactive materials resulting in catastrophic consequences would be extremely small (on the order of 1.0×10^{-7} yr to 1.0×10^{-8} yr).

The ROD for the Storage and Disposition PEIS, issued on January 21, 1997 (62 FR 3014), outlined DOE's decision to pursue a hybrid disposition strategy. This strategy allowed for both the immobilization of some (and potentially all) of the surplus plutonium and the fabrication of some of the surplus plutonium into MOX fuel to be irradiated in existing domestic, commercial reactors. The ROD made no decisions concerning lead assembly fabrication.

The environmental impacts of domestic fabrication of lead assemblies were evaluated in detail as part of the MOX fuel fabrication alternatives in the Surplus Plutonium Disposition EIS (SPD EIS) (DOE/EIS–0283, November 1999), which tiered from the Storage and Disposition PEIS. Specific facilities at five DOE sites were considered for this effort, based on site capabilities existing at that time: The Hanford Site in Washington, Idaho National Engineering and Environmental Laboratory Argonne National Laboratory West (ANL–W) facilities in Idaho, the Savannah River Site (SRS) in South Carolina, LANL in New Mexico, and Lawrence Livermore National Laboratory in California. The SPD EIS evaluated the environmental impacts of fabricating 10 fuel assemblies, irradiating up to 8 of them at existing commercial reactors (Catawba or McGuire), and performing post-irradiation examination at the Oak Ridge National Laboratory (ORNL) or ANL–W. This analysis included evaluation of transportation impacts.

The SPD EIS analyses indicate that environmental impacts from modification and routine operation of lead assembly fabrication facilities would be small; no LCFs would be expected in the general population from the postulated bounding design basis accident; nor would there be any traffic fatalities or LCFs expected from the associated transportation.

Among other decisions made in the ROD for the SPD EIS issued on January 11, 2000, DOE selected LANL as the site for lead assembly fabrication, to be followed by irradiation in U.S. commercial reactors and post-irradiation examination of selected fuel rods at ORNL.

II. Lead Assembly Fabrication in Europe

In May 2000, DOE determined that cost and schedule impacts and other programmatic considerations precluded lead assembly fabrication at LANL, and DOE discontinued related activities at LANL. DOE/NNSA is now proposing to use U.S. surplus plutonium from LANL to fabricate up to four lead assemblies in the existing Cadarache and MELOX facilities in France, and return those lead assemblies to the United States for irradiation. Consistent with decisions in the January 2000 ROD for the SPD EIS, the lead assemblies would be irradiated at Catawba, after which selected rods from lead assemblies would be transported to ORNL for post-irradiation examination.

As part of this proposed action, up to 140 kg of plutonium oxide from LANL would be transported by truck (one shipment consisting of three SST/Safeguards Transport [SGTs]) [2] to a U.S. military port. The plutonium oxide would then be transferred to Pacific Nuclear Transport Limited (PNTL) ships [3] at the port and transported

[2] The SST/SGT is a specially designed component of an 18-wheel tractor-trailer vehicle. Although the details of the vehicle enhancements are classified, key characteristics are not, and include: Enhanced structural supports and a highly reliable tie-down system to protect cargo from impact; heightened thermal resistance to protect the cargo in case of a fire; deterrents to protect unauthorized removal of cargo; couriers who are armed Federal officers that receive rigorous training and are closely monitored through DOE's Personnel Assurance Program; an armored tractor to protect the crew from attack, equipped with advanced communications equipment; specially designed escort vehicles containing advanced communications and additional couriers; 24-hour-a-day real-time monitoring of the location and status of the vehicle; and stringent maintenance standards.

[3] The PNTL ships are vessels specially designed to carry radioactive materials. Special safety features include: Double hulls to withstand damage from a severe collision and remain afloat; enhanced buoyancy to ensure the ship stays afloat and maintains a stable attitude even in the most extreme circumstances; duplicate navigation, communications, electrical and cooling systems; dual propulsion systems; specialized fire fighting

across the Atlantic Ocean to Cherbourg, France (one shipment consisting of a two-ship convoy). The plutonium oxide would then be transferred to existing fabrication facilities in France (Cadarache and MELOX). After fabrication, PNTL ships would transport the lead assemblies and remaining archive and scrap material across the Atlantic Ocean back to the same U.S. military port. The lead assemblies would be transferred from the PNTL ships to SST/SGTs, and transported from the port to Catawba (one shipment consisting of four SST/SGTs). Archive (MOX pellets meeting fuel specifications) and scrap (out-of-specification MOX fuel pellets and remains from the pellet-grinding process) material would be transported from the port to LANL for storage (one shipment consisting of two SST/SGTs). Once the MOX facility becomes operational, these archive and scrap materials would be used as feed material during pellet production for MOX fuel that would be irradiated in existing U.S. commercial nuclear reactors.

DOE would obtain an export license from the NRC to transport plutonium oxide from the United States to France and would require a Certificate of Competent Authority from the Department of Transportation (based on the NRC review) for the two shipping containers (FS47 and FS65) required for this project. DOE submitted the export license application to the NRC in October 2003, which is currently under review. The application for certification of the FS47 was submitted on August 2003 and the FS65 is scheduled to be filed in December 2003.

III. NEPA Process for Amending ROD

The Council on Environmental Quality (CEQ) regulations implementing NEPA at 40 CFR 1502.9(c) require Federal agencies to prepare a supplement to an EIS when an agency makes substantial changes in the proposed action that are relevant to environmental concerns or when there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. DOE NEPA Implementing Procedures at 10 CFR 1021.314(c) direct that when it is unclear whether a supplement to an EIS is required, an SA be prepared to assist in making that determination. DOE/NNSA has recently prepared the *Supplement Analysis for the Fabrication of Mixed Oxide Fuel Lead Assemblies in Europe* (DOE/EIS–0229–SA3) in accordance with these CEQ and DOE Procedures. The conclusions of the SA are summarized in Section IV of this amended ROD.

IV. Summary of Impacts

The SA focuses on the potential impacts (from both routine operations and postulated accidents) of transportation of materials, including cargo-handling activities at three alternative U.S. military ports, and the effects on the global commons of ocean transport. This is because the domestic activities proposed, other than those associated with transportation, remain essentially unchanged compared to the manner in which they were analyzed in the *Storage and Disposition PEIS* and the SPD EIS.[4] The ports evaluated in the SA are Charleston Naval Weapons Station in South Carolina, and Yorktown Naval Weapons Station and Norfolk Naval Station in Virginia.

Based on the analyses in the SA, the proposed fabrication of lead assemblies in France, specifically, overland transportation of plutonium oxide from LANL to any of the three ports, ocean transport to France, the return shipment of fresh MOX fuel lead assemblies to the United States, and subsequent transport of the lead assemblies to Catawba and archive and scrap materials to LANL, would not result in impacts significantly different from or greater than those described in either the *Storage and Disposition PEIS* or the SPD EIS. Where there are differences in impacts, they are small changes to impacts that are themselves small. Therefore, the activities evaluated do not represent substantial changes in any proposed actions or result in any new circumstances relevant to environmental concerns.

Impacts additional to or different from those previously evaluated would result from transportation of materials to implement this activity, such as movement of archive and scrap materials from the port to LANL. Some of the origins and destinations, and hence the routes, would be different than previously evaluated, and the shipping containers, although also approved Type B packages, would be different. However, there would be fewer shipments of material than previously anticipated.

The risk to the maximally exposed individual from the postulated severe truck accident involving shipment of plutonium oxide powder is extremely low. The risk estimated in the SA, 1×10^{-8} latent cancer fatality, is less than the risk estimated in the SPD EIS, 3.5×10^{-8} latent cancer fatality. Although more plutonium oxide powder would be available for release from the accident in the SA in the extremely unlikely event of a transportation accident involving a breach of the Type B package, there are fewer shipments, so the frequency of occurrence, hence overall risk, is lower.

Implementation of the proposed action would involve a very small increase in the use of the port facilities, with no construction at or modification of these facilities. Only three trucks (SST/SGTs) would arrive at the port to deliver the plutonium oxide to the dock where two PNTL ships, traveling in a two-ship convoy, would receive the cargo. The lead assemblies, archive, and scrap material would be transported back to the United States, also in a two-ship convoy, and would leave the port in a total of six trucks. It is not expected that the minimal additional transportation and cargo handling activities would result in any impacts to the local environment.

The SA analyzes a severe accident that involves a collision between the PNTL ship and another ship with an ensuing fire, resulting in the release of plutonium oxide powder. The SA analyzed the identical accident scenario for each of the three proposed U.S. ports, which would result in a population accident risk of 1.2×10^{-7} LCF for Charleston NWS, 1.1×10^{-7} LCF for Naval Station Norfolk, and 3.5×10^{-8} LCF for Yorktown NWS. The resulting individual LCF risk to the maximally exposed individual is 3.5×10^{-11} for Charleston NWS, 4.3×10^{-11} for NS Norfolk, and 2.0×10^{-11} for Yorktown NWS. By way of comparison, the *Storage and Disposition PEIS* reported an earlier DOE study that estimated the likelihood of a maritime accident of sufficient severity to cause significant release of radioactive material to be in the range of 1.0×10^{-8} to 1.0×10^{-9} per port call.

The probability of an accident at sea involving the PNTL is very unlikely because of the limited number of shipments (one two-ship convoy each way) as well as the redundant modern navigation systems on the ship. The probability of a significant release is further reduced because of the ruggedness of the PNTL design and the Type B packages. If plutonium oxide were released to waters of the global commons, the *Storage and Disposition PEIS* reports that plutonium oxide would dissolve very slowly, and would

equipment; satellite navigation and tracking; and highly experienced crew members.

[4] The only additional action needed for lead assembly fabrication in France, beyond those evaluated in previous NEPA documents, is the transport of archive and scrap materials to LANL for storage.

combine with sediments rather than remaining dissolved in the ocean water.

Archive and scrap materials meeting the stabilization criteria of DOE Standard DOE–3013–2000 would be stored in two Type B shipping packages. There is very little risk of either an inadvertent criticality, or dispersion of plutonium in the event of an accident, because the plutonium would be incorporated in a non-dispersible ceramic material. The dose rate at 1 m from the packages would not exceed 0.1 mrem/hr, which would result in only minimal personnel exposure, and would not exceed the dose rate from storage of archive and scrap materials as anticipated in the SPD EIS, which is estimated to be 0.15 mrem/hr at 1 m.

Both the Storage & Disposition PEIS (at Section G.1.2.6) and the SPD EIS (at Section L.6.5) acknowledged that a threat could be presented by sabotage or terrorism, and concluded that adequate safeguards are in place to meet such a threat. Although the likelihood of an attempted act of sabotage or terrorism occurring is not precisely knowable, the chance of success of any such attempt was judged to be very low, particularly in light of the transport methods to be employed by DOE in these shipments, which are designed specifically to afford security against sabotage or terrorism, as well as safety in the event of an accident. In preparing the SA, DOE again considered sabotage or terrorism and determined that adequate safeguards remain in place to meet such threats.

Based on these analyses, DOE/NNSA has determined that the potential environmental impacts associated with lead assembly fabrication in France are within the impacts evaluated in the Storage and Disposition PEIS and the SPD EIS. Fabricating lead assemblies at existing MOX fuel fabrication facilities in France would not constitute significant new circumstances or information relevant to environmental concerns and bearing on the previously analyzed action or its impacts either in the United States or affecting the global commons. Therefore, pursuant to 10 CFR 1021.314(c), no additional NEPA analysis is required by DOE/NNSA in order to fabricate MOX fuel lead assemblies in France.

V. Response to Public Comments

DOE has received letters requesting that it prepare a supplemental EIS on the fabrication of lead assemblies in Europe. These requests convey concerns that public safety is put at risk by the proposal to fabricate MOX fuel lead assemblies in Europe. In particular, concerns have been expressed about the transportation of plutonium to and from Europe and the safety of the facilities in France. One letter received by DOE alleges that the proposal to fabricate lead assemblies in Europe has not been analyzed in an EIS, and therefore that an SA is not an appropriate document in which to analyze the proposal.

DOE disagrees with the last assertion. Fabrication of MOX fuel assemblies in Europe was specifically analyzed in the Storage and Disposition PEIS. In that evaluation, the transportation impacts of fabricating the entire 50 metric tons of surplus plutonium in Europe (as opposed to the current proposal to use up to 0.14 metric tons to fabricate four lead assemblies) was analyzed. The Storage and Disposition PEIS was issued for public review and comment in accordance with NEPA requirements. DOE/NNSA believes that this afforded the public ample opportunity to comment on fabrication of MOX fuel in Europe.

As the analysis presented in the SA makes clear, the potential environmental impacts associated with lead assembly fabrication in Europe are within the impacts evaluated in the Storage and Disposition PEIS and the SPD EIS. In this analysis, particular attention has been given to the impacts of transportation. As part of this analysis, the SA evaluates impacts of activities that affect the global commons outside the jurisdiction of any one nation. The SA does not address the impacts of the proposal in France, however, because DOE believes that it is neither required nor appropriate under NEPA to evaluate the safety or environmental impacts of an activity within and under the jurisdiction and control of another sovereign nation. Nevertheless, DOE wishes to emphasize that the transportation activities and facilities in France will be government-licensed and conducted and operated under strict standards. Accordingly, DOE/NNSA has concluded that preparation of a supplemental EIS is not needed.

VI. Amended Decision

DOE/NNSA will use U.S. surplus plutonium from LANL to fabricate up to four mixed oxide fuel lead assemblies in France on a one-time basis. The plutonium oxide will be transported overland from LANL to Charleston NWS,[5] and then shipped across the Atlantic Ocean to Cherbourg, France. The plutonium oxide will be fabricated at existing facilities in France (Cadarache and MELOX). After fabrication, lead assemblies and archive and scrap materials will be returned to the United States through Charleston NWS.

Consistent with decisions in the January 2000 ROD for the SPD EIS, these lead assemblies will be transported to Catawba[6] for irradiation, and selected rods from the irradiated lead assemblies will be transported to ORNL for post-irradiation examination. Archive and scrap materials will be stored at LANL. This decision will allow DOE to fabricate lead assemblies on a schedule compatible with DOE's MOX fuel fabrication schedule.

Issued in Washington, DC, this 7th day of November, 2003.

Charles S. Przybylek,

Chief Operating Officer, National Nuclear Security Administration.

[FR Doc. 03–28506 Filed 11–13–03; 8:45 am]

BILLING CODE 6450–01–P

[5] However, if Charleston Naval Weapons Station is not available to support the schedule, either Yorktown Naval Weapons station or Naval Station Norfolk could be used for both the outbound and return shipments, after appropriate notifications and agreements have been made.

[6] The plants' refueling schedules determine availability for lead assembly use. Duke Power Company submitted a license amendment request to the NRC for Catawba. However, if needed, McGuire could also be used, provided a license amendment request was submitted and approved.

DEPARTMENT OF ENERGY

Bonneville Power Administration

Fish and Wildlife Implementation Plan

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of availability of Record of Decision (ROD).

SUMMARY: This notice announces the availability of BPA's ROD to adopt the Preferred Alternative (PA 2002) Policy Direction in its Fish and Wildlife Implementation Plan Environmental Impact Statement (FWIP EIS, DOE/EIS–0312, April 2003). BPA has decided to adopt this Preferred Alternative as a comprehensive and consistent policy to guide the implementation and funding of the agency's fish and wildlife mitigation and recovery efforts. PA 2002 focuses on enhancing fish and wildlife habitat, modifying hydro operations and structures, and reforming hatcheries to both increase populations of listed fish stocks and provide long-term harvest opportunities. PA 2002 reflects fish and wildlife policy guidance for the Pacific Northwest region and considers extensive public input. It is also consistent with the fish and wildlife component of BPA's earlier Business

Plan decision to use a Market-Driven approach for participation in the electric utility market (Business Plan EIS, DOE/EIS–0183, June 1995, and Business Plan ROD, August 15, 1995).

ADDRESSES: Copies of the ROD and EIS may be obtained by calling BPA's toll-free document request line, 1–800–622–4520. The ROD and EIS are also available on our Web site, *www.efw.bpa.gov.*

FOR FURTHER INFORMATION CONTACT: Charles Alton, Project Manager, Bonneville Power Administration—KEC–4, P.O. Box 3621, Portland, Oregon, 97208–3621; telephone number 503–230–5878; e-mail *ccalton@bpa.gov.*

Issued in Portland, Oregon, on October 31, 2003.

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. 03–28507 Filed 11–13–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Federal Energy Management Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces the eighth meeting of the Federal Energy Management Advisory Committee (FEMAC), an advisory committee established under Executive Order 13123—''Greening the Government through Efficient Energy Management.'' The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that these meetings be announced in the **Federal Register** to allow for public participation.

DATES: Wednesday, December 3, 2003; 9 a.m. to 12 p.m.

ADDRESSES: Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington DC 20024.

FOR FURTHER INFORMATION CONTACT: Rick Klimkos, Designated Federal Officer for the Committee, Office of Federal Energy Management Programs, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586–8287.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: To provide advice and guidance on a range of issues critical to meeting mandated Federal energy management goals.

Tentative Agenda: Agenda will include discussions on the following topics:

- Review of FEMAC's Draft Strategic Plan
- Evaluation of FEMP's Multi-Year Plan
- Assessment of FEMAC's current working groups
- Establish new FEMAC working group

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the Federal Energy Management Advisory Committee. If you would like to file a written statement with the committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact Rick Klimkos at (202) 586–8287 or *rick.klimkos@ee.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The chair of the committee will make every effort to hear the views of all interested parties. The chair will conduct the meeting to facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; Room 1EB190; Forrestal Building; 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on November 7, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–28509 Filed 11–13–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–12–000]

TransColorado Gas Transmission Company; Notice of Application

November 6, 2003.

Take notice that on October 31, 2003, TransColorado Gas Transmission Company (TransColorado), filed with the Federal Energy Regulatory Commission (Commission) pursuant to section 7(C) of the Natural Gas Act, and part 157 and § 2.55(a) of the Commission's Regulations its application for a certificate of public convenience and necessity authorizing installation, construction, modification and operation of compression facilities, minor piping and ancillary facilities. 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 ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions regarding the application may be directed to Skip George, Manager of Certificates, TransColorado Gas Transmission Company, PO Box 281304, Lakewood, Colorado 80228–8304, phone (303) 914–4969.

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 website 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.

Comment Date: November 28, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00211 Filed 11–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–46–000]

Transwestern Pipeline Company; Notice of Tariff Filing

November 6, 2003.

Take notice that on November 3, 2003, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Second Revised Sheet No. 106–111, to become effective February 23, 2000.

Transwestern states that on October 1, 1992, First Revised Sheet Nos. 105–111 were canceled by the Commission's Order in Docket No. RS92–87. Subsequently, in Docket Nos. RP99–481–000 and 001, Transwestern states that it implemented the Form of Service Agreement for its Enhanced Firm Backhaul Service on Sheet Nos. 105 and 105A. Transwestern further states that it inadvertently did not file Revised Sheet Nos. 106 through No. 111 stating that these sheets remain canceled. In the instant filing, Transwestern states that it is filing tariff revisions on Second Revised Sheet Nos. 106–111 to correct the pagination in the 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 § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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 eLibrary. 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 eFiling link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00210 Filed 11–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–75–000]

Freeport LNG Development, L.P.; Notice of Availability of the Draft Environmental Impact Statement for the Proposed Freeport LNG Project

November 6, 2003.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared this draft environmental impact statement (EIS) on the liquefied natural gas (LNG) import terminal and natural gas pipeline facilities proposed by Freeport LNG Development, L.P. (Freeport LNG) in the above-referenced docket.

The draft EIS was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project with appropriate mitigating measures as recommended, would have limited adverse environmental impact. The draft EIS also evaluates alternatives to the proposal, including system alternatives, alternative sites for the LNG import terminal, and pipeline alternatives.

The draft EIS addresses the potential environmental effects of the construction and operation of the following facilities in Brazoria County, Texas.

- LNG ship docking and unloading facilities with a protected single berth equipped with mooring and breasting dolphins, three liquid unloading arms, and one vapor return arm;
- reconfiguration of a storm protection levee and a permanent access road;
- two 26-inch-diameter (32-inch outside diameter) LNG transfer lines, one 16-inch-diameter vapor return line, and service lines (instrument air, nitrogen, potable water, and firewater);
- two double-walled LNG storage tanks each with a usable volume of 1,006,000 barrels (3.5 billion cubic feet of gas equivalent);
- six 3,240 gallon-per-minute (gpm) in-tank pumps;
- seven 2,315 gpm high pressure LNG booster pumps;
- three boil-off gas compressors and a condensing system;

• six high-pressure LNG vaporizers using a primary closed circuit water/glycol solution heated with twelve water/glycol boilers during cold weather and a set of intermediate heat exchangers using a secondary circulating water system heated by an air tower during warm weather, and circulation pumps for both systems;

• two natural gas superheaters and two fuel gas heaters;

• ancillary utilities, buildings, and service facilities at the LNG terminal; and

• 9.6 miles of 36-inch-diameter natural gas pipeline extending from the LNG import terminal to a proposed Stratton Ridge Meter Station.

The purpose of the Freeport LNG Project is to provide the facilities necessary to deliver LNG to intrastate shippers, including Dow Chemical Company (Dow), at the proposed Stratton Ridge Meter Station by 2007. Freeport LNG's proposed facilities would re-vaporize and transport up to 1.5 billion cubic feet per day.

Comment Procedures and Public Meeting

Any person wishing to comment on the draft EIS may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

• Send an original and two copies of your comments to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;

• Reference Docket No. CP03–75–000;

• Label one copy of your comments for the attention of Gas Branch 2, PJ11.2; and;

• Mail your comments so that they will be received in Washington, DC on or before December 29, 2003.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of the project. However, the Commission strongly encourages electronic filing of any comments or interventions to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created online.

In addition to or in lieu of sending written comments, we invite you to attend the public scoping meeting we will conduct in the area. The location and time for this meeting is listed below: December 9, 2003, 7 p.m., Lake Jackson Civic Center, 333 Highway 332 East, Lake Jackson, Texas 77566, Telephone: 979–415–2600.

This meeting will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

After these comments are reviewed, any significant new issues are investigated, and modifications are made to the draft EIS, a final EIS will be published and distributed by the staff. The final EIS will contain the staff's responses to timely comments received on the draft EIS.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

Anyone may intervene in this proceeding based on this draft EIS. You must file your request to intervene as specified above.[1] You do not need intervenor status to have your comments considered.

The draft EIS has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

A limited number of copies are available from the Public Reference and Files Maintenance Branch identified above. In addition, the draft EIS has been mailed to Federal, state, and local agencies; public interest groups; individuals, and affected landowners who requested a copy of the draft EIS; libraries; newspapers; and parties to this proceeding.

Additional information about the Project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with eLibrary, the eLibrary helpline can be reached at 1–866–208–3676, TTY (202) 502–8659 or at *FERCOnlineSupport@FERC.gov.* The eLibrary link on the FERC Internet website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to the eSubscription link on the FERC Internet Web site.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00216 Filed 11–13–03; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

November 6, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project No.:* 2058–038.

c. *Date Filed:* July 18, 2003.

d. *Applicant:* Avista Corporation.

e. *Name of Project:* Clark Fork.

f. *Location:* The project is located on the Clark Fork River, in Bonner County, Idaho and Sanders County, Montana, and affecting lands of the United States within the Idaho Panhandle, Lolo and Kootenai National Forests.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Steven A. Fry, Hydro Licensing and Safety Manager, Avista Corporation, PO Box 3727, Spokane, Washington 99220–3727, (509) 495–4852.

i. *FERC Contact*: Any questions on this notice should be addressed to Mrs. Anumzziatta Purchiaroni at (202) 502–6191, or e-mail address: *anumzziatta.purchiaroni@ferc.gov*.

j. *Deadline for filing comments and or motions:* December 5, 2003.

k. *Description of Request:* Avista Corporation, (Avista) filed an amendment of its license to revise the

generating and hydraulic capacities of the project. Avista is requesting the amendment to reflect a recent turbine and generator upgrade of Unit #3, and to allow for an upgrade of Unit #2 of the four units at the Cabinet Gorge Development. The upgrades will result in an increase of the total installed capacity of the Cabinet Gorge Development from 231 MW to 257 MW, and the design flow from 36,000 cfs to 37,400 cfs. Avista is not proposing changes to project operation, or water levels in its amendment application.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 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. 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 of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. 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 of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. 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 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.

q. 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 at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00212 Filed 11–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application For Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

November 6, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License to Replace the Turbines at the Wanapum Development.

b. *Project No.:* 2114–117.

c. *Date Filed:* October 2, 2003.

d. *Applicant:* Public Utility District No. 2 of Grant County, Washington.

e. *Name of Project:* Priest Rapids Hydroelectric Project.

f. *Location:* On the Columbia River, in Grant, Yakima, Kittitas, Douglas, Benton, and Chelan counties, Washington. The project occupies federal lands managed by the U.S. Bureau of Land Management, U.S. Bureau of Reclamation, U.S. Department of Energy, U.S. Department of the Army, and U.S. Fish and Wildlife Service.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Cliff Sears, Regulatory Compliance Coordinator, Public Utility District No. 2 of Grant County, Washington, P.O. Box 878, Ephrata, WA 98823; (509) 754–3541.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Vedula Sarma at (202) 502–6190, or e-mail address: *vedula.sarma@ferc.gov*.

j. *Deadline for filing comments, motions to intervene, and protest:* December 5, 2003.

k. *Description of Request:* Grant seeks authorization to replace one Kaplan turbine at its Wanapum development with a new and upgraded turbine in unit #8 and, if it meets specified performance criteria for juvenile salmon passage survival, to sequentially replace the remaining 9 turbine units at the rate of 1 unit every 9 months. Grant states the proposed turbines replacement would provide for increased project power, increased hydraulic capacity, equal or better juvenile salmon passage survival, and improved water quality by reducing the amount of forced spill at Wanapum Dam during periods of high flow. The total rated capacity of the new turbines at the Wanapum Development would increase from 1,200,000 hp (900 MW) to 1,500,000 hp (1,125 MW), and the total hydraulic capacity would increase from 178,000 cfs to 188,000 cfs. The generators' total nameplate capacity would remain unchanged at 1,038 MW.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 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. 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 of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. 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 of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. 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 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.

q. 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 at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00213 Filed 11–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

November 6, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* 3131–044.

c. *Date Filed:* October 6, 2003.

d. *Applicants:* Christopher J. Kruger and Eileen J. Kruger (Kruger/Transferor) and Brockway Mills, LLC (Brockway Mills/Transferee).

e. *Name of Project:* Brockways Mills.

f. *Location:* Located on the Williams River, in Windham County, Vermont.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicants Contact:* Christopher J. Kruger, 563 Holden Hill Road, Langdon, New Hampshire 03602, (603) 835–2503.

i. *FERC Contact:* Regina Saizan, (202) 502–8765.

j. *Deadline for filing comments and or motions:* December 5, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comments, protests, and interventions 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. Please include the project number (P–3131–044) on any comments or motions filed.

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 document on that resource agency.

k. *Description of Transfer:* Kruger and Brockway Mills jointly seek Commission approval to transfer the license for the Brockways Mills Project from Kruger to Brockway Mills.

l. *Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, 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 addresses in item h. above.

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 of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. 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'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. 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 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. E3–00214 Filed 11–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

November 6, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License to Change Project Boundary and Approve Revised Exhibit.

b. *Project No.:* 4900–071.

c. *Date Filed:* February 4, April 3, and October 20, 2003.

d. *Applicant:* Algonquin Power System (New York) Inc.

e. *Name of Project:* Forestport Generating Station.

f. *Location:* The project is located on the Black River in Oneida County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Sean Fairfield, Regulatory Coordinator, Algonquin Power System (New York) Inc., 2845 Bristol Circle, Oakville, Ontario, Canada L6H 7H7, 905–465–4518.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Jake Tung at (202) 502–8757, or e-mail address: *hong.tung@ferc.gov*.

j. *Deadline for filing comments and or motions:* December 5, 2003.

k. *Description of Request:* The licensee proposes to revise the boundary for the Forestport Generating Station Project. The boundary area subject to revision is located downstream of the project's spillway. The licensee indicates that the revised boundary is based on an updated survey map and it will not affect the project's Recreation Use Plan approved by the Commission in 1990.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 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. 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 of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. 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 of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. 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 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.

q. 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 at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00215 Filed 11–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Notice of Availability of the Final Environmental Impact Statement for the Proposed Chemistry and Metallurgy Research Building Replacement Project at Los Alamos National Laboratory, Los Alamos, NM

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Notice of availability.

SUMMARY: The Department of Energy's (DOE) National Nuclear Security Administration (NNSA) announces the availability of the *Final Environmental Impact Statement for the Chemistry and Metallurgy Research Building Replacement Project at Los Alamos National Laboratory, Los Alamos, New Mexico* (the Final CMRR EIS). The present Chemistry and Metallurgy Research (CMR) Building at Los Alamos National Laboratory (LANL) houses mission critical analytical chemistry, material characterization and research and development capabilities involving actinides (actinides are any of a series of elements with atomic numbers ranging from actinium-89 through lawrencium-103). The Final CMRR EIS considers the potential environmental impacts that could result due to the consolidation and relocation of these CMR capabilities from the existing aged CMR Building to a new facility such that these capabilities would be available on a long-term basis to successfully accomplish LANL mission support activities or programs. Two locations at LANL were evaluated for locating a new CMRR Facility: A location within Technical Area (TA) –55 and a location within TA–6. The Final CMRR EIS also considers the no-action alternative of maintaining the CMR capabilities at the existing CMR Building.

DATES: The NNSA intends to issue a Record of Decision on the CMRR EIS no sooner than 30 days after the Environmental Protection Agency publishes a notice of filing of the Final CMRR EIS in the **Federal Register**.

ADDRESSES: A copy of the Final CMRR EIS and its Summary may be obtained upon request by writing to: U.S. Department of Energy, National Nuclear Security Administration, Los Alamos Site Office, Attn: Ms. Elizabeth Withers, Office of Facility Operations, 528 35th Street, Los Alamos, New Mexico, 87544; by facsimile ((505) 667–9998); or by e-mail (*CMRR EIS@doeal.gov*). Copies of the Final CMRR EIS are also available for review at: the Los Alamos Outreach Center, 1619 Central Avenue, Los Alamos, New Mexico, 87544; and the Zimmerman Library, University of New Mexico, Albuquerque, New Mexico 87131.

FOR FURTHER INFORMATION CONTACT: For general information on NNSA NEPA process, please contact: Mr. James Mangeno (NA 1), NEPA Compliance Officer for Defense Programs, U.S. Department of Energy, National Nuclear Security Administration, 19901 Germantown Road, Germantown, MD 20874–1290, or telephone 1–800–832–0885. For general information about the DOE NEPA process, please contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600, or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION: Mission critical CMR capabilities at LANL support NNSA's stockpile stewardship and management strategic objectives. The CMR Building's analytical chemistry, materials characterization, and actinide research and development capabilities are necessary to support the current and future directed stockpile work and campaign activities conducted at LANL. The CMR Building is over 50 years old and approaching end of design life. Studies conducted in the late 1990s identified a seismic fault trace located beneath the CMR Building, which greatly enhances the level of structural upgrades needed for the building to meet current structural seismic code requirements for a Hazard Category 2 nuclear facility. The CMR Building has been upgraded such that operations can continue, on a restricted basis, in support of national security missions. The CMR Upgrades project was designed to extend the life of the CMR Building through approximately 2010. It would be cost prohibitive to perform the needed repairs, upgrades, and systems retrofitting for a long-term (beyond 2010), unrestricted use of the CMR Building.

NNSA cannot continue to perform the assigned LANL mission critical CMR capabilities in the existing CMR Building at an acceptable level of risk to public and worker health and safety without operational restrictions. These operational restrictions would preclude the full implementation of the level of operation DOE decided upon through its Record of Decision for the 1999 LANL Site-wide Environmental Impact Statement for the Continued Operation of Los Alamos National Laboratory (DOE/EIS–0238). CMR capabilities are necessary to support the current and directed stockpile work and campaign activities at LANL. By 2010, operations will have been conducted in the existing CMR Building for 60 years; this is the estimated operational life span for nuclear operations at the existing CMR Building. Given that the CMR Building is near the end of its useful life, action is now required by NNSA to assess alternatives for continuing these activities for the succeeding 50 years.

The Final CMRR EIS evaluates the environmental impacts associated with relocating the CMR capabilities at LANL to new buildings sited at the following alternative locations: (1) Next to the Plutonium Facility at TA–55 at LANL (the Proposed Action), and (2) a ''greenfield'' site within TA–6. The NNSA also evaluated performing minimal necessary structural and systems upgrades and repairs to portions of the existing CMR Building and continuing the use of these upgraded portions of the structure for administrative offices and support function purposes, as well as evaluating the potential decontamination and demolition of the existing CMR Building as disposition options coupled with the alternatives for construction and operation of new nuclear laboratory facilities at the two previously identified locations. The Final CMRR EIS considers the performance of minimal necessary structural and systems upgrades and repairs to the existing CMR Building as a no-action alternative with continued maintenance of limited mission critical CMR capabilities at the CMR Building.

In the Final CMRR EIS, the Administrator of the NNSA designated Alternative 1, the Proposed Action of constructing and operating a new CMRR Facility at TA–55, as its preferred alternative. Additionally, the designated preferred construction option is the construction of a single consolidated SNM-capable Hazard Category laboratory above ground with a separate administrative offices support functions building (Option 3); NNSA's preferred option for the disposition of the CMR Building is to decontaminate, decommission, and demolish that entire structure (Option 3).

Signed in Washington, DC, this 21 day of October, 2003.

Everet H. Beckner,

Deputy Administrator for Defense Programs, National Nuclear Security Administration.

[FR Doc. 03–28508 Filed 11–13–03; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6645–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 4, 2003 (68 FR 16511).

Draft EISs

ERP No. D–AFS–G65090–NM Rating LO, Magdelena Ridge Observatory Project, Construct and Operate an Observatory in the Magdelena Mountains, Cibola National Forest, Magdelena Ranger District, Socorro County, NM.

Summary: EPA had no objection to the preferred alternative.

ERP No. D–DOE–L09817–WA Rating EC2, BP Cherry Point Cogeneration Project, To Build a 720-megawatt Gas-Fired Combined Cycle Cogeneration Facility, Energy Facility Site Evaluation Council (EFSEC), Whatcom County, WA.

Summary: EPA expressed concerns that proposed mitigation would not adequately offset project-related impacts to wetlands. EPA recommended that the additional wetland mitigation be developed along with a demonstration that the applicant-proposed project represents the least environmentally damaging practicable alternative. EPA also recommended that the Bonneville Power Administration and the Corps of Engineers consult with the governments of affected tribes, pursuant to Executive Order 13175.

ERP No. D–NOA–L91019–00 Rating EC2, Pacific Coast Groundfish Fishery Management Plan (FMP) Amendment 16–2, Rebuilding Plans for: Darkblotched Rockfish, Pacific Ocean Perch, Canary Rockfish, and Lingcod, Maximum Sustainable Yield (MSY) Magnuson-Stevens Fishery Conservation and Management Act, WA, OR, CA and Boundary of U.S. EEZ.

Summary: EPA expressed concerns on bycatch information, impacts on habitat, and enforcement of depth-based management restrictions.

ERP No. D–USA–G11042–LA Rating EC2, 2nd Armored Cavalry Regiment Transformation and Installation Mission Support, Joint Readiness Training Center (JRTC) Stryker Brigade Combat Team, Long-Term Military Training Use of Kisatchie National Forest Lands, Fort Polk, LA.

Summary: EPA expressed environmental concerns and requested additional information on mitigation measure to reduce sediment loadings, mapping wetlands, and forest restoration.

ERP No. D–USA–L10005–AK Rating EC2, Programmatic EIS—Army Transformation of the 172nd Infantry Brigade (Separate) to a Stryker Brigade Combat Team (SBCT), Propose Location Forts Wainwright and Richardson, AK.

Summary: EPA expressed concerns regarding impacts on natural resources from increased in live-fire training and maneuver training. EPA requested that the FEIS clarify impacts and include compensation information for natural resources.

ERP No. DS–FAA–K51039–CA Rating EC2, Los Angeles International Airport Proposed Master Plan Improvements, New Alternative, Enhanced Safety and Security Plan, Los Angeles County, CA.

Summary: EPA raised environmental concerns regarding emissions of criteria and hazardous air pollutants, especially emissions from auxiliary power units; the adequacy of measures to reduce air pollutant loading for this project, especially operational emissions; whether the project causes disproportionately high adverse effects on low-income or minority populations due to air pollution and mitigation for noise impacts by jet aircrafts.

Final EISs

ERP No. F–AFS–G65088–NM

Bluewater Ecosystem Management Project, Proposal to Initiate Vegetation Treatments to Restore Ponderosa Pine and Pinon-Juniper Stands to a Desired Condition, Cibola National Forest, Mt. Taylor Ranger District, McKinley and Cibola Counties, NM.

Summary: EPA had no objection to the selection of the preferred alternative.

ERP No. F–BIA–K60034–CA

Jamul Indian Village (Tribe) 101 Acre Fee-to-Trust Transfer and Casino Project, Implementation, San Diego County, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–BLM–K65251–CA

Santa Rosa and San Jacinto Mountains National Monument Management Plan, Implementation, Public Lands Management, Riverside County, CA.

Summary: EPA indicated that the FEIS satisfactorily responded to our DEIS comments. Therefore, EPA has no objections to the proposed action.

ERP No. F–NOA–E91012–00

Atlantic Surfclam and Ocean Quahog Fishery Management Plan Amendment 13, Implementation, US Exclusive Economic Zone along the Atlantic Seaboard from Maine through North Carolina.

Summary: EPA has no objections to the implementation of Amendment 13 but recommends using appropriate harvesting controls, and monitoring for gear effects on EFH.

Dated: November 10, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–28571 Filed 11–13–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6645–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa.* Weekly receipt of Environmental Impact Statements filed November 3, 2003, through November 7, 2003, pursuant to 40 CFR 1506.9.

EIS No. 030507, FINAL EIS, AFS, AK, Greens Creek Tailings Disposal Project, Additional Dry Tailings Disposal Storage Facilities Construction, Authorization, Admiralty National Park Monument, Tongass National Forest, AK, Wait Period Ends: December 15, 2003, Contact: Jeff DeFreest (907) 790–7457. This document is available on the Internet at: *http://www.greenscreekeis.com.*

EIS No. 030508, DRAFT EIS, COE, ID, Emerald Creek Garnet Project, Proposal to Mine Garnet Reserves within the St. Maries River Floodplain near Fernwood, Walla Walla District, Issuance of Several Permits, Benewah and Shoshone Counties, ID, Comment Period Ends: December 29, 2003, Contact: Michael Doherty (208) 756–7237. This document is available on the Internet at: *http://www.usace.army.mil.*

EIS No. 030509, DRAFT EIS, FHW, UT, I–15, 31st Street in Ogden to 2700 North in Farr West, Reconstruction, Widening and Interchange Improvements, Funding and U.S. Army COE Section 404 Permit, Weber County, UT, Comment Period Ends: December 29, 2003, Contact: Sandra Garcia (801) 963–0182.

EIS No. 030510, DRAFT EIS, FHW, IA, IL, Interstate 74 Quad Cities Corridor Study, Improvements to the I–74 between 23rd Avenue in Moline, IL and 53rd Street in Davenport, IA, NPDES, Rivers and Harbors Act Section 9 and US Army COE Section 404 Permits, Scott County, IA and Rock Island County, IL., Comment Period Ends: January 9, 2004, Contact: Philip Barnes (515) 233–7300.

EIS No. 030511, FINAL EIS, FRC, OR, Bull Run Hydroelectric Project (FERC No.477–024), Proposal to Decommission the Bull Run Project and Remove Project Facilities including Marmot Dam, Little Sandy Diversion Dam and Roslyn Lake, and an Application to Surrender License, Sandy, Little Sandy, Bull Run Rivers, Town of Sandy, Clackamas County, OR, Wait Period Ends: December 15, 2003, Contact: Alan Mitchnick (202) 502–6074.

EIS No. 030512, DRAFT EIS, FRC, TX, Freeport Liquefied Natural Gas (LNG) Project, To Deliver Imported Liquefied Natural Gas to Shippers, Authorization of Site, Construction and Operation, Stratton Ridge Meter Station 2007, City of Freeport, Brazoria County, TX, Comment Period Ends: December 29, 2003, Contact: Thomas Russo (202) 502–8584. This document is available on the Internet at: *http://www.ferc.gov.*

EIS No. 030513, DRAFT EIS, NRC, IL, Quad Cities Nuclear Power Station Units 1 and 2, Supplement 16 to NUREG–1437, License Renewal, IL, Comment Period Ends: December 29, 2003, Contact: Louis L. Wheeler (301) 415–1444.

EIS No. 030514, DRAFT EIS, FHW, IL, Macomb Area Study, Construction from U.S. Route 67 (FAP–310) and Illinois Route 336 (FAP–315), City of Macomb, McDonough County, IL, Comment Period Ends: December 29, 2003, Contact: Norman R. Stoner (217) 492–4640.

EIS No. 030515, DRAFT EIS, BIA, OR, Wanapa Energy Center, Construction and Operation a New 1,200 Megawatt (MW) Natural Gas-Fired Electric Power Generating Facility, Confederated Tribes of the Umatilla Indian Reservation (CTUIR), in the City of Hermiston and the Port of Umatilla, OR, Comment Period Ends: December 29, 2003, Contact: Jerry Lauer (541) 278–3790. This document is available on the Internet at: *http://www.efw/bpa.gov/cgi-bin/PSA/NEPA/SUMMARIES/WanapaEnergy.*

EIS No. 030516, FINAL EIS, NOA, Atlantic Tunas, Swordfish, and Sharks Fishery Management Plan, To Prevent Overfishing and Rebuild Overfished Species, Update Essential Fish Habitat, Atlantic, Gulf of Mexico and Caribbean Sea, Wait Period Ends: December 15, 2003, Contact: Karyl Brewster-Geisz (301) 713–2347.

EIS No. 030517, FINAL EIS, FHW, IN, Indianapolis Northeast Corridor Transportation Connections Study, To Identify Actions to Reduce Expected Year 2025 Traffic Congestion and Enhance Mobility, Between I–69: from I–465 to IN–328; I–465: from U.S. 31 to I–70; I–70: from I–65 to I–465: IN–37 from I–69 to Allisonville Road (Noblesville), Marion and Hamilton Counties, IN, Wait Period Ends: December 21, 2003, Contact: Antony DeSimone (317) 226–5307.

Amended Notices

EIS No. 230442, DRAFT EIS, USA, HI, Transformation of the 2nd Brigade, 25th Infantry Division (Light) to a Stryker Brigade Combat Team in Hawai'i, Implementation, Honolulu and Hawai'i Counties, HI, Comment Period Ends: January 3, 2004, Contact: Cindy Barger (808) 438–4812. Revision of FR Notice Published on 10/03/03: CEQ Comment Period Ending 11/17/2003 has been Extended to 01/3/2004.

Dated: November 10, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–28572 Filed 11–13–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7586–5]

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), Section 104(k); Announcement of Proposal Deadlines for the Competition for the 2004 National Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants—Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of the availability of brownfields grant application guidelines and deadlines for submissions of proposals—Correction.

SUMMARY: The Environmental Protection Agency published a document in the **Federal Register** on October 16, 2003 (68 FR 59611), concerning the availability of brownfields grant application guidelines and deadlines for submissions of proposals. The guidelines referenced in this notice contained incorrect information.

FOR FURTHER INFORMATION CONTACT: The U.S. EPA's Office of Solid Waste and Emergency Response, Office of Brownfields Cleanup and Redevelopment, (202) 566–2777.

SUPPLEMENTARY INFORMATION: The following corrections have been made to the guidelines that are posted at *http://www.epa.gov/brownfields*:

On page 19 of the Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants, an error was found in the section, Revolving Loan Fund, Threshold Criteria D, *Site Eligibility and Property Ownership Eligibility*. The first sentence is incorrect. It should read, ''If you do not have specific sites identified, please move on to Threshold Criteria E, *Cleanup Authority and Oversight Structure*.''

Also, for Threshold Criteria C, *Letter from the State or Tribal Environmental Authority*, for both Revolving Loan Fund and Cleanup Grants, the first sentence should read, ''For an applicant other than a state or tribal environmental authority, provide a current letter from the appropriate state or tribal environmental authority acknowledging that the applicant plans to conduct cleanup activities and is planning to apply for federal grant funds.''

Dated: November 6, 2003.

Linda Garczynski,

Director, Office of Brownfields Cleanup and Redevelopment, Office of Solid Waste and Emergency Response.

[FR Doc. 03–28576 Filed 11–13–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0292; FRL–7331–8]

Pesticide Product; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket ID number OPP–2003–0292, must be received on or before December 15, 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: The Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511C), listed in this unit:

Regulatory Action Leader	Telephone number/e-mail address	Mailing address	File symbol
Alan Reynolds	(703) 605–0515; e-mail address: *reynolds.alan@epa.gov*.	Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001	49584–L 49584–A
Barbara Mandula	(703) 308–7378; e-mail address: *mandula.barbara@epa.gov*.	Do.	72444–E

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be potentially affected by this action if you manufacture pesticides or apply pesticides to growing crops. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 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–2003–0292. 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.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. 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–2003–0292. 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–2003–0292. 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–2003–0292.

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–2003–0292. 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 registration 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. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients not Included in Any Previously Registered Products

1. *File Symbol*: 49584–L. *Applicant*: Knoll Bioproducts Co., Inc., P.O. Box 2736, Santa Fe, NM 87504. *Product Name*: Custom Bt Technical Concentrate. Insecticide. *Active ingredient*: *Bacillus thuringiensis* kurstaki strain BK at 28.0%. *Proposed classification/Use*: Control of lepidopteran pests on growing crops.
2. *File Symbol*: 49584–A. *Applicant*: Knoll Bioproducts Co., Inc. *Product Name*: Custom Bt Flowable Concentrate. Insecticide. *Active ingredient*: *Bacillus thuringiensis* kurstaki strain BK at 1.4%. *Proposed classification/Use*: Control of lepidopteran pests on growing crops.
3. *File Symbol*: 72444–E. *Applicant*: Prophyta Biologischer Pflanzenschutz GmbH, c/o WF Stoneman Company, LLC, 6307 Mourning Dove Drive, McFarland, WI 53558. *Product Name*: MeloCon WG. Nematicide. *Active ingredient*: *Paecilomyces lilacinus* strain 251 at 6%. *Proposed classification/Use*: Control of parasitic nematodes on crop roots.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: October 31, 2003.

Phil Hutton,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 03–28424 Filed 11–13–03; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2636]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding

October 31, 2003.

Petitions for Reconsideration and Clarification have been filed in the Commission's Rulemaking proceeding listed in this public notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to these petitions must be filed by December 1, 2003. See section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of the Commission's Rules Governing Hearing Aid-Compatible Telephones (WT Docket No. 01–309, RM–8658).

Number of Petitions Filed: 4.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–28461 Filed 11–13–03; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, November 18, 2003, 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 03–28677 Filed 11–12–03; 2:35 pm]

BILLING CODE 6715–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

AGENCY: Federal Election Commission.

DATE AND TIME: Thursday, November 20, 2003 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Draft Advisory Opinion 2003–28: Horizon Lines, LLC by counsel, Thomas F. Walls.

Draft Advisory Opinion 2003–29: National Fraternal Order of Police Political Action Committee (NFOP PAC) by Bridget Vigue, Legislative Liaison.

Draft Advisory 2003–30: Fitgerald for Senate Committee and Senator Peter Fitzgerald by counsel, Benjamin L. Ginsberg and Glenn M. Willard.

Final Rules and Explanation and Justification for Travel on Behalf of Candidates and Political Committees.

Final Rules and Explanation and Justification for Leadership PACs.

Public Financing of Presidential Candidates and Nominating Conventions; Announcement of Effective Date and Correction.

Routine Administrative Matters.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 03–28678 Filed 11–12–03; 2:35 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 28, 2003.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045-0001:

1. Barry M. Snyder, Buffalo, New York; to acquire more than 10 percent, but less than 25 percent of the voting shares of Great Lakes Bancorp, Inc., Buffalo, New York, and thereby indirectly acquire voting shares of Greater Buffalo Savings Bank, Buffalo, New York.

B. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Christian A. Royer, St. Marys, Kansas; to acquire control of PCI Holdings, Inc., and thereby indirectly acquire The St. Marys State Bank, both of St. Marys, Kansas.

Board of Governors of the Federal Reserve System, November 10, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–28550 Filed 11–13–03; 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 December 8, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. BG Financial Group, Inc., Greeneville, Tennessee; to become a bank holding company by acquiring Bank of Greeneville, Greeneville, Tennessee.

2. BancTrust Financial Group, Inc., Mobile, Alabama; to merge with CommerceSouth, Inc., Eufaula, Alabama, and thereby indirectly acquire CommerceSouth Bank, Eufaula, Alabama.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Simmons First National Corporation, Pine Bluff, Arkansas; to merge with Alliance Bancorporation, Inc., Hot Springs, Arkansas, and thereby indirectly acquire voting shares of Alliance Bank of Hot Springs, Hot Springs, Arkansas.

Board of Governors of the Federal Reserve System, November 7, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–28505 Filed 11–13–03; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

Notice of Intent To Prepare a Supplemental Environmental Impact Statement

The General Services Administration (GSA), Greater Southwest Region, intends to prepare a Supplemental Environmental Impact Statement (SEIS) for the Phase III expansion of the Del Rio Port of Entry (POE), Del Rio, Texas.

Pursuant to the requirements of the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality's Regulations (40 CFR part 1500–1508)—, and GSA Order PBS P1095.1F (Environmental Considerations in Decision Making, dated 19 October 1999), GSA proposes to prepare a SEIS for the proposed Phase III expansion of the Del Rio POE which includes the proposed closure of a portion of Rio Grande Loop Road, south of the planned POE as documented in the 1992 EIS for the Phase II and III expansion of the Del Rio POE. The need for the proposed action arises due to the additional security requirements for border crossing into the United States due to the overall increased security requirements following the events of 11 September 2001.

The purpose of the proposed action is to facilitate entry into the planned Del Rio POE expansion for entrants from Mexico and limit security risks

associated with border crossing activities.

Alternatives Under Consideration

A preliminary group of alternatives for the proposed action that would be evaluated in the SEIS has been developed by GSA, pending comment received during scoping.

Alternative 1 (No Action Alternative). Under this alternative the Del Rio POE would be expanded per the 1992 EIS finding allowing for pedestrian access along Rio Grande Loop Road.

Alternative 2. Under this alternative the Del Rio POE would be expanded per the 1992 EIS with pedestrian access to the east of the POE along Rio Grande Loop Road provided by an elevated walkway.

Alternative 3. Under this alternative the Del Rio POE would be expanded per the 1992 EIS with pedestrian access to the east of the POE along Rio Grande Loop Road provided by a tunnel walkway.

Alternative 4. Under this alternative the Del Rio POE would be expanded per the 1992 EIS with complete closure of Rio Grande Loop Road, which traverses the POE. GSA anticipates that the following categories of impacts will be addressed in the SEIS: Land use, economic, community, environmental justice, transportation system, air quality, noise, hazardous materials and substances, cultural resources, and natural systems. The SEIS will also address methods to mitigate any significant impacts. GSA will comply with its obligations under Section 106 of the National Historic Preservation Act to identify potential impacts to cultural resources. Comments received during scoping may result in consideration of additional issues.

Scoping Process

In accordance with NEPA, a scoping process will be conducted to aid in determining the scope of issues to be addressed and for identifying the significant issues related to the proposed action. Scoping will be accomplished through a public scoping meeting, direct mail correspondence to potentially interested persons, agencies, and organizations, and meetings with persons or agencies of special concern with an interest in the proposed actions. It is important that Federal, regional, state, and local agencies, and interested individuals and groups take this opportunity to identify environmental concerns that should be addressed during the preparation of the Draft SEIS.

Public Scoping Meeting

The public scoping meeting will be held at Del Rio Civic Center, 1915 Veterans Blvd., Del Rio, TX on 19 November 2003, from 7 p.m. to 9 p.m. The meeting will be an information open house, where visitors may come, receive information, discuss the proposal with study team members, give their comments, and leave anytime during the meeting period. GSA will publish notices announcing this meeting approximately one week prior to the meeting in the *Del Rio News-Herald*, the *San Antonio Express News*, and the *Austin American-Statesman*. GSA will prepare a scoping report, available to the public, that will summarize the comments received and facilitate their incorporation into the SEIS process.

Written Comments: Agencies and the public are encouraged to provide written comments on the scoping issues in addition to or in lieu of giving their comments at the public scoping meeting. Written comments regarding the environmental analysis for the proposed action must be postmarked no later than 28 November 2003, and sent to the following address: U.S. General Services Administration, Public Building Services, Greater Southwest Region, Attention: Lisa Schaub, Environmental Advisor, 819 Taylor Street, 7PM, Fort Worth, TX 76102.

Scoping Meeting Place

The meeting will be held at the following address: Del Rio Civic Center, 1915 Veterans Blvd., Del Rio, TX, Data: 19 November 2003, Time: 7 p.m. to 9 p.m.

Dated: November 7, 2003

Lisa Schaub,

Environmental Advisor, Greater Southwest Region, General Services Administration.

[FR Doc. 03–28491 Filed 11–13–03; 8:45 am]

BILLING CODE 6820–14–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Chronic Fatigue Syndrome Advisory Committee

AGENCY: Office of the Secretary, HHS.

ACTION: Notice of meeting.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (DHHS) is hereby giving notice that the Chronic Fatigue Syndrome Advisory Committee (CFSAC) will hold a meeting. The meeting will be open to the public.

DATES: The meeting will be held on Monday, December 8, 2003, from 9 a.m. to 5 p.m.

ADDRESSES: Department of Health and Human Services, Hubert H. Humphrey Building, Room 800, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Dr. Larry E. Fields, Executive Secretary, Chronic Fatigue Syndrome Advisory Committee, U.S. Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Room 719H, Washington, DC 20201; (202) 690–7694.

SUPPLEMENTARY INFORMATION: CFSAC was established on September 5, 2002, to replace the Chronic Fatigue Syndrome Coordinating Committee. CFSAC was established to advise, consult with, and make recommendations to the Secretary, through the Assistant Secretary for Health, on a broad range of topics including (1) the current state of knowledge and research about the epidemiology and risk factors relating to chronic fatigue syndrome, and identifying potential opportunities in these areas; (2) current and proposed diagnosis and treatment methods for chronic fatigue syndrome; and (3) development and implementation of programs to inform the public, health care professionals, and the biomedical, academic, and research community about chronic fatigue syndrome advances.

The tentative agenda for this meeting is as follows:

9 a.m.—Call to Order, Roll Call, Introductions, Minutes of the September 29th meeting.

9:30 a.m.—Presentations, Executive Secretary, Organizational Matters, Communications (Web site, listserv), Ex Officio Members, Status of Departmental CFS-directed efforts, Requested follow-ups, Q & A.

12 noon—Lunch Break.

1 p.m.—Further Discussions, Carry-over Issues, CFSAC Mission Statement, CFSAC Goals and Priorities, Name change, New Issues.

3:30 p.m.—Public Comments.

4:30 p.m.—Wrap Up, Action Steps, Timelines, Next Meeting.

5 p.m.—Adjournment.

Public attendance at the meeting is limited to space available. Individuals must provide a photo ID for entry into the meeting. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact person. Members of the public will have the opportunity to provide comments at the

meeting. Preregistration is required for public comment. Any individual who wishes to participate in the public comment session should call the telephone number listed in the contact information to register. Public comment will be limited to five minutes per speaker. Any members of the public who wish to have printed material distributed to CFSAC members should submit materials to the Executive Secretary, CFSAC, whose contact information is listed above prior to close of business December 1, 2003.

Dated: November 7, 2003.

Larry E. Fields,

Executive Secretary, Chronic Fatigue Syndrome Advisory Committee.

[FR Doc. 03–28579 Filed 11–13–03; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 1996D–0009]

International Conference on Harmonisation; Revised Guidance on Q3B(R) Impurities in New Drug Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised guidance entitled ''Q3B(R) Impurities in New Drug Products.'' The revised guidance, which updates a guidance on the same topic published in the **Federal Register** of May 19, 1997 (the 1997 guidance), was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The revised guidance is intended to provide guidance to applicants for drug marketing registration on the content and qualification of impurities in new drug products produced by chemically synthesized new drug substances not previously registered in a country, region, or member State. The revised guidance clarifies the 1997 guidance, adds information, and provides consistency with more recently published ICH guidances. The revised guidance complements the ICH guidance entitled ''Q3A(R) Impurities in New Drug Substances.''

DATES: The guidance is effective November 14, 2003. Submit written or electronic comments at any time.

ADDRESSES: Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Submit written requests for single copies of the guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3844, FAX: 888–CBERFAX. Send two self-addressed adhesive labels to assist the office in processing your request. Requests and comments should be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Charles P. Hoiberg, Center for Drug Evaluation and Research (HFD–800), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5918; or

Andrew Shrake, Center for Biologics Evaluation and Research (HFM–345), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20052–1148, 301–402–4635.

Regarding the ICH: Michelle Limoli, Office of International Programs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health, Labour, and Welfare, and the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Health Canada's Health Products and Food Branch, and the European Free Trade Area.

In the **Federal Register** of February 11, 2003 (68 FR 6924), the agency published an ICH guidance entitled ''Q3A(R) Impurities in New Drug Substances,'' which revised Q3A. The guidance Q3A(R) provides recommendations to applicants for drug marketing registration on the content and qualification of impurities in new drug substances produced by chemical synthesis and not previously registered in a country, region, or member state.

In the **Federal Register** of July 19, 2000 (65 FR 44791), FDA published a draft tripartite guidance entitled ''Q3B(R) Impurities in New Drug Products.'' The notice gave interested persons an opportunity to submit comments by September 18, 2000.

After consideration of the comments received and revisions to the guidance, a final draft of the guidance was submitted to the ICH Steering Committee; the three participating regulatory agencies endorsed it in February 2003.

This revised guidance complements the ICH Q3A(R) guidance and provides recommendations for registration or marketing applications on the content and qualification of impurities in new drug products produced from chemically synthesized new drug substances not previously registered in a region or member state. The revised guidance addresses only those impurities in new drug products

classified as degradation products of the drug substance or reaction products of the drug substance with an excipient and/or immediate container closure system. Impurities arising from excipients present in the new drug product or extracted or leached from the container closure system are not addressed in this revised guidance.

The Q3B(R) guidance has been revised to add information to certain sections and to provide clarification to other sections of the previous guidance. The most important sections that have been revised are:

• The text on reporting, identification, and qualification thresholds.

• The text on the listing of impurities in specifications and a clear distinction between ICH Q3B (listing impurities) and Q6A (setting specifications).

• The deletion of the exception to conventional rounding practice, i.e., the provision recommending no rounding up to 0.1 percent for values between 0.05 and 0.09 percent.

• Attachment 2—an illustration of reporting degradation product results for identification and qualification in an application.

• Attachment 3—a decision tree for identification and qualification of a degradation product.

• Additions and revisions to the previous glossary including definitions for the terms ''unspecified degradation product,'' ''reporting threshold,'' ''identification threshold,'' and ''qualification threshold.''

• References to more recently published ICH guidances (e.g., ''Q3A(R) Impurities in New Drug Substances,'' Q3C Impurities: Residual Solvents,'' and ''Q6A Specifications: Test Procedures and Acceptance Criteria for New Drug Substances and New Drug Products: Chemical Substances'').

In addition, minor editorial changes were made to improve the clarity and consistency of the document.

This guidance represents the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the guidance at any time. Two copies of any mailed comments are to be submitted, except individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/ohrms/dockets/default.htm*, *http://www.fda.gov/cder/guidance/index.htm*, or *http://www.fda.gov/cber/publications.htm*.

Dated: November 4, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy

[FR Doc. 03–28457 Filed 11–13–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Customer Satisfaction With Educational Programs and Products of the National Cancer Institute

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on May 29, 2003, page 32067 and allowed 60 days for public comment. Comments were received from two individuals, both of whom are contractors interested in the potential for conducting portions of the proposed information collection activities. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health 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.

Proposed Collection: Title: Customer Satisfaction with Educational Programs and Products of the National Cancer Institute. *Type of Information Collection Request:* NEW. *Need and Use of the Information Collection:* The Office of Education and Special Initiatives (OESI) of the National Cancer Institute (NCI) is responsible for the design, implementation, and evaluation of education programs over the entire cancer continuum, including prevention, screening, diagnosis, treatment, survivorship, and palliative care; it also manages NCI initiatives that address specific challenges in cancer research and treatment. To help ensure the relevance, utility, and appropriateness of the many educational programs and products that OESI and NCI produce, OESI intends to collect information on customer satisfaction with those products through customer satisfaction surveys. By obtaining information from customers on the extent to which materials satisfy their needs, OESI and NCI will be able to systematically establish and follow a feedback loop that provides useful information to revise and enhance educational programs and products so that they attain maximum relevance, utility, appropriateness, and impact. Data will be collected through various means, including telephone, mail, in-person, and web-based surveys. *Frequency of Response:* On occasion. *Affected Public:* individuals or households, organizations involved in providing health care services. *Type of Respondents:* health care consumers of NCI educational programs or products, including cancer patients and families, health care professionals, cancer control planners, and policymakers. The estimated annual burden hours are as follows: *Estimated Number of Respondents:* 2547; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* .167; and *Estimated Total Annual Burden Hours Requested:* 910 (425???). The annualized cost to respondents is estimated at: $17,049. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological

collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Lenora Johnson, Acting Director, Office of Education and Special Initiatives, National Cancer Institute, 6116 Executive Boulevard, Suite 202, Bethesda, MD 20892–8334, (301) 451–4056.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: November 6, 2003.

Reesa Nichols,

NCI Project Clearance Liaison.

[FR Doc. 03–28561 Filed 11–13–03; 8:45 am]

BILLING CODE 4140–01–M

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 invention listed below is owned by an agency of the U.S. Government and is 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 application 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 application.

Intracellular Trapping of Radionuclides by Enzyme-Mediated Reduction

Fangyu Peng, King Li, Sunil Pandit (CC).

U.S. Provisional Application filed 30 Sep 2003 (DHHS Reference No. E–083–2003/0–US–01).

Licensing Contact: Michael Shmilovich; 301/435–5019; *shmilovm@mail.nih.gov.*

The invention provides a novel technique for intracellular trapping of radionuclides for use in cancer therapy and imaging. The technique includes enzyme-mediated intracellular trapping of a radionuclide in a target cell by transfecting the target cell with a transgenic vector encoding a microbial hydrogenase and treating the transfected target cell with a radionuclide. The transgenically expressed microbial hydrogenase catalyzes the reduction of the radionuclide. The reduced radionuclide is trapped intracellularly where its emissions can be detected in radioscintigraphy applications. Emissions from intracellularly trapped radionuclides can also be cytotoxic to the target cell and therefore useful in radiotherapy applications. The invention further provides a reporter mechanism wherein a microbial hydrogenase encoding nucleic acid is included in a vector along with a transgene, both under the control of the same promoter. The detection of emissions from intracellularly reduced and trapped radionuclides is used to monitor transgene expression.

Lutozmyia longipalpis Polypeptides and Methods of Use

Jesus G. Valenzuela, José M.C. Ribeiro (NIAID).

U.S. Provisional Application No. 60/422,203 filed 29 Oct 2002 (DHHS Reference No. E–285–2002/0–US–01).

Licensing Contact: Peter Soukas; 301/435–4646; *soukasp@mail.nih.gov.*

Leishmania parasites are transmitted to their vertebrate hosts by infected phlebotomine sand fly bites. Sand fly saliva is known to enhance Leishmania infection, while immunity to the saliva protects against infection. This invention claims a number of major salivary proteins from the sand fly vector of Leishmania major, Lutzomyia longipalpis, nucleic acids encoding the proteins, vaccines comprising the proteins and/or nucleic acids, and methods of producing an immune response to prevent Leishmaniasis.

The inventors have shown that similar salivary proteins are able to protect vaccinated mice challenged with parasites plus salivary gland homogenates (SGH). The vaccine comprises a DNA vaccine encoding the salivary proteins. In one experiment with mice, the vaccine produced both intense humoral and delayed-type hypersensitivity (DTH) response. The inventors are continuing to experiment preclinically with this vaccine.

Dated: November 4, 2003.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–28559 Filed 11–13–03; 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 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 Initial Review Group, Subcommittee E—Cancer Epidemiology, Prevention & Control.

Date: December 9–11, 2003.

Time: 7 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Mary C. Fletcher, PhD, Scientific Review Administrator, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8115, Bethesda, MD 20892, (301) 496–7413.

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: November 7, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–28555 Filed 11–13–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; 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 Board of Scientific Counselors, National Human Genome Research Institute.

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 as indicated below in accordance with the provisions set forth in sections 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 Human Genome Research Institute,* including consideration of personnel qualifications and performance, and the competence of individuals investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Human Genome Research Institute.

Date: November 16–18, 2003.

Closed: November 16, 2003, 6 p.m. to 7 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Eisenhower Inn and Conference Center, 2634 Emmitsburg Road, Gettysburg, PA 17325.

Open: November 16, 2003, 7 p.m. to 8 p.m.

Agenda: To discuss matters of program relevance.

Place: Eisenhower Inn and Conference Center, 2634 Emmitsburg Road, Gettysburg, PA 17325.

Closed: November 16, 2003, 8 p.m. to adjournment on November 18, 2003.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Eisenhower Inn and Conference Center, 2634 Emmitsburg Road, Gettysburg, PA 17325.

Contact Person: Claire Rodgaard, Assistant to the Scientific Director, Division of Intramural Research, Office of the Director, National Human Genome Research Institute, 45 Convent Drive, Building 49, Room 4A06, Bethesda, MD 20892, 301 435–5802.

This notice is being published less than 15 days prior tot he meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: November 7, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–28558 Filed 11–13–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Neurological Disorders and Stroke; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Neurological Disorders and Stroke Special Emphasis Panel, November 18, 2003, 3:30 p.m. to November 18, 2003, 5 p.m. National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD, 20852 which was published in the **Federal Register** on November 3, 2003, FR 68 03–27501.

The meeting will be held on November 18, 2003 from 3:30 p.m. to 5 p.m. instead of 2 p.m. to 4 p.m. The meeting is closed to the public

Dated: November 7, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–28556 Filed 11–13–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed 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 of Neurological Disorders and Stroke Special Emphasis Panel, NeuroAIDS Studies.

Date: November 21, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Andrea Sawczuk, DDS, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, 6001 Executive Boulevard, Room #3208, Bethesda, MD 20892, 301–496–0660, *sawczuka@ninds.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Translation Epilepsy Research.

Date: November 25, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Andrea Sawczuk, DDS, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, 6001 Executive Boulevard, Room #3208, Bethesda, MD 20892, 301–496–0660, *sawczuka@ninds.nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Neural Control of Motor Systems.

Date: December 3, 2003.

Time: 3:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Andrea Sawczuk, DDS, PHD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, 6001 Executive Boulevard, Room #3208, Bethesda, MD 20892, 301–496–0660, *sawczuka@ninds.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854,

Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: November 7, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–28557 Filed 11–13–03; 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, S11—Special Grant Application Review.

Date: November 24, 2003.

Time: 2 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, PhD, Scientific Review Administrator, 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: November 6, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–28563 Filed 11–13–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH SERVICES

National Institutes of Health

National Institute of Mental Health; 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 Mental Health Special Emphasis Panel, Child Interventions Part 3.

Date: November 18, 2003.

Time: 3:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David I. Sommers, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd, Room 6144, MSC 9606, Bethesda, MD 20892–9606, 301–443–7861, *dsommers@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. 93.242, 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: November 6, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–28564 Filed 11–13–03; 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 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 Mental Health Special Emphasis Panel, Therapy and Panic Disorders.

Date: November 17, 2003.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sara K. Goldsmith, PhD., Scientific Review Administrator, Division of Extramural Activities, National Institutes of Health, National Institute of Mental Health, 6001 Executive Blvd, Rm 6149, Bethesda, MD 20892–9609, 301–443–6102, *sgoldsmi@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. 93.242, 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: November 6, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–28565 Filed 11–13–03; 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, Unsolicited Program Project Review.

Date: December 11, 2003.

Time: 1 p.m. to 4:30 p.m.

Agenda: to review and evaluate grant applications.

Place: 6700–B Rockledge Drive, 6700–B, 3255, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary J. Homer, PhD, Scientific Review Administrator, Scientific Review Program, National Institute of Allergy and Infectious Diseases, DEA/NIH/DHHS, 6700–B Rockledge Drive, MSC 7616, Room 2157, Bethesda, MD 20892, (301) 496–2550, *mjhomer@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 7, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–28566 Filed 11–13–03; 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 grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Behavioral Allocation and Choice Processes in MR: Basic Research & Applications.

Date: December 5, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Marita R. Hopmann, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Building, Room 5E01, Bethesda, MD 20892, (301) 435–6911, *hopmannm@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: November 6, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–28568 Filed 11–13–03; 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, Small Grants for New Investigators.

Date: December 3, 2003.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Richard J. Bartlett, PHD, Scientific Review Administrator, 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: November 6, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–28569 Filed 11–13–03; 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 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 Board of Scientific Counselors, NICHD.

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 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 of Child Health and Human Development, 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, NICHD.

Date: December 5, 2003.

Open: 8 AM to 11 AM.

Agenda: To review and discuss current NICHD intramural research activities.

Place: National Institutes of Health, Building 31, Conference Room 2A48, Bethesda, MD 20892.

Closed: 11 AM to Adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 31, Conference Room 2A48, Bethesda, MD 20892.

Contact Person: Owen M. Rennert, MD, Scientific Director, National Institute of Child Health and Human Development, 9000 Rockville Pike, Building 31, Room 2A50, Bethesda, MD 20892, (301) 496–2133, *rennerto@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://www.nichd.nih.gov/about/bsd/htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: November 6, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–28570 Filed 11–13–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; 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: Center for Scientific Review Special Emphasis Panel, Fungal Pathogenesis.

Date: November 10, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW, Washington, DC 20015.

Contact Person: Melody Mills, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, MSC 7808, Room 3206, Bethesda, MD 02892, 301–435–0903.

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. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health HHS)

Dated: November 7, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–28562 Filed 11–13–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; 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 persona privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Research Fellowship Review.

Date: November 17–18, 2003.

Time: 8 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC., 2401 M Street, NW, Washington, DC 20037.

Contact Person: Syed M. Quadri, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, (301) 435–1211.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Brain Disorders and Clinical Neuroscience/Visual System SBIR and Devices.

Date: November 24–25, 2003.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC., 2401 M Street, NW, Washington, DC 20037.

Contact Person: Sherry L. Stuesse, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, 301–435–1785, *stuesses@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Structure and Energetics of Proteins Special Emphasis Panel.

Date: November 24, 2003.

Time: 9 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: Gopa Rakhit, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–1721.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Therapeutics.

Date: November 24, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Elaine Sierra-Rivera, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, 301–435–1779, *riverase@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Immunotherapy.

Date: November 24, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sharon K. Gubanich, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6204, MSC 7804, Bethesda, MD 20892, (301) 435–1767, *gubanics@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chimotactic Studies.

Date: November 24, 2003.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jean Hickman, PhD, Scientific Review Admnistrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3194, MSC 7808, Bethesda, MD 20892, (301) 435–1146, *hickmanj@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG 1 PTHA 02 M: Mast Cells in Heart Failure.

Date: November 24, 2003.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Larry Pinkus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, (301) 435–1214.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioinformatics and Related Topics.

Date: November 24, 2003.

Time: 1:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 2212, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Camilla E. Day, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2212, MSC 7890, Bethesda, MD 20892; (301) 435–1037, *dayc@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Endocrinology, Metabolism, Nutrition and Reproductive Sciences.

Date: November 24, 2003.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–1041.

Contact Person: Krish Krishnan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, HIV Virotherapy in Cancer and CNS.

Date: November 25, 2003.

Time: 11:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Abraham P. Bautista, MS, PhD, Scientist Review Admnistrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7852, Bethesda, MD 20892, (301)435–1506, *bautista@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Software Based Neural Imaging—ZRG1 SSS–E(10).

Date: November 25, 2003.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Custer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7850, Bethesda, MD 20892, (301) 435–1164, *custerm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Porens Molecular Studies.

Date: November 25, 2003.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jean Hickman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3194, MSC 7808, Bethesda, MD 20892, (301) 435–1146, *hickmanj@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Purinergic Regulation of the Renal Microvasculature.

Date: November 25, 2003.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Anshumali Chaudhari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, (301) 435–1210.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Brain Disorders and Clinical Neuroscience/Visual System/SBIR and Devices.

Date: November 25, 2003.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW, Washington, DC 20037.

Contact Person: Sherry L Stuesse, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, 301–435–1785, *stuesses@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Reviews in Neurophysiology of Human Movement.

Date: November 25, 2003.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Sue Krause, MED, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, 301–435–0902, *krausem@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Anitchlamydial Protection.

Date: November 25, 2003.

Time: 3:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Robert Freund, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3200, MSC 7848, Bethesda, MD 20892, 301–435–1050, *freundr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Developmental Disabilities.

Date: November 25, 2003.

Time: 5 p.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Cheri Wiggs, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–1261.

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. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 03.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 7, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–28567 Filed 11–13–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Institute of Environmental Health Sciences (NIEHS); National Toxicology Program (NTP); Request for Nominations and Submissions of Alternative Test Methods for Evaluation by ICCVAM; Notice of the Availability of the Updated Document, ''ICCVAM Guidelines for Nomination and Submission of New, Revised, and Alternative Test Methods''

Summary

The National Toxicology Program Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM) requests the nomination and submission of new, revised, and alternative test methods for potential evaluation by the Interagency Coordinating Committee on Alternative Toxicological Methods (ICCVAM). The nominations and submissions should be sent to Dr. William Stokes, NICEATM Director at the address provided below. Instructions for making nominations and submissions are described in the document, ''ICCVAM Guidelines for Nomination and Submission of New, Revised, and Alternative Test Methods,'' September 2003, NIH Publication 03–4508. The guidelines are available electronically in PDF and HTML formats from the NICEATM/ICCAVM Web site (*http://iccvam.niehs.nih.gov*) and in hardcopy from NICEATM (contact information provided below).

Nominations and Submissions of Alternative Test Methods for Evaluation by ICCVAM

Those persons nominating or submitting test methods are referred to the guidelines noted below for details on information required for an ICCVAM evaluation. Test methods for which adequate validation studies have been completed can be submitted to ICCVAM as test method submissions. Test method submissions should contain sufficient information to characterize the relevance and reliability of a test method for a specific, proposed regulatory testing application. Test methods for which complete submissions are not available may be nominated for further evaluation, including test methods that may require validation studies or a comprehensive review of their current validation status. Both nominations and submissions are prioritized for formal evaluation as described in the ICCVAM guidelines. Nominations should also be accompanied by as much information as possible as outlined in the ICCVAM guidelines. While there is no minimum requirement for information to provide with nominations, complete information will expedite ICCVAM's consideration of the proposed test method. All nominations and submissions should be sent to Dr. William S. Stokes, Director, NICEATM, P. O. Box 12233, MD EC–17, Research Triangle Park, NC 27709, phone: 919–541–2384, fax: 919–541–0947, or email: *niceatm@niehs.nih.gov*.

ICCVAM Guidelines

The NICEATM announces the availability of the document, ''ICCVAM Guidelines for Nomination and Submission of New, Revised, and Alternative Test Methods,'' September 2003, NIH Publication No. 03–4508. The updated guidelines replace the document previously published in 1999. The ICCVAM guidelines provide guidance for test method sponsors and nominators on the information needed by ICCVAM to evaluate the validation status of new, revised, and alternative test methods proposed for regulatory testing applications. A framework for organizing the information supporting the validity of a test method is provided. This framework can also be used to organize information to support test methods nominated for further evaluation, including validation study proposals. The updated ICCVAM nomination and submission guidelines are available electronically (PDF and HTML) on the NICEATM/ICCVAM Web site at *http://iccvam.niehs.nih.gov*. A limited number of printed guidelines are available from the NICEATM at the address given above.

Background Information on ICCVAM and NICEATM

The NIEHS established the ICCVAM in 1997 to coordinate the interagency technical review of new, revised, and alternative test methods of interagency interest, and to coordinate cross-agency issues relating to the validation, acceptance, and national/international harmonization of toxicological testing methods. ICCVAM was established as a permanent interagency committee of the NIEHS under the NICEATM on December 19, 2000, by the ICCVAM Authorization Act of 2000 (Public Law 106–545, available at *http://iccvam.niehs.nih.gov/about/PL106545.pdf*). The committee is composed of representatives from 15 Federal regulatory and research agencies that use or generate toxicological information. ICCVAM seeks to promote the scientific validation and regulatory acceptance of toxicological test methods that will improve the agencies' ability to accurately assess the safety or hazards of chemicals and various types of products, while refining (less pain and distress), reducing, and replacing animal use wherever possible. NICEATM administers the ICCVAM and provides scientific and operational support for ICCVAM and ICCVAM-related activities. NICEATM and ICCVAM work collaboratively to evaluate new and improved test methods applicable to the needs of Federal agencies. Additional information about ICCVAM and NICEATM can be found at the following Web site: *http://iccvam.niehs.nih.gov*.

Dated: November 5, 2003.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

[FR Doc. 03–28560 Filed 11–13–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-Day notice of information collection under review: interagency record of individual requesting change/adjustment to or from A or G status or

requesting A, G, or NATO dependent employment authorization; form I–566.

The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (CIS), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on June 4, 2003 at 68 FR 33513, allowing for a 60-day public comment period. The CIS received no comments on the proposed information collection.

The purpose of this notice is to notify the public that the CIS is seeking OMB approval on the revision of this information collection and to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 15, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: DHS Desk Officer, 725–17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Interagency Record of Individual Requesting Change/Adjustment to or from A or G Status or Requesting A, G, or NATO Dependent Employment Authorization.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–566. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form facilitates processing by the Department of Homeland Security and the Department of State of applications for benefits filed by dependents of diplomats, international organizations, and NATO personnel.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 5,060 responses at 15 minutes (.25) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,265 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, U.S. Citizenship and Immigration Services, 425 I Street, NW., Room 4304, Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Steve Cooper, Clearance Officer, Office of the Chief Clearance Officer, Department of Homeland Security, Regional Office Building 3, 7th and D Streets, SW., Suite 4636–26, Washington, DC 20202.

Dated: November 6, 2003.

Richard A. Sloan,

Department Clearance Officer, Department of Homeland Security, Citizenship and Immigration Services.

[FR Doc. 03–28486 Filed 11–13–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4809–N–46]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: November 14, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless.

Today's notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: November 6, 2003.

Mark R. Johnston,

Deputy Director, Office of Special Needs Assistance Programs.

[FR Doc. 03–28385 Filed 11–13–03; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for endangered species and marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review,

subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*), and/or the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permit(s) subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in section 2 of the Endangered Species Act of 1973, as amended.

ENDANGERED SPECIES

Permit number	Applicant	Receipt of application Federal Register notice	Permit issuance date
069826	Miami Metrozoo	68 FR 50804; August 22, 2003	October 24, 2003.
072019	Texas Memorial Museum	68 FR 50804; August 22, 2003	October 21, 2003.
072235	Lost Creek Animal Sanctuary	68 FR 43156; July 21, 2003	October 16, 2003.
072237			
072238			
073476	Carlton & Company	68 FR 43156; July 21, 2003	October 16, 2003.
073477			
076616	Steven D. Reiley	68 FR 53747; September 12, 2003	October 23, 2003.

ENDANGERED MARINE MAMMALS AND MARINE MAMMALS

Permit number	Applicant	Receipt of application Federal Register notice	Permit issuance date
067116	University of Florida	68 FR 52608, September 4, 2003	October 28, 2003.
072925	Larry Reynolds	68 FR 40291, July 7, 2003	October 16, 2003.

Dated: October 31, 2003.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–28516 Filed 11–13–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by December 15, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Wildlife Conservation Society, Bronx Zoo, Bronx, New York, PRT–078634.

The applicant requests a permit to import 3.2 captive born lesser mouse lemurs, (*Microcebus murinus*) from the Paris Zoo, Paris, France, for the purpose of enhancement of the survival of the species.

Applicant: Carlyle F. Griffin, Morrison, CO, PRT–078659.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Kevin F. Tenborg, Lincoln, CA, PRT–078689.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Homer H. Tompkins III, Roseville, MN, PRT–078771.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Brigham Young University, Dept. of Integrative Biology, Provo, UT, PRT–076005 and PRT–006998.

The applicant requests a permit to import biological samples taken from wild and/or captive held tartaruga

(*Podocnemis expansa*) and yellow-spotted river turtles (*Podocnemis unifilis*) from Brazil and or Venezuela as well as return such samples to Brazil and or Venezuela for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: U.S. Fish and Wildlife Service, Laramie, WY, PRT–078822.

The applicant requests a permit to import live specimens, biological samples and salvage materials from captive-bred and/or wild specimens of black-footed ferret (*Mustela nigripes*) from Mexico, to enhance the survival of the species through completion of identified tasks and objectives mandated under the Black-Footed Ferret Recovery Plan. Biological samples and salvaged materials may include, but are not limited to, blood, tissue, feces, hair, whole or partial dead specimens. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: George Carden Circus International, Springfield, MO, PRT–070854.

The applicant requests a permit to export and re-import one wild born Asian elephant (*Elephas maximus*) to worldwide locations for the purpose of enhancement of the species through conservation education. This notification covers activities to be conducted by the applicant over a three-year period and the import of any potential progeny born while overseas.

Dated: October 24, 2003.

Charles S. Hamilton,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–28517 Filed 11–13–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein.

MARINE MAMMALS

Permit number	Applicant	Receipt of application FEDERAL REGISTER notice	Permit issuance date
072829	Thomas M. Taylor	68 FR 40291; July 7, 2003	October 21, 2003.
076061	Jesus Mourra	68 FR 52608; September 4, 2003	October 23, 2003.

Dated: October 24, 2003.

Charles S. Hamilton,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–28515 Filed 11–13–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Northeast Regional Panel Meeting

AGENCY: Fish and Wildlife Service, Interior

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aquatic Nuisance Species (ANS) Task Force Northeast Regional Panel. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION** Section.

DATES: The Northeast Regional Panel will meet from 12 p.m. to 5:30 p.m. on Thursday, December 11, 2003, and 8:30 a.m. to 3:45 p.m. on Friday, December 12, 2003. Minutes of the meeting will be available for public inspection during regular business hours, Monday through Friday.

ADDRESSES: The Northeast Regional Panel meeting will be held at the Kellogg Environmental Center, 500 Hawthorne Avenue, Derby, CT 06418. Phone 203–734–2513. Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 810, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622.

FOR FURTHER INFORMATION CONTACT: Susan Snow-Cotter, 671–626–1202 or Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force, at 703–358–2308, or by e-mail, at *sharon_gross@fws.gov*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Aquatic Nuisance Species Task Force Northeast Regional Panel. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990. The Northeast Regional Panel was established on July 25, 2001, to advise and make recommendations to the Aquatic Nuisance Species Task Force on issues relating to the Northeast region of the United States. Geographically, the Northeast region is defined to include the jurisdictions of the states of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, and New York. The Northeast Regional Panel will discuss several topics at the meeting including: Updates from provinces and states; status reports from subcommittees on Ballast Water, Communication, Education, and Outreach, Policy and Legislation, and Science and Technology; the New England rapid assessment planning; updates on early detection and rapid response workshop and data management; ANS criteria for listing, establishing research priorities for invasive species in the Northeast, future training and worship, and outreach project for the non-English speaking community; updates from the Aquatic Nuisance Species Task Force and National Invasive Species Council on national issues, reauthorization of the National Aquatic Invasive Species Act; updates on the development of a

Canadian National Invasive Species Plan; and other topics.

Dated: October 30, 2003.

William Knapp,

Acting Co-Chair, Aquatic Nuisance Species Task Force, Acting Assistant Director—Fisheries & Habitat Conservation.

[FR Doc. 03–28518 Filed 11–13–03; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–03–840–1610–241A]

Canyons of the Ancients National Monument Advisory Committee Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Canyons of the Ancients National Monument (Monument) Advisory Committee (Committee), will meet as directed below.

DATES: Meetings will be held December 9, 2003 and January 6, 2004 at the Anasazi Heritage Center in Dolores, Colorado at 9 a.m. The public comment period for each meeting will begin at approximately 2:30 p.m. and the meetings will adjourn at approximately 3:30 p.m.

FOR FURTHER INFORMATION CONTACT: LouAnn Jacobson, Monument Manager or Stephen Kandell, Monument Planner, Anasazi Heritage Center, 27501 Hwy 184, Dolores, Colorado 81323; Telephone (970) 882–5600.

SUPPLEMENTARY INFORMATION: The eleven member committee provides counsel and advice to the Secretary of the Interior, through the BLM, concerning development and implementation of a management plan developed in accordance with FLMPA, for public lands within the Monument. At these meetings, topics we plan to discuss include planning issues and management concerns, planning alternatives, partnerships, science and other issues as appropriate.

All meetings will be open to the public and will include a time set aside for public comment. Interested persons may make oral statements at the meetings or submit written statements at any meeting. Per-person time limits for oral statements may be set to allow all interested persons an opportunity to speak.

Summary minutes of all Committee meetings will be maintained at the Anasazi Heritage Center in Dolores, Colorado. They are available for public inspection and reproduction during regular business hours within thirty (30) days of the meeting. In addition, minutes and other information concerning the Committee can be obtained from the Monument planning Web site at: *http://www.blm.gov/rmp/canm* which will be updated following each Committee meeting.

Dated: November 6, 2003.

LouAnn Jacobson,

Manager, Canyons of the Ancients National Monument.

[FR Doc. 03–28485 Filed 11–13–03; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–030–04–1610–PH–241A]

Notice of Resource Advisory Committee Meeting

AGENCY: Grand Staircase-Escalante National Monument (GSENM), Bureau of Land Management (BLM), Department of the Interior.

ACTION: Notice of Grand Staircase-Escalante National Monument Advisory Committee (GSENMAC) Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM), Grand Staircase-Escalante National Monument Advisory Committee (GSENMAC) will meet as indicated below.

DATES: A two-day meeting is scheduled for January 6–7, 2004, at the GSENM Headquarters Office, Main Conference Room, 190 E. Center Street, Kanab, Utah. The meetings will begin both days at 8 a.m. and conclude at 5 p.m.

FOR FURTHER INFORMATION: Contact Allysia Angus, Land Use Planner, GSENM Headquarters Office, 190 East Center, Kanab, Utah 84741; phone (435) 644–4364, or email *allysia_angus@blm.gov.*

SUPPLEMENTARY INFORMATION: The Grand Staircase-Escalante National Monument (GSENM) Advisory Committee will meet at the GSENM Headquarters Office, 190 East Center Street, Kanab, Utah 84741, 8 a.m. to 5 p.m., local time, on January 6, 2004, and 8 a.m. to 5 p.m., January 7, 2004. The Grand Staircase-Escalante National Monument Advisory Committee (GSENMAC) was appointed by the Secretary of Interior on September 26, 2003, pursuant to the Monument Management Plan, the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA). As specified in the Monument Management Plan, the GSENMAC will have several primary tasks. (1) Review evaluation reports produced by the Management Science Team and make recommendations on protocols and projects to meet overall objectives. (2) Review appropriate research proposals and make recommendations on project necessity and validity. (3) Make recommendations regarding allocation of research funds through review of research and project proposals as well as needs identified through the evaluation process above. (4) Could be consulted on issues such as protocols for specific projects.

This will be the first meeting of the GSENMAC. Topics to be discussed by the GSENMAC include operating procedures, establishing meeting guides, Charter, roles and responsibilities, Federal Advisory Committee Act/Management, selection of a chairperson, Federal travel regulations, forming of subcommittees, facilitation needs, actions taken by BLM to implement the Act, future meeting dates and other matters as may reasonably come before the GSENMAC.

The entire meeting is open to the public. Members of the public are welcome to address the council at 11 a.m., local time on January 7, 2004. Depending on the number of persons wishing to speak, a time limit could be established. Interested persons may make oral statements to the GSENMAC during this time or written statements may be submitted for the GSENMAC's consideration. Written statements can be sent to: Grand Staircase-Escalante National Monument, Attn.: Allysia Angus, 190 E. Center Street, Kanab, UT 84741. Information to be distributed to the GSENMAC is requested 10 days prior to the start of the GSENMAC meeting.

All meetings are open to the public; however, transportation, lodging, and meals are the responsibility of the participating public.

Dated: November 6, 2003.

Dave Wolf,

Acting Grand Staircase-Escalante National Monument Manager.

[FR Doc. 03–28524 Filed 11–13–03; 8:45 am]

BILLING CODE 4310–DQ–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–499]

In the Matter of Certain Audio Digital-to-Analog Converters and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 14, 2003, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Cirrus Logic, Inc. of Austin, Texas. A letter supplementing the complaint was filed on October 28, 2003. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain audio digital-to-analog converters and products containing same by reason of infringement of claims 1 and 11 of U.S. Patent No. 6,492,928 B1. The complaint, as supplemented, further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket imaging system (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: David H. Hollander, Jr., Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2746.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2003).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on November 7, 2003, ORDERED THAT—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain audio digital-to-analog converters or products containing same by reason of infringement of claims 1 or 11 of U.S. Patent No. 6,492,928 B1, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served: (a) The complainant is: Cirrus Logic, Inc., 2901 Via Fortuna, Austin, TX 78746

(b) The respondents are the following companies upon which the complaint is to be served:

Wolfson Microelectronics, PLC, 20 Bernard Terrace, EH8 9NX, Edinburgh, United Kingdom

Wolfson Microelectronics, Inc., 16875 West Bernardo Drive, Suite 280, San Diego, CA 92127

(c) David H. Hollander, Jr., Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(4) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.
Issued: November 10, 2003.

Marilyn R. Abbott,
Secretary to the Commission.

[FR Doc. 03–28532 Filed 11–13–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–391–394, 396–397, 399 (Review) (Remand)]

Ball Bearings From France, Germany, Italy, Japan, Singapore, Sweden, and the United Kingdom; Notice and Scheduling of Remand Proceedings

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The U.S. International Trade Commission (the Commission) hereby gives notice of the court-ordered remand of its five-year review in Investigation Nos. 731–TA–391–394, 396–397, and 399 (Review).

EFFECTIVE DATE: November 7, 2003.

FOR FURTHER INFORMATION CONTACT: Dong Jun Na (Office 615–U) (708–4827) (*dna@usitc.gov*) or Robert Carpenter (Office 615–AA) (205–3160) (*rcarpenter@usitc.gov*). Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On September 3, 2003, the Court of International Trade remanded the Commission's affirmative determination

in *Certain Bearings from China, France, Germany, Hungary, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom,* Inv. Nos. AA1921–143, 731–TA–341, 343–345, 391–397, and 399 (Review), USITC Pub. 3309 (June 2000), in which the Commission determined that revocation of the antidumping duty orders on imports of ball bearings from France, Germany, Italy, Japan, Singapore, and the United Kingdom would be likely to lead to continuation or recurrence of material injury to a domestic industry within a reasonably foreseeable time. *NMB Singapore Ltd. et al* v. *United States,* Consol. Court No. 00–07–00373, Slip Op. 03–115 (September 3, 2003). On October 20, 2003, the Commission published its schedule for the remand proceedings in the **Federal Register**, 68 FR 59950.

Scheduling the Vote

The Commission will vote on the remand determination at a public meeting to be held on Monday, November 17, 2003. The meeting is tentatively scheduled for 11:00 a.m.

Authority: This action is taken under the authority of the Tariff Act of 1930, title VII.

By order of the Commission.

Issued: November 7, 2003.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–28533 Filed 11–13–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–421–4]

Ductile Iron Waterworks Fittings From China; Notice of Commission Determination To Conduct a Portion of the Hearing in Camera

AGENCY: International Trade Commission.

ACTION: Closure of a portion of a Commission hearing to the public.

SUMMARY: Upon request of counsel for Chinese Respondents, the Commission has determined to conduct a portion of its hearing in the above-captioned investigation scheduled for November 6, 2003, in camera. See Commission rules 201.13(m) and 201.35(b)(3) (19 CFR 201.13(m) and 201.35(b)(3)). The remainder of the hearing will be open to the public. The Commission has determined that the seven-day advance notice of the change to a meeting was not possible. See Commission rule 201.35(a), (c)(1) (19 CFR 201.35(a), (c)(1)).

FOR FURTHER INFORMATION CONTACT: William Gearhart, Office of General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3091, e-mail *wgearhart@usitc.gov.* Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission believes that counsel has justified the need for a closed session. Counsel seeks a closed session to provide a full discussion of information relating to pricing data, its analysis of domestic industry and Petitioner financial performance, indicators of the extent of competition between domestic product and subject imports, and domestic shipments and domestic producer market share trends. Because such discussions will necessitate disclosure of confidential business information (CBI), they can only occur if a portion of the hearing is held in camera. In making this decision, the Commission nevertheless reaffirms its belief that whenever possible its business should be conducted in public.

The hearing will include the usual public presentations by parties, with questions from the Commission. In addition, the hearing will include in camera sessions for confidential presentations by Chinese Respondents and for questions from the Commission relating to the CBI. For any in camera session the room will be cleared of all persons except for those company officials and their counsel who are authorized to have access to the CBI at issue. See 19 CFR 201.35(b)(1), (2). The time for the party's presentations in the in camera session will be taken from its overall allotment for the hearing. All persons planning to attend the in camera portions of the hearing should be prepared to present proper identification.

Authority: The General Counsel has certified, pursuant to Commission Rule 201.39 (19 CFR 201.39) that, in her opinion, a portion of the Commission's hearing in Inv. No. TA–421–4, Ductile Iron Waterworks Fittings from China, may be closed to the public to prevent the disclosure of CBI.

By order of the Commission.

Issued: November 5, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–28510 Filed 11–13–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Executive Office for United States Attorneys; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: Office of Legal Education Nomination/Confirmation Form.

The Department of Justice (DOJ), Executive Office for United States Attorneys has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 146, page 44814 on July 30, 2003, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until December 15, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202)–395–7285. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic,

mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Existing collection in use without an OMB control number.

(2) *The title of the form/collection:* Office of Legal Education Nomination Form.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* DOJ Form Number, none. Office of Legal Education, Executive Office for United States Attorneys, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Respondents will be current and potential users of agency training services. Respondents may represent Federal agencies, as well as State, local, and tribal governments. The Executive Office for United States Attorneys will use the collected information to select class participants, arrange for transportation and reserve rooms; have an address to contact the participant, and an emergency contact.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that there will be 2,140 responses annually. It is estimated that each form will take 5 minutes to complete.

(6) *An estimate of the total public burden (in hours) associated with the collection:* An estimate of the total hour burden to conduct this survey is 1,750 hours.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: November 7, 2003

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–28484 Filed 11–13–03; 8:45 am]

BILLING CODE 4410–07–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response Compensation and Liability Act

Pursuant to 28 CFR 507 notice is hereby given that on October 16, 2003, eleven proposed Consent Decrees in the case *United States* v. *Brothers Machine & Tool, Inc., et al.* Civil Action No. LACV 03–07406 DDP (RNBx) were lodged with the United States District Court for the Central District of California.

In this action, under sections 106 and 107 of CERCLA, 42, U.S.C. 9606 and 9607, the United States sought injunctive relief and recovery of response costs to remedy conditions in connection with the release or threatened release of hazardous substances into the environment at the Waste Disposal, Inc. Superfund Site in Santa Fe Springs, California (hereinafter referred to as the ''Site'').

The defendants in this action are as follows: Brothers Machine & Tool, Inc.; Chasin Trust; Hanson Trust; Searing Revocable Trust; Lucille F. Ferris Living Trust; John I. Maple Family Partnership; Thomas J. Mersits; Irene L. Mersits Trust; David Joseph Neptune Family Trust; O.R.P. LLC; Danny R. Peoples and Dena Peoples, Eddie E. Timmons; Eugene Geraldine Welter Trust; Graziano Trust; Los Nietos Property LLC. and Jovita L. Ortega.

Each of the defendants in this action own a portion of the Site (''Landowner(s)''), and the purpose of each of the settlements is to provide to the United States the access and institutional controls which are required to perform the remedial action at the Site. In return, the United States has given, to each Landowner in each decree, its covenants not to sue and contribution protection.

Each Landowner settlement is related to a prior consent decree in the case of *United States* v. *Archer Daniels, et al.* Civil Action No. 03–CV–1593WJR, wherein defendants which had allegedly arranged for the disposal of hazardous substances at the Site had agreed to perform the Site Remedy. This decree was entered by the United States District Court for the Central District of California on August 12, 2003.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to any of the Landowner Consent Decrees. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Brothers Machine & Tool, Inc., et al.*, D.J. Ref. 90–11–2–1000/1. As each Consent Decree includes a covenant not to sue under Section 7003 of RCRA, 42 U.S.C. 6973(d), commenters may request an opportunity for a public meeting in the affected area, in accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d).

Each Consent Decree may be examined at U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94107. During the public comment period, each Consent Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of each Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC. 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy of each Landowner Consent Decree from the Consent Decree Library, please enclose a check in the amount of $63.50 (25 cents per page reproduction cost) per Consent Decree payable to the U.S. Treasury. In requesting a copy of each Consent Decree, exclusive of exhibits and defendants' signatures, please enclose a check in the amount of $11.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ellen M. Mahan,

Assistant Section Chief, Environmental Enforcement Section.

[FR Doc. 03–28459 Filed 11–13–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–10957, et al.]

Proposed Exemptions; *John Hancock Life Insurance Company, et al*

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@.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.

John Hancock Life Insurance Company, Located in Boston, Massachusetts

[Application No. D–10957]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act 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 section 406(b)(2) of the Act shall not apply to the proposed purchases and sales of farmland asset(s) (the Farmland Asset(s)), as defined in Condition 12(b), or entire farmland account(s) (the Entire Farmland Account(s)), as defined in Condition 12(n), between various account(s) (the Account(s)), as defined in Condition 12(a), that are managed by Hancock Natural Resource Group, Inc. (HNRG) or the affiliate(s) (the Affiliate(s)), as defined in Condition 12(e), of John Hancock Life Insurance Company (JHLIC).

Conditions and Definitions

This exemption is subject to the following conditions:

1. A plan or plans covered by the Act (the ERISA-Covered Plan(s)), as defined in Condition 12(c), may participate in a subject transaction only if each such plan has total assets in excess of $100 million.

2. At least 30 days prior to entering a subject transaction, each affected customer (the Customer(s)), as defined in Condition 12(l), invested in an Account participating in such transaction will be provided with information regarding the Farmland Asset(s) or the Entire Farmland Account involved and the terms of the transaction, including the purchase price and how the transaction would meet the goals and investment policies of each such affected Customer. Notice of any change in the purchase price will be provided to each affected Customer at least 30 days prior to the consummation of the transaction.

3. An independent fiduciary (an Independent Fiduciary), as defined in Condition 12(h), is appointed by JHLIC or an Affiliate as follows:

(a) One Independent Fiduciary is appointed to represent the Account(s) in which an ERISA-Covered Plan or ERISA-Covered Plans is/are invested, whether the Account(s) is/are the buyer(s) or the seller(s) in a subject transaction, where one side of such transaction involves one or more: (i) ERISA-Covered Plan(s), (ii) pooled separate account(s)(the Pooled Separate Account(s), as defined in Condition 12(k), in which an ERISA-Covered Plan or ERISA-Covered Plans invest, and/or (iii) other Account(s) holding ''plan assets'' subject to the Act [1] and the other side of such transaction involves one or more plan(s) or other customer(s) not covered by the Act (the Non-ERISA Plan(s) or Non-ERISA Customer(s), as defined in Condition 12(d)),

(b) One Independent Fiduciary is appointed to represent the buying account(s) (the Buying Account(s)), as defined in Condition 12(f), in a subject transaction, where such transaction is between two (2) or more: (i) ERISA-Covered Plans, (ii) Pooled Separate Accounts in which an ERISA-Covered Plan or ERISA-Covered Plans invest, and/or (iii) other Accounts holding ''plan assets'' subject to the Act, and the decision to liquidate the Farmland Asset(s) or Entire Farmland Account is the result of one or more ''triggering events,'' as described below. A ''triggering event'' will exist whenever:

(1) JHLIC or an Affiliate receives a direction from a Customer to liquidate such Customer's Entire Farmland Account, and the decision to liquidate such Entire Farmland Account is outside of the control of JHLIC and its Affiliates; or

(2) JHLIC or an Affiliate receives a request by a Customer to liquidate a specified Farmland Asset or Farmland Assets held in the Customer's Account, and the decision to liquidate the Farmland Asset(s) is outside of the control of JHLIC and its Affiliates; or

(3) a liquidation of all of the Farmland Assets held in a selling account(s)(the Selling Account(s)), as defined in Condition 12(g), or an Entire Farmland Account, or a particular Farmland Asset or Farmland Assets held by such Account(s) is required under the terms of the investment contract, insurance contract, or investment guidelines

[1] See 29 CFR 2510.3–101 for the Department's definition of ''plan assets'' relating to plan investments.

governing the Account(s), and the decision to select any particular Farmland Asset(s) to be sold or the decision to sell an Entire Farmland Account is outside of the control of JHLIC and its Affiliates; and

(c) One Independent Fiduciary is appointed to represent the Buying Account(s) and one Independent Fiduciary is appointed to represent the Selling Account(s) involved in a subject transaction:

(1) Where such transaction is between two (2) or more: (i) ERISA-Covered Plans, (ii) Pooled Separate Accounts in which an ERISA-Covered Plan or ERISA-Covered Plans invest, and/or (iii) other Accounts holding ''plan assets'' subject to the Act, and there is no ''triggering event,'' as described above in Condition 3(b), or

(2) Where such transaction is between two (2) or more: (i) ERISA-Covered Plans, (ii) Pooled Separate Accounts in which an ERISA-Covered Plan or ERISA-Covered Plans invest, and/or (iii) other Accounts holding ''plan assets'' subject to the Act, and one or more of the participants in such transaction is a Pooled Separate Account and/or other Account holding ''plan assets'' subject to the Act in which a John Hancock plan (the Hancock Plan(s)), as defined in Condition 12(m) participates.

4. With respect to each transaction requiring the participation of an Independent Fiduciary, as described in Condition 3, the purchase and sale of a Farmland Asset or Farmland Assets or an Entire Farmland Account shall not be consummated, unless the Independent Fiduciary determines that the transaction, including the price to be paid or received for each Farmland Asset or Entire Farmland Account, would be in the best interest of the particular Account(s) involved based on the investment policies and objectives of such Account(s).

5. Each Account which buys or sells a particular Farmland Asset or Farmland Assets or Entire Farmland Account pays no more than or receives no less than the fair market value of each Farmland Asset or Entire Farmland Account at the time of the transaction. For a Farmland Asset, fair market value shall be determined by a qualified, independent real estate appraiser experienced with the valuation of farmland properties similar to the type involved in the transaction, and may include customary closing adjustments, as described in Condition 12(o).

For an Entire Farmland Account, fair market value shall be determined by a qualified, independent entity experienced in the auditing and valuation of farmland accounts similar to the type involved in the transaction and the valuation of assets or liabilities other than Farmland Assets, including but not limited to assets such as short-term investments or accounts receivable from prior crop sales or leases, and liabilities such as investment or property management fees payable or property taxes payable, and may include customary closing adjustments, as described in Condition 12(o).

6. Each purchase or sale of a Farmland Asset or Farmland Assets or Entire Farmland Account between Accounts is a one-time cash transaction. A Buying Account may assume liabilities associated with an Entire Farmland Account, subject to valuation procedures described in Condition 5, above.

7. Each Account involved in the purchase or sale of a Farmland Asset or Farmland Assets or Entire Farmland Account pays no real estate commissions or brokerage fees relating to the transaction.

8. JHLIC or an Affiliate acts as a discretionary investment manager for the assets of the Account(s) involved in each transaction, provided that this condition will not fail to have been satisfied solely because the Customer retains the right to veto or approve the purchase or sale of a Farmland Asset or Farmland Assets or Entire Farmland Account.

9. An Account may not participate in a subject transaction, if the assets of any Hancock Plan or Hancock Plans in the Account exceed 20 percent (20%) of the total assets of the Account.

10. No purchase or sale transaction shall be designed to benefit the interests of one particular Account over another.

11. The general accounts (the General Accounts) of both JHLIC and John Hancock Variable Life Insurance Company (JHVLIC) shall not participate, directly or indirectly, in the subject transactions;

12. For purposes of this exemption:

(a) the term, ''Account(s),'' means a separate account or separate accounts (the Separate Account(s)), as defined in Condition 12(i), including Non-Pooled Separate Account(s), or Pooled Separate Account(s), as well as holding entities (Holding Entities), such as a partnership, corporation, or trust for which JHLIC or an Affiliate serves as general partner, investment manager, or adviser and include entities established or maintained by JHLIC, and limited liability companies established by pension plan investors;

(b) the term, ''Farmland Asset(s),'' means a fee simple in farmland (and appurtenant rights), an interest in related equipment, a farmland lease, farm improvements, contractual agreements with respect to the production and harvesting of farm products, such as crop quotas, crop receivables, or delivery contracts, stock in farm cooperatives, and direct or indirect interest in entities holding such assets. With respect to any farmland lease: (i) the underlying fee simple must be owned by a person other than JHLIC or an Affiliate or any Account at the time of sale; and (ii) the entire lease originally acquired by the Selling Account must be sold to the Buying Account;

(c) the term, ''ERISA-Covered Plan(s),'' means an employee benefit plan or plans as defined under section 3(3) of the Act and not excluded from coverage under section 4 of the Act;

(d) the terms, ''Non-ERISA Plans'' or ''Non-ERISA Customers,'' mean entities or investors not covered by the provisions of Title I of the Act, such as a governmental plan, a university endowment fund, or other institutional investors, whose assets are managed in an Account for which JHLIC or an Affiliate acts as investment manager;

(e) the term, ''Affiliate(s),'' means any person(s) directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with such person;

(f) the term, ''Buying Account(s),'' means the Account(s) that seeks to purchase a Farmland Asset or Farmland Assets or an Entire Farmland Account from another Account;

(g) the term, ''Selling Account(s),'' means the Account(s) that seeks to sell a Farmland Asset or Farmland Assets or an Entire Farmland Account to another Account;

(h) the term, ''Independent Fiduciary,'' means a person or entity with authority to both review the appropriateness of a subject transaction for an Account, that is considered to hold ''plan assets'' subject to the fiduciary responsibility provisions of the Act, based on the investment policy established for that Account, and to negotiate the terms of the transaction, including the price to be paid for the Farmland Asset, the Farmland Assets, or the Entire Farmland Account. An individual or firm selected to serve as an Independent Fiduciary shall meet the following criteria:

(1) The individual or firm shall have no current employment relationship with JHLIC or an Affiliate, although a prior employment relationship would not disqualify the individual or firm;

(2) No individual or firm shall serve as an Independent Fiduciary during any year in which gross receipts received from business with JHLIC and its

Affiliates for that year exceed five (5) percent of such individual's or firm's gross receipts from all sources for the prior year;

(3) The individual or firm must be an expert with respect to farmland valuations;

(4) The individual or firm must have the ability to access (itself or through persons engaged by it) appropriate farmland sales comparison data and make appropriate adjustments to the subject property, properties, or Account; and

(5) The individual or firm must not have a criminal record involving fraud, fiduciary standards, or securities laws violations.

(i) the term, ''Separate Account(s),'' means a segregated asset Account or Accounts which receive premiums or contributions from Customers, including employee benefit plans subject to the Act, in connection with group annuity contracts and funding agreements, with investments held in the name of JHLIC, but where the value of the contract or agreement to the Customer (contract holder) fluctuates with the value of the investment associated with such Account;

(j) the terms, ''Non-Pooled Separate Account(s)'' or ''Non-Pooled Account(s),'' mean a Separate Account or Separate Accounts established to back a single contract issued to one Customer, which may be an employee benefit plan subject to the Act;

(k) the terms, ''Pooled Separate Account(s),'' or ''Pooled Account(s),'' mean a Separate Account or Separate Accounts established to back a group of substantially identical contracts issued to a number of unrelated Customers, including employee benefit plans subject to the Act;

(l) the term, ''Customer(s),'' means a person or persons or entity or entities that act as the authorized representative for the investor in an Account involved in a proposed purchase or sale of Farmland Assets or an Entire Farmland Account, that is independent of JHLIC and its Affiliates, provided, however, that for any Hancock Plan, as defined in Condition 12(m), below, a ''Customer'' shall mean the Plan Investment Advisory Committee of JHLIC;

(m) the term, ''Hancock Plan(s),'' means an employee benefit plan or employee benefit plans sponsored by JHLIC or an Affiliate which invest(s) in an Account;

(n) the term, ''Entire Farmland Account(s),'' means all the assets and liabilities of an Account or Accounts, as defined in Condition 12(a), including but not limited to the Farmland Assets in such Account or Accounts; and

(o) ''customary closing adjustments'' means adjustments that may arise where agricultural land bearing crops is sold prior to harvest and may involve an agreement between the buyer and seller that either: (1) The buyer reimburse the seller for documented expenses incurred during the growing period in the cultivation of such crops, up to the date of closing; or (2) the buyer retain a certain amount of the crops and the seller receive the proceeds for any crops in excess of the amount retained by the buyer.

Summary of Facts and Representations

1. The applicant for the exemption is JHLIC, acting on behalf of itself and on behalf of HNRG. HNRG, which was established in 1995, is a wholly-owned indirect subsidiary of JHLIC. JHLIC is a wholly-owned subsidiary of John Hancock Financial Services, Inc.

2. JHLIC offers group annuity contracts and funding agreements to Customers (contract holders), including employee pension benefit plans subject to the Act. JHLIC, through HNRG, manages farmland for Customers. HNRG currently manages over 115,000 acres of farmland in the United States valued at approximately $363 million, and 460 acres of farmland in Australia valued at approximately $3.8 million.

3. Customers, including employee pension benefit plans, may invest directly or indirectly in farmland through Pooled and Non-Pooled Separate Accounts available under JHLIC group annuity contracts and funding agreements.[2]

The Pooled Separate Accounts and Non-Pooled Separate Accounts that invest in farmland are known as farmland separate accounts (the Farmland Separate Account(s)). JHLIC has established a total of five (5) such Farmland Separate Accounts. Five contract holders participate in these Farmland Separate Accounts. ERISA-Covered Plans, including Hancock Plans, and Non-ERISA Plans are contract holders of these Farmland Separate Accounts.

Over 23,000 acres of farmland are allocated to the Farmland Separate Accounts which had a value of over $81 million, as of September 30, 2000. JHLIC is the sole legal owner of the assets of each Farmland Separate Account. Assets invested in the Farmland Separate Accounts are managed by JHLIC and HNRG in accordance with the investment policies established for these accounts. The investment policy for each Non-Pooled Account is established jointly by JHLIC and the contract holder. For each Pooled Account, the investment policy is established by JHLIC and adopted by each contract holder when choosing to participate in the Pooled Account.

Under the applicable contract or agreement, JHLIC or, as described below, HNRG has the right to control, manage, and administer the Farmland Separate Account in accordance with the investment policy established for the Farmland Separate Account. The management responsibilities of JHLIC under the Farmland Separate Accounts are performed by HNRG. HNRG is responsible for all decisions regarding the acquisition and disposition of farmland properties held in the Farmland Separate Accounts, although such decisions must be reviewed and approved by JHLIC's internal investment committees. In addition, HNRG has responsibility for the ongoing management of JHLIC's farmland properties, including site preparation and planting, road building and construction, leasing to tenants, maintenance, acquisition of insurance, and payment of taxes.

4. Customers desirous of obtaining JHLIC's farmland management expertise typically invest in the Farmland Separate Accounts. However, Customers and the Farmland Separate Accounts may also invest directly in Holding Entities that themselves own farmland, directly or indirectly. These Holding Entities include corporations, partnerships, or trusts. It is represented that these Holding Entities currently include entities established or maintained by JHLIC (such as separate accounts), and limited liability companies established by pension plan investors. That is, there are no unaffiliated non-plan investors currently invested in the Holding Entities. As of June 30, 2003, JHLIC and its Affiliates owned interests in farmland through such Holding Entities totaling over $100 million in value, including investments valued at $947,719 in JHLIC's Australian farmland investment entities.

HNRG is usually appointed the investment manager of the Holding Entity, or HNRG (or an employee) may be appointed an officer of the entity that holds the property. HNRG's

[2] It is represented that these contracts and agreements provide that, in accordance with a contract holder's direction, the premiums or contributions received from the contract holder will be allocated internally on the books of JHLIC to segregated asset account(s)(Separate Account(s)). The Investments of a Separate Account are held in the name of JHLIC, but the value of the contract or agreement to the contract holder fluctuates with the value of the investments allocated to the Separate Account. The direct expenses of managing the investments and JHLIC's fees are charged against the value of the Separate Account.

management responsibilities are exercised in accordance with investment guidelines contained in the Holding Entity's governing agreements. HNRG may have full investment discretion with respect to the management of the Holding Entity's farmland, or it may be required to seek Customer approval for acquisition and disposition decisions.

5. The General Accounts of both JHLIC and JHVLIC also invest in farmland. Assets held in the General Accounts are used to support various lines of insurance business. JHLIC and JHVLIC each have the right to control, manage, and administer their respective General Accounts, including the sole discretion to select and dispose of investments held by the General Accounts. As of September 30, 2000, the General Accounts held over 60,000 acres of U.S. Farmland Assets, with a value of over $185 million. In addition, the General Accounts' holdings in Australian farmland investment entities had a value of approximately $1.9 million. Although the applicant initially requested relief for the participation of the General Account in the subject transactions, in a letter, dated, May 16, 2003, the applicant amended the requested exemption to eliminate the General Account from the Accounts that are eligible to participate in the transactions covered by the proposed exemption.

6. The types of farmland held by the Farmland Separate Accounts and the Holding Entities are diversified by geography and by crop type. Farmland Assets include direct or indirect: [3] (a) Interests in real property that produces row crops or permanent crops including, but not limited to, orchards, vineyards, and citrus groves, and (b) other interests, such as interests in equipment related to the production or harvesting of crops, farmland leases, farm improvements, contractual agreements with respect to the production and harvesting of farm products (such as crop quotas, crop receivables, or delivery contracts), and stock in farm cooperatives. It is represented that with respect to any farmland lease, the underlying fee simple will be owned by a person other than JHLIC, its Affiliates, any Farmland Separate Accounts, General Accounts, or Holding Entities at the time of any covered transaction, and the entire lease will be sold in any covered transaction. As a practical matter, the Farmland Assets are generally illiquid investments, considered by JHLIC, HNRG, and their Customers to be long-term investments.

7. It is represented that from time to time, it may be appropriate to liquidate a Farmland Asset held in a Farmland Separate Account, even though the Farmland Asset remains an attractive investment. For example, a Farmland Separate Account's investments may have so increased in value that the farmland-related portion of such Account's aggregate portfolio exceeds the Customer's current asset allocation guidelines for that investment class. In addition, a Customer may request that JHLIC liquidate a portion of its Farmland Assets in order to recognize some of the portfolio's gains, to raise cash, or for other reasons unrelated to investment performance, even though the particular Farmland Asset remains an attractive investment. Also, JHLIC or HNRG may conclude that a particular Farmland Asset, though individually an attractive investment, is no longer appropriate, in light of the composition of the Account, its liquidity needs, and other available investment opportunities. In these and other situations in which a Farmland Asset might be sold, the Farmland Asset chosen for liquidation could be an appropriate investment for another Farmland Separate Account.

The applicant represents that it does not expect a Farmland Asset to be broken into separate parcels for investment by more than one Customer in most cases. It is represented that the Hancock Agricultural Investment Group, Inc. (HAIG),[4] will evaluate Farmland Assets to determine whether they could be broken into smaller parcels to satisfy a particular Farmland Account's portfolio needs but as noted above, the applicant expects that such a separation would be suitable rarely, if ever.

In some situations, a Farmland Separate Account may decide to sell a group of Farmland Assets and would sell those assets to a single purchaser, if possible. Where a group of Farmland Assets is sold by a Farmland Separate Account to another Farmland Separate Account, the sale will be treated as a single transaction.

On occasion, an Entire Farmland Account might be sold to a Farmland Separate Account. In that case, Farmland Assets and other assets of the Account, such as short term investments, would be transferred to the buyer, as well as the liabilities associated with the Entire Farmland Account. These other assets might include short-term investments or accounts receivable from prior period crop sales or leases. Liabilities might include investment or property management fees payable or property taxes payable. In the event that an Entire Farmland Account could not be sold to a single buyer, it is represented that JHLIC will separate the Farmland Assets held in such Entire Farmland Account and sell these Farmland Assets individually or in groups of multiple Farmland Assets.

8. When more than one Farmland Separate Account is interested in purchasing a particular Farmland Asset or Farmland Assets, investments are allocated by HAIG, based on its Investment Selection and Allocation Policy (the Allocation Policy). Pursuant to the Allocation Policy, HAIG reviews the investment policies and guidelines for each potential Farmland Separate Account investor to determine whether the available Farmland Asset or Farmland Assets is/are suitable for allocation to that Farmland Separate Account. Suitability is determined based on the anticipated effect on the Farmland Separate Account's crop type and geographic diversification, cash flow and capital appreciation goals, current income targets, and the Farmland Separate Account's property size limitations. In addition to the suitability analysis, HAIG will perform financial analyses that project and measure future portfolio performance both with and without the proposed Farmland Asset(s) as part of a Farmland Account's portfolio. In most situations, the characteristics of Farmland Assets and Farmland Separate Accounts will be sufficiently varied, such that a Farmland Asset will not be suitable for multiple Farmland Separate Accounts seeking investment when such asset is available.

In the event that two or more Farmland Separate Accounts have objectives and constraints that are sufficiently similar, HAIG implements its investment queue procedures. The investment queue is based on the length of time that funds of a Farmland Separate Account have been waiting for investment in a Farmland Asset or Farmland Assets. Funds that have been committed to a farmland investment program, but are not yet allocated, receive priority in the chronological order each Farmland Separate Account committed to the farmland investment program. It is represented that when an Entire Farmland Account is to be sold and more than one investor holds assets awaiting investment in Farmland

[3] Occasionally, a Farmland Separate Account may own farmland real property or other Farmland Assets indirectly through an interest in an entity, such as a corporation, that owns the property or assets.

[4] HAIG is the agricultural investment subdivision of HNRG.

Assets, the sale of the Entire Farmland Account will follow the same investment queue procedures, as described above for individual Farmland Assets.

The applicant maintains that the Allocation Policy is objective, because there is an established and easily administered rule that determines the priority among competing Farmland Separate Accounts. The Farmland Separate Account with the oldest outstanding commitment is allocated the investment. The applicant further maintains that this approach is also fair. In this regard, the applicant points out that unlike other types of investments, the identification of appropriate real estate investments, including farmland, takes time. Accordingly, the applicant maintains that it is appropriate and fair to allocate opportunities to those Farmland Separate Accounts that have the longest outstanding commitments to JHLIC or HNRG awaiting investment. In this regard, customers know that their commitments will be filled in full before new competing requests are accommodated.

9. Assets held in the Farmland Separate Accounts are considered assets of the plans participating in such Farmland Separate Accounts, pursuant to 29 CFR 2510.3–101(h)(1)(iii) of the Department's regulations. In addition, the assets of certain Holding Entities through which JHLIC's Customers hold Farmland Assets may also constitute plan assets if the Customer is an ERISA-Covered Plan and the Holding Entity is a pass-through entity, pursuant to 29 CFR 2510.3–101(a)(2) of the Department's regulations.

As investment managers for the Farmland Separate Accounts, JHLIC and HNRG are both fiduciaries and parties in interest to ERISA-Covered Plans participating in the Farmland Separate Accounts, pursuant to section 3(14)(A), and (B) of the Act. As a discretionary manager of the Farmland Assets held by the Holding Entities that are pass-through entities, HNRG is a fiduciary and party in interest with respect to any ERISA-Covered Plans that invest in these Holding Entities.

10. The transfer of a Farmland Asset or Farmland Assets or an Entire Farmland Account from one Farmland Separate Account to another could constitute a violation of section 406(b)(2) of the Act, if one of the Accounts holds plan assets. Section 406(b)(2) of the Act provides that a plan fiduciary shall not in his individual or in any other capacity act in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries. Because JHLIC or its Affiliate serves as investment manager to both the Buying and Selling Account, it could be viewed as representing adverse parties in a transaction involving a plan. Accordingly, the applicant requests an exemption from the prohibitions of section 406(b)(2) of the Act to cover the subject transactions.

11. The applicant maintains that the proposed exemption is administratively feasible, because each transaction involving an ERISA-Covered Plan can be readily identified and audited. The proposed exemption would not require continued monitoring or other involvement on behalf of the Department of Labor or the Internal Revenue Service.

12. The applicant represents that the proposed exemption is protective of the rights of participants and beneficiaries of ERISA-Covered Plans that are Customers, because decisions regarding which Farmland Asset or Farmland Assets or Entire Farmland Account to be transferred and the timing of the transfers will be made by JHLIC and its Affiliates in conformance with each Customer's investment guidelines, which have been agreed upon by the Customer. In addition, if JHLIC or HNRG determines that it should liquidate a Farmland Asset or Farmland Assets held in an Account or an Entire Farmland Account or if as a result of certain ''triggering events,'' described in Condition 3 of this proposed exemption, such liquidation must occur and JHLIC concludes that the particular Farmland Asset, Farmland Assets, or Entire Farmland Account to be sold is an appropriate investment for the portfolio of another Farmland Separate Account, JHLIC will engage an Independent Fiduciary to represent the interests of any ERISA-Covered Plans, as set forth in Condition 3. The individual or firm selected to serve as an Independent Fiduciary; must satisfy the criteria, as set forth in Condition 12(d) of this proposed exemption.

13. For each transaction requiring an Independent Fiduciary, the purchase or sale of a Farmland Asset or Farmland Assets or Entire Farmland Account may not be completed unless the Independent Fiduciary determines that the transaction, including the purchase price, would be in the best interest of the particular Account(s) involved based on investment policies and procedures of the Account(s).

Where a transaction between ERISA-Covered Plans and a triggering event has occurred, the fee for the services of the Independent Fiduciary will be charged as an acquisition expense to the Buying Account(s). In a transaction other than the one described in the above sentence, each side would pay the fee for the services of the Independent Fiduciary, to the extent that an Independent Fiduciary is required by the terms of the exemption. For example, the Buying Account would pay for an Independent Fiduciary, as required under the exemption to represent the interest of the Buying Account, and the Selling Account would pay for an Independent Fiduciary, as required under the exemption to represent the interest of the Selling Account. In a situation where more than one account is on the buying or on the selling side of the transaction, it is expected that there will not be more than one Independent Fiduciary required to represent the accounts on a single side of the transaction. In that event, the costs of the fees for the services of the Independent Fiduciary would be shared, as negotiated by the accounts whose interests the Independent Fiduciary represents in the transaction.

14. It is represented that the proposed exemption provides sufficient safeguards for the protection of the participants and beneficiaries of the ERISA-Covered Plans. In this regard, participation in the proposed transactions by ERISA-Covered Plans is limited to plans having total assets in excess of $100 million. The minimum asset requirements will help ensure that the fiduciaries reviewing these transactions are sophisticated investors familiar with complex investments.

15. Further, the applicant represents that each Account that buys or sells a Farmland Asset or Farmland Assets or Entire Farmland Account will pay no more and receive no less than fair market value of the Farmland Asset or Farmland Assets or Entire Farmland Account at that time of the transaction. For a Farmland Asset, fair market value shall be determined by a qualified, independent real estate appraiser experienced with the valuation of farmland properties similar to the type involved in the transaction, and may include customary closing adjustments. It is represented that customary closing adjustments may arise where agricultural land bearing crops is sold prior to harvest and may involve an agreement between the buyer and seller that either: (1) The buyer reimburse the seller for documented expenses incurred during the growing period in the cultivation of such crops, up to the date of closing; or (2) the buyer retain a certain amount of the crops and the seller receive the proceeds for any crops

in excess of the amount retained by the buyer.

For an Entire Farmland Account, it is represented that fair market value shall be determined by a qualified, independent entity experienced in the auditing and valuation of farmland accounts similar to the type involved in the transaction and the valuation of assets or liabilities other than Farmland Assets, including but not limited to assets such as short-term investments or accounts receivable from prior crop sales or leases, and liabilities such as investment or property management fees payable or property taxes payable, and may include customary closing adjustments. It is represented that the valuation of an Entire Farmland Account would be similar to valuation of a business or going concern in any transaction. If the entity that performs the valuation of the Entire Farmland Account is not a qualified real estate appraiser, then it is represented that such a qualified real estate appraiser will be engaged to value the Farmland Assets included in the Entire Farmland Account.

16. JHLIC will provide a notice to each Customer investing in the Accounts participating in the purchase or sale of a Farmland Asset or Farmland Assets or Entire Farmland Account. The notice will be provided at least 30 days before entering a subject transaction, and will include information regarding the Farmland Asset(s) or Entire Farmland Account involved and the proposed terms of the transaction, including the approved purchase price and how the transaction would meet the goals and investment policies of each Customer. If there is any change in the purchase price, notice of such change in the purchase price will be provided to the Customer at least 30 days prior to the consummation of the transaction.

17. An Account will not participate in a subject transaction, if the assets of any Hancock Plan or Hancock Plans in the Account exceed 20 percent (20%) of the total assets of the Account.

18. The applicant maintains that the proposed exemption is in the interest of JHLIC's plan Customers and their participants and beneficiaries because it will provide those Customers with attractive and appropriate investment opportunities that might not otherwise be available to them. In this regard, it is represented that transfers of a Farmland Asset, Farmland Assets, or an Entire Farmland Account between Farmland Separate Accounts, including Accounts in which a Hancock Plan invests, allow the Buying Accounts to invest more quickly and to invest in Farmland Assets that might not otherwise be available to them. JHLIC believes that investors commit to establishing a farmland investment portfolio because they have identified a current need for such an asset category. Once a Customer has committed to a farmland program, it is important to invest the funds as rapidly as is prudent. As attractive farm properties are relatively scarce, allowing a transfer of farm parcels in accordance with this proposed exemption would provide an opportunity for the Buying Accounts to invest funds more rapidly than would be possible if the purchase involved a seller having no relationship to JHLIC.

Further, both the Selling and Buying Accounts will incur lower transaction or start-up costs as a result of the proposed exemption. In this regard, it is represented that a transfer of legal ownership of property is not necessary when the transfer is between Farmland Separate Accounts maintained by the same insurer. As JHLIC has legal title to all assets allocated to its Separate Accounts, and generally may reallocate these assets among such Accounts without a change in legal title, significant transaction costs can be avoided. In addition, real estate sales commissions and brokerage fees, which can amount to over half the entire cost of a transaction, will be avoided in all cases.

Furthermore, because JHLIC or HNRG is the manager of both the Selling and Buying Account, more information about the property would be available to the Buying Account than would be if both Accounts were not managed by JHLIC or HNRG. This significantly reduces the risk to the Buying Account. In addition, because JHLIC or HNRG is already familiar with the property, the Buying Account would avoid certain ''due diligence'' expenses normally associated with the purchase of a new property, such as the costs of well testing, soil and root analysis, and environmental testing.

19. The applicant maintains that denial of this proposed exemption would prevent the transfer of properties from one Farmland Separate Account to another and would require instead that a property be liquidated and sold to an unrelated third party. The Buying Account would therefore be deprived of attractive and appropriate investment opportunities, when such opportunities are scarce. In addition, the Selling and Buying Accounts would incur higher transaction or start-up costs if they were each required to enter into transactions with parties whose assets are not managed by JHLIC or HNRG.

20. In summary, the applicant represents that the proposed transactions satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

a. The minimum asset requirement for ERISA-Covered Plan participation in the proposed transactions will ensure that the fiduciaries reviewing such transactions are sophisticated investors familiar with complex investments;

b. Prior to entering a subject transaction, each affected Customer will receive disclosures regarding the Farmland Asset(s) or Entire Farmland Account involved in the proposed transaction and the terms of such transaction;

c. Any change in the terms of a proposed transaction must be disclosed to the affected Customer at least 30 days prior to the consummation of such transaction;

d. An Independent Fiduciary will be appointed by JHLIC or an Affiliate to review and approve the proposed transactions, as set forth in Condition 3;

e. In each transaction requiring the participation of an Independent Fiduciary, the purchase and sale of a Farmland Asset or Farmland Assets or an Entire Farmland Account will not be consummated, unless the Independent Fiduciary determines that the transaction is in the best interest of the particular Account involved based on the investment policies and objectives of such Account;

f. Each Account which buys or sells a particular Farmland Asset or Farmland Assets or Entire Farmland Account will pay no more than or receive no less than the fair market value of the Farmland Asset(s) or Entire Farmland Account at the time of the transaction;

g. Each purchase or sale of a Farmland Asset or Farmland Assets or Entire Farmland Account between Accounts will be a one-time cash transaction;

h. Each Account involved in the purchase or sale of a Farmland Asset or Farmland Assets or Entire Farmland Account will pay no real estate commissions or brokerage fees relating to the transaction;

i. An Account will not participate in a proposed transaction, if the assets of any Hancock Plan or Hancock Plans in the Account exceed 20 percent (20%) of the total assets of the Account;

j. No purchase or sale transaction will be designed to benefit the interests of one particular Account over another; and

k. The General Accounts of both JHLIC and JHVLIC will not participate, directly or indirectly, in the subject transactions.

Notice to Interested Persons

It is represented that those persons who may be interested in the publication in the **Federal Register** of the Notice of Proposed Exemption (the Notice) include all ERISA-Covered Plans currently participating in any Farmland Separate Account and those ERISA-Covered Plans participating in any Holding Entity whose assets are managed by JHLIC or HNRG.

JHLIC proposes to provide notification of the publication of the Notice to the plan trustee or other fiduciary of all ERISA-Covered Plans which currently participate in any Farmland Separate Account and/or in any Holding Entity whose assets are managed by JHLIC or HNRG by first class mail or overnight delivery within fifteen (15) calendar days of the date of publication of the Notice in the **Federal Register**. Such notification will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the supplemental statement (the Supplemental Statement), as required, pursuant to 29 CFR 2570.43(b)(2) of the Department's regulations. The Supplemental Statement will include a statement informing the plan trustee or fiduciary or other interested persons of their right, to comment and/or request a hearing on the proposed exemption.

The applicant also represents that for ERISA-Covered Plans who invest after the date of the publication of the Notice and before the publication in the **Federal Register** of the final exemption, if granted, JHLIC will provide a copy of the Notice and a copy of the Supplemental Statement via U.S. first class mail or hand delivery prior to such plan's initial investment in a Farmland Separate Account and/or Holding Entity. In addition, the applicant represents that a copy of the final exemption, if granted, will be provided by hand delivery or U.S. first class mail to the independent fiduciary of each ERISA-Covered Plan prior to any such plan's initial investment in a Farmland Separate Account.

Written comments and/or requests for a hearing on the proposed exemption must be received by the Department on or before 45 days from the date following publication of the Notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena C. Le Blanc of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

United States Steel and Carnegie Pension Fund (UCF or the Applicant), Located in New York, NY

[Application No. D–11191]

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(a) of the Act (or ERISA) 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).[5]

Section I. Covered Transactions

(A) 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 in kind contribution of certain timber rights (the Timber Rights), under two timber purchase and cutting agreements (the Timber Rights Agreements) to The United States Steel Corporation Plan for Employee Pension Benefits (Revision of 2003) (the Plan) by the United Steel Corporation (US Steel), the Plan sponsor and a party in interest with respect to the Plan.

(B) 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 following ancillary transactions between the Plan and U.S. Steel arising from certain rights retained by U.S. Steel related to the timberland (the Property) on which the Timber Rights are based:

(1) The receipt of compensation by the Plan from U.S. Steel under the Timber Rights Agreements in the event that either (a) U.S. Steel exercises its right to early termination of an Agreement, which requires a termination payment to the Plan at a premium over the fair market value of the Timber Rights as determined by a qualified, independent appraiser, which has been selected by the independent fiduciary (the Independent Fiduciary); or (b) U.S. Steel owes compensation to the Plan for mineral activities that interfere with the Plan's use of the land for timber purposes.

(2) The guarantee by U.S. Steel to make the Plan whole in the event of a decline in value of the Timber Rights after five years.

(3) Any ongoing obligation incurred by U.S. Steel to maintain the Property in a fashion that does not unreasonably interfere with the Plan's use thereof.

(4) The indemnity given by U.S. Steel to the Plan for any environmental claims arising out of activities engaged in prior to the execution and closing of the proposed Timber Rights contribution.

Section II. General Conditions

This proposed exemption is conditioned upon adherence to the material facts and representations described herein and upon satisfaction of the following general conditions:

(a) A qualified independent fiduciary (the Independent Fiduciary) acting on behalf of the Plan, represents the Plan's interests for all purposes with respect to the Timber Rights contribution, and determines prior to entering into any of the transactions described herein, that each such transaction, including the Timber Rights contribution, is in the interest of the Plan.

(b) The Independent Fiduciary negotiates and approves the terms of any of the transactions between the Plan and U.S. Steel that relate to the Timber Rights.

(c) The Independent Fiduciary manages the holding, disposition, and assignment of the Timber Rights and takes whatever actions it deems necessary to protect the rights of the Plans with respect to the Timber Rights.

(d) The terms of any transactions between the Plan and U.S. Steel are no less favorable to the Plan than terms negotiated at arm's length under similar circumstances between unrelated third parties.

(e) The Independent Fiduciary determines the fair market value of the Timber Rights contributed to the Plan on the date of such contribution. In determining the fair market value of the Timber Rights Contribution, the Independent Fiduciary obtains an updated appraisal from a qualified, independent appraiser selected by the Independent Fiduciary, and ensures that the appraisal is consistent with sound principles of valuation.

(f) The fair market value of the Timber Rights does not exceed 5% of the Plan's total assets at the time of such contribution.

(g) The Plan pays no fees or commissions in connection with the Timber Rights contribution. (This condition does not preclude the Plan from paying the Independent Fiduciary's ongoing management fees once the contribution has been

[5] For purposes of this proposed exemption, reference to Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

approved and accepted. It also does not restrict the Plan from paying the due diligence costs connected with the acquisition of the Property, such as the expenses for a title search, appraisal and environmental review.)

(h) Five years from the date of the Timber Rights contribution, U.S. Steel contributes, to the Plan, an amount in cash calculated as follows:

(1) The fair market value of the Timber Rights as of the date of the contribution, less

(2) The sum of (i) the fair market value of the Timber Rights held by the Plan as of the date five years from the date of the contribution, as determined by a qualified, independent appraiser, which has been selected by the Independent Fiduciary, plus (ii) the net cash distributed to the Plan LLC or the Plan relating to all or any part of the Timber Rights (and/or the related timber) prior to such date; provided, that if a contribution is due and if, for the taxable year of U.S. Steel in which the contribution is to be made, such contribution (i) is not deductible under section 404(a)(1) of the Code or (ii) results in the imposition of an excise tax under section 4972 of the Code, such contribution will not be made until the next taxable year of U.S. Steel for which the contribution is deductible under section 404(a)(1) of the Code and does not result in an excise tax under section 4972 of the Code.

(i) U.S. Steel indemnifies the Plan with respect to all liability for hazardous substances released on the Property prior to the execution and closing of the Timber Rights contribution.

(j) The Plan retains the right to sell or assign, in whole or in part, any of its Timber Rights interests to any third party purchaser.

Section III. Definitions

(a) The term ''Independent Fiduciary'' means a fiduciary who is: (1) independent of and unrelated to U.S. Steel or its affiliates, and (2) appointed to act on behalf of the Plan for purposes related to (i) the in kind contribution of the Timber Rights by U.S. Steel to the Plan and (ii) other transactions between the Plan and U.S. Steel related to the Property on which the Timber Rights are based. For purposes of this proposed exemption, a fiduciary will not be deemed to be independent of and unrelated to U.S. Steel if: (1) Such fiduciary directly or indirectly controls, is controlled by or is under common control with U.S. Steel, (2) such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this proposed exemption; except that an Independent Fiduciary may receive compensation for acting as an Independent Fiduciary from U.S. Steel in connection with the transactions contemplated herein if the amount or payment of such compensation is not contingent upon or in any way affected by the Independent Fiduciary's ultimate decision, and (3) the annual gross revenue received by such fiduciary, during any year of its engagement, from U.S. Steel and its affiliates exceeds 5% of the Independent Fiduciary's annual gross revenue from all sources for its prior tax year.

(b) The term ''affiliate'' 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, or partner of any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

Summary of Facts and Representations

1. UCF is a Pennsylvania non-stock membership corporation created in 1914 to manage the pension plan of the United States Steel Corporation (predecessor to the current U.S. Steel) and an endowment fund created by Andrew Carnegie for the benefit of the company's employees. Despite its name, UCF is not itself a pension fund but rather an entity that manages pension funds. Its principal office is located in New York, New York. UCF currently serves as the plan administrator and/or trustee of several employee benefit plans sponsored by U.S. Steel and by U.S. Steel affiliates, as well as certain former affiliates of U.S. Steel. It is registered as an investment adviser with the Securities and Exchange Commission under the Investment Advisers Act of 1940.

As a non-stock membership corporation, UCF has no shareholders, but rather is governed by its members (the Members). There are currently eleven Members, with any vacancy in the Membership being filled by the vote of the majority of the remaining Members. The Members also serve as the directors of UCF and manage its affairs in that capacity. A majority of the Members/directors of UCF are employees of U.S. Steel.

As of December 31, 2002, UCF managed a total of $8.5 billion in assets. The majority of these assets, $7.2 billion, were held in two trusts for pension plans for the employees of U.S. Steel (a union plan and a non-union plan), which are in the process of being merged into a single plan, the Plan. Another $465 million in assets was managed by UCF for funds used to provide retired U.S. Steel employees with welfare benefits. In addition, the category of investments managed by UCF include domestic and international equities, fixed-income securities, real estate, mortgage-backed loans and options. UCF makes investments in accordance with its internal investment policies, guidelines and procedures.

2. U.S. Steel is a publicly-traded company that owns and operates the former steel business of USX Corporation, which after the spin-off, effective January 1, 2002, is now known as ''Marathon Oil Corporation''. U.S. Steel is the largest integrated steel producer in North America, and through a subsidiary, the largest integrated flat-rolled producer in Central Europe. U.S. Steel's domestic operations, which employ over 20,000 people, are engaged in the production, sale and transportation of steel mill products, coke, taconite pellets and coal; the management of mineral resources; real estate development; and engineering and consulting services. In 2002, U.S. Steel had total revenues of $7.1 billion.

3. U.S. Steel has sponsored and maintained two defined benefit plans for its employees and retirees. In this regard, the United States Steel Corporation Plan for Employee Pension Benefits (Revision of 1950) covers employees and retirees who are subject to collective bargaining agreements, which include the United Steelworkers of America, as well as a limited number of other groups of employees. The United States Steel Corporation Plan for Non-Union Employee Pension Benefits (Revision of 1998) generally covers management and other non-union employees and retirees. Effective on or before November 30, 2003, the two plans are to be merged, with the surviving plan being The United States Steel Corporation Plan for Employee Pension Benefits (Revision of 2003). As noted above, this plan is referred herein as ''the Plan''.

As of December 31, 2002, the combined assets for the two plans totaled $7.222 billion. Also as of December 31, 2002, the plans had approximately 120,500 participants and beneficiaries, including actives, retirees and deferred vesteds. The Applicant represents that the plans together were slightly overfunded, with a funding

ratio calculated in accordance with the Retirement Protection Act of 106%.

The Applicant further represents that preliminary funding valuations indicate that the newly-merged Plan will not require contributions for the 2003 or 2004 Plan years. U.S. Steel currently anticipates annual funding requirements, broadly estimated, to be approximately $90 million beginning in 2005. The actual amount will depend upon various factors such as future asset performance, the level of interest rates used to measure ERISA minimum funding levels, the impacts of business acquisitions or sales, union-negotiated changes and future government regulation. For example, the Applicant states that the obligation could be much larger if the securities markets continue to show negative returns and the interest rates required to be used for funding calculations continue to decrease.

UCF is the Named Fiduciary and Plan Administrator of the Plan. It also will serve as trustee of the Plan (the Trustee), with responsibility for managing its assets. The assets of the Plan are diversified across several asset classes. As of December 31, 2002, the overall allocation of the $7.2 billion in assets of the two plans was as follows:

Equities	63%
Fixed Income	31%
Real Estate	[6] 2%
Cash	4%

[6] This percentage does not include the Plan's investment in publicly-traded real estate investment trusts (REITs), which the Plan classifies as equity or fixed income depending on the nature of the interest held. Equity interests in the REITs constitute 2.4% of the Plan's assets, and fixed income interests in REITs constitute 2.7%.

4. In 1907, U.S. Steel's predecessor acquired approximately a quarter million acres of timberland when it bought Tennessee Coal and Iron. This land is generally situated around Birmingham, Alabama. Nearly 100,000 acres were harvested in the late 1980's and early 1990's, of which approximately 30% were clearcut harvested and replanted with pine. These areas will be available for harvest again approximately 25–30 years after planting, with harvesting to begin within the next ten years. Plantation thinning has begun on the older pine plantations, a process in which deformed and smaller trees are harvested, leaving the more valuable final crop trees to grow. More limited harvesting has occurred over the last five to seven years, with those areas also being planted with pine.

U.S. Steel currently is engaged in an effort to divest itself of its ''non-strategic'' assets, *i.e.*, those not related to its core steel business. One of the assets it is expected to divest is the timberland. However, because the timber is still in the early stages of growth, the market price U.S. Steel would obtain in a sale to a third party would be relatively low, as timber assets are assigned low values in early growth years and only appreciate significantly as the timber matures and can be harvested.

To retain, at least indirectly, the benefit of the future appreciation of these assets, U.S. Steel would like to contribute certain rights in the Property toward the funding of its employee benefit plans. U.S. Steel announced this possibility in its earnings release of January 28, 2003, in describing a series of business and asset dispositions it has under consideration, and in its Form 10–K annual report for the 2002 fiscal year that was filed with the Securities and Exchange Commission in March 2003. After considering the needs and current investments of its different plans, U.S. Steel decided that because of the minimum funding requirements for defined benefit plans, the recent increases in funding liabilities due to falling interest rates, the recent declines in asset levels due to negative stock market performance, and the need for asset diversification, the Plan is in the best position to benefit from receiving growing, cutting and harvesting rights in the timber assets.

5. Accordingly, UCF requests an administrative exemption from the Department to receive the contribution of Timber Rights on behalf of the Plan from U.S. Steel and to engage, on behalf of the Plan, in subsequent transactions between the Plan and U.S. Steel (*e.g.*, compensating the Plan for the timber value on the Property in the event that a parcel is sold for development) that may arise from the retention and exercise of the Timber Rights. Such transactions will be approved and monitored by The Campbell Group (TCG), the Independent Fiduciary for the Plan with respect to the proposed transactions. However, U.S. Steel will remain in control of the underlying Property from which the Timber Rights are derived and will make decisions affecting such Property.

The Plan will pay no fees or commissions in connection with the Timber Rights contribution. Absent administrative exemptive relief from the Department or a statutory exemption, such in kind contribution of the Timber Rights in lieu of cash in satisfaction of U.S. Steel's obligation to contribute to the Plan would constitute a prohibited transaction in violation of the Act.

6. The Property on which the Timber Rights are based involves approximately 170,000 acres of land situated within a 35 mile radius south and west of Birmingham, Alabama. Environmental reports of the Property have revealed that certain areas within the Property are identified as being likely locations where hazardous substances have been released. To have the Plan avoid potential legal liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), TCG and UCF have requested (and U.S. Steel agreed) to ''carve out'' or otherwise exclude from the Timber Rights conveyance those areas which would present a higher risk or have actual evidence of hazardous substances. Nevertheless, because large portions of the subject Property present historical environmental concerns, UCF and the Independent Fiduciary have determined that it would not be prudent for the Plan to become an owner of the underlying land under CERCLA. Therefore, to minimize the Plan's legal risk, the proposed transactions have been specifically structured to convey limited timber and access rights only, as opposed to a perpetual fee simple interest in the underlying Property as initially contemplated. As a further measure to protect the Plan from CERCLA liability, U.S. Steel proposes to indemnify the Plan with respect to all liability for hazardous substances released on the Property prior to the execution and closing of the contemplated transactions. However, U.S. Steel will not be required to indemnify the Plan for the release of hazardous substances due to the Plan's gross negligence or willful misconduct in its timber harvesting activities. Under the Timber Rights Agreements, the Plan also retains the right to sell or assign, in whole or in part, its interests in the Timber Rights to a bona fide third party purchaser. The Plan will remain liable and responsible for the sale or assignment to U.S. Steel, unless such sale or assignment is approved by U.S. Steel. U.S. Steel will not unreasonably withhold its approval, but will condition it on consideration of the technical and financial capability and integrity of the proposed successor or assignee.

7. Of the 170,000 acres of the Property from which the Timber Rights are derived, 135,000 of those acres will be covered under a long-term timber purchase and cutting agreement (the Timber Agreement) and the remaining 35,000 acres will be covered under the U.S. Steel Agreement (USS Agreement).

The Timber Rights Agreements will provide the Plan with the right to grow, cut and harvest timber from the underlying Property for 99 years, and will include a compensation formula in the event U.S. Steel, as owner of the underlying Property, interferes with the Plan's Timber Rights. Upon commencement of the Timber Rights Agreements, title to the timber will be held by a limited liability corporation (the Plan LLC). Such company through UCF, as Trustee, will be 100% owned by the Plan.

The Timber Agreement will convey to the Plan all rights and interests to timber, forest products, crops and vegetation, and includes the right to hunting, fishing, and other licensing activities derived from the Property. The Timber Agreement is for a term of 99 years, with U.S. Steel, as the owner of the Property, having a right of termination at the end of year 50, and again at the end of year 75.[7] Early termination compensation by U.S. Steel prior to the 50th and 75th year will be at a premium of the then fair market value of the remaining term of the Timber Agreement. Such premium will be 115% in the 50th year and 107% in the 75th year. After year 50, U.S. Steel may terminate on any portion of the property sold to a bona fide third party purchaser at a 115% premium in years 50 through 74, and at 107% in years 75 through 99.

Throughout the 99 year term of the Timber Agreement, U.S. Steel will retain the right to terminate the Plan's Timber Rights, temporarily, if U.S. Steel's use of such timberland is for typical mining activities or lasts less than 15 years,[8] does not pose a risk of contamination or nuisance, and U.S. Steel restores the surface land to its prior condition upon cessation of the mining activities. The Plan's compensation for said temporary termination will be the fair market rental value of the affected timberland surface plus the present fair market value of the affected merchantable and pre-merchantable timber.

The remaining 35,000 acres of the Property on which the Plan's Timber Rights are based also will remain under U.S. Steel's ownership and governed under the USS Agreement for a period of 99 years. Under the USS Agreement, this acreage will be subject to future commercial development. For this reason, U.S. Steel will retain the right to terminate the USS Agreement on any portion of this acreage at any time. Should U.S. Steel not dispose of the Property before the current timber is cut, the Plan will continue to replant and U.S. Steel will be obligated to pay the greater of (a) The fair market value of such Property, as determined by a qualified, independent appraiser which has been selected by the Independent Fiduciary, (based upon the greater of the current market value for timber or the average price for the preceding 5 years) for such replanted trees or (b) the Plan's capital investment for the timber plus an 8% per annum, compounded annually from the later of the date of acquisition or the date of planting or establishment of the timber through the date of termination.

Throughout the 99 year term of the USS Agreement, U.S. Steel also will retain the right to terminate the Plan's Timber Rights, temporarily, if U.S. Steel's use of such timberland is for typical mining activities or lasts less than 15 years,[9] does not pose a risk of contamination or nuisance, and U.S. Steel restores the surface land to its prior condition upon cessation of the mining activities. The Plan's compensation for such temporary termination will be the fair market rental value of the affected timberland surface plus the present fair market value of the affected merchantable and pre-merchantable timber.

8. To protect the Plan against economic loss related to the acceptance and holding of the Timber Rights, U.S. Steel has agreed to make the Plan whole for any economic loss sustained from the Timber Rights contribution. This ''make whole'' contribution will apply to the first five years of the Timber Agreements. On the fifth year, U.S. Steel will contribute to the Plan the value of the economic losses related to the Timber Rights contribution. These losses will represent an amount in cash calculated as follows: (a) The fair market value of the Timber Rights as of the date of the contribution, less (b) the sum of (i) the fair market value of the Timber Rights held by the Plan as of the date five years from the date of the contribution, as determined by a qualified, independent appraiser, which has been selected by the Independent Fiduciary, plus (ii) the net cash distributed to the Plan LLC or the Plan related to all or any part of the Timber Rights (and/or the related timber) prior to such date; provided, however, that if a contribution is due and if, for the taxable year of U.S. Steel in which such contribution is to be made, such contribution (i) will not be deductible under section 404(a)(1) of the Code or (ii) will result in the imposition of an excise tax under section 4972 of the Code, such contribution will not be made until the next taxable year of U.S. Steel for which the contribution will be deductible under section 404(a)(1) of the Code and will not result in an excise tax under section 4972 of the Code.

9. Under the Timber Rights Agreements, the Plan will pay Alabama state property taxes for the portion of the Property attributable to the Timber Rights. However, U.S. Steel and its successors, as underlying Property owners, will remain liable for property taxes attributable to the underlying Property and the minerals derived therefrom. According to existing Alabama law, property taxes are assessed based on the value of the property's current use, as opposed to any potential use for the property that might have a higher value. Because the subject property will be used for timber growth, its value, for property tax purposes, will be based on the value of the timber. Therefore, the process for determining the value of the timber will require a discounted cash flow analysis that will consider such factors as the timber inventory, current stumpage prices, and planned harvest, to determine the Plan's Alabama property tax assessment.

10. In January 2003, UCF and The Campbell Group (TCG) of Portland, Oregon, which will serve on behalf of the Plan as the Independent Fiduciary with respect to the proposed transactions, retained the services of Larson & McGowin, Inc. (L&M), a qualified, independent appraisal firm based in Mobile, Alabama to procure a valuation of the Timber Rights, specifically the rights of the Plan to grow and harvest timber on the Property for 99 years under the terms of the Timber Rights Agreements. L&M specializes in forest timber management and related consulting. In particular, Messrs. Robert J. Foster and L. Alexander McCall, who are principals with L&M conducted the appraisal along with Mr. Edward F. Travis, an independent MAI appraiser. In a final appraisal report dated September 2,

[7] Although initially, the Timber Agreement will be with U.S. Steel, in the event that the Property is subsequently conveyed to a third party purchaser, then the third party purchaser will succeed to the rights and obligations of U.S. Steel under such agreement.

[8] Section 12.2 of the Timber Agreement states that the following types of existing and potential temporary uses by U.S. Steel related to surface or strip mining activities would cause a temporary termination of the Timber Rights Agreements in less than 15 years: Well sites for oil or gas or salt water disposal wells, roads, pipelines, power lines, telephone lines, power substations, non-commercial tower sites, dehydration facilities, tank batteries, transfer and pumping stations, conveyors, equipment yards, field offices, water disposal ponds, compressor sites, temporary sale stockpiles and temporary treatment or washing facilities.

[9] *Id.*

2003, L&M placed the fair market value of the Timber Rights at $60 million. L&M arrived at this valuation by utilizing the discounted cash flow analysis in the Income Approach and will update such valuation on the date of the contribution. Because the Plan had total assets having fair market value of $7.222 billion as of December 31, 2002, the Timber Rights will represent less than 1% of the Plan's assets at the time of contribution.

In its capacity as Independent Fiduciary, TCG represents that L&M is qualified to serve as the independent appraiser. Specifically, TCG states that its selection of L&M, as the finalist of three other independent appraisal firm candidates, to complete the appraisal of the Timber Rights was based on a review of specific methodologies that were used in developing the appraisal and the appropriateness of the methodologies utilized. TCG also represents that sample work provided by L&M was reviewed as part of the selection process. Thus, TCG concludes that the valuation of the Timber Rights is appropriate. Moreover, TCG represents that on the day of the Timber Rights contribution, it will obtain an updated appraisal of the Timber Rights from L&M, which will reflect any changes in fair market value relative to the September 2, 2003 valuation. TCG states that L&M will utilize the same valuation methodologies to update the appraised value as those used in the initial appraisal report. TCG explains that it will review the updated appraisal report and the resulting appraised value for appropriateness prior to the contribution.

11. U.S. Steel and its wholly owned subsidiary, U.S. Steel Mining Co., currently hold most of the mineral rights appurtenant to the Property, which they lease or operate for the production of coal and coal seam gas. However, U.S. Steel and U.S. Steel Mining Co. are currently negotiating with a third party to sell the mineral rights with respect to the underlying land under the terms of a mineral rights agreement (the Mineral Rights Agreement). To ensure that the Mineral Rights Agreement will be subject and subordinate to the terms of the Timber Rights Agreements, U.S. Steel will have the Timber Rights Agreements in place before the Mineral Rights Agreement is finalized.

12. Because the proposed contribution to the Plan of the Timber Rights will likely occur after the execution of the Mineral Rights Agreement, U.S. Steel LLC (US Steel LLC) will hold the Timber Rights until the Department grants the final exemption, at which point, U.S. Steel LLC will transfer the Timber Rights and its obligations to the Plan. The Plan, in turn, will create the Plan LLC to hold and exercise the Timber Rights on behalf of the Plan. The Plan LLC will be 100% owned by the Plan. As Trustee, UCF will oversee the Plan LLC's management and operations.

13. Following a selection process, UCF determined that TCG had the best overall skills and experience to act as the Independent Fiduciary for the proposed transactions and to serve as manager of the Timber Rights after the proposed contribution is made. As noted in Representation 5 above, U.S. Steel will remain in control of the underlying Property and will make decisions with respect to such Property.

14. TCG is a full-service timberland investment advisory firm founded in 1981. The firm, which focuses exclusively on acquiring, managing and disposing of timberland properties, is one of the largest timber investment managers in the world, with current assets under management that exceed $1.5 billion. Its clients include endowments, trusts, public and private pension funds and individual investors. For a ten year period ending in 1997, TCG was associated exclusively with the Hancock Timber Resource Group, handling its timber management business in the western United States and Canada.

As Independent Fiduciary, TCG represents that it has two principal responsibilities. First, TCG is responsible for reviewing the terms and conditions under which the contribution of the Timber Rights will be made to the Plan, providing an opinion on whether the contribution is in the interests of an protective of the Plan and its participants and beneficiaries, and, if warranted on the basis of such opinion, approving the contribution of the Timber Rights. As noted previously in Representation 10, in the course of its review, TCG is also required to give due consideration to the selection of the independent appraiser for the Timber Rights and the fair market value of such Timber Rights. Furthermore, TCG is required to ensure that the proposed contribution complies with the following conditions:

- The Independent Fiduciary, acting on behalf of the Plan, represents the Plan's interests for all purposes with respect to the Timber Rights contribution, and determines prior to entering into any of the transactions described herein, that each such transaction, including the Timber Rights contribution, is in the interest of the Plan.
- The Independent Fiduciary negotiates and approves the terms of any of the transactions between the Plan and U.S. Steel that relate to the Timber Rights.
- The Independent Fiduciary manages the holding, disposition, and assignment of the Timber Rights and takes whatever actions it deems necessary to protect the rights of the Plans with respect to the Timber Rights.
- The terms of any transactions between the Plan and U.S. Steel are no less favorable to the Plan than terms negotiated at arm's length under similar circumstances between unrelated third parties.
- The Independent Fiduciary determines the fair market value of the Timber Rights contributed to the Plan on the date of such contribution. In determining the fair market value of the Timber Rights Contribution, the Independent Fiduciary obtains an updated appraisal from a qualified, independent appraiser selected by the Independent Fiduciary, and ensures that the appraisal is consistent with sound principles of valuation.
- The fair market value of the Timber Rights does not exceed 5% of the Plan's total assets at the time of such contribution.
- The Plan pays no fees or commissions in connection with the Timber Rights contribution. (This condition does not preclude the Plan from paying the Independent Fiduciary's ongoing management fees once the contribution has been approved and accepted. It also does not restrict the Plan from paying the due diligence costs connected with the acquisition of the Property, such as the expenses for a title search, appraisal and environmental review.)
- Five years from the date of the Timber Rights contribution, U.S. Steel contributes, to the Plan, an amount in cash calculated as follows: (1) The fair market value of the Timber Rights as of the date of the contribution, as determined by a qualified, independent appraiser, less (2) The sum of (i) the fair market value of the Timber Rights held by the Plan as of the date five years from the date of the contribution, as determined by a qualified, independent appraiser, which has been selected by the Independent Fiduciary, plus (ii) the net cash distributed to the Plan LLC or the Plan relating to all or any part of the Timber Rights (and/or the related timber) prior to such date; provided, that if a contribution is due and if, for the taxable year of U.S. Steel in which the contribution is to be made, such contribution (i) is not deductible under section 404(a)(1) of the Code or (ii)

results in the imposition of an excise tax under section 4972 of the Code, such contribution will not be made until the next taxable year of U.S. Steel for which the contribution is deductible under section 404(a)(1) of the Code and does not result in an excise tax under section 4972 of the Code.

• US Steel indemnifies the Plan with respect to all liability for hazardous substances released on the Property prior to the execution and closing of the Timber Rights contribution.

• The Plan retains the right to sell or assign, in whole or in part, any of its Timber Rights interests to any third party purchaser.

Second, following the completion of the Timber Rights contribution, TCG will be authorized to exercise all of the rights and responsibilities otherwise exercisable by the Plan in connection with any subsequent transactional dealings with U.S. Steel, regarding the Timber Rights under the Timber Rights Agreements, or as may be required pursuant to the terms of this exemption. These rights and responsibilities and the transactions to which they pertain include the following:

• Determining that the Plan receives the compensation due to it under the Timber Rights Agreements in the event that either (1) U.S. Steel exercises its right to early termination of an Agreement, which requires a termination payment to the Plan at a premium over the fair market value of the Timber Rights, as determined by a qualified, independent appraiser, which has been selected by the Independent Fiduciary; or (2) U.S. Steel owes compensation to the Plan for mineral activities that interfere with the Plan's use of the land for timber purposes.

• Overseeing and enforcing the requirements of the exemption for a ''make-whole'' contribution that may be required in the event of a decline in value of the Timber Rights after five years.

• Enforcing U.S. Steel's ongoing obligations to maintain the Property in a fashion that does not unreasonably interfere with the Plan's use thereof.

• Enforcing the Plan's indemnification rights against U.S. Steel for any environmental claims that may arise.

In its Management Agreement with UCF, TCG represents to UCF that (a) it is independent of, and unrelated to, U.S. Steel and its affiliates; (b) to the extent it provides services to U.S. Steel, its affiliates or its retirement plans during the term of its Management Agreement with the Plan, TCG's annual gross revenues for such services will be less than 5% of its total annual gross revenues; and (c) it has experience with the type of transactions for which it is acting as an Independent Fiduciary, and acknowledges and accepts it is acting as an ERISA fiduciary with an understanding of its duties, liabilities, and responsibilities under that statute.

15. As Independent Fiduciary, TCG duties will encompass, but are not limited to rendering investment management and advisory services, such as buy-hold-sell analysis; coordinating appraisals; providing long-term management planning; determining investment strategies; performing price forecasting; managing regulatory changes and impact on operations; management-level services such as financial accounting, budgeting, reporting, audit supervision, performance measurement, any acquisition and disposition of services; and determining whether it is appropriate to sell or assign, in whole or in part, the Plan's interests in the Timber Rights.

UCF will oversee TCG's Property management. TCG will establish an annual management plan and budget for the Property each year that will be reviewed and approved by UCF. It will include a harvest plan, timber sale plan, capital expenditure plan, silviculture plan (with recommendations regarding such activities as site preparation, planting, fertilization, thinning and application of herbicides, stumpage management), and budget (by calendar year) for the Property. TCG will be able to make expenditures in accordance with the approved annual budget, and within 10% of any budgeted line item, without further approval by UCF, as well as to make extra-budgetary expenditures without prior approval as are required to protect the Property in case of emergencies. TCG will inform UCF promptly of any variance from a budgeted line item, and will (subject to the exception for emergencies) obtain UCF's approval before expending or failing to expend funds at variance with the limits in the management plan. UCF may modify the management plan and annual budget at any time on a prospective basis. TCG also will prepare a strategic plan, setting forth the overall objectives and strategies for the Property, and a five year operating plan to support the strategic plan that contains projections with respect to silviculture and harvesting, which will be updated at least annually. TCG will report all events that, in its judgment, make it impracticable to follow the annual or five-year operating plan and will recommend appropriate modifications. Among its duties as Property manager, TCG will also be responsible for both the on-site and management level forest operations. Services in this category will include long- and short-term harvesting planning; obtaining all necessary permits and federal, state, and local tax filings; managing log sale contracts and road planning; overseeing subcontractors, including log-harvesting, road construction and maintenance; managing timber inventory and land records; managing risk, such as fire prevention planning; and procuring geographical information systems and mapping.

16. TCG represents that the Property is expected to generate a positive cash flow during the early years of the Timber Rights contribution. The source of this income is from an expected, but small scale timber harvest and from the sale of hunting and recreation leases, which will be managed by TCG. In addition to the timber being in the early stages of growth, TCG believes that the Property will benefit from silviculture programs to improve its long-term value, and thereby enhance the overall economic benefit to the Plan of the timber contribution. TCG will run models on possible expenditures for silvicultural programs that it will then describe in its proposed management plan for the Property, which will be reviewed and approved by UCF before any funds are spent.

17. TCG will receive the following fees [10] from UCF for its services to the Plan:

• *Investment Management and Advisory Service Fees,* which are initially determined as a percentage of the initial asset value (as determined by an independent appraisal) and are thereafter adjusted annually based on the Consumer Price Index for all urban consumers. The value of the basis will be decreased by UCF to reflect land sales (including any acres that U.S. Steel has exercised its right to terminate under either the Timber Agreement or the USS Agreement).

• *Asset Management Service Fees*, which will consist of a flat rate per acre for total acres managed, and a percentage of net stumpage and net log sales provided for in the annual budget that is approved by UCF. Such fees will also include a percentage of ancillary revenue, such as hunting rights income, subject to the approved annual budget.

[10] The Applicant states that the fees will represent reasonable compensation and will be statutorily exempt under section 408(b)(2) of the Act. However, the Department expresses no opinion herein on whether such fees will satisfy the terms and conditions of section 408(b)(2) of the Act.

• *Incentive Fee (the Incentive Fee)*,[11] which will be based on whether the return on the amount the Plan has invested in the timber assets, as determined by the cash distributions to the Plan and the current appraised value of the timber assets, exceeds a ''hurdle rate.'' The Incentive Fee will be calculated to include both realized and unrealized gains and losses. It will be a ''rolling'' fee, inasmuch as performance will be measured based on cumulative performance over the life of TCG's Management Agreement, rather than over a discrete period. The Incentive Fee will consist of three components—a fixed hurdle rate, cash distributions, and the appraised value of the timber assets with respect to the Plan's Timber Rights. The hurdle rate will be a percentage fixed in the TCG service contract. The Incentive Fee will reflect 20% of the cumulative performance exceeding the hurdle rate, with the Plan retaining 80%. Such percentage has been approved and set by UCF, the Plan fiduciary independent of TCG, and it is not subject to TCG's discretion. The cash distributions to the Plan will be the actual outflow net after expenses of payments made to the Plan out of the timber assets and any miscellaneous income expected to be generated by the Timber Rights, such as those derived from hunting, fishing and other licensing activities, reducing the value of the timber assets being managed. Thus, the Incentive Fee will not include amounts reinvested in the timber assets nor expenses paid with respect to those assets, which would be reflected instead in the appraised value. The appraised value of the timber assets will be determined by a qualified, independent appraiser, using standard methods for valuing timber. The timber appraiser will be selected by UCF. TCG will not have any discretion over the determination of the appraised asset value component of its fee calculation. The Incentive Fee will be calculated every three years and paid at three-year intervals, subject to withholding 50% of the accrued performance fee until final disposition to avoid any overpayment in any particular period.

Duties of the Independent Fiduciary

The Department notes that the appointment of an independent fiduciary to represent the interests of the Plan with respect to the proposed transactions that are the subject of the exemption request is a material factor in its determination to propose exemptive relief. The Department believes that it would be helpful to provide general information regarding its views on the responsibilities of an independent fiduciary in connection with the in kind contribution of property to an employee benefit plan. As noted in the Department's Interpretive Bulletin, 29 CFR 2509.94–3(d) (59 FR 66736, December 28, 1994), apart from consideration of the prohibited transaction provisions, plan fiduciaries must determine that acceptance of an in kind contribution is consistent with the general standards of fiduciary conduct under the Act. It is the view of the Department that acceptance of an in kind contribution is a fiduciary action subject to section 404 of the Act. In this regard, section 404(a)(1)(A) and (B) of the Act requires that fiduciaries discharge their duties to a plan solely in the interests of the participants and beneficiaries, for the exclusive purpose of providing benefits to participants and beneficiaries and defraying reasonable administrative expenses, and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. In addition, section 404(a)(1)(C) requires that fiduciaries diversify plan investments so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so. Accordingly, the fiduciaries of a plan must act ''prudently,'' ''solely in the interest'' of the plan's participants and beneficiaries, and with a view to the need to diversify plan assets when deciding whether to accept an in kind contribution. If accepting an in kind contribution is not ''prudent,'' not ''solely in the interest'' of the participants and beneficiaries of the plan, or would result in an improper lack of diversification of plan assets, the responsible fiduciaries of the plan would be liable for any losses resulting from such a breach of fiduciary responsibility, even if a contribution in kind does not constitute a prohibited transaction under section 406 of the Act.

18. In summary, the Applicant represents that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Independent Fiduciary, acting on behalf of the Plan, will represent the Plan's interests for all purposes with respect to the Timber Rights contribution, and will determine prior to entering into any of the transactions described herein, that each such transaction, including the Timber Rights contribution, is in the interest of the Plan;

(b) The Independent Fiduciary will negotiate and approve the terms of any of the transactions between the Plan and U.S. Steel that relate to the Timber Rights;

(c) The Independent Fiduciary will manage the holding, disposition, and assignment of the Timber Rights and take whatever actions it deems necessary to protect the rights of the Plan with respect to the Timber Rights;

(d) The terms of any transactions between the Plan and U.S. Steel will be no less favorable to the Plan than terms negotiated at arm's length under similar circumstances between unrelated third parties;

(e) The Independent Fiduciary will determine the fair market value of the Timber Rights contributed to the Plan as of the date of such contribution. In determining the fair market value of the Timber Rights Contribution, the Independent Fiduciary will obtain an appraisal from a qualified, independent appraiser selected by the Independent Fiduciary, and will ensure that the appraisal is consistent with sound principles of valuation;

(f) The fair market value of the Timber Rights will not exceed 5% of the Plan's total assets at the time of such contribution.

(g) In general, the Plan will pay no fees or commissions in connection with the Timber Rights contribution.

(h) Five years from the date of the Timber Rights contribution, U.S. Steel will contribute, to the Plan, an amount in cash calculated to make the Plan ''whole.''

(i) U.S. Steel will indemnify the Plan with respect to all liability for hazardous substances released on the Property prior to the execution and closing of the Timber Rights contribution.

(j) The Plan will retain the right to sell, in whole or in part, any of its Timber Rights' interests to any third party purchaser.

Notice to Interested Persons

Notice of proposed exemption will be provided to all interested persons by first class mail within 4 days of

[11] The Applicant represents that the Incentive Fee payable to TCG will meet the criteria in the Department's advisory opinions on performance fees (see Advisory Opinions 86–20A, 86–21A, and 89–28A). However, the Department is providing no opinion in this proposed exemption on whether the Incentive Fee payable to TCG by the Plan is or will be consistent with the fiduciary responsibilities contained in Part 4 of Title I of the Act. In this regard, the Department notes that section 404(a)(1) of the Act requires, among other things, that the plan fiduciary act prudently and solely in the interest of the plan and its participants and beneficiaries when making investment decisions on behalf of a plan.

publication of the notice of pendency in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2), which will inform interested persons of their right to comment on the proposed exemption and/or to request a hearing. Comments and hearing requests are due within 34 days of the date of publication of the proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Silvia M. Quezada of the Department, telephone number (202) 693–8553. (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 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 10th day of November, 2003.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 03–28546 Filed 11–13–03; 8:45 am]

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

Prohibited Transaction Exemption 2003–32; [Exemption Application No. D–11067] et al.; Grant of Individual Exemptions; Sorensen Broadcasting Employee Stock Ownership Plan and Trust, et al

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions 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.

Sorenson Broadcasting Employee Stock Ownership Plan and Trust (the Plan); Located in Sioux Falls, SD

[Prohibited Transaction Exemption 2003–32; Exemption Application No. D–11067]

Exemption

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,[1] shall not apply to (1) the sale (the Sale) by the Plan to Sorenson Broadcasting Corporation (the Employer), a party in interest with respect to the Plan, of 930 shares of common stock (the Common Stock) of the Employer; and (2) the extension of credit by the Plan to the Employer under the terms of a subsequent adjustment to the Sale price (the True-up) in connection with the Sale.

This exemption is subject to the following conditions:

(a) The Sale occurs in the following manner:

(1) The Employer pays the Plan the fair market value of the Common Stock as of December 31, 2002, as determined by a qualified, independent appraiser, plus certain positive adjustments indicated in an addendum to a purchase agreement dated May 26, 2000;

(2) The fair market value of the Common Stock as of the transaction date (the Closing Value) is determined no later than two months after the transaction date;

(3) As additional consideration, the Plan receives the difference between the

[1] For purposes of this exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

Closing Value and the amount paid for the Common Stock on the transaction date (*i.e.*, the True-up), plus interest based on the New York prime market rate, effective on the transaction date until the date of the True Up; and

(4) As collateral for the True-up, Mr. Dean Sorenson, the principal shareholder of the Employer, deposits $100,000 in cash in an escrow account for the benefit of the Plan to ensure that the Employer honors its obligation under the True-up.

(b) The Plan does not pay any commissions or other expenses with respect to the Sale.

(c) The transactions are approved by an independent fiduciary, who will monitor such transactions on behalf of the Plan.

(d) The Plan's trustees determine that the Sale and True-up are appropriate transactions for the Plan and in the best interests of the Plan and its participants and beneficiaries.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 5, 2003 at 68 FR 52791.

FOR FURTHER INFORMATION CONTACT: Ms. Anna M.N. Mpras of the Department, telephone (202) 693–8565. (This is not a toll-free number.)

Liberty Media 401(k) Savings Plan (the Plan); Located in Englewood, Colorado

[Prohibited Transaction Exemption No. 2003–33; Application No. D–11170]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) and 407(a) 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, effective November 25, 2002, to (1) the acquisition of certain stock rights (the Rights) by the Plan in connection with a Rights offering by Liberty Media Corporation (LMC), a party in interest with respect to the Plan; (2) the holding of the Rights by the Plan during the subscription period of the offering; and (3) the exercise of the Rights by the Plan. This exemption is conditioned upon the adherence to the material facts and representations described herein and upon the satisfaction of the following requirements:

(a) The Rights were acquired pursuant to Plan provisions for individually-directed investment of such accounts;

(b) The Plan's receipt of the Rights occurred in connection with the Rights offering made available to all shareholders of common stock of LMC;

(c) All decisions regarding the holding and disposition of the Rights by the Plan were made, in accordance with the Plan provisions for individually-directed investment of participant accounts, by the individual Plan participants whose accounts in the Plan received the Rights in connection with the offering;

(d) The Plan's acquisition of the Rights resulted from an independent act of LMC as a corporate entity, and all holders of the Rights, including the Plan, were treated in the same manner with respect to the acquisition; and

(e) The Plan received the same proportionate number of the Rights as other owners of Liberty Media Series A and Series B common stock (the Stock).

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on August 15, 2003 at 68 FR 49302.

FOR FURTHER INFORMATION CONTACT: Khalif Ford of the Department, telephone (202) 693–8540 (this is not a toll-free number).

Hayden O. Grona IRA (the IRA); Located in San Antonio, Texas

[Prohibited Transaction Exemption 2003–34; Application No. D–11192]

Exemption

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 proposed sale of certain unimproved land (the Property) by the IRA to Mr. Grona's children (the Children), disqualified persons with respect to the IRA;[2] provided that the following conditions are met:

(a) the sale is a one-time cash transaction;

(b) the IRA receives the current fair market value for the Property, as established at the time of the sale by an independent, qualified appraiser; and

(c) the IRA pays no commissions or other expenses associated with the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 5, 2003 at 68 FR 52795.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department at (202) 693–8540. (This is not a toll-free number.)

[2] Pursuant to CFR 2510.3–2(d), there is no jurisdiction with respect to the IRA under Title I of the Act. However, there is jurisdiction under Title II of the Act, pursuant to section 4975 of the Code.

Newspaper Agency Corporation; Pension Trust (the Plan); Located in Salt Lake City, Utah

[Prohibited Transaction Exemption 2003–35; Application No. D–11194]

Exemption

I. Transactions

The restrictions of sections 406(a)(1)(A)–(D), 406(b)(1), and 406(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[3] shall not apply to: (1) The leasing of certain improved real property (the Property) by the Plan to the Newspaper Agency Corporation (the Employer), a party in interest with respect to the Plan, pursuant to the terms of a lease (the New Lease), effective August 1, 2003; and (2) the guarantee by MediaNews Group, Inc. and Deseret News Publishing Company (collectively, the Owners of the Employer) of the obligations of the Employer under the terms of the New Lease.

II. Conditions

This exemption is conditioned upon the adherence to the material facts and representations described herein and upon the satisfaction of the following requirements:

(a) an independent, qualified fiduciary (the I/F), acting on behalf of the Plan, determines that each of the subject transactions is feasible, in the interest of, and protective of the Plan and the participants and beneficiaries of such Plan;

(b) the I/F manages the Property on an on-going basis and is empowered to take whatever action it deems appropriate to serve the best interest of the Plan and its participants and beneficiaries, including but not limited to the retention, leasing, or sale of the Property;

(c) the fair market value of the Property does not now and will at no time exceed twenty-five percent (25%) of the fair market value of the total assets of the Plan;

(d) the I/F negotiates, reviews, and approves the terms of the subject transactions;

(e) the terms and conditions of the subject transactions are, and will at all times be, no less favorable to the Plan than terms obtainable by the Plan under similar circumstances when negotiated at arm's length with an unrelated third party;

[3] 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.

(f) an independent, qualified appraiser determines the fair market value of the rental of the Property, as of August 1, 2003, and annually thereafter;

(g) the I/F monitors compliance with the terms of the New Lease throughout the duration of such lease and is responsible for legally enforcing the payment of the rent and the proper performance by the Employer and/or the Owners of the Employer of all other obligations of the Employer under the terms of such lease;

(h) the Plan incurs no fees, costs, commissions, or other charges or expenses as a result of its participation in the transactions which are the subject of this exemption, other than the fee payable to the I/F for services rendered to the Plan and the fee payable to the independent, qualified appraiser for the annual appraisal of the fair market value of the Property;

(i) the I/F ensures that the terms and conditions described herein are at all times satisfied;

(j) the I/F will place the Property on the market for sale or lease to unrelated third parties, within fifteen (15) calendar days of the date of the publication of the grant of this exemption in the **Federal Register**, and subject to the termination of the New Lease, as provided in section II(k), below, of this exemption, will proceed to sell or lease such Property to any such unrelated third party who presents a *bona fide* sale or lease offer which the I/F determines to be prudent and in the best interest of the Plan and its participants and beneficiaries; and

(k) notwithstanding anything to the contrary in the New Lease, the Plan may at any time upon six (6) month prior written notice to the Employer terminate the New Lease and the Employer's occupancy of the Property, effective as of the date specified in such notice, which date shall be at least six (6) months after the date such written notice is given to the Employer (but in no event extending the New Lease beyond the then current lease term.

Effective Date: The exemption will be effective August 1, 2003.

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 forty-five (45) days of the date of the publication of the Notice in the **Federal Register** on September 5, 2003. All comments and requests for a hearing were due by October 20, 2003.

The Department received, on October 20, 2003, a letter from the applicant, informing the Department of a correction to the language of the exemption, as proposed. In this regard, in the Notice on page 52796, Part I, lines 16–17, the reference to ''Deseret News Publishing Corporation'' should be revised to read ''Deseret News Publishing Company.'' The Department acknowledges the correction and in the final exemption has amended the language of Part I, as requested in the October 20, 2003, letter from the applicant.

In addition, on October 20, 2003, the Department received a comment letter, from the Executive Board and Chief Steward of the Graphic Communications International Union, Local 28N (the Local). Accompanying this comment letter was a petition signed by 153 individuals who are employees of the Employer and members of the Local. In this regard, the commentators requested denial of the exemption. In support of this request, the commentators state that: (a) The Employer has not maintained the premises of the Property, because upon completion of construction on a new building, the Employer wants to ''walk away'' leaving ''an almost worthless piece of property'' in the Plan; (b) all employees will be adversely affected by the grant of the exemption; (c) the exemption should not be allowed without proper and meaningful negotiations between the union(s) and the Employer; and (d) a hearing should be scheduled, in the event negotiations between the union(s) and the Employer break down.

At the close of the comment period, the Department forwarded a copy of the comment letter to the applicant and requested that the applicant respond in writing to the issues raised by the commentators.

With regard to the commentators' assertion that the Employer has not maintained the Property, the applicant points out that the Property is a warehouse constructed of cement block. As such, the greatest expense involved in maintaining the Property has been that of maintaining the roof. In this regard, it is represented that the Employer has expended substantial sums in maintaining the Property. For example, since June of 2001, the Employer has paid a total of $112,809.67 to replace over two-thirds (2/3) of the roof ($49,891 paid on June 30, 2001, and an additional $62,918.67 paid during 2002). It is represented that the Employer also pays for janitorial services for the Property two (2) times per week.

In response to the comment that the Property is ''an almost worthless piece of property,'' the applicant points out that the fair market value of the Property is $1,700,000, as evidenced by the written appraisal of the independent appraiser selected by the I/F. In addition, the applicant points out that the Property has increased in value over the period from 1971 to 2003 from $259,000 to $1,700,000, being an increase in value of over 650% (or an average of slightly over 20% per year over the term of 32 years). In addition to appreciation in the value of the Property, the Employer, as the tenant, has made fair market value rental payments to the Plan and also paid for the taxes, liability and casualty insurance premiums, maintenance, and repairs.

In response to the comment that all employees will be adversely affected by the grant of the exemption, the applicant represents that the Plan is a defined benefit pension plan under which the participant benefits are calculated without regard to the value of the underlying plan assets as they exist from time to time. Accordingly, it is represented by the applicant that benefits of Plan participants are not adversely affected by approval of the exemption request. In this regard, the applicant points out that the exemption deals with the leasing of the Property under the terms of the New Lease between the Employer and the Plan which includes various provisions which are favorable to the Plan, including but not limited to the following:

(a) the Employer, as the tenant, is required to pay fair market value lease payments to the Plan, redetermined annually by independent appraisal (in addition to taxes, insurance and other expenses); and

(b) upon six months written notice to the Employer, the Plan may unilaterally terminate the New Lease for any reason. The applicant notes that the Employer does not have the right to terminate the New Lease prior to the end of the primary three (3) year term. Further, the applicant points out that the exemption includes a condition requiring the I/F, within fifteen (15) days following publication of the grant of the exemption in the **Federal Register**, to place the Property on the open market so that the Plan has adequate time (in essence, almost a three (3) year period) to find a buyer for the Property.

In the opinion of the applicant, the comment that the exemption should not be allowed without proper and meaningful negotiations between the union(s) and the Employer appears to

reflect the desire of the Local to use the exemption application process as a means to open pension negotiations with the Employer. As the exemption application by the Employer does not request or result in any amendment to the Plan or any change in the benefits provided to participants under the Plan, it is the position of the applicant that the requested exemption should not constitute a trigger for union benefit negotiations.

Further, the applicant suggests that the genesis of the request for denial of the exemption application included in the comment letter appears to arise from some disappointment or ill will from prior negotiations involving issues unrelated to the exemption application. In the opinion of the applicant, such feelings as to unrelated matters are irrelevant to and should not be the catalyst for denial of the requested exemption.

In response to the comment requesting a hearing be scheduled if union negotiations break down, the applicant maintains that the exemption application does not affect the benefits of the participants under the Plan and should not involve union negotiations. Further, the applicant points out that the comment letter does not include any facts supporting a conclusion that any participant would be adversely affected by the grant of the exemption requested. In the opinion of the applicant, a hearing should not be required, as all factual data and documents have already been provided to the Department of Labor, and any issues discussed in the comment letter can be fully explored, if deemed necessary by the Department of Labor, through the submission of evidence in written form.

The Department, after reviewing the concerns of the commentators, does not believe that there are material issues relating to the subject exemption that were raised by the commentators during the comment period which would require the convening of a hearing. Accordingly, the Department has determined not to delay consideration of the final exemption by holding a hearing on application D–11194.

After giving full consideration to the entire record, including the written comment from the commentators, the applicant's response to such comments, and the applicant's own comment, the Department has decided to grant the exemption, as described and amended, above. In this regard, the comment letter from the commentators, the applicant's response thereto, and the comment letter from the applicant which were 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 September 5, 2003, at 68 FR 52796.

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 at Washington, DC, this 7th day of November, 2003.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 03–28545 Filed 11–13–03; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be

impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register,** or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification of General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New Hampshire
NH030001 (Jun. 13, 2003)
NH030002 (Jun. 13, 2003)
NH030004 (Jun. 13, 2003)
NH030005 (Jun. 13, 2003)
NH030007 (Jun. 13, 2003)

Volume II

Pennsylvania
PA030005 (Jun. 13, 2003)
PA030006 (Jun. 13, 2003)
PA030007 (Jun. 13, 2003)
PA030008 (Jun. 13, 2003)
PA030010 (Jun. 13, 2003)
PA030012 (Jun. 13, 2003)
PA030014 (Jun. 13, 2003)
PA030017 (Jun. 13, 2003)
PA030019 (Jun. 13, 2003)
PA030020 (Jun. 13, 2003)
PA030023 (Jun. 13, 2003)
PA030024 (Jun. 13, 2003)
PA030025 (Jun. 13, 2003)
PA030026 (Jun. 13, 2003)
PA030030 (Jun. 13, 2003)
PA030031 (Jun. 13, 2003)
PA030059 (Jun. 13, 2003)
PA030061 (Jun. 13, 2003)

West Virginia
WV030001 (Jun. 13, 2003)
WV030002 (Jun. 13, 2003)
WV030003 (Jun. 13, 2003)
WV030010 (Jun. 13, 2003)

Volume III

None

Volume IV

None

Volume V

New Mexico
NM030001 (Jun. 13, 2003)
NM030004 (Jun. 13, 2003)
NM030005 (Jun. 13, 2003)
NM030007 (Jun. 13, 2003)
NM030011 (Jun. 13, 2003)

Volume VI

North Dakota
ND030002 (Jun. 13, 2003)

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage determinations Issued Under the Davis-Bacon And Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts, are available electronically at no cost on the Government Printing Office site at *http://www/access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, *etc.*

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any of all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 6th Day of November 2003.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 03–28408 Filed 11–13–03; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

AGENCY HOLDING MEETING: National Science Foundation, National Science Board and its Subdivisions.

DATE AND TIME:

November 19, 2003: 8 a.m.–5 p.m.

Concurrent Sessions:

8 a.m.–9:45 a.m. Open Session.
9:45 a.m.–10 a.m. Closed Session.
8:30 a.m.–10 a.m. Open Session.
10 a.m.–12 noon Open Session.
12:30 p.m.–1:10 p.m. Open Session.
1:10 p.m.–1:30 p.m. Closed Session.
1:30 p.m.–4:00 p.m. Open Session.
4 p.m.–4:30 p.m. Open Session.
4:30 p.m.–5 p.m. Closed Session.

October 16, 2003: 8:30 a.m.–3 p.m.

Concurrent Sessions:

8:30 a.m.–9:20 a.m. Closed Session.
9:20 a.m.–10:45 a.m. Open Session.
11 a.m.–12 noon Closed Session.
12:15 p.m.–3 p.m. Open Session.

PLACE: The National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, *www.nsf.gov/nsb.*

CONTACT FOR INFORMATION: NSF Information Center (703) 292–5111.

STATUS: Part of this meeting will be closed to the public. Part of this meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Wednesday, November 19, 2003

Open

Committee on Audit and Oversight (8 a.m.–9:45 a.m.), Room 1235

- Minutes
- FY 2003 Financial Statement Audit
- CFO Update—FY 2003 Performance & Accountability Report
- OIG Semiannual Report
- Briefing on Committee on Science, Research Business Models Subcommittee

Subcommittee on S&E Indicators (8:30 a.m.–10 a.m.), Room 1295
- Approval of Minutes
- S&E Indicators 2004 Cover
- S&E Indicators 2004 Companion Piece

Committee on Strategy and Budget (10 a.m.–12 Noon), Room 1235
- Approval of Minutes
- Review of Draft Report (required by Section 22 of the NSF Authorization Act)
- Discussion of Future Agenda Items

Subcommittee on Polar Issues (12:30 p.m.–1:15 p.m.), Room 1235
- Introduction
- Approval of Minutes
- OPP Director's Report:
- OPP and U.S. Polar Science: Inter- and Intra-Agency Interactions And Cooperation
- NSF Roles and Responsibilities

—U.S. Antarctic Program
—U.S. Arctic Research

Committee on Education and Human Resources (1:30 p.m.–4 p.m.), Room 1235
- Approval of Minutes
- Comments from the Chair
- NWP Update
- CEOSE and the Diversity Workshop (Oct. 23–24)
- Report from Subcommittee on S&E Indicators
- Workforce for 21st Century Priority Area Update
- Report from the EHR AD: Coordination of Education Across NSF
- New Business

Executive Committee (4 p.m.–4:30 p.m.), Room 1295
- Minutes

Closed

Audit & Oversight (9:45 a.m.–10:00 a.m.), Room 1235
- Briefing on an Active Investigation

Executive Committee (4:30 p.m.–5 p.m.), Room 1295
- Member Proposal
- Director's Items

—Specific Personnel Items
—Future Budgets

Thursday, November 20, 2003

Open

Committee on Programs and Plans (9:20 a.m.–10:45 a.m.), Room 1235
- Information Item: Status of the Atacama Large Millimeter Array Project (ALMA)
- Minutes/Announcements
- Long-Lived Data Collections: Status Report
- High Risk Research
- Polar Subcommittee

Plenary Session of the Board (12:15 p.m.–3 p.m.), Room 1235
- Minutes
- Closed Items, February 2004
- Director's Items
- Chairman's Items, including

—February 2004 Meeting
- Committee Reports, including

—High Risk Research
—LLDC Workshop
—Media Event for NWP Report
- NSB Election Protocol Discussion

Closed

Committee on Programs and Plans (8:30 a.m.–9:20 a.m.), Room 1235
- Closed Minutes
- Award Actions

—Office of Polar Programs
—Division of Electrical and Communications Systems

Plenary Session of the Board (11 a.m.–12 p.m.), Room 1235
- Closed Minutes
- Closed Committee Reports, including

—Award Action: Office of Polar Programs
—Award Action: Division of Electrical and Communications Systems
—Member Proposal

Michael P. Crosby,

Executive Officer, NSE.

[FR Doc. 03–28642 Filed 11–12–03; 3:42 pm]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–47; EA–03–173]

Dominion Nuclear Connecticut, Inc., Millstone Power Station; Order Modifying Licenses (Effective Immediately)

Dominion Nuclear Connecticut, Inc. (DNC) has been issued a general license by the U.S. Nuclear Regulatory Commission (NRC or the Commission) authorizing storage of spent fuel in an independent spent fuel storage installation (ISFSI) in accordance with the Atomic Energy Act of 1954, 10 CFR part 50, and 10 CFR part 72. This Order is being issued to DNC who has identified near term plans to store spent fuel in an ISFSI under the general license provisions of 10 CFR part 72. The Commission's regulations in 10 CFR 72.212(b)(5) and 10 CFR 73.55(h)(1) require DNC to maintain safeguards contingency plan procedures in accordance with 10 CFR part 73, Appendix C. Specific safeguards requirements are contained in 10 CFR 73.55.

On September 11, 2001, terrorists simultaneously attacked targets in New York and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State, and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security plan requirements, as well as a review of information provided by the intelligence community and other governmental agencies, the Commission has determined that certain compensatory measures are required to be implemented by licensees as prudent, interim measures, to address the current threat environment in a consistent manner throughout the nuclear ISFSI community. Therefore, the Commission is imposing requirements, as set forth in Attachment 1[1] of this Order, on DNC who has indicated near term plans to store spent fuel in an ISFSI under the general license provisions of 10 CFR part 72. These interim requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that some measures may not be possible or necessary, or may need to be tailored to accommodate the specific circumstances existing at DNC's facility to achieve the intended objectives and avoid any unforeseen effect on the safe storage of spent fuel.

[1] Attachment 1 contains SAFEGUARDS information and will not be released to the public.

In order to provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, the Commission concludes that security measures must be embodied in an Order consistent with the established regulatory framework. DNC's general license issued pursuant to 10 CFR 72.210 shall be modified to include the requirements identified in Attachment 1 to this Order. In addition, pursuant to 10 CFR 2.202, the Commission finds that in the circumstances described above, the public health, safety, and interest require that this Order be effective immediately.

Accordingly, pursuant to Sections 103, 104, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 50, 72, and 73, it is hereby ordered, effective immediately, that your general license is modified as follows:

A. DNC shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 1 to this Order except to the extent that a more stringent requirement is set forth in their security plan. DNC shall immediately start implementation of the requirements in Attachment 1 to the Order and shall complete implementation before spent fuel is initially placed in the ISFSI.

B. 1. DNC shall, within twenty (20) days of the date of this Order, notify the Commission: (1) If they are unable to comply with any of the requirements described in Attachment 1, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the requirements would cause the licensee to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide the licensees' justification for seeking relief from or variation of any specific requirement.

2. If DNC considers that implementation of any of the requirements described in Attachment 1 to this Order would adversely impact the safe storage of spent fuel, DNC must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 1 requirement in question, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, DNC must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

C. 1. DNC shall, within twenty (20) days of the date of this Order, submit to the Commission, a schedule for achieving compliance with each requirement described in Attachment 1.

2. DNC shall report to the Commission when they have achieved full compliance with the requirements described in Attachment 1.

D. Notwithstanding the provisions of 10 CFR 72.212(b)(5), all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

DNC's responses to Conditions B.1, B.2, C.1, and C.2, shall be submitted in accordance with 10 CFR 72.4. In addition, submittals that contain Safeguards Information shall be properly marked and handled in accordance with 10 CFR 73.21.

The Director, Office of Nuclear Material Safety and Safeguards may, in writing, relax or rescind any of the above conditions upon demonstration by DNC of good cause.

In accordance with 10 CFR 2.202, DNC must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555.

Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; to the Regional Administrator for NRC Region I; and to the licensee, if the answer or hearing request is by a person other than the licensee. Because of potential disruptions in delivery of mail to United States Government offices, it is requested that answers 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*, and also to the Office of the General Counsel, either by means of facsimile transmission to 301–415–3725, or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than DNC requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by DNC or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such a hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), DNC may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland, this 31st day of October 2003.

For the Nuclear Regulatory Commission.

Martin J. Virgilio, Director,

Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–28501 Filed 11–13–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–49; EA–03–174]

Entergy Operations, Inc., River Bend Power Station; Order Modifying Licenses (Effective Immediately)

Entergy Operations, Inc., (EO) has been issued a general license by the U.S. Nuclear Regulatory Commission (NRC or the Commission) authorizing storage of spent fuel in an independent spent fuel storage installation (ISFSI) in accordance with the Atomic Energy Act of 1954, 10 CFR part 50, and 10 CFR part 72. This Order is being issued to EO who has identified near term plans to store spent fuel in an ISFSI under the general license provisions of 10 CFR part 72. The Commission's regulations in 10 CFR 72.212(b)(5) and 10 CFR 73.55(h)(1) require EO to maintain safeguards contingency plan procedures in accordance with 10 CFR part 73, Appendix C. Specific safeguards requirements are contained in 10 CFR 73.55.

On September 11, 2001, terrorists simultaneously attacked targets in New York and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State, and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security plan requirements, as well as a review of information provided by the intelligence community and other governmental agencies, the Commission has determined that certain compensatory measures are required to be implemented by licensees as prudent, interim measures, to address the current threat environment in a consistent manner throughout the nuclear ISFSI community. Therefore, the Commission is imposing requirements, as set forth in Attachment 1[1] of this Order, on EO who has indicated near term plans to store spent fuel in an ISFSI under the general license provisions of 10 CFR part 72. These interim requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that some measures may not be possible or necessary, or may need to be tailored to accommodate the specific circumstances existing at EO's facility to achieve the intended objectives and avoid any unforeseen effect on the safe storage of spent fuel.

In order to provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, the Commission concludes that security measures must be embodied in an Order consistent with the established regulatory framework. EO's general license issued pursuant to 10 CFR 72.210 shall be modified to include the requirements identified in Attachment 1 to this Order. In addition, pursuant to 10 CFR 2.202, the Commission finds that in the circumstances described above, the public health, safety, and interest require that this Order be effective immediately.

Accordingly, pursuant to sections 103, 104, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Parts 50, 72, and 73, It is hereby ordered, effective immediately, that your general license is modified as follows:

A. EO shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 1 to this Order except to the extent that a more stringent requirement is set forth in their security plan. EO shall immediately start implementation of the requirements in Attachment 1 to the Order and shall complete implementation before spent fuel is initially placed in the ISFSI.

B. 1. EO shall, within twenty (20) days of the date of this Order, notify the Commission: (1) If they are unable to comply with any of the requirements described in Attachment 1, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the requirements would cause the licensee to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide the licensees' justification for seeking relief from or variation of any specific requirement.

2. If EO considers that implementation of any of the requirements described in Attachment 1 to this Order would adversely impact the safe storage of spent fuel, EO must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 1 requirement in question, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, EO must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

C. 1. EO shall, within twenty (20) days of the date of this Order, submit to the Commission, a schedule for achieving compliance with each requirement described in Attachment 1.

2. EO shall report to the Commission when they have achieved full compliance with the requirements described in Attachment 1.

D. Notwithstanding the provisions of 10 CFR 72.212(b)(5), all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

EO's responses to Conditions B.1, B.2, C.1, and C.2, shall be submitted in accordance with 10 CFR 72.4. In addition, submittals that contain Safeguards Information shall be properly marked and handled in accordance with 10 CFR 73.21.

The Director, Office of Nuclear Material Safety and Safeguards may, in writing, relax or rescind any of the above conditions upon demonstration by EO of good cause.

In accordance with 10 CFR 2.202, EO must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and

[1] Attachment 1 contains SAFEGUARDS information and will not be released to the public.

Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555.

Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; to the Regional Administrator for NRC Region IV; and to the licensee, if the answer or hearing request is by a person other than the licensee. Because of potential disruptions in delivery of mail to United States Government offices, it is requested that answers 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*, and also to the Office of the General Counsel, either by means of facsimile transmission to 301–415–3725, or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than EO requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by EO or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such a hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), EO may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, MD, this 31st day of October 2003.

For the Nuclear Regulatory Commission.

Martin J. Virgilio,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–28502 Filed 11–13–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

System Energy Resources, Inc.; Notice of Receipt and Availability of Early Site Permit Application for the Grand Gulf ESP Site

On October 21, 2003, the Nuclear Regulatory Commission (NRC, the Commission) received an early site permit (ESP) application dated October 16, 2003, from System Energy Resources, Inc., a subsidiary of Entergy Corporation, filed pursuant to section 103 of the Atomic Energy Act and 10 CFR part 52. The site selected for the application is property co-located with the Grand Gulf Nuclear Station near Port Gibson, Mississippi and is identified as the Grand Gulf ESP site.

An applicant may seek an ESP in accordance with subpart A of 10 CFR part 52 separate from the filing of an application for a construction permit (CP) or combined license (COL) for a nuclear power facility. The ESP process allows resolution of issues relating to siting. At any time during the period of an ESP (up to 20 years), the permit holder may reference the permit in an application for a CP or COL.

Subsequent **Federal Register** notices will address the acceptability of the tendered ESP application for docketing and provisions for participation of the public and other parties in the ESP review process.

A copy of the application is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland and via the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* The accession number for the application is ML032960315. Future publicly available documents related to the application will also be posted in ADAMS. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

The application is also available to local residents at the Harriette Person Memorial Library in Port Gibson, Mississippi, and it will be available on the NRC web page at *http://www.nrc.gov/reactors/new-licensing/license-reviews/esp.html.*

Dated at Rockville, Maryland, this 7th day of November 2003.

For the Nuclear Regulatory Commission.

James E. Lyons,

Program Director, New, Research and Test Reactors Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 03–28497 Filed 11–13–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–27]

Environmental Assessment and Finding of No Significant Impact of License Amendment for BWX Technologies, Inc.

ACTION: Notice of Environmental Assessment and Finding of No Significant Impact (FONSI) for Amendment of BWX Technologies, Inc., Materials License SNM–42 to approve the Final Status Survey Plan and Decommissioning Plan for Industrial Waste Landfill 1.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Stout, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T8–A33, Washington, DC 20555–0001, telephone (301) 415–5269 and e-mail *des1@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the amendment of Special Nuclear Material License SNM–42 to approve the Final Status Survey Plan (FSSP) and Decommissioning Plan (DP) for Industrial Waste Landfill 1 (ILW1) at the

BWX Technologies, Inc., facility located in Lynchburg, VA, and has prepared an Environmental Assessment (EA) in support of this action.

Pursuant to NRC regulations (10 CFR part 51) which implement the requirements of the National Environmental Policy Act (NEPA) of 1969, the NRC staff prepared an EA to evaluate the environmental impacts associated with approval of the FSSP and DP for ILW 1. Based on this evaluation the NRC has concluded that a FONSI is appropriate for the proposed licensing action.

The NRC published a **Federal Register** notice on October 23, 2002 (67 FR 65146), with a Notice of Opportunity for Hearing on the proposed action. No request for a hearing was received.

II. Environmental Assessment

1.0 Introduction

The Nuclear Regulatory Commission (NRC) staff has received a license request from BWX Technologies, Inc. (BWXT), dated June 11, 2002, to amend SNM–42 to approve the DP and the FSSP for IWL1 (Ref. 1). The purpose of this document is to assess the environmental consequences of the proposed license amendment.

The BWXT facility in Lynchburg, VA is authorized under SNM–42 to possess nuclear materials for the fabrication and assembly of nuclear fuel components. The facility fabricates research and university reactor components, and manufactures compact reactor fuel elements. The facility also performs recovery of scrap uranium. Research and development activities related to the fabrication of nuclear fuel components are also conducted.

1.1 Background

BWXT began operations at the Lynchburg, VA facility in 1956. From 1972 until 1990, BWXT, formerly Babcock and Wilcox, operated two industrial waste landfills, designated IWL1 and IWL2 (further subdivided into 2A and 2B). The landfills were operated under permits issued by the Commonwealth of Virginia. During an internal investigation in 1990, it was determined that the material in the landfills had been contaminated prior to disposal. Subsequent to the investigation, the NRC issued a violation for onsite disposal of radioactive material.

In response to the violation, BWXT committed to submitting a characterization plan to the NRC for the industrial waste landfills. Following the completion of the characterization, BWXT's intention was to request permission to leave the contaminated material in place, as scoping surveys indicated that the criteria for unrestricted release could be demonstrated.

In a submittal dated September 29, 1999, BWXT requested approval of Revision 0 of the Final Status Survey Report (FSSR) for the Industrial Waste Landfills at the Lynchburg, VA facility. In a response dated May 19, 2000, the NRC staff concluded that IWLs 2A and 2B were acceptable for release, provided the licensee demonstrated that the cover would remain in place. However, the staff also determined that Trenches 2 and 3 of IWL1 should be remediated. The FSSP and DP for IWL1 were submitted on June 11, 2002, and are the subject of this EA.

The purpose of the FSSP and DP is to provide a plan for demonstrating that the levels of radioactive contamination in IWL1 satisfy NRC requirements for complying with 10 CFR 70.38, which requires the licensee to decommission any outdoor area where no principal licensed activities are occurring. Based on knowledge of the source of contamination, as well as scoping survey information, the main radioactive contaminant present in IWL1 is highly enriched uranium.

The criteria that BWXT proposes to meet are found in the Branch Technical Position (BTP), ''Disposal or Onsite Storage of Thorium or Uranium Wastes from Past Operations'' (Ref. 2). This criteria was approved by the NRC for use at the BWXT site before the License Termination Rule was published in 1997. The criteria in the BTP which BWXT propose to meet are as follows:

Option 1—Disposal of acceptably low concentrations enriched uranium with no restriction on burial. For enriched uranium, the maximum acceptable concentration is 30 pCi/gm.

Option 2—Disposal of certain low concentrations of enriched uranium, when buried under prescribed conditions, with no subsequent land use restrictions and no continuing NRC licensing of the material. For enriched uranium, the maximum acceptable concentration is 100 pCi/gm for soluble U and 250 pCi/gm for insoluble U. Conditions may be prescribed in the license, such as depth and distribution of material, to minimize the likelihood of intrusion. The prescribed burial conditions include demonstration that the buried material will be stabilized in place and not be transported away from the site and burial depth be at least four feet below the surface. The acceptability of the site for this type of disposal will depend upon topographical, geological, hydrogeological and meteorological characteristics of the site.

1.2 Review Scope

In accordance with 10 CFR part 51, this EA serves to (1) present information and analysis for determining whether to issue a FONSI or to prepare an Environmental Impact Statement (EIS); (2) fufill the NRC's compliance with the NEPA when no EIS is necessary; and (3) facilitate preparation of an EIS when one is necessary. Should the NRC issue a FONSI, no EIS would be prepared and the license amendment would be granted.

This document serves to evaluate and document the impacts of the proposed action. Other activities on the site have previously been evaluated and documented in the 1991 EA for the Renewal of the NRC license for BWXT (Ref. 3). The 1991 document is referenced when no significant changes have occurred. Besides the proposed licensing action, operations will continue to remain limited to those authorized by the license.

1.3 Proposed Action

IWL1 is approximately 240 ft long, 150 ft wide, and has a maximum depth of 3 ft. There are 8 trenches in the landfill. BWXT will remediate Trench 2 and a portion of Trench 3 of IWL1. All of Trench 2 and more than a third of Trench 3 will be excavated and the material will be properly disposed of as radioactive waste, a total volume of approximately 3750 ft^3. A post-remediation scanning survey will be conducted for the excavation as well as any surrounding ''affected'' areas impacted by the exhumation activities. Elevated contaminated areas will be either exhumed for disposal as waste or flagged for additional sampling. Soil sampling will also be conducted within the excavation and one meter from the edge of the excavation to compare contamination levels to the guideline value.

The rest of the trenches in the landfill would then remain buried and be capped with impermeable material to inhibit infiltration of surface water (precipitation). Two feet of cover has already been applied over the landfill, another 2 feet will be added for a total of 4 feet of impermeable clay. This cap would be a continuous cover over all trenches, including up to 5 feet beyond the outermost trenches in the site. The cap would then be covered with 0.5 feet of topsoil to support growth of vegetation.

Preparation, excavation, sampling, analysis, and report preparation is

scheduled to be conducted in approximately 42 months (Ref. 1).

BWXT's specific objectives in the FSSP and the DP are to demonstrate that:

- The residual contamination in IWL1, after removal of material from Trench 2 and part of Trench 3, meets the criteria in Option 1 or Option 2 of BTP, ''Disposal or Onsite Storage of Thorium or Uranium Wastes from Past Operations'' (SECY 81–576)(NRC 1981).
- The environmental impact of any contamination above background poses no significant risk to the environment or the general public, and
- The buried material will remain in place under Option 2 of the BTP criteria.

BWXT has no plans at this time to release IWL1 from its NRC license. At the time of license termination for the entire BWXT site, the results of the area final status survey will be reassessed in order to include any possible dose contribution from the IWL1 in the dose assessment for the entire site and any impacts from possible recontamination of the IWL1.

1.4 Need for Proposed Action

The need for this proposed action is to allow BWXT to dispose of contamination in IWL1 so as to be able to demonstrate that levels of radioactive contamination in IWL1 will satisfy NRC requirements for complying with 10 CFR 70.38.

1.5 Alternatives to the Proposed Action

NRC considered two alternatives to the proposed action. These are described below.

Alternative 1—No action

This alternative is to leave the site in its current, contaminated condition. Leaving the site in this condition would not comply with NRC regulations that require remediation of unused outdoor areas. Therefore, this alternative is not acceptable.

Alternative 2—Excavate the entire IWL1

This alternative would require the licensee to recover and dispose of all of the material in the landfill. The NRC has concluded that this alternative is not preferable for the following reasons:

- This option is more disruptive to the environment due to more disturbance of the soil; and
- the soil which is not contaminated (below the cleanup criteria) will have to be sent to a municipal landfill which has the same environmental impacts as leaving it in place.

2.0 Affected Environment

The affected environment is the BWXT site. A full description of the site and its characteristics is given in the 1991 EA for renewal (Ref. 3). The BWXT facility is located on a 525 acre (2 km^2) site in the northeastern corner of Campbell County, approximately 5 miles (8 km) east of Lynchburg, VA. This site is located in a generally rural area, consisting primarily of rolling hills with gentle slopes, farm land, and woodlands.

3.0 Environmental Impacts of the Proposed Action

3.1 Radiological Impacts

Excavated material from Trenches 2 and 3 will be shipped to a licensed disposal facility. The licensee's radiological protection program, which is described in SNM–42, requires use of hazardous work permits and safety procedures that will limit doses to workers to less than or equal to the limits in 10 CFR part 20.

Minor spills and/or releases may occur as contaminated soil is being prepared for shipment or during transport to an offsite disposal facility. However, considering that the majority of the waste stream expected to be generated during decommissioning comprises contaminated soil, these incidents would pose only negligible impact to human health and the environment. In the event of a spill of this nature, decontamination efforts and any required notification would be performed in accordance with the BWXT procedures.

Residual concentrations of radionuclides in soil will be in compliance with the approved levels in the BTP. Using the conservative resident farmer scenarios, the RESRAD computer program calculates the radiological impact from the residual contamination to be approximately 25 mrem/yr to the resident.

3.2 Non-Radiological Impacts

Portions of the site, primarily the groundwater, are contaminated with solvents (PCE, TCE, etc.) from previous BWXT activities. These materials are the subject of an EPA and TDEC RCRA/HSWA Permit requiring investigation and remediation to EPA and Virginia standards in a timeframe agreed upon among EPA, Virginia Department of Health and BWXT. Therefore they are not addressed in this EA.

3.3 Historical and Archaeological Resources

The only historic site on the National Register of Historic Places near the facility (within 5 miles) is the 19th century Mt. Athos Plantation, which is across the Mt. Athos Road to the east.

The proposed action is not expected to adversely affect historic properties. The staff consulted the State of Virginia Liaison Officer for Historic Preservation and no comments were provided.

3.4 Biota

The bald eagle (Haliaeetus leucocephalus) is listed as a federally threatened species in Campbell County.

One vascular plant, the smooth coneflower (Echinacea laevigata) is listed as a federally endangered species, and two vascular plants, the sweet pine sap (Monotropsis odorata) and the Torrey's mountain-mint (Pycnanthemum torrei), are listed as species of concern in Campbell County.

Two fish, the orangefin madtom (Noturus gilberti) and the bigeye jumprock (Scartomyzon ariommus), are listed as species of concern in Campbell County.

The U.S. Fish and Wildlife Service, Virginia Field Office determined that the proposed action will not have adverse impacts on threatened or endangered species, or their habitat.

3.5 Water Resources

Surface water is not expected to be impacted from approval of this amendment application. There will be no direct effluent discharges to surface water as a result of the proposed activity. Surface water is expected to continue to be protected from site activities through release limits and monitoring programs, as required by the National Pollutant Discharge Elimination System permit, which is regulated by the State.

Groundwater quality is not expected to be impacted by this operation. There will be no discharges to soils or surface water that could result in groundwater contamination from the proposed activity, and no withdrawals from groundwater wells which would drawdown the water table.

3.6 Construction Impacts

No building construction will occur in this action. Therefore construction impacts are not applicable.

3.7 Impacts to Aesthetic, Economic, Cultural, Social, Air Quality, and Noise Resources

There will be no discernable impacts on aesthetics, socio-economics or cultural resources because the work is being done by existing staff and the physical configuration of the facility will remain the same as currently.

There may be minor, temporary impacts on air quality and noise during remediation activities. BWXT has dust control measures in place, and the use of equipment will not significantly change from that of the current industrial environment.

4.0 Environmental Monitoring

A full description of the effluent monitoring program at the site is provided in the 1991 EA for renewal (Ref. 3). Monitoring programs at the BWXT facility comprise effluent monitoring of air and water and environmental monitoring of various media (air, soil, vegetation, and groundwater). This program provides a basis for evaluation of public health and safety impacts, for establishing compliance with environmental regulations, and for development of mitigation measures if necessary. The monitoring program is not expected to change as a result of the proposed action. The NRC has reviewed the location of the environmental monitoring program sampling points, the frequency of sample collection, and the trends of the sampling program results in conjunction with the environmental pathway and exposure analysis and has concluded that the monitoring program provides adequate protection of public health and safety.

The area to be remediated will remain within licensee control and will be monitored according to the pertinent provisions of the license for operational and environmental monitoring.

5.0 Agencies and Individuals Consulted

Virginia Department of Environmental Quality, was consulted and has no objection to the proposed action (phone call with Mark Campbell on August 26, 2003).

State of Virginia Liason Officer for Historic Preservation was consulted and provided no comments on the proposed action.

U.S. Fish and Wildlife Service, Virginia Field Office was consulted and has no objection to the proposed action (phone call with Jolie Harrison on May 21, 2003).

6.0 References

1. BWX Technologies, Inc. June 11, 2002 Final Status Survey Plan and Decommissioning Plan for the Industrial Waste Landfill 1. (ADAMS accession number ML021690397).

2. U.S. Nuclear Regulatory Commission, October 5, 1981, Branch Technical Position, Disposal or Onsite Storage of Residual Thorium or Uranium (Either as Natural Ores or Without Daughters Present) From Past Operations (SECY 81–576).

3. U.S. Nuclear Regulatory Commission, August 1991, Environmental Assessment for the Renewal of Special Nuclear Material License No. SNM–42.

4. U.S. Nuclear Regulatory Commission, February 26, 2001, Letter to Arne Olsen from Philip Ting, ''BWXT Amendment No. 66, Postponement of Landfill No. 1 Decommissioning''.

III. Finding of No Significant Impact

The Commission has prepared the above Environmental Assessment related to the amendment of Special Nuclear Material License SNM–42. On the basis of the assessment, the Commission has concluded under the National Environmental Policy Act of 1969, as amended to the Commission's regulation in subpart A of 10 CFR part 51, that environmental impacts associated with the proposed action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, the Commission has determined that an Environmental Impact Statement is not required.

IV. Further Information

In accordance with 10 CFR 2.790 of the NRC's ''Rules of Practice,'' the documents related to this proposed action will be available electronically for public inspection from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* (the Public Electronic Reading Room).

Dated at Rockville, Maryland, this 5th day of November, 2003.

For the Nuclear Regulatory Commission.

John Lubinski,

Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety And Safeguards.

[FR Doc. 03–28499 Filed 11–13–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–247]

Entergy Nuclear Operations, Inc.; Indian Point Nuclear Generating Unit No. 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. DPR–26, issued to Entergy Nuclear Operations, Inc. (ENO or the licensee) for operation of Indian Point Nuclear Generating Unit No. 2 (IP2), located in Westchester County, New York. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise the existing, or current, Technical Specifications (TS) for IP2 in their entirety based on the guidance provided in NUREG–1431, ''Standard Technical Specifications for Westinghouse Plants,'' Revision 2, dated April 2001, and in the Commission's ''Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors,'' published on July 22, 1993 (58 FR 39132). The proposed amendment is in accordance with the licensee's application dated March 27, 2002, as supplemented by letters dated May 30, 2002; July 10, 2002; October 10, 2002; October 28, 2002; November 26, 2002; December 18, 2002; January 6, 2003; January 27, 2003; February 26, 2003; April 8, 2003; May 19, 2003; June 23, 2003; June 26, 2003; July 15, 2003; August 6, 2003; September 11, 2003; October 8, 2003; and October 14, 2003.

The Need for the Proposed Action

It has been recognized that nuclear safety in all nuclear power plants would benefit from the improvement and standardization of plant TSs. The ''NRC Interim Policy Statement on Technical Specification Improvements for Nuclear Power Plants'' (52 FR 3788), contained proposed criteria for defining the scope of TSs. Later, the Commission's ''Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors,'' published on July 22, 1993 (59 FR 39132), incorporated lessons learned since publication of the interim policy statement and formed the basis for revisions to 10 CFR 50.36, ''Technical Specifications.'' The ''Final Rule'' (60 FR 36953) codified criteria for determining the content of TSs. To facilitate the development of standard TS for nuclear power reactors, each power reactor vendor owners' group (OG) and the NRC staff developed standard TS. For IP2, the Improved Standard Technical Specifications (ISTS) are in NUREG–1431, Revision 2. The NRC Committee to Review Generic Requirements (CRGR) reviewed the ISTS, made note of their safety merits, and indicated its support of the conversion by operating plants to the ISTS.

The proposed changes to the current TS (CTS) are based on NUREG–1431, Revision 2, and on guidance provided by the Commission in the Final Policy

Statement. The objective of the changes is to completely rewrite, reformat, and streamline the TSs (*i.e.*, to convert the CTS to Improved Technical Specifications (ITS)). Emphasis is placed on human factors principles to improve clarity and understanding of the TSs. The Bases section of the ITS has been significantly expanded to clarify and better explain the purpose and foundation of each specification. In addition to NUREG–1431, Revision 2, portions of the CTS were also used as the basis for the development of the IP2 ITS. Plant-specific issues (*e.g.*, unique design features, requirements, and operating practices) were discussed with the licensee, and generic matters were discussed with Westinghouse and other OGs.

The proposed changes to the CTS can be grouped into four categories. These groupings are characterized as administrative changes, relocation changes, more restrictive changes and less restrictive changes.

1. Administrative changes are those that involve restructuring, renumbering, rewording, interpretation, and complex rearranging of requirements and other changes not affecting technical content or substantially revising an operating requirement. The reformatting, renumbering, and rewording process reflects the attributes of NUREG–1431, Rev. 2, and does not involve technical changes to the ITS. The proposed changes include: (a) Providing the appropriate numbers, etc., for NUREG–1431 bracketed information (information that must be supplied on a plant-specific basis, and which may change from plant to plant), (b) identifying plant-specific wording for system names, etc., and (c) changing NUREG–1431 section wording to conform to existing licensee practices. Such changes are administrative in nature and do not impact initiators of analyzed events or assumed mitigation of accident or transient events.

2. Relocation changes are those involving relocation of requirements and surveillances for structures, systems, components, or variables that do not meet the criteria for inclusion in TSs. Relocated changes are those CTS requirements that do not satisfy or fall within any of the four criteria specified in 10 CFR 50.36(c)(2)(ii) and may be relocated to appropriate licensee-controlled documents.

The licensee's application of the screening criteria is described in the attachment of the licensee's March 27, 2002, submittal, which is entitled, ''Application of NRC Selection Criteria Including the CTS to ITS Disposition and Relocation Matrix'' (Split Report) in Volume 1 of the submittal. The affected structures, systems, components or variables are not assumed to be initiators of analyzed events and are not assumed to mitigate accident or transient events. The requirements and surveillances for these affected structures, systems, components, or variables will be relocated from the TSs to administratively-controlled documents such as the quality assurance program, the Final Safety Analysis Report (FSAR), the ITS Bases, the Technical Requirements Manual (TRM) that is incorporated by reference in the FSAR, the Core Operating Limits Report (COLR), the Offsite Dose Calculation Manual (ODCM), the Inservice Testing (IST) Program, or other licensee-controlled documents. Changes made to these documents will be made pursuant to 10 CFR 50.59 or other NRC-approved control mechanisms, which provide appropriate procedural means to control changes by the licensee.

3. More restrictive changes are those involving more stringent requirements compared to the CTS for operation of the facility. These more stringent requirements do not result in operation that will alter assumptions relative to the mitigation of an accident or transient event. The more restrictive requirements will not alter the operation of process variables, structures, systems, and components described in the safety analyses. For each requirement in the ISTS that is more restrictive than the CTS that the licensee proposes to adopt in the ITS, the licensee has provided an explanation as to why it has concluded that adopting the more restrictive requirement is desirable to ensure safe operation of the facility because of specific design features of the plant.

4. Less restrictive changes are those where CTS requirements are relaxed or eliminated, or new plant operational flexibility is provided. The more significant ''less restrictive'' requirements are justified on a case-by-case basis. When requirements have been shown to provide little or no safety benefit, their removal from the TSs may be appropriate. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of: (a) Generic NRC actions, (b) new NRC staff positions that have evolved from technological advancements and operating experience, or (c) resolution of the Owners Groups' comments on the ISTS. Generic relaxations contained in NUREG–1431, Revision 2 were reviewed by the staff and found to be acceptable because they are consistent with current licensing practices and NRC regulations. The licensee's design is being reviewed to determine if the specific design basis and licensing basis are consistent with the technical basis for the model requirements in NUREG–1431, Revision 2, thus providing a basis for the ITS, or if relaxation of the requirements in the ITS is warranted based on the justification provided by the licensee.

These administrative, relocated, more restrictive, and less restrictive changes to the requirements of the ITS do not result in operations that will alter assumptions relative to mitigation of an analyzed accident or transient event.

In addition to the proposed changes solely involving the conversion, there are also changes proposed that are different from the requirements in both the CTS and the STS NUREG–1431. These beyond scope issues to the conversion, listed in the order of the applicable ITS specification or section, as appropriate (from ITS 3.6.9 to ITS 3.8.7), are as follows:

1. The licensee added ITS Limiting Condition for Operation (LCO) 3.6.9—Isolation Valve Seal Water System to the proposed IP2 ITS. NUREG–1431 does not include an STS for this system, because very few plants have this kind of system. The CTS provides a base set of requirements, which the staff will use to evaluate the licensee's proposed change for parameters such as allowable out-of-service time and surveillance requirements (SRs).

2. The licensee added ITS LCO 3.6.10—Weld Channel and Penetration Pressurization System (WC&PPS) to the proposed IP2 ITS. The WC&PPS is designed to continuously pressurize the space between selected containment isolation valves, containment piping penetration barriers, and most of the weld seam channels installed on the inside of the containment liner. Pressurization by the WC&PPS provides a means of monitoring the containment leakage of the affected barriers. WC&PPS pressure is maintained above P_a [atmospheric pressure], so the system may also reduce out leakage from the containment during an accident, although it is not credited for doing so. There are no regulatory requirements or guidance for this system. NUREG–1431 does not include an STS for this system, because very few plants have this kind of system.

3. The licensee added ITS 3.7.2—Main Steam Isolation Valves (MSIVs) and Main Steam Check Valves (MSCVs) to the proposed IP2 ITS. CTS 3.4B allows all 4 MSIVs to be inoperable for up to 72 hours prior to requiring initiation of plant shutdown. The proposed ITS LCO 3.7.2, required action C.1, allows only one MSIV to be

inoperable for up to 72 hours prior to requiring initiation of a plant shutdown. If more than one MSIV is inoperable in Mode 1 (and not closed), ITS LCO 3.0.3 is immediately applicable and a plant shutdown must be initiated within one hour. Proposed ITS 3.7.2 deviates from STS 3.7.2 which allows all four MSIVs to be inoperable for up to 72 hours prior to requiring initiation of plant shutdown.

4. The licensee proposed ITS LCO 3.7.3 for Main Feedwater Isolation to add requirements for operability, allowable out of service times and SRs which are deviations from the Scope of STS conversion.

5. The licensee proposed ITS LCO 3.7.8 of 72 hours allowed out of service time which is less restrictive (*i.e.*, longer) than the STS allowed out of service time of 12 hours, without adopting NUREG–1431, STS LCO 3.7.8 Notes 1 and 2, for the service water pumps.

6. The licensee proposed ITS LCO 3.8.1 to replace the current CTS 3.7 and to require that onsite and offsite electrical power systems are operable in Modes 1, 2, 3, and 4. Current requirements of CTS 3.7 specify that requirements for onsite and offsite electrical power systems are applicable only when the reactor is critical and, therefore, requires only that the reactor be made subcritical when requirements are not met. CTS 4.6 does not establish any requirements for the periodic verification of correct breaker alignment and indicated power availability for offsite circuits.

7. The licensee proposed the following SRs for ITS LCO 3.8.3—Diesel Fuel Oil and Starting Air:

(a) ITS SR 3.8.3.1, requirement for verification regarding the emergency diesel generator fuel oil inventory in the fuel oil storage tanks, is relaxed.

(b) Proposed ITS does not adopt STS SR 3.8.3.2 requirement for verification regarding the lube oil inventory; and

(c) The licensee added new sections to specify a range of pressure limits and impose LCOs and SRs for the starting air receivers. CTS does not currently have these requirements.

8. The licensee proposed ITS LCO 3.8.4, ''DC Sources—Operating'' and associated ITS SR 3.8.4 which are less restrictive than CTS 3.7.B.5 and CTS 3.7.B.6, CTS 3.7.B.5, and CTS 3.7.B.6 allow one of the four batteries to be inoperable for 24 hours if the associated charger is operable or allow one of the four chargers to be inoperable for 24 hours if the associated battery is operable.

9. The licensee originally proposed ITS LCO 3.8.6, which did not include a requirement to verify battery float current every seven days in accordance with STS 3.8.6, but required seven days with associated conditions. The original proposed ITS 3.8.6 was a deviation from STS 3.8.6, which specified the seven-day interval requirement. However, the licensee later modified its proposed ITS 3.8.6 to include the seven-day SR.

10. The licensee originally proposed ITS LCO 3.8.7, ''Inverter—Operating,'' which limits the time the inverter may be inoperable to seven days in its March 27, 2002, submittal in lieu of 24 hours as recommended by NUREG–1431. The staff was concerned that the seven-day LCO was too long and also was not consistent with NUREG–1431. Subsequently, the licensee modified its proposed ITS LCO 3.8.7 to reduce the LCO from seven days to 24 hours.

11. The licensee proposed ITS 5.5.11, ''Diesel Fuel Oil Testing Program,'' which is a deviation from STS 5.5.13. The current CTS and UFSAR do not have any requirements for testing diesel fuel oil. Proposed ITS 5.5.11 adds a new program, ''Diesel Fuel Oil Testing,'' to require that a diesel fuel oil testing program is maintained with specific TS requirements for acceptance criteria and testing frequency. IP2 design and licensing basis requires that each diesel generator (DG) has an onsite underground storage tank containing oil for 48 hours of minimum safeguards load and a DG fuel oil reserve with sufficient fuel to support an additional 5 days of operation. ITS 5.5.11 will establish separate fuel oil testing programs for onsite underground storage tanks and the DG fuel oil reserve tanks. The proposed ITS adds to the Administrative Control Section of the TS a new diesel fuel oil testing program. It also incorporates several editorial changes in order to make the ITS consistent with the STS. With a few exceptions, this program follows the requirements specified in the STS.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed conversion of the CTS to the ITS for IP2, including the beyond scope issues discussed above. Changes which are administrative in nature have been found to have no effect on the technical content of the TSs. The increased clarity and understanding that these changes bring to the TSs are expected to improve the operators' control of IP2 in normal and accident conditions.

Relocation of the requirements from the ITS to other licensee-controlled documents does not change the requirements themselves. Future changes to these requirements may be made by the licensee under 10 CFR 50.59 and other NRC-approved control mechanisms, which will ensure continued maintenance of adequate requirements. All such relocations have been found consistent with the guidelines of NUREG–1431, Revision 2, and the Commissions's Final Policy Statement.

Changes involving more restrictive requirements have been found to enhance plant safety.

Changes involving less restrictive requirements have been reviewed individually. When requirements have been shown to provide little or no safety benefit, or to place an unnecessary burden on the licensee, their removal from the TSs was justified. In most cases, the relaxations previously granted to individual plants on a plant-specific basis were the result of generic action, or of agreements reached during discussions with the owners' groups, and found to be acceptable for the plant. Generic relaxations contained in NUREG–1431, Revision 2, have been reviewed by the NRC staff and found to be acceptable.

In summary, the proposed revisions to the TSs were found to provide control of plant operations such that reasonable assurance will be provided that the health and safety of the public will be adequately protected.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action involves features located entirely within the restricted area for the plant defined in 10 CFR part 20 and does not have the potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. It does not increase any discharge limit for the plant. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the

proposed action (*i.e.*, the ''no-action'' alternative). Denial of the application would result in no change in the current environmental impacts. The environmental impacts of the proposed action and alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for IP2, dated September 1972.

Agencies and Persons Consulted

On September 25, 2002, the staff consulted with the New York State official, Ms. Alyse Peterson, of the New York Energy and Research Authority, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated March 27, 2002, as supplemented by letters dated May 30, 2002; July 10, 2002; October 10, 2002; October 28, 2002; November 26, 2002; December 18, 2002; January 6, 2003; January 27, 2003; February 26, 2003; April 8, 2003; May 19, 2003; June 23, 2003; June 26, 2003; July 15, 2003; August 6, 2003; September 11, 2003; October 8, 2003; and October 14, 2003. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* 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 or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland this 5th day of November, 2003.

For the Nuclear Regulatory Commission.

Richard Laufer,

Chief, Section 1, Project Directorate 1, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–28498 Filed 11–13–03; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Required Interest Rate Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or can be derived from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's Web site *http://www.pbgc.gov*.

DATES: The required interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in November 2003. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in December 2003.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, (202) 326–4024. TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to (202) 326–4024.

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the ''required interest rate'') in determining a single-employer plan's variable-rate premium. The required interest rate is the ''applicable percentage'' (currently 100 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the ''premium payment year''). (Although the Treasury Department has ceased issuing 30-year securities, the Internal Revenue Service announces a surrogate yield figure each month—based on the 30-year Treasury bond maturing in February 2031—which the PBGC uses to determine the required interest rate.)

The required interest rate to be used in determining variable-rate premiums for premium payment years beginning in November 2003 is 5.16 percent.

The following table lists the required interest rates to be used in determining variable-rate premiums for premium payment years beginning between December 2002 and November 2003.

For premium payment years beginning in:	The required interest rate is:
December 2002	4.96
January 2003	4.92
February 2003	4.94
March 2003	4.81
April 2003	4.80
May 2003	4.90
June 2003	4.53
July 2003	4.37
August 2003	4.93
September 2003	5.31
October 2003	5.14
November 2003	5.16

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in December 2003 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 10th day of November 2003.

Joseph H. Grant,

Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 03–28543 Filed 11–13–03; 8:45 am]

BILLING CODE 7708–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad

Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s): (1) *Collection title:* Voluntary Customer Surveys in Accordance with E.O. 12862.

(2) *Form(s) submitted:* G–201.

(3) *OMB Number:* 3220–0192.

(4) *Expiration date of current OMB clearance:*

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households, business or other for-profit.

(7) *Estimated annual number of respondents:* 2,050.

(8) *Total annual responses:* 2,050.

(9) *Total annual reporting hours:* 742.

(10) *Collection description:* The Railroad Retirement Board (RRB) utilizes voluntary customer surveys to ascertain customer satisfaction with the RRB in terms of timeliness, appropriateness, access, and other measures of quality service. Surveys involve individuals that are direct or indirect beneficiaries of RRB services as well as railroad employers who must report earnings.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363).

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 03–28504 Filed 11–13–03; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of November 17, 2003:

An Open Meeting will be held on Wednesday, November 19, 2003 at 2 p.m., in Room 1C30, the William O. Douglas Room.

The subject matter of the Open Meeting scheduled for Wednesday, November 19, 2003 will be:

The Commission will consider whether to adopt amendments to Schedule 14A and Forms 10–Q, 10–QSB, 10–K, and 10–KSB under the Securities Exchange Act of 1934, and Form N–CSR under the Securities Exchange Act of 1934 and the Investment Company Act of 1940. The amendments would require expanded disclosure related to the operation of board nominating committees and new disclosure concerning security holder communications with board members.

For further information, please contact Lillian Brown at (202) 824–5250.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: November 12, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–28707 Filed 11–12–03; 3:45 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [68 FR 62860, November 6, 2003]

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

ANNOUNCEMENT OF ADDITIONAL MEETING: Additional meeting.

An additional Closed Meeting will be held on Wednesday, November 12, 2003 at 4 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matter may also be present.

Commissioner Campos, as duty officer, determined that no earlier notice thereof was possible.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), and (10) and 17 CFR 200.402(a)(5), (7), and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Campos, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the Closed Meeting to be held on Wednesday, November 12, 2003 will be:

Settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 942–7070.

Dated: November 12, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–28708 Filed 11–12–03; 3:45 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48755; File No. PCAOB–2003–04]

Public Company Accounting Oversight Board; Order Approving Proposed Code of Ethics

November 7, 2003.

I. Introduction

On July 11, 2003, the Public Company Accounting Oversight Board (the ''Board'' or the ''PCAOB'') filed with the Securities and Exchange Commission (the ''Commission'') proposed rule PCAOB–2003–04 pursuant to Section 101 of the Sarbanes-Oxley Act of 2002 (the ''Act'')[1], relating to the establishment of an ethics code. Notice of the proposed rule was published in the **Federal Register** on September 26, 2003.[2] The Commission received no comment letters. For the reasons discussed below, the Commission is granting approval of the proposed rule.

II. Description

Section 101(g)(3) of the Act directs the PCAOB to establish ethics rules and standards of conduct for Board members and staff. The Act required that this code include a one-year bar on practice before the Board (and the Commission, with respect to Board-related matters) for former members of the Board, and a bar for former staff that was not to exceed one year.

In furtherance of this provision, the PCAOB issued a proposed ethics code for public comment on April 18, 2003. In response to comments received, the PCAOB adopted a proposed ethics code

[1] 15 U.S.C. 7201, *et seq.*

[2] Release No. 34–48506 (September 22, 2003); 68 FR 55673 (September 26, 2003).

on June 30, 2003 and filed it with the Commission's Office of the Secretary on July 11, 2003. Pursuant to the requirements of section 107(b) of the Act and section 19(b) of the Securities Exchange Act of 1934 (the ''Exchange Act''), the Commission published the proposed ethics code for public comment on September 26, 2003.

The PCAOB's proposed ethics code consists of 14 sections (EC 1 through EC 14) that establish rules governing the conduct of PCOAB members, employees and certain contractors and consultants. The code, among other things, adopts a set of basic principles, clarifies who is covered by which provisions, establishes permitted and prohibited financial and employment interests, requires certain financial disclosures, restricts certain outside activities, limits the gifts that may be received by members and employees, employs a reasonable person standard for analyzing disqualification issues, maintains a permanent ban on the release of non-public information, establishes the position of an Ethics Officer to counsel and provide interpretations of the code, addresses the conflict-of-interest issues relating to seeking other employment, imposes a post-employment restriction on former members and staff with respect to practicing before the Board (or the Commission with respect to Board-related matters) with respect to particular matters involving specific parties that the former member or staff person had worked on at the Board, provides that waivers of the ethics code will be made public (subject to the protection of certain information on privacy grounds), and requires an annual certification of compliance with the Code's provisions.

III. Discussion

The Commission received no public comments regarding the PCAOB's proposed ethics code. Section 101 of the Act directs the PCAOB to establish ethics rules and standards of conduct for Board members and staff. The proposed ethics code addresses all of the essential elements of an effective ethics code, including standards on financial and personal conflicts, protection of non-public information, acceptance of gifts, outside activities, waivers of the code, and restrictions on seeking other employment, and post-Board employment activities.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed ethics code is consistent with the requirements of the Act and the securities laws and is necessary and appropriate in the public interest and for the protection of investors.

It is thefore ordered, pursuant to section 107 of the Act and section 19(b)(2) of the Exchange Act, that the proposed ethics code (File No. PCAOB–2003–04) be and hereby is approved.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–28474 Filed 11–13–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48749; File No. SR–NYSE–2003–24]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change and Amendment No.1 Thereto To Reduce Initial and Annual Branch Office Registration Fees, Retroactive to January 1, 2003, Charged to Member Organizations With More Than One Thousand Branch Offices

November 6, 2003.

On August 21, 2003, the New York Stock Exchange, Inc. (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') and Rule 19b–4 [2] thereunder, a proposed rule change to reduce branch office fees charged to member organizations with more than one thousand branch offices, retroactive to January 1, 2003. On September 8, 2003, the Exchange amended the proposal.[3] The proposed rule change, as amended, was published for notice and comment in the **Federal Register** on October 3, 2003.[4] The Commission did not receive any comment letters on the proposed rule change.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(4) of the Act, which requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.[6] The Commission notes that the proposed rule change will not impose any additional charges on members, but will rather refund a portion of the fees paid by members having more than one thousand offices since January 1, 2003, as well as reduce their prospective fees. The Commission further notes that the Exchange has represented that it filed this proposal in response to member organization concerns that the current branch fee schedule is unduly burdensome for certain business models.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR-NYSE–2003–24), as amended by Amendment No. 1, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–28475 Filed 11–13–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Darla C. Stuckey, Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated September 5, 2003 (''Amendment No. 1'').

[4] *See* Securities Exchange Act Release No. 48547 (September 25, 2003), 68 FR 57497 (October 3, 2003).

[5] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Bartow County, GA

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to adivse the public that a supplemental draft Environmental Impact Statement (EIS) will be prepared for the proposed new location extension of US 411 in Bartow County, Georgia.

FOR FURTHER INFORMATION CONTACT: Robert M. Callan, P.E., Division Administrator, Federal Highway Administration, 61 Forsyth Street, SW., Suite 17T100, Atlanta, GA 30303–3104, Telephone (404) 562–3630 and/or Mr. Harvey Keepler, State Environmental/Location Engineer, Georgia Department of Transportation, Office of Environmental/Location, 3993 Aviation Circle, Atlanta, Georgia 30336, Telephone (404) 699–4400.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the GDOT, will prepare a supplemental draft EIS to construct a new location roadway between US41 and I–75 in Bartow County, Georgia for a distance of approximately 7.5 miles. This new location extension of US411 is needed to provide additional capacity and congestion relief for the existing roadway network, which currently includes common sections of US411, SR 61 and SR20 to access I–75. This project would provide direct, multi-lane access from Rome to I–75 and is one of the final connecting links in the Memphis to Atlanta Connector.

A Final EIS for this project was approved January 9, 1989, and the Record of Decision was signed May 25, 1989. In 1991, a suit was filed against the USDOT, FHWA and the GDOT on this project. In 1993, the United States District for the Northern District of Georgia acknowledged the need for the project and confirmed its independent utility from a larger east-west connector known as the Northern Arc. However, the document was ruled inadequate because it failed to adequately study a full range of alternatives. The proposed Supplemental draft EIS will address and study a full range of alternatives for this corridor and will provide updated studies and analyses on the alternatives originally studied.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies. A public hearing will be held and a public notice will be given of the time and place of the hearing.

To ensure that the full range of issues related to this proposed project is addressed and all significant issues identified in the EIS, formal scoping will be reinitiated. Additionally, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. Georgia's approved clearinghouse review procedures apply to this program.)

Issued on: November 5, 2003.

Jennifer L. Giersch,

Environmental Coordinator, Atlanta, Georgia.

[FR Doc. 03–28490 Filed 11–13–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Interstate 81 Corridor Improvement Study, Virginia

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The Federal Highway Administration (FHWA) is issuing this notice to advise the public that a Tier 1 Environmental Impact Statement (EIS) will be prepared for the I–81 Corridor Improvement Study in Virginia.

FOR FURTHER INFORMATION CONTACT: John Simkins, I–81 Corridor Environmental Project Manager, Federal Highway Administration, Post Office Box 10249, Richmond, Virginia 23240–0249. Telephone: (804) 775–3342.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Virginia Department of Transportation (VDOT), will prepare a Tier 1 EIS for the I–81 Corridor Improvement Study in Virginia. The Tier 1 EIS will study a range of improvement concepts that will address the purpose and need, including highway concepts, rail concepts, and combinations of highway and rail concepts. The effects of tolling with regard to the improvement concepts will also be studied. In addition, the consequences of making no improvements to the I–81 corridor will be studied. At the conclusion of the Tier 1 study, decisions will be made on the improvements concepts, the independent highway and rail components to be studied in Tier 2 National Environmental Policy Act (NEPA) document(s), and the type of NEPA document(s) for those components. Site-specific analyses and approvals will be elements of subsequent Tier 2 studies.

The FHWA and the VDOT are seeking input as part of the scoping process to assist in determining and clarifying issues relative to the study. Letters describing the study and soliciting input will be sent to the appropriate Federal, State, and local agencies, and to private organizations and other interested parties as part of the scoping effort. An agency scoping meeting as well as multiple public scoping meetings are being planned and will be announced by the VDOT when schedules have been confirmed. In addition, multiple public hearings will be held for which public notice will be given on the time and place. The Tier 1 Draft EIS will be available for public and agency review and comment prior to the public hearings.

To ensure that the full range of issues related to this study is addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this study and the Tier 1 EIS should be directed to the FHWA at the address provided above.

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

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: November 6, 2003.

John Simkins,

I–81 Corridor Environmental Project Manager.

[FR Doc. 03–28541 Filed 11–13–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2000–7257; Notice No. 32]

Railroad Safety Advisory Committee; Notice of Meeting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Railroad Safety Advisory Committee (''RSAC'') meeting.

SUMMARY: FRA announces the next meeting of the RSAC, a Federal Advisory Committee that develops railroad safety regulations through a consensus process. The RSAC meeting topics will include updates on the Illinois Department of Transportation Positive Train Control Project, the Highway-Rail Crossing Action Plan, the Switching Operations Fatality Analysis, and the Collision Analysis Working Group. Status reports will be given on the Locomotive Crashworthiness, Passenger Safety, and other active working groups. The Committee will be briefed on the International Application of Alcohol and Drug Rules, Hazardous Materials Regulations, and Medical Standards for Safety Critical Employees.

DATES: The meeting of the RSAC is scheduled to commence at 9:30 a.m. and conclude at 4 p.m. on Tuesday, December 2, 2003.

ADDRESSES: The meeting of the RSAC will be held at the Washington Plaza, 10 Thomas Circle, NW., Washington, DC 20005, (202) 842–1300. The meeting is open to the public on a first-come, first-served basis and is accessible to

individuals with disabilities. Sign and oral interpretation can be made available if requested 10 calendar days before the meeting.

FOR FURTHER INFORMATION CONTACT: Trish Butera or Lydia Leeds, RSAC Coordinators, FRA, 1120 Vermont Avenue, NW., Stop 25, Washington, DC 20590, (202) 493–6212/6213 or Grady Cothen, Deputy Associate Administrator for Safety Standards and Program Development, FRA, 1120 Vermont Avenue NW., Mailstop 25, Washington, DC 20590, (202) 493–6302.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), FRA is giving notice of a meeting of the Railroad Safety Advisory Committee (''RSAC''). The meeting is scheduled to begin at 9:30 a.m. and conclude at 4 p.m. on Tuesday, December 2, 2003. The meeting of the RSAC will be held at the Washington Plaza, 10 Thomas Circle, NW., Washington, DC 20005, (202) 842–1300. All times noted are Eastern Standard Time.

RSAC was established to provide advice and recommendations to the FRA on railroad safety matters. The Committee consists of 48 individual voting representatives and five associate representatives drawn from among 32 organizations representing various rail industry perspectives, two associate representatives from the agencies with railroad safety regulatory responsibility in Canada and Mexico and other diverse groups. Staffs of the National Transportation Safety Board and Federal Transit Administration also participate in an advisory capacity.

See the RSAC Web site for details on pending tasks at: *http://rsac.fra.dot.gov.* Please refer to the notice published in the **Federal Register** on March 11, 1996 (61 FR 9740) for more information about the RSAC.

Issued in Washington, DC, on November 7, 2003.

George A. Gavalla,

Associate Administrator for Safety.

[FR Doc. 03–28527 Filed 11–13–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement for Improved Transit Access Across the Hudson River to New York City, Referred to as Access to the Region's Core

AGENCY: Federal Transit Administration (FTA).

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

SUMMARY: The Federal Transit Administration (FTA) is issuing this notice to advise other agencies and the public that, in accordance with the National Environmental Policy Act and its implementing regulations, FTA and the New Jersey Transit Corporation (NJ TRANSIT), in partnership with the Port Authority of New York & New Jersey (PANYNJ), intend to prepare an Environmental Impact Statement (EIS) to evaluate alternatives that increase transit capacity across the Hudson River to meet the growing demand for travel between midtown Manhattan (23rd Street to 59th Street, Hudson River to East River) and west-of-Hudson points in New Jersey and New York. NJ TRANSIT is the local sponsoring agency for this EIS. Among the alternatives to be considered is the construction of a new trans-Hudson River rail tunnel and additional infrastructure improvements in New Jersey and proximate to Penn Station New York (PSNY) to improve train and commuter capacity. The tunnel alternative was recommended on the basis of a Major Investment Study (MIS) conducted from 1995 to 2003, which is available for review as described in **ADDRESSES** below. FTA, NJ TRANSIT, and PANYNJ seek public and interagency input on the scope of the EIS for the project, including the alternatives to be considered and the environmental and community impacts to be evaluated. The project is called Access to the Region's Core (ARC).

DATES: *Scoping Comments Due Date:* Written comments on the scope of the EIS should be sent to NJ TRANSIT by January 30, 2004. See **ADDRESSES** below.

Scoping Meeting: Public scoping meetings to determine the appropriate scope of the EIS for ARC will be held on December 8, 2003 in Newark and December 10, 2003 in New York City at the locations given in **ADDRESSES** below. Registration to speak will begin at 11 am for the mid-day session and at 5 pm for the evening session and will remain open for both sessions until all who wish to speak have been heard. The buildings are accessible to people with disabilities. A sign language interpreter will be available for the hearing impaired. People with other special needs should call the study toll-free information line at 1–877–ARC–0999. Oral and written comments may be given at the scoping meetings; a stenographer will record oral comments. At the meetings, project staff will be available for informal discussion and questions on project-related issues. Scoping information is available on the project Web site at *http://www.accesstotheregionscore.com* and will be available at the scoping meetings. Scoping material may also be obtained by contacting David Widawsky, Project Manager, at the NJ TRANSIT address given in **ADDRESSES** below or by calling toll-free 1–877–ARC–0999 or by e-mailing *info@accesstotheregionscore.com.*

ADDRESSES: Written comments on the project scope should be forwarded to David Widawsky, Project Manager, NJ TRANSIT, One Penn Plaza East, 4th Floor, Newark, NJ 07105–2246 or via e-mail to *info@accesstotheregionscore.com.* The scoping meetings will be held at the following locations: The Gateway Hilton, Newark Gateway Center @ Raymond Boulevard, Newark, New Jersey 07102 on December 8, 2003 from 11 am to 2 pm and from 5 pm to 8 pm and at the Hotel Pennsylvania, 401 Seventh Avenue, New York, New York 10001 on December 10, 2003 from 11 am to 2 pm and from 5 pm to 8 pm. If you wish to be placed on the mailing list to receive further information as the EIS study develops, call the toll-free information line at 1–877-ARC–0999 or send an e-mail request to *info@accesstotheregionscore.com.* The Major Investment Study (MIS) Summary Report can be downloaded from the project Web site at *http://www.accesstotheregionscore.com* or a hard copy can be obtained by contacting the Project Manager, as indicated above. Updated information on ARC will also be posted on the project Web site given above.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Goveia, Community Planner, Federal Transit Administration, Region II, One Bowling Green, Room 429, New York, New York, 10004–1415; telephone: (212) 668–2170.

SUPPLEMENTARY INFORMATION:

I. Scoping

The FTA, NJ TRANSIT, and the PANYNJ invite all interested individuals and organizations, and federal, state, and local agencies to comment on the scope of the EIS. During the scoping process, comments should focus on identifying specific social, economic, or environmental issues to be evaluated, or on proposing alternatives that may be less costly, more cost effective or have fewer environmental impacts while achieving similar transportation objectives. At this time, comments should not focus on a preference for a particular alternative.

Following the public scoping process, public outreach activities will include

meetings with a Regional Citizens' Liaison Committee (RCLC) established for the study, as well as meetings with interested parties or small groups. Those wishing to participate in the RCLC may do so by registering on the Web site at *http://www.accesstotheregionscore.com* or by calling toll free 1–877–ARC–0999 or by e-mailing *info@accesstotheregionscore.com.* As part of the public participation process, the study Web site, *http://www.accesstotheregionscore.com,* will be periodically updated to reflect the project's current status. In addition, newsletters will be circulated to a broad constituency to ensure people are informed about the project. Additional opportunities for public participation will be announced through mailings, notices, advertisements, and press releases.

II. Description of Study Area and Transportation Needs

The primary project study area is defined as the travel corridor from Newark Liberty International Airport Station, through PSNY, to Sunnyside Yard in Queens. The market area for the proposed ARC transit service is a much larger area that encompasses all of the individual market areas of the existing and planned passenger rail lines that serve PSNY from west of the Hudson River.

The goal of the ARC EIS is to examine alternatives that provide new transit capacity to meet the growing demand for travel between midtown Manhattan and west-of-Hudson points in New Jersey and New York. The rail and highway networks, as well as commuter bus services and facilities, in this corridor are at or near capacity. As shown in the MIS increased trans-Hudson transit capacity would help to meet the growing demand on existing lines and additional demand that would be created by other ongoing capital improvements such as the opening of the Secaucus Junction station and the recent inauguration of Midtown Direct service via the Montclair Connection. It is anticipated that these improvements will open new markets, attracting additional riders on trains between west-of-Hudson markets and PSNY, adding pressures to capacity and service reliability. The ARC MIS conducted from 1995 to 2003 indicated that a new rail tunnel is needed because: (1) Trans-Hudson rail lines are already at or near capacity; (2) commuter rail can best provide the high transit capacity and geographic coverage that is needed; (3) train capacity constraints exist at PSNY; and (4) long-term growth trends in population, employment, and regional development are expected to continue.

III. Alternatives

The alternatives proposed for evaluation in the EIS include:

1. The No Action Alternative, which includes the current transportation network and the other projects in the long-range transportation plans of the both metropolitan planning organizations (North Jersey Transportation Planning Authority and New York Metropolitan Transportation Council) that will be completed by the design year of the ARC project.

Two long-term build alternatives (Alternatives P and S) to be developed by 2015:

2. Long-Term Build Alternative P (Penn Station), which includes a new two track rail line from Secaucus Junction and a new tunnel from a portal near Tonnelle Avenue in Union City, adjacent to the existing North River tunnel, continuing under the Palisades and the Hudson River to Penn Station New York. Alternative P also includes increased station capacity at Penn Station New York. Alternative P would significantly increase the transit capacity to midtown Manhattan for west-of-Hudson commuters and would also achieve the additional goals of meeting the growing demand generated by commuters on existing transit lines and highways, providing capacity for expansion of transit service into new markets, improving service reliability and reducing travel times for existing riders, and providing improved access to planned activity centers on Manhattan's far West Side. As initially proposed, key features of this alternative, from west to east include: (a) A track connection at Secaucus Junction permitting direct service from the Main/Bergen, Pascack Valley, and Port Jervis lines via the Northeast Corridor to PSNY; (b) a storage yard in Secaucus, New Jersey for the additional NJ TRANSIT trains operating in the new tunnel; (c) a fifth track at the Secaucus Junction to accommodate the additional trains from the Main/Bergen, Pascack Valley, and Port Jervis lines; (d) two additional tracks on the Northeast Corridor High Line east of the Secaucus Junction to accommodate additional trains operating in a new tunnel; (e) a new two track tunnel under the Palisades and Hudson River; (f) a new lower level 8-track, 4-platform station directly beneath the existing tracks of PSNY; (g) new passenger circulation corridors, designed to link the new tracks and platforms with the street and with existing passenger concourses; and (h) A short length of tunnel designed for future use and concealed behind a breakout wall. This feature would facilitate a future extension of service north to the vicinity of Grand Central Terminal or east to Sunnyside Yard in Queens with minimal disruption to existing train operations.

3. Long-Term Build Alternative S (Sunnyside Yard) is identical to Alternative P (Penn Station) west of the Hudson River. Alternative S includes a new two track rail line from Secaucus Junction and a new tunnel from a portal near Tonnelle Avenue in Union City, adjacent to the existing North River tunnel, continuing under the Palisades and the Hudson River to Penn Station New York. Alternative S also includes increased station capacity at Penn Station New York. Alternative S would significantly increase the transit capacity to midtown Manhattan for west-of-Hudson commuters and would also achieve the additional goals of meeting the growing demand generated by commuters on existing transit lines and highways, providing capacity for expansion of transit service into new markets, improving service reliability and reducing travel times for existing riders, and providing improved access to planned activity centers on Manhattan's far West Side. As initially proposed, key features of Alternative S from west to east are: (a) A track connection at Secaucus Junction permitting direct service from the Main/Bergen, Pascack Valley, and Port Jervis lines via the Northeast Corridor to PSNY; (b) a fifth track at the Secaucus Junction to accommodate the additional trains from the Main/Bergen, Pascack Valley, and Port Jervis lines; (c) two additional tracks on the Northeast Corridor High Line east of the Secaucus Junction to accommodate additional trains operating in a new tunnel; (d) reconfiguration of Tracks 1–5 and extension of Platforms 1 and 2 in Penn Station New York; (e) a second new two track tunnel breaking out of Tracks 1–5 at the east end of Penn Station New York, continuing under 31st Street in Manhattan and under the East River to Sunnyside Yard in Queens; (f) a short length of tunnel designed for future use and concealed behind a breakout wall. This feature would facilitate a future extension of service north to the vicinity of Grand Central Terminal with minimal disruption to existing train operations. Alternative S differs from Alternative P by providing an additional new tunnel under 31st Street in Manhattan, continuing under the East River that will enable additional NJ TRANSIT and possibly Amtrak trains to access the storage yards at Sunnyside in Queens.

4. Near-Term Improvement Alternatives: In addition, NJ TRANSIT has developed near-term improvements that could be developed incrementally in phases to expand trans-Hudson and PSNY capacity by 2010. During this near-term period, the effects of many new services such as the NJ TRANSIT Montclair Connection, the NJ TRANSIT Secaucus Junction, Amtrak High Speed Acela service, and expanded Long Island Rail Road (LIRR) service with dual-power locomotives and bi-level coaches will mature, and PSNY will not have the room to accommodate the resulting train and passenger demand. The proposed near-term improvements provide capacity enhancements at PSNY to meet these demands. The near-term improvements include: (a) A linear yard east of PSNY Tracks 1–5 under 31st Street to store up to six trains, which could be the first incremental phase of through tracks to Sunnyside Yard as in Alternative S; (b) an easterly extension of PSNY Platforms 1 and 2 to permit the operation of longer NJ TRANSIT trains; and (c) a new 12th Avenue Yard west of 10th Avenue between 30th and 31st Streets to store up to an additional 12 trains. The Near-Term Improvement Alternatives may be implemented as stand-alone projects, or as an initial phase of the build alternatives.

Any additional reasonable alternatives that emerge from the scoping process will be considered.

IV. Probable Effects

The FTA, NJ TRANSIT, and PANYNJ will evaluate both project-specific and cumulative changes to the social, economic, and physical environment, including land acquisition and displacements; land use, zoning and economic development; parklands; community disruption; aesthetics; historic and archeological resources; traffic and parking; air quality; noise and vibration; water quality; wetlands; ecologically sensitive areas; endangered species; energy requirements and potential for conservation; hazardous waste; environmental justice; and safety and security. Through the MIS process, the following environmental sensitivities have already been identified for consideration during the EIS.

In New Jersey these environmental sensitivities include: (a) Habitat and wetlands encroachment in the New Jersey Meadowlands; (b) hazardous materials disturbance and disposal associated with facilities such as the Malanka Landfill; (c) surface waters and floodplains, along with coastal wildlife habitats; (d) historic architectural (above-ground) and archaeological (below-ground) resources; (e) electrical power transmission facilities; and (f) air quality and noise/vibration due to rail operations and park-ride facilities traffic.

In New York these environmental sensitivities include: (a) Hazardous materials disturbance and disposal; (b) air quality and noise/vibration associated with construction; (c) vehicular and pedestrian flow during construction; (d) utilities and their possible relocation during construction; (e) underground fuel tanks below buildings; (e) landmarks and historic buildings/structures; and (f) parks and recreation areas.

In the Hudson River and East River these environmental sensitivities include: (a) Regulations and associated permits from Federal and State jurisdictional agencies; (b) disturbance and disposal of hazardous materials; (c) marine and benthic (bottom-dwelling) habitat and wildlife disturbance related to alternative construction techniques.

Key areas of environmental concern would be in the areas of new construction (*e.g.,* new structures, new stations, new track). The impacts will be evaluated both for the construction period and for the long-term period of operation of each alternative. Measures to mitigate adverse impacts will be explored.

V. FTA Procedures

The EIS is being prepared in accordance with the National Environmental Policy Act of 1969 (NEPA), as amended, and implemented by the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508), the FTA/Federal Highway Administration's Environmental Impact and Related Procedures (23 CFR part 771). This study will also address the requirements of the National Historic Preservation Act of 1966, as amended, Section 4(f) of the 1966 U.S. Department of Transportation Act, the Clean Air Act, as amended, Section 6(f) the Clean Water Act, the Executive Orders on Environmental Justice, Floodplain Management, and Protection of Wetlands, and other applicable environmental laws, regulations, and executive orders.

The MIS that resulted in the recommendation to build a new Hudson River rail tunnel and related infrastructure on both sides of the Hudson River was issued in 2003. FTA intends to incorporate the MIS by reference into the EIS, as well as various supplemental studies conducted subsequent to the MIS, including an initial evaluation of the potential social, economic, and environmental impacts of the MIS alternatives.

Upon completion, the Draft EIS will be available for public and agency review and comment. Public hearings on the Draft EIS will be held within the study area. On the basis of the Draft EIS and the public and agency comments received, a locally preferred alternative will be selected for further analysis and refinement in the Final EIS.

Issued on: November 7, 2003.

Letitia Thompson,

Regional Administrator.

[FR Doc. 03–28481 Filed 11–13–03; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the information collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The Federal Register notice with a 60-day comment period soliciting comments on the following collection of information was published on August 11, 2003. No comments were received.

DATES: Comments must be submitted on or before December 15, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas Christensen, Maritime Administration, 400 7th Street, SW., Washington, DC 20590. Telephone: 202–366–5900; FAX: 202–488–0941 or e-mail: *tom.christensen@marad.dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Voluntary Tanker Agreement.

OMB Control Number: 2133–0505.

Type of Request: Extension of currently approved collection.

Affected Public: Owners of tanker companies who operate in international trade and who have agreed to participate in this agreement.

Forms: None.

Abstract: The collection consists of a request from MARAD that each

participant in the Voluntary Tanker Agreement submit a list of the names of ships owned, chartered, or contracted for by the participant, and their size and flags of registry. There is no prescribed format for this information.

Annual Estimated Burden Hours: Fifteen hours (one hour per respondent).

Addresses: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

Comments Are Invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency'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 best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC, on November 7, 2003.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–28477 Filed 11–13–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Announcing the Twelfth Quarterly Meeting of the Crash Injury Research and Engineering Network (CIREN)

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Meeting announcement.

SUMMARY: This notice announces the Twelfth Quarterly Meeting of members of the Crash Injury Research and Engineering Network. CIREN is a collaborative effort to conduct research on crashes and injuries at ten Level 1 Trauma Centers linked by a computer network. Researchers can review data and share expertise, which could lead to a better understanding of crash injury mechanisms and the design of safer vehicles.

DATE AND TIME: The meeting is scheduled from 9 a.m. to 5 p.m. on Friday, December 5, 2003.

ADDRESSES: The meeting will be held at the Children's Harbor Building, 1600 6th Avenue South (corner of 6th Avenue South and 16th Street) in Birmingham, Alabama. This meeting will be hosted by the Mercedes Benz CIREN Center at the University of Alabama at Birmingham.

SUPPLEMENTARY INFORMATION: The CIREN System has been established and crash cases have been entered into the database by each Center. CIREN cases may be viewed from the NHTSA/CIREN Web site at: *http://www-nrd.nhtsa.dot.gov/departments/nrd-50/ciren/CIREN.html.* NHTSA has held three Annual Conferences where CIREN research results were presented. Further information about the three previous CIREN conferences is also available through the NHTSA website. NHTSA held the first quarterly meeting on May 5, 2000, with a topic of lower extremity injuries in motor vehicle crashes; the second quarterly meeting on July 21, 2000, with a topic of side impact crashes; the third quarterly meeting on November 30, 2000, with a topic of thoracic injuries in crashes; the fourth quarterly meeting on March 16, 2001, with a topic of offset frontal collisions; the fifth quarterly meeting on June 21, 2001, on CIREN outreach efforts; the sixth quarterly meeting (held in Ann Arbor, Michigan) with a topic of injuries involving sport utility vehicles, the seventh quarterly meeting on December 6, 2001, with a topic of Age Related Injuries (Elderly and Children), the eighth quarterly meeting on April 25, 2002, with a topic of Head and Traumatic Brain Injuries, the ninth quarterly meeting on August 22, 2002 at Harborview Injury Prevention and Research Center in Seattle, Washington with presentations highlighting the various research specialties of the Centers; the tenth Quarterly meeting on December 5, 2002, with a topic of Occult Injuries; and the eleventh Quarterly Meeting on April 3, 2003 with papers on the injuries sustained in crashes where vehicles are mis-matched in terms of size or weight. Presentations from these meetings are available through the NHTSA website.

NHTSA plans to continue holding quarterly meetings on a regular basis to disseminate CIREN information to interested parties. This is the twelfth such meeting. The CIREN Centers will be presenting papers on a variety of research topics.

Should it be necessary to cancel the meeting due to inclement weather or to any other emergencies, a decision to cancel will be made as soon as possible and posted immediately on NHTSA's Web site *http://www.nhtsa.dot.gov/nhtsa/announce/meetings/.* If you do not have access to the web site, you may call the contact listed below and leave your telephone or fax number. You will be called only if the meeting is postponed or canceled.

FOR FURTHER INFORMATION CONTACT:

Mark Scarboro, Office of Advanced Safety Research, 400 Seventh Street, SW., Room 6220, Washington, DC 20590, Telephone: (202) 366–5932.

or

Holly Waller, Mercedes-Benz CIREN Center, Center for Injury Sciences, 1922 7th Avenue South—KB 110, Birmingham, Alabama 35294, Telephone (205)975–3034.

Issued on: November 6, 2003.

Raymond P. Owings,

Associate Administrator for Advanced Research and Analysis, National Highway Traffic Safety Administration.

[FR Doc. 03–28482 Filed 11–13–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–16473]

Notice of Receipt of Petition for Decision That Nonconforming 2002–2003 Mercedes Benz E–320 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2002–2003 Mercedes Benz E–320 passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2002–2003 Mercedes Benz E–320 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 15, 2003.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400

Seventh St. SW., Washington, DC 20590. Docket hours are from 9 a.m. to 5 p.m. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202) 366–3151.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Sunshine Car Import L.C. of Cape Coral, Florida (''SCI'') (Registered Importer 01–289) has petitioned NHTSA to decide whether 2002–2003 Mercedes Benz E–320 passenger cars are eligible for importation into the United States. The vehicles which SCI believes are substantially similar are 2002–2003 Mercedes Benz E–320 passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2002–2003 Mercedes Benz E–320 passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

SCI submitted information with its petition intended to demonstrate that non-U.S. certified 2002–2003 Mercedes Benz E–320 passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2002–2003 Mercedes Benz E–320 passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence,* 103 *Defrosting and Defogging Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) inscription of the word ''brake'' on the instrument cluster in place of the international ECE warning symbol; (b) replacement or conversion of the speedometer to read in miles per hours.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* inspection of all vehicles and installation of U.S.-model headlamps, tail lamps, side markers, and high mounted stop lamps on vehicles that are not already so equipped.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component or inscription of the required warning statement on the mirror's face.

Standard No. 114 *Theft Protection:* reprogramming of the instrument cluster software to activate the key warning buzzer.

Standard No. 118 *Power Window Systems:* inspection of all vehicles and installation, in vehicles that are not already so equipped, of a relay in the power window system so that the window transport will not operate with the ignition switched off.

Standard No. 201 *Occupant Protection in Interior Impact:* inspection of all vehicles and replacement of all parts necessary to achieve compliance with the standard with U.S.-model components on vehicles that are not already so equipped.

Standard No. 208 *Occupant Crash Protection:* (a) Reprogramming of the instrument cluster software to activate the seat belt warning buzzer; (b) inspection of all vehicles and replacement of the driver's and passenger's air bags, control units, sensors, and seat belts with U.S.-model components on vehicles that are not already so equipped. The petitioner states that the vehicles should be equipped at the front and rear outboard seating positions with combination lap and shoulder belts that are self-tensioning and that release by means of a single red pushbutton and with a lap belt at the rear center seating position. The petitioner further states that the vehicles are equipped with a seat belt warning lamp that is identical to the lamp installed on U.S.-certified models.

Standard No. 214 *Side Impact Protection:* inspection of all vehicles to ensure that they are equipped with door beams identical to those in the U.S. certified model and installation of those components on vehicles that are not already so equipped.

Standard No. 301 *Fuel System Integrity:* inspection of all vehicles to ensure that they are equipped with components necessary to achieve compliance with the standard that are identical to the components installed on the vehicles' U.S.-certified counterparts.

Standard No. 401 *Interior Trunk Release:* installation of an emergency trunk lid release.

The petitioner states that all vehicles must be inspected for compliance with the Bumper Standard found in 49 CFR part 581 and that U.S.-model components necessary to achieve compliance with the standard must be installed on vehicles not already so equipped.

The petitioner also states that a vehicle identification plate must be affixed to the vehicles near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition

described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. Docket hours are from 9 a.m. to 5 p.m. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 10, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–28525 Filed 11–13–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–16474]

Notice of Receipt of Petition for Decision that Nonconforming 1999–2003 Suzuki GSX–R 750 Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1999–2003 Suzuki GSX–R 750 motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1999–2003 Suzuki GSX–R 750 motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 15, 2003.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St. SW., Washington, DC 20590. Docket hours are from 9 a.m. to 5 p.m. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Northern California Diagnostic Laboratories, Inc. of Napa, California (''NCDL'') (Registered Importer 92–011) has petitioned NHTSA to decide whether non-U.S. certified 1999–2003 Suzuki GSX–R 750 motorcycles are eligible for importation into the United States. The vehicles which NCDL believes are substantially similar are 1999–2003 Suzuki GSX–R 750 motorcycles that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1999–2003 Suzuki GSX–R 750 motorcycles to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

NCDL submitted information with its petition intended to demonstrate that non-U.S. certified 1999–2003 Suzuki GSX–R 750 motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1999–2003 Suzuki GSX–R 750 motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses,* 116 *Brake Fluid,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* and 122 *Motorcycle Brake Systems.*

The petitioner also states that vehicle identification number (VIN) plates that meet the requirements of 49 CFR Part 565 have been affixed to non-U.S. certified 1999–2003 Suzuki GSX–R 750 motorcycles.

Petitioner additionally contends that the vehicles are capable of being altered to meet the following standards, in the manner indicated below:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* installation of amber front side reflectors, and red rear side reflectors that conform to the requirements of the standard. The petitioner states that the vehicles are already equipped with a headlamp system, a tail lamp system, a stop lamp system, a white license plate lamp, a red rear reflector, and turn signals that conform to the standard.

Standard No. 111 *Rearview Mirrors:* installation of rearview mirrors that conform to the standard.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* installation of a label showing that the tires and rims are in conformity with the requirements of the standard.

Standard No. 123 *Motorcycle Controls and Displays:* modification of the speedometer to read in miles per hour. The petitioner states that the vehicles are already equipped with a supplemental engine stop control on the right handlebar and with other controls and displays that are in conformity with the requirements of the standard.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400

Seventh Street SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 10, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–28526 Filed 11–13–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–21004]

Lincolnshire Equity Fund II, L.P., VSC Partners, LLC, ACL Acquisition, LLC, and Southeast Coach, Inc.—Control—American Coach Lines of Miami, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice Tentatively Approving Finance Transaction.

SUMMARY: Lincolnshire Equity Fund II, L.P. (LEF II), VSC Partners, LLC (VSC), ACL Acquisition, LLC (ACL Acquisition), and Southeast Coach, Inc. (SCI) (collectively, applicants), noncarriers that control several motor passenger carriers,[1] jointly filed an application under 49 U.S.C. 14303 to acquire control of American Coach Lines of Miami, Inc. (ACL Miami), a newly formed company. Persons wishing to oppose the application must follow the rules at 49 CFR part 1182.5 and 1182.8. The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this matter will be the final Board action.

DATES: Comments must be filed by December 29, 2003. Applicants may file a reply by January 13, 2004. If no comments are filed by December 29, 2003, the tentative approval becomes final on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–21004 to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, send one copy of comments to applicants' representative: Vincent J. Coyle, Jr., Pitney, Hardin, Kipp & Szuch LLP, 685 Third Avenue, New York, NY 10017–4024.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: LEF II, a Delaware limited partnership, and VSC, a Delaware limited liability company, are private equity firms specializing in middle market investments. SCI is a Delaware holding company that was created for the purpose of acquiring ownership of the motor passenger carriers that were the subject of the Board's decision in STB Docket No. MC–F–21003. *See supra* note 1. ACL Acquisition, which is an intermediate holding company between LEF II and VSC, on the one hand, and SCL, on the other hand, is a Delaware limited liability company that was created for the purpose of effectuating the instant transaction.

Applicants state that they intend to own and operate a bus transportation business in the Miami area and have formed ACL Miami to be incorporated in Delaware and also to qualify to do business as a foreign corporation in the State of Florida. Applicants also state that ACL Miami intends to apply for federal operating authority from the Federal Motor Carrier Safety Administration to operate as a motor passenger carrier. According to applicants, ACL Miami will provide bus service in the Miami area that is similar, but not identical, to operations formerly provided by American Bus Lines, Inc. (American Bus), a wholly owned subsidiary of Coach USA, Inc.[2] ACL Miami will conduct interstate charter bus operations and intends to provide local charter service to a variety of customers, including schools, tour groups and various businesses. ACL Miami also plans to provide charter service to Florida colleges and universities under long-term service contracts.

Under 49 U.S.C. 14303(b), the Board must approve and authorize a transaction it finds consistent with the public interest, taking into consideration at least: (1) The effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

Applicants have submitted the information required by 49 CFR 1182.2, including information to demonstrate that the proposed transaction is consistent with the public interest under 49 U.S.C. 14303(b). Applicants state that the proposed acquisition of control will not reduce competitive options, result in unreasonable fixed charges, or adversely impact employees. They assert that granting the application will allow the new motor carrier to take advantage of economies of scale and substantial benefits offered by applicants that would otherwise be unavailable to the motor carrier individually. They also assert that, with the termination of operations by American Bus, ACL Miami's commencement of operations will fill an important service void. Applicants state that ACL Miami has made offers of employment to, and intends to hire, a number of personnel in the Miami area, several of whom were employees of American Bus. ACL Miami will conduct business in some of the markets formerly served by American Bus and intends to move into other markets as well. Additional information, including a copy of the application, may be obtained from applicants' representative.

On the basis of the application, the Board finds that the proposed transaction is consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated, and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. *See* 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

Board decisions and notices are available on the Board's Web site at *http://www.stb.dot.gov*.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed acquisition of control is approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed as having been vacated.

3. This decision will be effective on December 29, 2003, unless timely opposing comments are filed.

4. A copy of this notice will be served on: (1) The U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 400 7th Street,

[1] *See Lincolnshire Equity Fund II, L.P., et al.—Control—America Charters, Ltd.,et al.*, STB Docket No. MC–F–21003 (STB served Aug. 18, 2003).

[2] American Bus has ceased operating in the Miami area.

SW., Room 8214, Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 400 7th Street, SW., Washington, DC 20590.

Decided: November 7, 2003.

By the Board, Chairman Nober.

Vernon A. Williams,

Secretary.

[FR Doc. 03–28514 Filed 11–13–03; 8:45 am]

BILLING CODE 4915–00–P

Corrections

Federal Register

Vol. 68, No. 220

Friday, November 14, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2003–16227]

Policy and Procedures Concerning the Use of Airport Revenue: Petition of Sarasota-Manatee Airport Authority To Allow Use of Airport Revenue for Direct Subsidy of Air Carrier Operations

Correction

In notice document 03–27753 beginning on page 62651 in the issue of Wednesday, November 5, 2003, make the following corrections:

1. On page 62652, in the first column, under the **ADDRESSES** heading, in the fifth line from the bottom, ''16277'' should read ''16227''.

2. On the same page, in the third column, in the fifth line, ''City pair presently'' should read ''City pair not presently''.

[FR Doc. C3–27753 Filed 11–13–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
November 14, 2003

Part II

Department of Health and Human Services

Administration for Children and Families

Notice of Public Comment on the Proposed Adoption of ANA Program Policies and Procedures; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice of Public Comment on the Proposed Adoption of ANA Program Policies and Procedures

SUMMARY: Pursuant to section 814 of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b–1, the Administration for Native Americans (ANA) herein describes its proposed interpretive rules, general statements of policy and rules of agency procedure or practice relating to the Social and Economic Development Strategies *(SEDS)*, Language Preservation and Maintenance (hereinafter referred to as Native Language), and Environmental Regulatory Enhancement (hereinafter referred to as Environmental) programs. Under the statute, ANA is required to provide members of the public an opportunity to comment on proposed changes in interpretive rules, statements of general policy, and rule of agency procedure or practice and to give notice of the final adoption of such changes at least 30 days before the changes become effective. The notice also provides additional information about ANA's plans for administering these programs.

DATES: The deadline for receipt of comments is November 28, 2003.

ADDRESSES: Comments in response to this notice should be addressed to Sheila Cooper, Director of Program Operations, Administration for Native Americans, 370, L'Enfant Promenade, SW., Mail Stop: Aerospace 8–West, Washington, DC 20447. Delays may occur in mail delivery to Federal offices; therefore, a copy of comments should also be faxed to: (202) 690–7441. Comments will be available for inspection by members of the public at Administration for Native Americans, Aerospace Center, 901 D Street SW., Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Sheila Cooper, 202–690–7732.

SUPPLEMENTARY INFORMATION: Section 814 of the Native American Programs Act of 1974, (the Act), as amended, requires the Administration for Native Americans (ANA) to provide notice of its proposed interpretive rules, statements of policy and rule of agency organization, procedure or practice. These proposed clarifications and modifications will appear in the FY 2004 SEDS Program Announcement and the announcements for the Native Language and Environmental programs. This notice and the draft ANA SEDS Program Announcement, which is part of this notice, serve to fulfill this requirement.

Additional Information

1. Policy on Deadline Date for Applications

For FY 2004, ANA will have one closing date for the SEDS Program or other special initiative undertaken pursuant to section 803(a) of the Native American Programs Act of 1974, 42 U.S.C. 2991b and one closing date each for the Alaska SEDS Program, Native Language program, and the Environmental program. *(Legal authority: Sections 803 (a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

2. Receipt of Applications

ANA's program announcements will now require that all applications for funding be ''received by'' the Administration for Native Americans (ANA) by the closing date. Consistent with past practices, ANA will not acknowledge receipt of applications. Previously, ANA accepted applications for funding if they were postmarked on or before the closing date. The change to receipt of the application by the closing date is expected to reduce disputes regarding postmarks and late-arriving applications. This change will also ensure ANA has the appropriate number of skilled peer panel reviewers available to review submitted applications. Applications received after the published closing date as stipulated in the published announcement will not be considered. The new program announcement closing schedules will allow ANA to release all funding to communities earlier in the fiscal year; provide applicants additional time to receive agency comments and seek free technical assistance before the next competition in the program. Additionally, ANA grantees will have the opportunity to implement projects in a timely manner; recruit personnel to support the grantee's objectives; and decrease the number of requests for no cost grant extensions. This modification will afford ANA the opportunity to perform grant administration and program monitoring and evaluation activities that support new and non-competing continuation grants. *(Legal authority: Sections 803 (a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

3. Access to Program Announcement and Application Materials

The program announcement and the application materials are available on the ANA website at: http://www.acf.hhs.gov/programs/ana. The material on the website is provided as information only. ANA makes all reasonable efforts to assure that the Website is complete and accurate. The applicant bears sole responsibility, to assure that the copy downloaded and/or printed from any source is accurate and complete. In case of a conflict between the content of material downloaded from the web site and the material appearing in the **Federal Register**, the notice published in the **Federal Register** shall take precedence. *(Legal authority: Sections 803 (a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

4. Application Submission Requirements

The format of the application for funding is now standardized. The new application format will help applicants focus on the type of information and data required to support an application for funding. ANA will implement a page limitation requirement to enable a thorough review of the application. (*See* 4 (a) and (b)). ANA will implement these page requirements with a limit on the number of pages for each section. These modifications to the announcement will reduce the amount of documentation applicants need to submit and it will both strengthen and streamline the peer panel review process to allow reviewers to focus on the project and application content. Additionally, program announcement standardization will prepare ANA and applicants for the Federal Government's Electronic Grant Application submission initiative and process. *(Legal authority: Sections 803 (a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

4. (a) Organization and Preparation of Application: Due to the intensity and pace of the application review and evaluation process, ANA has standardized the application submission format. The new application submission format for the SEDS program is included in this notice.

4. (b) ANA Application Format: ANA will now require all applications to be labeled with a Section Heading in compliance with the format provided in the program announcement. This format applies to all applicants submitting applications for funding in the programs

covered by this notice. All pages submitted (including Government Forms, certifications and assurances) should be numbered consecutively. The paper size shall be 8½ × 11 inches, line spacing shall be a space and a half (1.5 line spacing), printed only on one side, and have a half-inch margin on all sides of the paper. The font size should be no smaller than 12-point and the font type shall be Times New Roman. These requirements do not apply to the project Abstract Form, Letters of Commitment, the Table of Contents, and the Objective Work Plan. A complete application for assistance under ANA's Program Announcements consists of Three Parts. Part One is the SF 424, Required Government Forms, and other required documentation noted in the program announcement. Part Two of the application is a description of the project's substance. This section of the application may not exceed 45 pages. Part Three of the application is the Appendix. This section of the application may not exceed 20 pages (the exception to this 20-page limit applies only to projects that require, if relevant to the project, a Business Plan or any Third-Party Agreements). *(Legal authority: Sections 803 (a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

4. (c) Explanation of Project Period: Under ANA's new program announcements, project periods will be 12 months, 17 months, 24 month, or 36 months. ANA currently funds projects spanning a 36-month period. Exception: Native Language Planning Grants (Category I) will continue to be 12 or 17 project periods. This notice clarifies the specific project periods that ANA will fund. *(Legal authority: Sections 803 (a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

4. (d) Application Review Criteria: ANA has expanded the review criteria to allow for a more equitable distribution of points during the application review and competition process. In the FY 2004 Program Announcement, ANA will improve the competitive review process through the use of six criteria that will evenly distribute evaluation points. The use of six criteria will standardize the review of each application and distribute the number of points more equitably. Based on the ACF Uniform Project Description, ANA's criteria categories are Project Introduction; Objectives and Need for Assistance; Project Approach; Organizational Capacity; Results and Benefits Expected; and Budget and Budget Narrative. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

5. Program Areas of Interest

The Administration for Children and Families supports and fosters strong families and healthy communities. In the FY 2004 Program Announcements, ANA has identified program Areas of Interest to complement other HHS and ACF programs. For example, in ANA's SEDS program the Economic Development areas of interest support activities that will provide business and employment opportunities and options necessary to build the foundation of healthy communities and strong families. Under Social Development, the program areas of interest support families, elders, youth development, healthy marriage, and individuals with disabilities. Furthermore, under Governance, funding may be used for leadership and management training or to assist eligible applicants in the development of laws, regulations, codes, policies, and practices that support and promote community based activities that lead to self sufficiency. The Program Areas of Interest are projects that ANA considers supportive to Native American communities. Although eligibility for funding is not restricted to projects of the type listed under this program announcement, these Areas of Interest are ones which ANA sees as particularly beneficial to the development of healthy Native American communities. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b)*

6. Policy on Results and Benefits

ANA's program announcement will now offer an opportunity for applicants to choose from six project performance indicators. For example, indicators may be: the number of jobs created or retained; the strengthening and modification of tribal government activities such as the implementation of codes and ordinances; the number of people trained; the dollar amount of non-federal resources leveraged per grantee; the number and type of community, federal and state partnerships involved in the project; the dollar amount of private sector investment integrated into the project; and the number of community-based small businesses established. This quantitative and qualitative data will be used monitor grantee performance and to communicate to the public and Congress on the impact and success of locally funded ANA projects. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

7. ANA Funding Restrictions

ANA does not fund:

- Activities in support of litigation against the United States Government that are unallowable under OMB Circulars A–87 and A–122. *(Legal authority: Sections 803(a) and (d), and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b, and 2991b–3; 45 CFR 1336.50(a); 45 CFR 74.27 and 92. 22; OMB Circular A–122, Attachment B, Paragraph 10(g) and OMB Circular A–87, Attachment B, Paragraph 14(b))*
- Duplicative projects or does not allow any one community to receive a disproportionate share of the funds available for award. When making decisions on awards of grants the Agency will consider whether the project is essentially identical or similar, in whole or significant part, to projects in the same community previously funded or being funded under the same competition. The Agency will also consider whether the grantee is already receiving funding for a SEDS, Language, or Environmental project from ANA. The Agency will also take into account in making funding decisions whether a proposed project would require funding on indefinite or recurring basis. This determination will be made after it is determined whether the application meets the requirements for eligibility as set forth in 45 CFR 1336, Subpart C, but before funding decisions are complete. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*
- Projects in which a grantee would provide training and/or technical assistance (T/TA) to other tribes or Native American organizations that are otherwise eligible to apply. However, ANA will fund T/TA requested by a grantee for its own use or for its members' use (as in the case of a consortium), when the T/TA is necessary to carry out project objectives. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3; 45 CFR 1336.33(b)(1))*
- The purchase of real property or construction because those activities are not authorized by the Native American Programs Act of 1974, as amended. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans*

Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3; 45 CFR 1336.33(b)(7))

• Objectives or activities to support core administration activities of an organization. However, functions and activities that are clearly project related are eligible for grant funding. Under Alaska SEDS projects, ANA will consider funding core administrative capacity building projects at the village government level if the village does not have governing systems in place. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3 and 45 CFR 1336.33(b)(4))*

• Costs associated with fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable under an ANA grant award. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3; 45 CFR 1336.50; 45 CFR 74.27; OMB Circular A–122, Attachment B, Paragraph 23; OMB Circular A–87, Attachment B, Paragraph 21.)*

• Major renovation or alteration because those activities are not authorized under the Native American Programs Act of 1974, as amended. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

• Projects originated and designed by consultants who provide a major role for themselves and are not members of the applicant organization, Tribe, or village. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

• Project activities that do not further the three interrelated ANA goals of economic development, social development and governance or meet the purpose of this program announcement. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3; 45 CFR 1336.33(b)(5))*

8. Administrative Policies: Applicants Must Comply With the Following Administrative Policies

• An applicant must provide a 20% non-federal match of the approved project costs. Applications originating from American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands are covered under section 501(d) of Public Law 95–134, as amended (48 U.S.C. 1469a), under which HHS waives any requirement for matching funds under $200,000 (including in-kind contributions). *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3; 45 CFR 1336.50(b))*

• An application from a Tribe, Alaska Native Village or Native American organization must be from the governing body. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

• A non-profit organization submitting an application must submit proof of its non-profit status at the time of submission. The non-profit organization shall submit one of the following verifiable documents: (i) A copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax exempt organizations described in Section 501(c) (3) of the IRS code or (ii) a copy of the currently valid IRS tax exemption certificate, or (iii) a copy of the articles of incorporation bearing the seal of the State or federally-recognized Tribe in which the corporation or association is domiciled. Organizations incorporating in American Samoa are cautioned that the Samoan government relies exclusively upon IRS determination of non-profit status; therefore, articles of incorporation approved by the Samoan government do not establish non-profit status for the purpose of ANA eligibility. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

• If the applicant, other than a Tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans or Native Alaskans, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community to be served. To establish compliance, an applicant should provide supporting documentation and assurance that its duly elected or appointed board of directors is majority Native American. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3; 45 CFR 1336.33(a))*

• Applicants must describe how the proposed project objectives and activities relate to a locally determined strategy. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

• Proposed projects must consider the maximum use of all available community-based resources. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

• Proposed projects must present a strategy to overcome the challenges that hinder movement toward self-sufficiency in the community. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

• Applicants proposing an Economic Development project should address the project's viability. A business plan, if applicable, must be included to describe the project's feasibility, cash flow, and approach for the implementation and marketing of the business. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

• ANA will not accept applications from tribal components, which are tribally authorized divisions of a larger tribe, which are not approved by the governing body of the tribe. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3; 45 CFR 1336.33(a))*

9. DUNS Numbers (New Requirement To Receive Grant Awards)

On June 27, 2003, the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants, after giving notice in the **Federal Register** on June 27, 2002 and providing opportunity for public comment. The policy requires all Federal grant applicants to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal *(http://www.Grants.Gov).* A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under mandatory grant programs, submitted on or after October 1, 2003. A DUNS number may be acquired at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com.*

10. Community and Faith-based Organizations

The Administration for Children and Families through the Administration for Native Americans supports and fosters strong families and healthy communities under four initiatives. ANA encourages applications from eligible community and faith-based organizations that (1) provide services directly to Native American people; (2) organizations that support rural communities; (3) provide prevention and intervention programs for youth and families; and (4) promote healthy relationships to strengthen families.

11. Community-Based Projects

ANA's program announcements will emphasize partnerships and community-based projects. The intent of this change is to increase the number of grants to local community organizations, to encourage new partnerships with public and private community-based organizations. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

12. Funding Thresholds

The ANA will increase funding ceilings under the Native Language program for Category I Planning and Category II Design and Implementation grants. The minimum grant amount for Native Language grants will be $25,000. The ceiling amount for Category I grants will increase from $60,000 to $100,000. The ceiling amount for Category II grants will increase from $150,000 to $175,000. The increase in funding amounts for Native Language grants will support the effective assessment of native languages. It will also provide applicants the opportunity to incorporate new technologies necessary to design, implement, and preserve Native language and culture. Grants awarded under the Native Language program that produce audio or print media will now include a stipulation that a copy of the product be provided to ANA for the Language Repository. Federally-recognized Tribes have the option to not submit project products. The funding ceiling for Social and Economic Development Strategies (SEDS) will be reduced from $1 million to $500,000. The minimum grant award amount will be $25,000. This adjustment of the minimum and maximum funding levels is due to the demand for SEDS project funding. These changes will result in additional community-based social and economic development project grant awards under the SEDS program. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

13. Availability of Multi-Year Funding

Applicants may apply for projects of up to 36 months in duration. A multi-year project, one extending more than 12 months or 17 months, affords grantees the opportunity to undertake more complex and in-depth projects. Applicants are encouraged to develop multi-year projects. However, applicants should note that a multi-year project is a project on a single theme that requires more than 12 or 17 months to complete. It is not a series of unrelated projects presented in chronological order over a three-year period. Funding after the first budget period of a multi-year project will be non-competitive. However, multi-year funding will be contingent upon: (1) The availability of Federal funds; (2) the grantee's progress to achieve the objectives and activities outlined in the Objective Work Plan; (3) ANA's continued belief that the project is in the public interest; and (4) the grantee is in compliance with applicable statutory and grant reporting requirements. Multi-year grant awards are subject to the availability of funds and a determination by ANA that the grantee has successfully completed its prior year objectives. Exception: Native Language Category I: Planning Grants will remain 12 or 17 month projects. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

14. Applications from Multiple Organizations in the Same Geographic Area

ANA will accept applications for funding and award grants to multiple organizations located in the same geographic area, provided the activities are not duplicative of previously funded ANA projects in the same geographic area or to the same grantee. Previously, under each competitive program area, ANA accepted one application that served or impacted a reservation, Tribe or Native American community. The reason for this change is to expand and support large Native American rural and urban communities that provide a variety of services in the same geographic area. Although Tribes are limited to three simultaneous ANA grants (one each under SEDS, Native Language and Environmental programs) at any one time, this clarification allows other community based organizations to apply for ANA funding to support on-going community-based efforts, provided the activities do not duplicate currently funded projects serving the same geographic area. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

15. Program Specific Program Announcements

ANA's FY 2004 Program Announcements will now be program specific. ANA will release separate program announcements for funding opportunities under SEDS, for Language Preservation and Maintenance, Environmental Regulatory Enhancement, and for special initiatives. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

16. Policy on Training and Technical Assistance

To reduce geographic disparities, ANA's training and technical assistance curriculum and all associated handouts will be standardized. ANA's contracted training and technical assistance providers may provide training in pre-application and project development. Training will be advertised in advance, to ensure prospective applicants have the opportunity to attend. All potential ANA applicants are eligible to receive free training and technical assistance in the SEDS, Language or Environmental program areas. *(Legal authority: Sections 804 of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991c)*

17. Application Review Criteria

ANA has improved the competitive review process and will now use six criteria that will evenly distribute evaluation points. The use of six criteria will standardize the review of each application and distribute the number of points more equitably. ANA's criteria categories are: Project Introduction; Objectives and Need for Assistance; Project Approach; Organizational Capacity; Results and Benefits Expected; and Budget and Budget Justification. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

18. Definitions

The following definitions will be used in all ANA program announcements. In the FY 2004 Program Announcement, ANA clarifies many areas that have previously prompted numerous

questions and application mistakes from applicants. The ANA program announcement will now include definitions for the following terms:

Authorized Representative: The person or person(s) authorized by Tribal or Organizational resolution to execute documents and other actions required by outside agencies. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Budget Period: The interval of time into which the project period is divided for budgetary or funding purposes, and for which a grant is made. A budget period usually lasts one year in a multi-year project period. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Community: A group of people residing in the same geographic area that can apply their own cultural and socio-economic values in implementing ANA's program objectives and goals. In discussing the applicant's community, the following information should be provided. (1) A description of the population segment within the community to be served or impacted; (2) the size of the community; (3) geographic description or location, including the boundaries of the community; (4) demographic data on the target population; and (5) the relationship of the community to any larger group or tribe. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Community Involvement: How the community participated in the development of the proposed project, how the community will be involved during the project implementation and after the project is completed. Evidence of community involvement can include, but is not limited to, certified petitions, public meeting minutes, surveys, needs assessments, newsletters, special meetings, public Council meetings, public committee meetings, public hearings, and annual meetings with representatives from the community. The applicant should document the community's support of the proposed project. Applications from National and Regional Indian and Native organizations should clearly demonstrate a need for the project, explain how the project originated, identify the beneficiaries, and describe and relate the actual project benefits to the community and organization. National Indian and Native organizations should also identify their membership and specifically discuss how the organization operates and impacts Native American people and communities. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Completed Project: A completed project means that the program funded by ANA is finished and the results and outcomes are achieved by the end of the project period. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Consortia—Tribal/Village: A group of Tribes or villages that join together either for long-term purposes or for the purpose of an ANA project. Applicant must identify Consortia membership. The Consortia applicant must be the recipient of the funds. A Consortia applicant must be an ''eligible entity'' as defined by this Program Announcement and the ANA regulations. Consortia applicants should include documentation (a resolution adopted pursuant to the organization's established procedures and signed by an authorized representative) from all consortia members supporting the ANA application. An application from a consortium should have goals and objectives that will create positive impacts and outcomes in the communities of its members. ANA will not fund activities by a consortium of tribes which duplicates activities for which member Tribes also receive funding from ANA. The consortium application should identify the role and responsibility of each participating Consortia member and a copy of the consortia legal agreement or Memoranda of Agreement to support the proposed project. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Construction: The initial building of a facility. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Core Administration: Salaries and other expenses for those functions that support the applicant's organization as a whole or for purposes that are unrelated to the actual management or implementation of the ANA project. However, salaries and activities that are clearly related to the ANA project are eligible for grant funding. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3; 45 CFR 1336.33(b)(4).)*

Economic Development: Involves the promotion of the physical, commercial, technological, industrial, and/or agricultural capacities necessary for a sustainable local community. Economic development includes activities and actions that develop sustainable, stable, and diversified private sector local economies. For example, initiatives that support employment options, business opportunities, development and formation of a community's economic infrastructure, laws and policies that result in the creation of businesses and employment options and opportunities that provide for the foundation of healthy communities and strong families. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Equipment: Tangible, non-expendable personal property, including exempt property, charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. However, consistent with recipient policy, lower limits may be established. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3; 45 CFR 1336.50(a); 45 CFR 74.2 and 92.3)*

Governance: Involves assistance to tribal and Alaska Native village government leaders to increase their ability to execute local control and decision- making over their resources. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Implementation Plan: The guidebook the applicant will use in meeting the results and benefits expected for the project. The Implementation Plan provides detailed descriptions of how, when, where, by whom and why activities are proposed for the project and is complemented and condensed by the Objective Work Plan. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

In-kind Contributions: In-kind contributions are property or services which benefit a federally assisted project or program and which are contributed by the grantee, non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement. Any proposed In-

kind match must meet the applicable requirements found in 45 CFR Parts 74 and 92. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Letter of Commitment: A third party statement to document the intent to provide specific in-kind contributions or cash to support the applicant. The Letter of Commitment must state the dollar amount (if applicable), the length of time the commitment will be honored, and the conditions under which the organization will support the proposed ANA project. If a dollar amount is included, the amount must be based on market and historical rates charged and paid. The resources to be committed may be human, natural, physical, or financial, and may include other Federal and non-Federal resources. For example, a notice of award from another Federal agency committing $200,000 in construction funding to complement a proposed ANA funded pre-construction activity is evidence of a commitment. Statements about resources which have been committed to support a proposed project made in the application without supporting documentation will be disregarded. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Leveraged Resources: The total dollar value of all non-ANA resources that are committed to a proposed ANA project and are supported by documentation that exceeds the 20% non-federal match required for an ANA grant. Such resources may include any natural, financial, and physical resources available within the tribe, organization, or community to assist in the successful completion of the project. An example would be a written letter of commitment from an organization that agrees to provide a supportive action, product, and service, human or financial contribution that will add to the potential success of the project. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Multi-purpose Organization: A community-based corporation whose charter specifies that the community designates the Board of Directors and/or officers of the organization through an elective procedure and that the organization functions in several different areas of concern to the members of the local Native American community. These areas are specified in the by-laws and/or policies adopted by the organization. They may include, but need not be limited to, economic, artistic, cultural, and recreational activities, and the delivery of human services such as day care, education, and training. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Multi-year Project: Encompasses a single theme and requires more than 12 or 17 months to complete. A multi-year project affords the applicant an opportunity to develop and address more complex and in-depth strategies that cannot be completed in one year. A multi-year project is a series of related objectives with activities presented in chronological order over a two or three year period. Prior to funding the second or third year, of a multi-year grant, ANA will require verification and support documentation from the Grantee that objectives and outcomes proposed in the preceding year were accomplished. Applicants proposing multi-year projects must complete and submit an Objective Work Plan (OWP) and budget with narrative for each project year, and fully describe objectives to be accomplished, outcomes to be achieved, and the results and benefits to determine the successful outcomes of each budget period. ANA will review the quarterly and annual reports of grantees to determine if the grantee is meeting its goals, objectives and activities identified in the OWP. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Objective(s): Specific outcomes or results to be achieved within the proposed project period that are specified in the Objective Work Plan. Completion of objectives must result in specific, measurable, outcomes that would benefit the community and directly contribute to the achievement of the stated community goals. Applicants should relate their proposed project objectives to outcomes that support the community's long-range goals. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Partnerships: Agreements between two or more parties that will support the development and implementation of the proposed project. Partnerships include other community-based organizations or associations, Tribes, federal and state agencies and private or non-profit organizations. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Performance Indicators: Measurement descriptions used to identify the outcomes or results of the project. Outcomes or results must be measurable to determine that the project has achieved its desired objective and can be independently verified through monitoring and evaluation. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Real Property: Land, including land improvements, structures, and appurtenances thereto, excluding movable machinery and equipment. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Renovation or Alteration: The work required to change the interior arrangements or other physical characteristics of an existing facility, or install equipment so that it may be more effectively used for the project. Alteration and renovation may include work referred to as improvements, conversion, rehabilitation, remodeling, or modernization, but is distinguished from construction. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Resolution: Applicants are required to include a current signed Resolution (a formal decision voted on by the official governing body) in support of the project for the entire project period. The Resolution should indicate who is authorized to sign documents and negotiate on behalf of the Tribe or organization. The Resolution should indicate that the community was involved in the project planning process, and indicate the specific dollar amount of any non-federal matching funds (if applicable). *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Sustainable Project: A sustainable project is an on-going program or service that can be maintained without additional ANA funds. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Self-Sufficiency: The ability to generate resources to meet a community's needs in a sustainable manner. A community's progress

toward self-sufficiency is based on its efforts to plan, organize, and direct resources in a comprehensive manner that is consistent with its established long-range goals. For a community to be self sufficient, it must have local access to, control of, and coordination of services and programs that safeguard the health, well being, and culture of the people that reside and work in the community. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Social Development: Investment in human and social capital for advancing the well being members of the Native American community served. Social development is the action taken to support the health, education, culture, and employment options that expand an individual's capabilities and opportunities, and that promote social inclusion and combat social ills. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

19. Competitive Panel Review Process

ANA will consolidate the peer panel review process. ANA is required by statute to provide a peer panel review for each eligible application. Panel reviewers are selected nationally for their education, experience, and working knowledge in ANA program areas. In FY 2003, ANA began the process of expanding and rotating the pool of panel reviewers. This process will ensure that applications for funding are reviewed, analyzed, and scored by qualified professionals in the respective program area. This organizational efficiency will ensure that each application receives appropriate consideration and the panel review teams have the appropriate and necessary credentials to analyze, evaluate, and score applications. For example, readers with education and work experience in Environmental Regulatory Enhancement will be selected to review environmental applications. Readers with education and work experience in Language Preservation and Maintenance will be selected to review language applications. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

19. (a) Initial Screening

Each application submitted under an ANA program announcement will undergo a pre-review screening to determine if (a) the application was received by the Program Announcement closing date; (b) the application was submitted in accordance with Application Submission Requirements; (c) the applicant is eligible for funding; (d) the applicant has submitted the proper support documentation such as proof of non-profit status, resolutions, and required government forms; and (e) an authorized representative has signed the application. An application that does not meet one of the above elements will be excluded from the competitive review process. Ineligible applicants will be notified by mail within 30 business days from the closing date of this program announcement. ANA staff cannot respond to requests for information regarding funding decisions prior to the official applicant notification. After the Commissioner has made funding decisions, unsuccessful applicants will be notified in writing within 90 days. Applicants are not ranked based on general financial need. Applicants, who are initially excluded from competition because of ineligibility, may appeal the Agency's decision. Likewise, applicants may also appeal an ANA decision that an applicant's proposed activities are ineligible for funding consideration. The appeals process is stated in the final rule published in the **Federal Register** on August 19, 1996 (61 FR 42817 and 45 CFR part 1336, subpart C). ANA has a policy of not funding duplicative projects or allowing any one community to receive a disproportionate share of the funds available for award. When making decisions on awards of grants the Agency will consider whether the project is essentially identical or similar, in whole or significant part, to projects in the same community previously funded or being funded under the same competition. The Agency will also consider whether the grantee is already receiving funding for a SEDS project or for another project from ANA. The Agency will also take into account in making funding decisions whether a proposed project would require funding on indefinite or recurring basis. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

19. (b) Automation of the Panel Review Process

In FY 2004, ANA will automate its application receipt and panel review process to comply with the Paperwork Reduction Act of 1995 and to support the ACF Electronic Grant Application Submission Initiative. The automation of document management will provide program operation efficiency. For example, when an application is submitted to ANA it is logged into an automated system and given an identification number. After the Program Announcement closing date ANA randomly assigns each application to a peer review panel for evaluation and scoring. During the review process, panel reviewer comments are downloaded into data files. These comments are then matched and stored with the application data file. This process consolidates all applications and review information, protects the confidentiality of the panel reviewers, and allows applicants to obtain comments in a timely manner. *(Legal authority: Sections 803(a) and (d), 803C and 806 of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b, 2991b–3 and 2991d–1)*

19. (c) Panel Reviews and Funding Decisions

ANA values the knowledge and expertise of individual reviewers. Applications for funding are randomly assigned to panel review teams. Each panel reviewer is responsible for reading the program announcement **Federal Register** and scoring each application in accordance with the published review criteria. Each application is reviewed and scored independently by a panel reviewer. After the panel review process, ANA conducts due diligence on each application in the funding range. The ANA Commissioner determines the final action on each grant application received under ANA program announcements. The Commissioner's funding decision is based on an analysis of the application by each peer review panel, the review and recommendations of ANA staff, Panel Review scores, comments of State and Federal agencies having contract and grant performance related information, and other interested parties. The Commissioner makes grant awards consistent with the purpose of the Native American Programs Act (NAPA), all relevant statutory and regulatory requirements, this program announcement, and the availability of appropriated funds. *(Legal authority: Sections 803(a) and (d), 803C and 806 of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b, 2991b–3 and 2991d–1)*

19. (d) Award Notification Information

Successful applicants are notified through an official Financial Assistance Award (FAA) document. The FAA will state the amount of Federal funds awarded, the purpose of the grant, the

terms and conditions of the grant award, the effective date of the award, the project period, the budget period, and the amount of the non-ACF matching share requirement. Unsuccessful applicants should expect notification within 90 days after the closing deadline date. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

20. Web Site Information

In FY 2004, ANA may make public on its web site information associated with successfully funded applications. Such information will include the name of the grant recipient, type of award such as SEDS, Language, Environmental amount, the duration of the project, and a synopsis of the project. Posting this information will provide prospective applicants with examples of successfully funded projects, inform the public how and where ANA is expending its funds, and to share information with other HHS, ACF, federal and state agencies. The ANA website will also include profiles of successful ANA community projects, and it will provide links to other funding sources, information on special HHS, ACF and ANA initiatives, and provide an opportunity for ANA applicants to track the review and approval process of submitted applications for funding. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

21. New OMB Format Requirements

The Office of Management and Budget has changed the format for program announcements published in the **Federal Register**. ANA has modified its' normal program announcement format to comply with these changes.

FY 04 SEDS Program Announcement

Department of Health and Human Services

Administration for Children and Families

Program Office Name: Administration for Native Americans (ANA).

Funding Opportunity Title: Social and Economic Development Strategies for Native Americans. This program is authorized by U.S. Code Citation 42 U.S.C. 2991 *et seq.* 1974, the Native Americans Programs Act.

Announcement Type: Initial.

Funding Opportunity Number: HHS-ACF–04–ANA–001.

CFDA Number: 93.612.

Dates: March 26, 2003, 4:30 p.m.

Due Dates for Applications: March 26, 2003.

Federal Agency Contact: Lois Hodge.

E-mail: lhodge@acf.hhs.gov.

Telephone number: (202) 690–7776 or 1–877–922–9262.

Funding Opportunity Description: The Administration for Native Americans (ANA), within the Administration for Children and Families, announces the availability of fiscal year (FY) 2004 funds for new community-based projects under ANA's Social and Economic Development Strategies (SEDS) program. ANA's FY 2004 SEDS goals and areas of interest are focused on strengthening children, families, and communities through community-based organizations, Tribes, and Village governments.

The Program Areas of Interest are projects that ANA considers supportive to Native American communities. Although eligibility for funding is not restricted to projects of the type listed under this program announcement, these Areas of Interest are ones which ANA sees as particularly beneficial to the development of healthy Native American communities. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b)*

Financial assistance under the SEDS program is provided utilizing a competitive process in accordance with the Native American Programs Act of 1974, as amended. The purpose of this Act is to promote the goal of economic and social self-sufficiency for American Indians, Native Hawaiians, Alaskan Natives, and other Native American Pacific Islanders, including American Samoa natives.

Funding Instrument Type: Grant.

Category of Funding Activity: ISS Income Security and Social Services.

Explanation of Other: N/A.

Anticipated Total Program Funding: $20,000,000.

Anticipated Number of Awards: 140.

Ceiling on amount of individual SEDS awards: $500,000.

Floor on amount of individual awards: $25,000.

Project Periods for Awards: 12 months, 17 months, 24 months, or 36 months.

Electronic Link to Full Announcement: http://www.acf.hhs.gov/programs/ana.

Eligible Applicants:

07 Native American tribal governments (Federally recognized).

11 Native American tribal organizations (other than federally recognized tribal governments).

12 Nonprofits having 501 (c) (3) statuses with the IRS, other than institutions of higher education.

13 Non profits that do not have a 501 (c) (3) status with the IRS, other than institutions of higher education.

25 Others.

The above statement of the categories of eligible organizations is a summary only, for a complete statement of the categories of eligible organizations under the SEDS program, as established under 45 CFR 1336.33(a)(1) and (2), see the listing in the section on Additional Information on Eligibility, in the following section.

Additional Information on Eligibility:

DUNS Numbers: On June 27, 2003, the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants after giving notice in the **Federal Register** on June 27, 2002 and opportunity for public comment. The policy requires all Federal grant applicants to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*http://www.Grants.Gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under mandatory grant programs, submitted on or after October 1, 2003. A DUNS number may be acquired at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com*.

In support of the Presidential Executive Orders on Asian American and Pacific Islanders, Community-based Alternatives for Individuals with Disabilities, and Faith-based and Community Organizations, ANA encourages greater participation from Hawaiian and Pacific Islander communities, encourages Native communities to address the needs of people with disabilities, and invites eligible faith-based and community organizations to apply.

This program announcement emphasizes community-based partnerships and projects. This emphasis is expected to increase the number of grants to local community organizations and expand the number of partnerships among locally based non-profit organizations. ANA will accept applications for funding and award grants to multiple organizations located

in the same geographic area, provided the activities are not duplicative of previously funded ANA projects in the same geographic area or to the same grantee. Previously, under each competitive program area, ANA accepted one application that served or impacted a reservation, Tribe or Native American community. The reason for this change is to expand and support large Native American rural and urban communities that provide a variety of services in the same geographic area. Although Tribes are limited to three simultaneous ANA grants (SEDS, Language and Environmental) at any one time, this clarification allows other community based organizations to apply for ANA funding to support on-going community-based efforts, provided the activities do not duplicate currently funded projects serving the same geographic area.

Eligible applicants for funding under this program announcement include:

1. Federally recognized Indian Tribes.
2. Consortia of Indian Tribes.
3. Incorporated non-Federally recognized Tribes.
4. Incorporated non-profit multi-purpose community-based Indian organizations.
5. Urban Indian Centers.
6. National or regional incorporated non-profit Native American organizations with Native American community-specific objectives.
7. Alaska Native villages, as defined in the Alaska Native Claims Settlement Act (ANSCA) and/or non-profit village consortia.
8. Incorporated nonprofit Alaska Native multi-purpose community-based organizations.
9. Non-profit Alaska Native Regional Corporations/Associations in Alaska with village specific projects.
10. Incorporated non-profit Alaska Native multi-purpose community based organizations.
11. Public and nonprofit private agencies serving Native Hawaiians
12. Public and non-profit private agencies serving native peoples from Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands (the populations served may be located on these islands or in the continental United States).
13. Tribally-controlled Community Colleges, Tribally-controlled Post-Secondary Vocational Institutions, and colleges and universities located in Hawaii, Guam, American Samoa or the Commonwealth of the Northern Mariana Islands which serve Native peoples.
14. Non-profit Alaska Native community entities or Tribal governing bodies (Indian Reorganization Act or Traditional Councils) as recognized by the Bureau of Indian Affairs. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b; 45 CFR 1336.33(a)(1) and (2))*.

Organizations in Palau are not longer eligible for assistance from ANA. *(Legal authority: 48 U.S.C 1931)*

Cost Sharing or Matching: Yes.

Explanation of Application Due Date:

Deadline: The closing time and date for receipt of applications is 4:30 p.m. (Eastern Time Zone) on March 26, 2004. Mailed or hand carried applications received after 4:30 p.m. on the closing date will not be considered. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b)*

Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, Attention: Lois B. Hodge, ANA No. 93612–2004, 370 L'Enfant Promenade, SW., Mail Stop: Aerospace Center 8th Floor-West, Washington, DC 20447–0002.

Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date. ACF/ANA will not acknowledge receipt of applications.

Hand delivered applications by applicants, applicant couriers, other representatives of the applicant or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., EST, between Monday and Friday (excluding Federal holidays). Application may be delivered to: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, ACF Mail Room, Second Floor Loading Dock, Aerospace Center 901 D Street, SW., Washington DC 20024, Attention: Lois B. Hodge, ANA No. 93612–2004.

Applicants are cautioned that express/overnight mail services do not always deliver as agreed. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b)*

Late Applications: Applications that do not meet the deadline criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b)*

Extension of Deadline: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mails service. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b)*

Funding Opportunity Description: The Administration for Native Americans (ANA), within the Administration for Children and Families, announces the availability of fiscal year (FY) 2004 funds for new community-based activities under ANA's Social and Economic Development Strategies (SEDS) program. ANA's FY 2004 SEDS goals and areas of interest are focused on strengthening children, families, and communities through community-based organizations, Tribes, and Village governments.

This program announcement emphasizes community-based partnerships and projects. This emphasis will increase the number of grants to local community organizations and expand the number of partnerships among locally based non-profit organizations. ANA will accept applications for funding and award grants to multiple organizations located in the same geographic area, provided the activities are not duplicative of previously funded ANA projects in the same geographic area or to the same grantee. Previously, under each competitive program area, ANA accepted one application that served or impacted a reservation, Tribe or Native American community. The reason for this change is to expand and support large Native American rural and urban communities that provide a variety of services in the same geographic area. Although Tribes are limited to three simultaneous ANA grants (one each under SEDS, Language and Environmental programs) at any one time, this clarification allows other community based organizations to apply for ANA funding to support on-going community-based efforts, provided the activities do not duplicate currently funded projects serving the same geographic area. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

In support of the Presidential Executive Orders on Asian American and Pacific Islanders, Community-based Alternatives for Individuals with Disabilities, and Faith-based and Community Organizations, ANA encourages greater participation from Hawaiian and Pacific Islander communities, encourages Native communities to address the needs of people with disabilities, and invites eligible faith-based and community organizations to apply.

Financial assistance under the SEDS and Alaska SEDS program is provided utilizing a competitive process in accordance with the Native American Programs Act of 1974, as amended. The purpose of this Act is to promote the goal of economic and social self-sufficiency for American Indians, Native Hawaiians, Alaskan Natives, and other Native American Pacific Islanders, including American Samoan Natives.

The ANA SEDS Program supports the fundamental principle that economic development, social development and governance are interrelated, and that with effective economic, social and governance policies and development strategies, Native American people and communities can achieve self-sufficiency. In order to move toward self-sufficiency, development in one area should be balanced with the development in the others. Accordingly, community-based economic, social and governance development programs and activities proposed in response to this announcement should take into consideration the elements necessary to build healthy self-sufficient communities.

ANA's FY 2004 Program Announcements will now be goal-category specific. ANA will release separate program announcements for funding opportunities under SEDS, for Language Preservation and Maintenance, Environmental Regulatory Enhancement, and for special initiatives. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

ANA's policy is based on three interrelated goals: (1) Economic Development: To foster the development of stable diversified local economies and economic activities that provide jobs, options and opportunities that promote economic well-being in Native American communities. (2) Social Development: To support local access to, control of, and coordination with, programs and services that safeguard the health, well-being, and culture of native peoples, and; (3) Governance: To assist Tribes and Alaska Native village governments to build capacity that results in local control and decision-making over their resources. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b; 45 CFR 1336.33(b) (5)*)

The Administration for Children and Families through the Administration for Native Americans supports and fosters strong families and healthy communities under four initiatives. ANA encourages applications from eligible community and faith based organizations that: (1) Provide services directly to Native American people; (2) organizations that support rural communities; (3) organizations that provide prevention and intervention programs for youth and families; and (4) organizations that promote healthy relationships to strengthen families.

ANA's FY 2004 program goals and areas of interest are focused on expanding community-based, culturally appropriate economic development, social development and governance activities. ANA is interested in projects designed to grow Native American economies, strengthen Native families, and decrease the high rate of social challenges caused by the lack of community-based business, social, and economic infrastructure. In response to this announcement, ANA encourages Native American tribes and organizational leaders to propose, coordinate and implement community-based projects to meet the needs of its community members and develop options and opportunities for future generations.

The Program Areas of Interest are projects that ANA considers supportive to Native American communities. Although eligibility for funding is not restricted to projects of the type listed under this program announcement, these Areas of Interest are ones which ANA sees as particularly beneficial to the development of healthy Native American communities. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b)*

ANA Administrative Policies:

Applicants must comply with the following Administrative Policies:

- An applicant must provide a 20% non-federal match of the approved project costs. Applications originating from American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands are covered under section 501(d) of Public Law 95–134, as amended (48 U.S.C. 1469a), under which HHS waives any requirement for matching funds under $200,000 (including in-kind contributions). *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3; 45 CFR 1336.50(b))*
- An application from a Tribe, Alaska Native Village or Native American organization must be from the governing body. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*
- A non-profit organization submitting an application must submit proof of its non-profit status at the time of submission. The non-profit organization shall submit one of the following verifiable documents: (i) A copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax exempt organizations described in Section 501(c)(3) of the IRS code or (ii) a copy of the currently valid IRS tax exemption certificate, or (iii) a copy of the articles of incorporation bearing the seal of the State or federally-recognized Tribe in which the corporation or association is domiciled. Organizations incorporating in American Samoa are cautioned that the Samoan government relies exclusively upon IRS determination of non-profit status; therefore, articles of incorporation approved by the Samoan government do not establish non-profit status for the purpose of ANA eligibility. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*
- If the applicant, other than a Tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans or Native Alaskans, or both, it must provide assurance that it's duly elected or appointed board of directors is representative of the community to be served. To establish compliance, an applicant should provide supporting documentation and assurance that it's duly elected or appointed board of directors is majority Native American. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3; 45 CFR 1336.33(a))*
- Applicants must describe how the proposed project objectives and activities relate to a locally determined strategy. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*
- Proposed projects must consider the maximum use of all available

community-based resources. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

• Proposed projects must present a strategy to overcome the challenges that hinder movement toward self-sufficiency in the community. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

• Applicants proposing an Economic Development project should address the project's viability. A business plan, if applicable, must be included to describe the project's feasibility, cash flow, and approach for the implementation and marketing of the business. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

• ANA will not accept applications from tribal components, which are tribally authorized divisions of a larger tribe, which are not approved by the governing body of the tribe. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3; 45 CFR 1336.33(a))*

Definitions: The following definitions will be used in ANA program announcements.

In the FY 2004 Program Announcement, ANA clarifies many areas that have previously prompted numerous questions and application mistakes from applicants. The ANA program announcement will now include definitions for the following terms:

Authorized Representative: The person or person(s) authorized by Tribal or Organizational resolution to execute documents and other actions required by outside agencies. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Budget Period: The interval of time into which the project period is divided for budgetary or funding purposes, and for which a grant is made. A budget period usually lasts one year in a multi-year project period. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Community: A group of people residing in the same geographic area that can apply their own cultural and socio-economic values in implementing ANA's program objectives and goals. In discussing the applicant's community, the following information should be provided: (1) A description of the population segment within the community to be served or impacted; (2) the size of the community; (3) geographic description or location, including the boundaries of the community; (4) demographic data on the target population; and (5) the relationship of the community to any larger group or tribe. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Community Involvement: How the community participated in the development of the proposed project, how the community will be involved during the project implementation and after the project is completed. Evidence of community involvement can include, but is not limited to, certified petitions, public meeting minutes, surveys, needs assessments, newsletters, special meetings, public Council meetings, public committee meetings, public hearings, and annual meetings with representatives from the community. The applicant should document the community's support of the proposed project. Applications from National and Regional Indian and Native organizations should clearly demonstrate a need for the project, explain how the project originated, identify the beneficiaries, and describe and relate the actual project benefits to the community and organization. National Indian and Native organizations should also identify their membership and specifically discuss how the organization operates and impacts Native American people and communities. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Completed Project: A completed project means that the program funded by ANA is finished and the results and outcomes are achieved by the end of the project period. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Consortia—Tribal/Village: A group of Tribes or villages that join together either for long-term purposes or for the purpose of an ANA project. Applicant must identify Consortia membership. The Consortia applicant must be the recipient of the funds. A Consortia applicant must be an ''eligible entity'' as defined by this Program Announcement and the ANA regulations. Consortia applicants should include documentation (a resolution adopted pursuant to the organization's established procedures and signed by an authorized representative) from all consortia members supporting the ANA application. An application from a consortium should have goals and objectives that will create positive impacts and outcomes in the communities of its members. ANA will not fund activities by a consortium of tribes which duplicates activities for which member Tribes also receives funding from ANA. The consortium application should identify the role and responsibility of each participating Consortia member and a copy of the consortia legal agreement or Memoranda of Agreement to support the proposed project. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Construction: The initial building of a facility. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Core Administration: Salaries and other expenses for those functions that support the applicant's organization as a whole or for purposes that are unrelated to the actual management or implementation of the ANA project. However, salaries and activities that are clearly related to the ANA project are eligible for grant funding. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3; 45 CFR 1336.33(b)(4).)*

Economic Development: Involves the promotion of the physical, commercial, technological, industrial, and/or agricultural capacities necessary for a sustainable local community. Economic development includes activities and actions that develop sustainable, stable, and diversified private sector local economies. For example, initiatives that support employment options, business opportunities, development and formation of a community's economic infrastructure, laws and policies that result in the creation of businesses and employment options and opportunities that provide for the foundation of healthy communities and strong families. *(Legal authority: Sections 803 (a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Equipment: Tangible, non-expendable personal property, including exempt property, charged directly to the award

having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. However, consistent with recipient policy, lower limits may be established. *(Legal authority: Sections 803 (a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3; 45 CFR 1336.50(a); 45 CFR 74.2 and 92.3)*

Governance: Involves assistance to tribal and Alaska Native village government leaders to increase their ability to execute local control and decision-making over their resources. *(Legal authority: Sections 803 (a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Implementation Plan: The guidebook the applicant will use in meeting the results and benefits expected for the project. The Implementation Plan provides detailed descriptions of how, when, where, by whom and why activities are proposed for the project and is complemented and condensed by the Objective Work Plan. *(Legal authority: Sections 803 (a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

In-kind Contributions: In-kind contributions are property or services which benefit a federally assisted project or program and which are contributed by the grantee, non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement. Any proposed In-kind match must meet the applicable requirements found in 45 CFR parts 74 and 92. *(Legal authority: Sections 803 (a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Letter of Commitment: A third party statement to document the intent to provide specific in-kind contributions or cash to support the applicant. The Letter of Commitment must state the dollar amount (if applicable), the length of time the commitment will be honored, and the conditions under which the organization will support the proposed ANA project. If a dollar amount is included, the amount must be based on market and historical rates charged and paid. The resources to be committed may be human, natural, physical, or financial, and may include other Federal and non-Federal resources. For example, a notice of award from another Federal agency committing $200,000 in construction funding to complement a proposed ANA funded pre-construction activity is evidence of a commitment. Statements about resources which have been committed to support a proposed project made in the application without supporting documentation will be disregarded. *(Legal authority: Sections 803 (a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Leveraged Resources: The total dollar value of all non-ANA resources that are committed to a proposed ANA project and are supported by documentation that exceed the 20% non-federal match required for an ANA grant. Such resources may include any natural, financial, and physical resources available within the tribe, organization, or community to assist in the successful completion of the project. An example would be a written letter of commitment from an organization that agrees to provide a supportive action, product, and service, human or financial contribution that will add to the potential success of the project. *(Legal authority: Sections 803 (a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Multi-purpose Organization: A community-based corporation whose charter specifies that the community designates the Board of Directors and/or officers of the organization through an elective procedure and that the organization functions in several different areas of concern to the members of the local Native American community. These areas are specified in the by-laws and/or policies adopted by the organization. They may include, but need not be limited to, economic, artistic, cultural, and recreational activities, and the delivery of human services such as day care, education, and training. *(Legal authority: Sections 803 (a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Multi-year Project: Encompasses a single theme and requires more than 12 or 17 months to complete. A multi-year project affords the applicant an opportunity to develop and address more complex and in-depth strategies that cannot be completed in one year. A multi-year project is a series of related objectives with activities presented in chronological order over a two or three year period. Prior to funding the second or third year, of a multi-year grant, ANA will require verification and support documentation from the Grantee that objectives and outcomes proposed in the preceding year were accomplished. Applicants proposing multi-year projects must complete and submit an Objective Work Plan (OWP) and budget with narrative for each project year, and fully describe objectives to be accomplished, outcomes to be achieved, and the results and benefits to determine the successful outcomes of each budget period. ANA will review the quarterly and annual reports of grantees to determine if the grantee is meeting its goals, objectives and activities identified in the OWP. *(Legal authority: Sections 803 (a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Objective(s): Specific outcomes or results to be achieved within the proposed project period that are specified in the Objective Work Plan. Completion of objectives must result in specific, measurable, outcomes that would benefit the community and directly contribute to the achievement of the stated community goals. Applicants should relate their proposed project objectives to outcomes that support the community's long-range goals. *(Legal authority: Sections 803 (a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Partnerships: Agreements between two or more parties that will support the development and implementation of the proposed project. Partnerships include other community-based organizations or associations, Tribes, federal and state agencies and private or non-profit organizations. *(Legal authority: Sections 803 (a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Performance Indicators: Measurement descriptions used to identify the outcomes or results of the project. Outcomes or results must be measurable to determine that the project has achieved its desired objective and can be independently verified through monitoring and evaluation. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Real Property: Land, including land improvements, structures, and appurtenances thereto, excluding movable machinery and equipment. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Renovation or Alteration: The work required to change the interior arrangements or other physical characteristics of an existing facility, or install equipment so that it may be more

effectively used for the project. Alteration and renovation may include work referred to as improvements, conversion, rehabilitation, remodeling, or modernization, but is distinguished from construction. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Resolution: Applicants are required to include a current signed Resolution (a formal decision voted on by the official governing body) in support of the project for the entire project period. The Resolution should indicate who is authorized to sign documents and negotiate on behalf of the Tribe or organization. The Resolution should indicate that the community was involved in the project planning process, and indicate the specific dollar amount of any non-federal matching funds (if applicable). *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Sustainable Project: A sustainable project is an on-going program or service that can be maintained without additional ANA funds. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Self-Sufficiency: The ability to generate resources to meet a community's needs in a sustainable manner. A community's progress toward self-sufficiency is based on its efforts to plan, organize, and direct resources in a comprehensive manner that is consistent with its established long-range goals. For a community to be self sufficient, it must have local access to, control of, and coordination of services and programs that safeguard the health, well being, and culture of the people that reside and work in the community. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Social Development: Investment in human and social capital for advancing the well being members of the Native American community served. Social development is the action taken to support the health, education, culture, and employment options that expand an individual's capabilities and opportunities, and that promote social inclusion and combat social ills. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

I. Program Area 1

Social and Economic Development Strategies for Native Americans (Non-Alaska): To promote the goal of social and economic self-sufficiency for Native Americans.

Economic Development: Involves the promotion of the physical, commercial, technological, industrial, and / or agricultural components necessary for a sustainable local community. Applicants are encouraged to develop sustainable projects to support sustainable, stable, and diversified private sector local economies.

Program areas of interest include:

- Projects to strengthen an organization's capacity to deliver business technical assistance, workshops, financial literacy programs, and that create, expand, and retain public and private sector community-based businesses.
- Projects to increase cooperative enterprise development activities, and technical capacity of youth to establish and operate cooperative businesses with the goal of teaching financial, management and long-term employment skills.
- Projects to develop and coordinate emergency response services within the community and with State and local governments to protect against Acts of Nature and other catastrophic events such as fire, floods, and environmental catastrophes.
- Projects to implement initiatives for Tribes to evaluate the economic potential of energy resources in their community, including renewable energy sources such as: Bio-energy, Geothermal, Hydrogen, Hydropower, Ocean, Solar, Wind, or other methods appropriate to the tribe and geographical location.
- Projects to develop community transportation activities that support the needs of the elderly, the disabled, and the local workforce.
- Projects to develop organizational and management capacity building activities that enhance community based program delivery systems and services.
- Projects to develop and implement community-based activities that increase International Tourism and trade activities for Native American products, services, and communities. Business sectors of interest include: the export of Native American packaged foods; arts and crafts; literature and music; manufactured products; agricultural and organic products; value-added product assembly or processing that includes agriculture and aquaculture.
- Projects to develop and enhance subsistence activities that retain, or re-establish Native traditional foods and or by-products of natural resources for local and commercial markets. Develop and/or strengthen the local economy through enhanced commercial trade in areas such as agriculture, aquaculture, lumber, and traditional arts and crafts. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b)*

Social Development: The investment in human and social capital for advancing people's well being. Applicants are encouraged to develop and implement culturally appropriate programs to enhance tribal, community, and village activities. Social development programs under this area support families, elders, parents, positive youth development, healthy marriage, individuals with disabilities, and personal commitment.

Program areas of interest:

- Healthy Relationships and Strengthening Families Initiative: The goal is to promote healthy family environments and strengthen co-parenting teamwork, problem-solving, and conflict resolution. To respond to this initiative, applicants should consider comprehensive projects that are culturally and socially appropriate to teach couples relationship-building skills, such as negotiation-based interpersonal communications, collaborative problem solving, and preservation of love, commitment, and friendship. Applicants are encouraged to be creative in their efforts to integrate elders into these projects to support traditional values and methods. Initiatives could address problematic periods in the family life cycle such as: pregnancy, postpartum care, first-time parenthood, parenting adolescents, and goal setting for independent young adults.
- Project to strengthen the long-term commitment of married couples. Projects should consider the enhancement of relationship skills through premarital counseling, mentoring activities, or role model activities.
- Projects to support young families in order to reduce the challenges and stress of child rearing, and the risks associated with child/infant abuse and neglect, strengthening the bonds between parents and children, and particularly between fathers and children and the fathers' role in healthy families.
- In partnership with community and or faith-based organizations, develop and implement comprehensive culturally and socially appropriate

projects to help youth practice personal responsibility; reach a balance in their lives by learning how to set and meet short and long-term goals; and to practice healthy lifestyles with the goal of decreasing gang activity, school drop out rates and juvenile delinquency.

• Projects to recruit, train, and certify new Native American foster parents or promote appropriate extended family placements or to assist abused, neglected, and abandoned Native American children, youth, and their families.

• Projects to develop, coordinate, and implement training for Native Americans with disabilities in order to join the workforce, obtain information and technical assistance to apply for disability benefits, gain access to workplace facilities, and receive reasonable accommodations necessary to perform job functions. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b)*

Governance: Involves assistance to Tribal and Alaska native Village government leaders to increase their ability to execute local control and decision-making over their resources. ANA encourages applications for the development of laws and policies that support community-based social, economic and governance activities. Governance projects under this area may be used for leadership and management training or to assist eligible applicants in the development of laws, regulations, codes, policies, and practices that support and promote community based activities.

Program areas of interest include:

• Projects to enact laws that support and enforce business and investment transactions, contracts, and property rights. For example, develop and implement Uniform Commercial Codes (business codes) and Tax Codes.

• Projects to enact laws, ordinances, and policies, to develop, expand, and/or enhance utility and communications infrastructures.

• Projects to enrich and strengthen the management and leadership skills of senior Tribal government personnel, and senior management personnel of tribally owned companies.

• Projects to establish and implement technology management information systems to assist with the effective and efficient administration of tribal government programs.

• Projects to develop or amend tribal constitutions, government procedures and functions, by-laws or codes, and council or executive branch duties in order to improve the regulatory, judicial and/or administrative infrastructure of tribal and village governments. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b)**

II. Award Information

Funding Instrument Type: Grant.

Anticipated Total Program Area 1 Funding: $18,000,000.

Anticipated Number of Awards: 110—120.

Average Projected Award Amount: $25,000 to $500,000.

Length of Project Period: 12, 17, 24, or 36 months.

Ceiling on Amount of Individual Awards: $500,000.

An application that exceeds the upper value of the dollar range specified will be considered ''non-responsive'' and be returned to the applicant without further review.

Floor on Amount of Individual Awards: $25,000.

III. Eligibility Information

Eligible Applicants

• Federally recognized Indian Tribes.

• Consortia of Indian Tribes.

• Incorporated non-Federally recognized Tribes.

• Incorporated non-profit multi-purpose community-based Indian organizations.

• Urban Indian Centers.

• National or regional incorporated non-profit Native American organizations with Native American community-specific objectives.

• Alaska Native villages, as defined in the Alaska Native Claims Settlement Act (ANSCA) and/or non-profit village consortia.

• Non-profit Alaska Native Regional Corporations/Associations in Alaska with village specific projects.

• Incorporated non-profit Alaska Native multi-purpose community based organizations.

• Non-profit Native organizations with village specific projects

• Public and non-profit private agencies serving Native Hawaiians.

• Public and non-profit private agencies serving native peoples from Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands (the populations served may be located on these islands or in the continental United States).

• Tribally-controlled Community Colleges, Tribally-controlled Post-Secondary Vocational Institutions, and colleges and universities located in Hawaii, Guam, American Samoa or the Commonwealth of the Northern Mariana Islands which serve Native Pacific Islanders.

• Non-profit Alaska Native community entities or Tribal governing bodies (Indian Reorganization Act or Traditional Councils) as recognized by the Bureau of Indian Affairs. Organizations in Palau are no longer eligible for assistance from ANA. *(Legal authority: 48 U.S.C. 1931)*

Additional Information on Eligibility

Cost Sharing or Matching Grantees must provide at least 20 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ANA share and the non-federal share. The required match can be computed by dividing total Federal funds by 80 percent for total project costs then subtracting the Federal portion. The remainder is the required match. For example, a project requesting $100,000 in Federal funds (per budget period) must provide a match of at least $ 25,000 ($100,000/80% = $125, 000—$100,000 = $25,000). Grantees must be able to verify commitments of the non-Federal resources. Failure to provide the non-federal share match will result in the disallowance of Federal funding commitment.

A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program regulations. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b)*

Applications originating from American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands are covered under section 501(d) of Public Law 95–134, as amended (48 U.S.C. 1469a) under which HHS waives any requirement for matching funds under $200,000 (including in-kind contributions). For ANA grants under this announcement there is no match required for these insular areas.

Acceptable proof of non-profit status includes:

• A copy of the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code, or

• A copy of a currently valid IRS tax exemption certificate, or

• Provide a copy of the articles of incorporation bearing the seal of the State or federally-recognized Tribe in which the corporation or association is domiciled. Organizations incorporating in American Samoa are cautioned that the Samoan government relies exclusively upon IRS determinations of non-profit status; therefore, articles of incorporation approved by the Samoan government do not establish non-profit

status for the purpose of ANA program eligibility.

Resolution: Applicants are required to include a current signed Resolution (a formal decision voted on by the official governing body) in support of the project for the entire project period. The Resolution must indicate who is authorized to sign documents and negotiate on behalf of the Tribe or organization. The Resolution should indicate that the community was involved in the project planning process, and indicate the specific dollar amount of any non-federal matching funds (if applicable).

IV. Application and Submission Information

To request an application package, please contact: The ANA regional Training and Technical Assistance (T/TA) providers at:

Native American Management Services, Inc., 6858 Old Dominion Drive, Suite 302, McLean, Virginia 22101, Toll Free: 888–221–9686, (703) 821–2226 x-234, Fax: (703) 821–3680, Kendra King-Bowes, Project Manager, E-mail: *kking@namsinc.org, http://www.anaeastern.org*.

Region I: AL, AR, CT, DC, DE, FL, GA, IA, IL, IN, KS, KY, LA, MA, MD, ME, MI, MN, MO, MS, NC, ND, NE, NH, NJ, NY, OH, OK, PA, RI, SC, SD, TN, TX, VA, VT, WI, W.VA.

ACKCO, Inc., 2214 N. Central, suite #250, Phoenix, Arizona 85004, Toll Free: 800–525–2859, (602) 253–9211, Fax (602) 253–9135, Theron Wauneka, Project Manager, E-mail: *theron.wauneka@ackco.com, www.anawestern.com*.

Region II: AZ, CA, CO, ID, MT, NM, NV, OR, UT, WA, WY.

Native American Management Services, Inc., 11723 Old Glenn Highway, suite 201, Eagle River, Alaska 99577, Toll Free 877–770–6230, (907) 694–5711, Fax (907) 694–5775, P.J. Bell, Project Manager, E-mail: *pjbell@gci.net, http://www.anaalaska.org*.

Region III: Alaska.

Council for Native Hawaiian Advancement, 33 South King Street, Suite 513, Honolulu, Hawaii 96813, Toll-Free 800–709–2642, (808) 521–5011, Fax: (808) 521–4111, Jade Danner, Project Manager, E-mail: *jade@hawaiiancouncil.org, http://www.anapacific.org*.

Region IV: American Samoa (AS), Guam, HI, Commonwealth of Northern Mariana Islands (CNMI).

Content and Form of Submission

Organization and Preparation of Application: Due to the intensity and pace of the application review and evaluation process, ANA strongly recommends applicants organize, label, and insert required information in accordance with Part One, Part Two and Part Three as presented in the charts below. The application should begin with the information requested in Part One of the chart in the prescribed order. Utilizing this format will insure all information submitted to support an applicant's request for funding is thoroughly reviewed. Submitting information in this format will assist the panel reviewer in locating and evaluating the information. Deviation from this suggested format may reduce the applicant's ability to receive maximum points, which are directly related to ANA's funding review decisions.

ANA Application Format: ANA will now require all applications to be labeled with a Section Heading in compliance with the format provided in the program announcement. This format applies to all applicants submitting applications for funding. All pages submitted (including Government Forms, certifications and assurances) should be numbered consecutively. The paper size shall be 8½ x 11 inches, line spacing shall be a space and a half (1.5 line spacing), printed only on one side, and have a half-inch margin on all sides of the paper. The font size should be no smaller than 12-point and the font type shall be Times New Roman. These requirements do not apply to the project Abstract Form, Letters of Commitment, the Table of Contents, and the Objective Work Plan.

Submission Date and Time

Deadline: The closing time and date for receipt of applications is 4:30 p.m. (Eastern Time Zone) on March 26, 2004. Mailed or hand-delivered applications received after 4:30 p.m. on the closing date will be classified as late.

Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, Attention: Lois B. Hodge, ANA No. 93612–2004, 370 L'Enfant Promenade, SW., Mail Stop: Aerospace Center 8th Floor-West, Washington, DC 20447–0002.

Hand-delivered applications must be received at the address below by 4:30 p.m. (Eastern Standard Time) on or before the closing date. Applications that are hand delivered will be accepted between the hours of 8 a.m. to 4:30 p.m., Monday through Friday. Applications may be delivered to: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, ACF Mail Room, Second Floor Loading Dock, Aerospace Center, 901 D Street, SW., Washington, DC 20024, Attention: Lois B. Hodge, ANA No. 93612–2004.

Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date. ACF/ANA will not acknowledge receipt of applications.

Late Applications: Applications that do not meet the above criteria will be considered unresponsive to the Program Announcement and late. ACF will notify each late applicant that its application will not be considered for review in the current competition. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b)*

Extension of Deadline: ANA may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, when there are widespread disruptions of mail service, or if the Chief Grants Management Officer makes a determination to extend or waive deadline requirements. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b)*

Intergovernmental Review: Applications are not subject to Executive Order 12372 *(Legal authority: 45 CFR 100.3)*

Funding Restrictions

ANA does not fund:

- Activities in support of litigation against the United States Government that are unallowable under OMB Circulars A–87 and A–122. (Legal authority: Sections 803 (a) and (d), and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b, and 2991b–3; 45 CFR 1336.50(a); 45 CFR 74.27 and 92. 22; OMB Circular A–122, Attachment B, Paragraph 10(g) and OMB Circular A–87, Attachment B, Paragraph 14(b))
- ANA has a policy of not funding duplicative projects or allowing any one community to receive a disproportionate share of the funds available for award. When making decisions on awards of grants the Agency will consider whether the project is essentially identical or similar, in whole or significant part, to projects in the same community previously funded or being funded under the same competition. The

Agency will also consider whether the grantee is already receiving funding for a SEDS, Language, or Environmental project from ANA. The Agency will also take into account in making funding decisions whether a proposed project would require funding on indefinite or recurring basis. This determination will be made after it is determined whether the application meets the requirements for eligibility as set forth in 45 CFR 1336, Subpart C, but before funding decisions are complete. *(Legal authority: Sections 803 (a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

• Projects in which a grantee would provide training and/or technical assistance (T/TA) to other tribes or Native American organizations that are otherwise eligible to apply. However, ANA will fund T/TA requested by a grantee for its own use or for its members' use (as in the case of a consortium), when the T/TA is necessary to carry out project objectives. *(Legal authority: Sections 803 (a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3; 45 CFR 1336.33(b)(1))*

• The purchase of real property or construction because those activities are not authorized by the Native American Programs Act of 1974, as amended. *(Legal authority: Sections 803 (a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3; 45 CFR 1336.33(b)(7))*

• Objectives or activities to support core administration activities of an organization. However, functions and activities that are clearly project related are eligible for grant funding. Under Alaska SEDS projects, ANA will consider funding core administrative capacity building projects at the village government level if the village does not have governing systems in place. *(Legal authority: Sections 803 (a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3 and 45 CFR 1336.33(b)(4))*

• Costs associated with fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable under an ANA grant award. *(Legal authority: Sections 803 (a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3; 45 CFR 1336.50; 45 CFR 74.27; OMB Circular A–122, Attachment B, Paragraph 23; OMB Circular A–87, Attachment B, Paragraph 21.)*

• Major renovation or alteration because those activities are not authorized under the Native American Programs Act of 1974, as amended. *(Legal authority: Sections 803 (a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

• Projects originated and designed by consultants who provide a major role for themselves and are not members of the applicant organization, Tribe, or village. *(Legal authority: Sections 803 (a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

• Project activities that do not further the three interrelated ANA goals of economic development, social development and governance or meet the purpose of this program announcement. *(Legal authority: Sections 803 (a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3; 45 CFR 1336.33(b)(5))*

Other Submission Requirements: Application Submission: An original and two copies of the complete application are required. The original copy must include all required forms, certifications, assurances, and appendices, be signed by an authorized representative, have original signatures, and be submitted unbound. The two additional copies of the complete application must include all required forms, certifications, assurances, and appendices and must also be submitted unbound. Applicants have the option of omitting from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget. *(Legal authority: Sections 803 (a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b)*

A completed application for assistance under this Program Announcement consists of Three Parts. Part One is the SF 424, Required Government Forms, and other required documentation. Part Two of the application is the project substance of the application. This section of the application may not exceed 45 pages. Part Three of the application is the Appendix. This section of the application may not exceed 20 pages (the exception to this 20 page limit applies only to projects that require, if relevant to the project, a Business Plan or any Third-Party Agreements). *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b)*

PART ONE—FEDERAL FORMS AND OTHER REQUIRED DOCUMENTS

Part I of the application for funding must include the following:	Content and location of part I required forms, certifications and documents	When to submit
SF 424, SF 424A, and SF 424B	*http://www.acf.hhs.gov/programs/ofs/forms.htm*	By application due date.
Table of Contents	Applicant must include a table of contents that accurately identifies the page number and where the information can be located. Table of Contents does not count against application page limit.	By application due date.
Project Abstract	ANA Form: OMB Clearance Number 09800204—On ANA Web site *http://www.acf.hhs.gov/programs/ana*.	By application due date.
Proof of Non-Profit Status	As described in this announcement under Section ''Other Eligibility Information''.	By application due date.
Resolution	Information for submission can be found in the Program Announcement Section ''Other Eligibility Information''.	By application due date.
Documentation that the Board of Directors is majority Native American, if applicant is other than a tribe or Alaska Native Village government.	As described in this announcement under ''ANA Administrative Policies''.	By application due date.

PART ONE—FEDERAL FORMS AND OTHER REQUIRED DOCUMENTS—Continued

Part I of the application for funding must include the following:	Content and location of part I required forms, certifications and documents	When to submit
Audit Letter	A Certified Public Accountant's ''Independent Auditors'' Report on Financial Statement.'' This is usually only a two to three page document. (This requirement applies only to applicants with annual expenditures of $300,000 or more of federal funds). Applicant must also include that portion of the audit document that identifies all other federal sources of funding.	By application due date.
Indirect Cost Agreement	Organizations and Tribes must submit a current indirect cost agreement (if claiming indirect costs) that aligns with the approved ANA project period. The Indirect Cost Agreement must identify the individual components and percentages that make up the indirect cost rate.	By application due date.
Non-Federal Share of Waiver Request, per CFR 1336.50(b).	A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b) (3) of the Native American Program regulations. (if applicable).	By application due date.
Certification regarding Lobbying Disclosure of Lobbying Activities—SF LLL.	May be found at *www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Certification regarding Maintenance of Effort	May be found at *www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Certification Regarding Debarment, Suspension and other Responsibility Matters (Primary covered transactions and Lower Tier Transactions as appropriate).	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Drug-Free Workplace Certification	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Environmental Tobacco Smoke Certification	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.

PART TWO—APPLICATION REVIEW CRITERIA

PART II—proposed project	Application review criteria—this section may not exceed 45 pages
Criteria One	Project Introduction and Summary.
Criteria Two	Objective and Need for Assistance.
Criteria Three	Project Approach—Include the Objective Work Plan (OWP) form for each year of project.
Criteria Four	Organizational Capacity.
Criteria Five	Results and Benefits Expected.
Criteria Six	Budget and Budget Justification Summary/ Cost Effectiveness.

PART THREE—APPENDIX

PART III—support documentation	Appendix— this section may not exceed 20 pages
	Part III of the submitted application should include only supplemental information or required support documentation that addresses the applicant's capacity to carry out and fulfill the proposed project. These items include: letters of agreement with cooperating entities, in-kind commitment and support letters, business plans, and a summary of the Third Party Agreements. (Do not include books, videotapes, studies or published reports and articles, as they will not be made available to the reviewers, or be returned to the applicant.

(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)

V. Application Review Information

Criteria: ACF Uniform Project Description (UPD)

The UPD text should be used as general guidance in the development of projects. However, the specific ANA application submission format to be used in response to this announcement is located in section IV Application and Submission Information.

Purpose: The Project Description is a major area by which an application is evaluated and ranked in competition with other applications for financial assistance. The Project Description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included if they present information clearly and succinctly. In preparing your Project Description, all information requested through each specific evaluation criteria should be provided. ANA uses this and other information to make funding decisions. It is important, therefore, that this information be included in the application.

General Instructions: ANA is particularly interested in specific factual information and statements of measurable goals and performance indicators in quantitative terms. Project descriptions are evaluated on a basis of

substance, not length. Extensive exhibits are not required. Cross-referencing should be used rather than repetition. Supporting information that does not directly pertain to an integral part of the grant-funded activity should be placed in the appendix. The application narrative should be in a 12-pitch font. A table of contents and an executive summary should be included. Each page should be numbered sequentially, including attachments or appendices. Please do not include books, videotapes or published reports because they are not easily reproduced, are inaccessible to the reviewers, and will not be returned to the applicant.

Introduction: Applicants are required to submit a full Project Description and shall prepare this portion of the grant application in accordance with the following instructions and the specified evaluation criteria. The introduction provides a broad overview of the Project, and the information provided under each evaluation criteria expands and clarifies the project program-specific activities and information that reviewers will need to assess the proposed project.

Project Summary: Provide a summary of the Project Description (a page or less) with reference to the funding request. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b)*

Objectives and Need for Assistance: Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the Project Description, the applicant should provide information on the total range of projects currently being conducted and supported (or to be initiated) to ensure they are within the scope of the program announcement. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b)*

Results or Benefits Expected: Identify the results and benefits to be derived by the community and its members. For example, applicants are encouraged to describe the qualitative and quantitative data collected, how this data will measure progress towards the stated results or benefits, and how performance indicators under economic and social development and governance projects can be monitored, evaluated and verified. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b)*

Approach: Outline a plan of action that describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors, which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, extraordinary social and community involvement or ease of project replication by other tribes and Native organizations. List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution. Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people served and the number of activities accomplished. Examples of these activities would be the number of businesses started or expanded, the number of jobs created or retained, the number of people trained, the number of youth, couples or families assisted or the number elders participating in the activity during that reporting period. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the dates and schedule of accomplishments. List organizations, cooperating entities, consultants, or other key individuals who will work on the project, as well as a short description of the nature of their effort or contribution. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b)*

Staff and Position Data: Provide a biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed. Information should include the qualifications of each staff person as they pertain to the project. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b)*

Organizational Profiles: Provide information on the applicant organization(s) and cooperating partners with organizational charts, financial statements, audit reports or statements from CPA/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b)*

Third-Party Agreements: Include written agreements between grantees and sub grantees or subcontractors or other cooperating entities. These agreements must detail scope of work to be performed, work schedules, remuneration, and other terms and conditions that structure or define the relationship. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b)*

Budget and Budget Justification: Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424. Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allowability of the proposed costs. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b)*

Geographic Location: Describe the precise location of the project and boundaries of the area to be served by the proposed project. Maps or other graphic aids may be attached. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b)*

Additional Information: The following are requests for additional information that need to be included in the application: Any non-profit organization submitting an application must submit proof of its non-profit status in the application at the time of submission. The non-profit organization shall submit one of the following verifiable documents: (a) A copy of the applicant's listing in the Internal

Revenue Service's (IRS) most recent list of tax exempt organizations described in Section 501(c)(3) of the IRS code, or (b) providing a copy of the currently valid IRS tax exemption certificate, or (c) providing a copy of the articles of incorporation bearing the seal of the State or federally-recognized Tribe in which the corporation or association is domiciled. Organizations incorporating in American Samoa are cautioned that the Samoan government relies exclusively upon IRS determinations of non-profit status; therefore, articles of incorporation approved by the Samoan government do not establish non-profit status for the purpose of ANA program eligibility.

General: The following guidelines are for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. For purposes of preparing the budget and budget justification, ''Federal resources'' refers only to the ACF grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s); and last column, total budget. The budget justification should be a narrative.

- Personnel: The description of the costs of employee salaries and wages. Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), or time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.
- Fringe Benefits: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate. Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.
- Travel: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel). Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.
- Equipment: Equipment means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000. (Note: Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.). Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy, which includes the equipment definition.
- Supplies: Costs of all tangible personal property other than that included under the Equipment category. Justification: Specify general categories of supplies and their costs. Show computations and provide other information that supports the amount requested.
- Contractual: Costs of all contracts for services and goods except for those, which belong under other categories such as equipment, supplies, construction, etc. Third-party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant, should be included under this category. Justification: All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and sub-recipients, other than States that are required to use Part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition (sole source) and exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000.). Recipients may be required to make available to ANA pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc. Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.
- Other: Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs. Justification: Provide computations, a narrative description, and a justification for each cost under this category.
- Indirect Charges: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of the Interior, Department of Labor, the Department of Health and Human Services (HHS), or other Federal agency. Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.
- Program Income: The estimated amount of income, if any, expected to be generated from this project. Justification: Describe the nature, source, and anticipated use of program income in the budget or refer to the pages in the application, which contain this information.
- Non-Federal Resources: Amounts of non-Federal resources that will be used to support the project as identified in

Block 15 of the SF–424. Justification: The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process. A detailed budget must be prepared for each budget period.

• Total Direct Charges, Total Indirect Charges, and Total Project Costs *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b)*

Evaluation Criteria

Criteria One: Approach (25 Points)

The applicant should provide a Project Description with objectives and discuss the project approach and the implementation plan. The Applicant's narrative should be clear and concise. It should include a logical breakdown of the project, and discuss in detail the strategy and approach the applicant intends to employ in order to accomplish the project objectives and activities over the project period. In this section, the applicant should describe the project strategy using the Objective Work Plan (OWP). In the OWP, the applicant should identify the project objectives, time frames, proposed activities, outcomes, and evaluation activity, as well as the individuals responsible for completing the objectives and performing the activities. The project description, objective(s), approach, strategy and implementation plan are inter-related. The applicant should also include the names and activities of any organizations, consultants, or other key individuals who will contribute to the project. The Applicant should discuss ''Leveraged Resources'' (see definition section) used to strengthen and broaden the impact of the proposed project. The Applicant should discuss commitments and how they impact the project. Applicant should provide ''Letters of Commitment'' that identify the time, dollar amount, and activity to be accomplished through partnerships. Applicants should discuss the relationship of non-ANA funded activities to those objectives and activities that will be funded with ANA grant funds. (Letters of Commitment should be included in the Appendix). *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b)*

Criteria Two: Objectives and Need for Assistance (20 Points)

Discuss the Need for Assistance. The need for assistance should clearly identify the physical, economic, social, financial, and institutional challenges and problem(s) requiring a solution that supports the funding request. Describe the Community (*see* Definition section) to be impacted by the project and the Community Involvement in the project. The Applicant should describe the community's long-range goals, and how the project supports these community goals. The applicant describes the planning and/or consultation efforts undertaken, and the proposed objectives and activities that reflect either the economic and social development or governance needs of the local community. Discuss the Geographic Location of the project and where the project and grant will be administered. Applications from National and Regional Indian and Native organizations should clearly demonstrate a need for the project, explain how the project originated, identify the beneficiaries, and describe and relate the actual project benefits to the community and organization. National Indian and Native organizations should also identify their membership and specifically discuss how the organization operates and impacts Native American people and communities. Applicant should show a clear relationship between the proposed project, the social and economic development strategy, and the community's long-range goals. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b)*

Criteria Three: Organizational Profiles (20 Points)

Provide information on the applicant's organization and cooperating partners. Include organizational charts, and information associated with experience in the program area. Describe the organizations capabilities such as the management structure, the administrative structure, and the program delivery process. If relevant to the project, applicants must provide a Business Plan or any Third-Party Agreements (include in the appendix). Applicants are required to make a positive statement that they will give credit to the Administration for Native Americans, and reference the ANA funded project on any audio, video, and/or printed materials developed in whole or in part with ANA funds. Applicants should list all current sources of federal funding, the agency, purpose, amount, and provide the most recent certified signed audit letter for the organization to be included in Part One of the application. If the applicant has audit exceptions, these issues should be addressed. Applicants should provide evidence of its ability to successfully manage a project of similar scope. Applicant should provide ''staffing and position data''. This is a proposed staffing pattern for the project where the Applicant highlights the new project and staff. All positions proposed for the project are the same positions discussed in the Objective Work Plan and in the proposed budget. Note: Applicants are strongly encouraged to give preference to qualified Native Americans in hiring project staff and in contracting services under an approved ANA grant. Applicant should provide a paragraph of the duties and skills required for the proposed staff and a paragraph on qualifications and experience of current staff (Full position descriptions are required to be submitted in the Appendix). Applicant should explain and discuss how the current and future staff will manage the proposed project. *(Legal authority: Sections 803(a) and Section 803B(c) (6) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–2)*

Criteria Four: Results or Benefits Expected (20 Points)

In this section the applicant should discuss the ''Performance Indicators'' (see Definition section) and the Benefits Expected as a result of this Project. Performance indicators specifically identify qualitative and quantitative data directly associated with the project. Each applicant may select five indicators to support the applicant's project. Three of the performance indicators may be selected from the list below. Each grantee is required to develop two additional indicators that are project specific and directly support the success of the project objectives and goals. Each performance indicator should be discussed in the application, as well as the method for collecting the data and evaluating the project. Performance indicators will be reported to ANA in the grantee's quarterly report. Three of the five Performance indicators required, should be selected from the following list: (1) The number of jobs created; (2) the number of workshops/classes provided; (3) the number of people to successfully complete a workshop/class; (4) the number of community-based small businesses established or expanded; (5) identify the tribal or village government business, industry, energy or financial codes or ordinances that were adopted; and (6) the number of children, youth, families or elders assisted. In this section discuss how the applicant will determine the success of the individual project components and the project as a whole. The applicant should describe how the

success of the project would be evaluated and verified by an independent program monitoring and evaluation team. Applicant should provide a narrative on the specific performance indicators that can be analyzed, measured, monitored, and evaluated. For example, if requesting funds for a conference, workshop, or an educational activity, the applicant should discuss the value and long-term impact to the recipient and the community and discuss how the information has an impact on the project goals. What will the participants gain by attending the activity and how the knowledge, training, and skills gained, will improve the lives of children and families. Relate these performance indicators to the project goals, objectives, and outcomes. The applicant should discuss how the project will be sustainable or how the resulting product will be used to further the community's needs, goals, and objectives. Applicants should discuss and present objectives and goals to be achieved and evaluated at the end of each budget period. Project objectives support the identified need and should be measurable. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b)*

Criteria Five: Budget and Budget Justification/ Cost Effectiveness (5/5 Points)

An applicant must submit an itemized budget detailing the applicant's Federal and non-Federal share with source(s) of funding cited. The applicant should provide a detailed line item Federal and Non-federal share budget by year for each year of project funds requested. A budget narrative describing the line item budget should be attached for each year of project funds requested. The budget should include a line item justification for each Object Class Category listed under Section B—''Budget Categories'' of the ''Budget Information-Non Construction Programs on the SF 424A form. The budget should include the necessary details to facilitate the determination of allowable costs and the relevance of these costs to the proposed project. Up to five points will be awarded for the budget and budget justification. Up to an additional five points will be added to the applicant's score based on the demonstration of an effective cost-benefit relationship for the proposed project. This criterion reflects ANA's concern with ensuring that the expenditure of its limited resources yields the greatest benefit possible in achieving the economic and social self-sufficiency for Native American communities. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

Applicant should explain how the project components, not funded by ANA will be financed through other resources. The applicant is required to describe any specific financial circumstances, which may impact the project, such as any monetary or land settlements made to the applicant, and any restrictions on the use of those settlements. When the applicant appears to have other resources to support the proposed project and chooses not to use them, the applicant should explain why it is seeking ANA funds and not utilizing its available resources to support the project. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

The non-federal budget share should identify the source and be supported by letters of commitment (see Definitions). Letters of commitment are binding when they specifically state the nature, the amount, and conditions under which another agency or organization will support a project funded with ANA funds. These resources may be human, natural, or financial, and may include other Federal and non-Federal resources. For example, a letter from another Federal agency or foundation pledging a commitment of $200,000 in construction funding to complement proposed ANA funded pre-construction activity is evidence of a firm funding commitment. Statements that additional funding will be sought from other specific sources are not considered a binding commitment of outside resources. Letters of Support merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters. They do not factually establish the authenticity of other resources and do not offer or bind specific resources to the project. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

If an applicant plans to charge or otherwise seek credit for indirect costs in its ANA application, a current copy of its Indirect Cost Rate Agreement should be included in the application, with all cost broken down by category so ANA reviewers can determine what is included in the indirect cost pool. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

The budget includes sufficient funds for principal representatives, such as the chief financial officer or project director from the applicant organization to travel to one ANA post-award grant training and technical assistance workshop. This expenditure is mandatory for new grant recipients and optional for grantees that have had previous ANA grant awards. Applicants may also include costs to travel to an ANA grantee conference. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

For business development projects, the proposal should demonstrate that the expected return on the ANA funds used to develop the project will provide a reasonable operating income and investment return within a specified time period. If a profit-making venture is being proposed, profits should be reinvested in the business in order to decrease or eliminate ANA's future participation. Such revenue should be reported as general program income. A decision will be made at the time of the grant award regarding appropriate use of program income. (*See* 45 CFR part 74 and part 92). *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

Criteria Six: Project Introduction and Summary/Abstract (5 Points)

The applicant should provide a Project Introduction. The Introduction will provide the reader an overview and some details of the proposed project. This is where the project is introduced to the peer review panel. Identify the name of the applicant, location of the community to be served by the proposed project, the project activities, funding amount requested, amount of matching funds to be provided, the length of time required to accomplish the project, and the outcomes or outputs to be achieved. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b)*

Review and Selection Process

Initial Screening: Each application submitted under an ANA program announcement will undergo a pre-review screening to determine if (a) the application was received by the Program Announcement closing date; (b) the application was submitted in accordance with section IV ''Application and Submission Information''; (c) the applicant is eligible for funding; (d) the applicant has submitted the proper support documentation such as proof of non-profit status, resolutions, and required government forms; and (e) an authorized representative has signed the application. An application that does

not meet one of the above elements will be determined to be ineligible and excluded from the competitive review process. Ineligible applicants will be notified by mail within 30 business days from the closing date of this program announcement. ANA staff cannot respond to requests for information regarding funding decisions prior to the official applicant notification. After the Commissioner has made funding decisions, unsuccessful applicants will be notified in writing within 90 days. Applicants are not ranked based on general financial need. Applicants, who are initially excluded from competition because of ineligibility, may appeal the Agency's decision. Likewise, applicants may also appeal an ANA decision that an applicant's proposed activities are ineligible for funding consideration. The appeals process is stated in the final rule published in the **Federal Register** on August 19, 1996 (61 FR 42817 and 45 CFR part 1336, subpart C). ANA has a policy of not funding duplicative projects or allowing any one community to receive a disproportionate share of the funds available for award. When making decisions on awards of grants the Agency will consider whether the project is essentially identical or similar, in whole or significant part, to projects in the same community previously funded or being funded under the same competition. The Agency will also consider whether the grantee is already receiving funding for a SEDS project or for another project from ANA. The Agency will also take into account in making funding decisions whether a proposed project would require funding on indefinite or recurring basis.

Competitive Review Process: Applications that pass the initial ANA screening process will be analyzed, evaluated and rated by an independent review panel on the basis of the Evaluation Criteria specified. The evaluation criteria were designed to analyze and assess the quality of a proposed community-based project, the likelihood of its success, and the ability to monitor and evaluate community impact and long-term results. The evaluation criteria and analysis are closely related and are wholly considered in judging the overall quality of an application. In addition, the evaluation criteria will standardize the review of each application and distribute the number of points more equitably.

Application Review Criteria: ANA has expanded the review criteria to allow for a more equitable distribution of points during the application review and competition process. ANA will improve the competitive review process through the use of six criteria that will evenly distribute evaluation points. The use of six criteria will standardize the review of each application and distribute the number of points more equitably. Based on the ACF Uniform Project Description, ANA's criteria categories are Project Introduction; Objectives and Need for Assistance; Project Approach; Organizational Capacity; Results and Benefits Expected; and Budget and Budget Narrative.

Application Consideration: The Commissioner's funding decision is based on an analysis of the application by the review panel, the panel review scores, recommendations of the ANA staff, comments of State and Federal agencies having contract and grant performance related information, and other interested parties. The Commissioner makes grant awards consistent with the purpose of the Native American Programs Act (NAPA), all relevant statutory and regulatory requirements, this program announcement, and the availability of appropriated funds.

The Commissioner reserves the right to award more, or less, than the funds described or under such circumstances as may be deemed to be in the best interest of the federal government. Applicants may be required to reduce the scope of projects based on the amount of approved award.

VI. Award Administration Information

Anticipated Announcement and Award Date: 120 days after the due date of applications.

Award Notices: 120 days after the due date of applications.

Administrative and National Policy Requirements: 45 CFR part 74 and 45 CFR part 92 and 45 CFR part 1336, subpart C) and 42 U.S.C. 2991 *et seq.*—Native American Programs Act of 1974;

Reporting Requirements:

Programmatic Reports: Quarterly.

Financial Reports: Quarterly.

Special Reporting Requirements: An original and one copy of each performance report and financial status report must be submitted to the Grants Officer. Failure to submit these reports when required will mean the grantee is non-compliant with the terms and conditions of the grant award and subject to administrative action or termination. Performance reports are submitted 30 days after each quarter (3-month intervals) of the project period. The final performance report, due 90 days after the project period end date, shall cover grantee performance during the entire project period. All grantees shall use the SF 269 (Long Form) to report the status of funds. Grantees shall submit semi-annual Financial Status Reports that shall be due 30 days after the end of the second and fourth quarter of each budget period. The final report shall be due 90 days after the end of the project period. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b; 45 CFR 1336.50(a); 45 CFR 74.51 and 74.52; 45 CFR 92.40 and 92.41)*

VII. Agency Contacts

Program Office Contact: ANA Applicant Help Desk at 202–690–7776 or toll free at 1–877–922–9262 for assistance.

Grants Management Office Contact: Lois B. Hodge, 370 L'Enfant Promenade, SW., Aerospace Building 8th Floor-West, Washington, DC 20447–0002, Telephone: (202) 401–2344, E-mail: *Lhodge@acf.dhhs.gov.*

VIII. Other Information

Training and Technical Assistance: All potential ANA applicants are eligible to receive free T&TA in the SEDS, Language, or Environmental program areas. Prospective applicants should check ANA's Web site for training and technical assistance dates and locations, or contact the ANA Help Desk at 1–877–922–9262. Due to the new application and program additions and modifications, ANA strongly encourages all prospective applicants to participate in free pre-application training. *(Legal authority: Sections 804 of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991c)*

Paperwork Reduction Act of 1995 (Pub. L. 104–13): Under the Paperwork Reduction Act of 1995, Public Law 104–13, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval of any reporting and record keeping requirements in regulations including program announcements. This program announcement does not contain information collection requirements beyond those approved for ANA grant applications under the Program Narrative Statement by OMB (Approval Number 0980–0204).

I. Program Area: 2

Alaska Social and Economic Development Strategies for Native Americans

In fiscal year 1984, ANA implemented a special Alaska Social and Economic Development initiative to support activities at the village level. This special effort was designed to provide small amounts of project seed money for

village-specific projects to improve and strengthen the capacity of village governments, an integral part of social and economic self-sufficiency. ANA continues to implement this special initiative with a renewed awareness that economic, social and governance development is interrelated. ANA believes both the non-profit and for-profit corporations in Alaska can play an important supportive role in assisting individual villages in the development and implementation of their own locally determined strategies, which capitalize on opportunities afforded to Alaska Natives under the Alaska Native Claims Settlement Act (ANCSA), *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

The Program Areas of Interest are projects that ANA considers supportive to Native American communities. Although eligibility for funding is not restricted to the projects of the type listed under this program announcement, these Areas of Interest are ones which ANA sees as particularly beneficial to the development of healthy Native American communities.

Economic Development: Involves the promotion of the physical, commercial, technological, industrial, and / or agricultural components necessary for a sustainable local community. Applicants are encouraged to develop sustainable projects to support sustainable, stable, and diversified private sector local economies.

Program Areas of Interest include:

- Projects to strengthen an organization's capacity to deliver business technical assistance, workshops, financial literacy programs, and that create, expand, and retain public and private sector community-based businesses.
- Projects to increase cooperative enterprise development activities, and technical capacity of youth to establish and operate cooperative businesses with the goal of teaching financial, management and long-term employment skills.
- Projects to develop and coordinate emergency response services within the community and with State and local governments to protect against Acts of Nature and other catastrophic events such as fire, floods, and environmental catastrophes.
- Projects to implement initiatives for Tribes to evaluate the economic potential of energy resources in their community, including renewable energy sources such as: Bio-energy, Geothermal, Hydrogen, Hydropower, Ocean, Solar, Wind, or other methods appropriate to the tribe and geographical location.
- Projects to develop community transportation activities that support the needs of the elderly, the disabled, and the local workforce.
- Projects to develop organizational and management capacity building activities that enhance community based program delivery systems and services.
- Projects to develop and implement community-based activities that increase International Tourism and trade activities for Native American products, services, and communities. Business sectors of interest include: the export of Native American packaged foods; arts and crafts; literature and music; manufactured products; agricultural and organic products; value-added product assembly or processing that includes agriculture and aquaculture.
- Projects to develop and enhance subsistence activities that retain, or re-establish Native traditional foods and or by-products of natural resources for local and commercial markets. Develop and/or strengthen the local economy through enhanced commercial trade in areas such as agriculture, aquaculture, lumber, and traditional arts and crafts. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b)*

Social Development: The investment in human and social capital for advancing people's well being. Applicants are encouraged to develop and implement culturally appropriate programs to enhance tribal, community, and village activities. Social development programs under this area support families, elders, parents, positive youth development, healthy marriage, individuals with disabilities, and personal commitment.

Program Areas of Interest include:

- Healthy Relationships and Strengthening Families Initiative: The goal is to promote healthy family environments and strengthen co-parenting teamwork, problem-solving, and conflict resolution. To respond to this initiative, applicants should consider comprehensive projects that are culturally and socially appropriate to teach couples relationship-building skills, such as negotiation-based interpersonal communications, collaborative problem solving, and preservation of love, commitment, and friendship. Applicants are encouraged to be creative in their efforts to integrate elders into these projects to support traditional values and methods. Initiatives could address problematic periods in the family life cycle such as: pregnancy, postpartum care, first-time parenthood, parenting adolescents, and goal setting for independent young adults.
- Project to strengthen the long-term commitment of married couples. Projects should consider the enhancement of relationship skills through premarital counseling, mentoring activities, or role model activities.
- Projects to support young families in order to reduce the challenges and stress of child rearing, and the risks associated with child/infant abuse and neglect, strengthening the bonds between parents and children, and particularly between fathers and children and the fathers' role in healthy families.
- In partnership with community and or faith-based organizations, develop and implement comprehensive culturally and socially appropriate projects to help youth practice personal responsibility; reach a balance in their lives by learning how to set and meet short and long-term goals; and to practice healthy lifestyles with the goal of decreasing gang activity, school drop out rates and juvenile delinquency.
- Projects to recruit, train, and certify new Native American foster parents or promote appropriate extended family placements or to assist abused, neglected, and abandoned Native American children, youth, and their families.
- Projects to develop, coordinate, and implement training for Native Americans with disabilities in order to join the workforce, obtain information and technical assistance to apply for disability benefits, gain access to workplace facilities, and receive reasonable accommodations necessary to perform job functions. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

Governance: Involves assistance to Tribal and Alaska native Village government leaders to increase their ability to execute local control and decision-making over their resources. ANA encourages applications for the development of laws and policies that support community-based social, economic and governance activities. Governance projects under this area may be used for leadership and management training or to assist eligible applicants in the development of laws, regulations, codes, policies, and practices that support and promote community based activities. Program Areas of Interest include:

- Projects to enact laws that support and enforce business and investment

transactions, contracts, and property rights. For example, develop and implement Uniform Commercial Codes (business codes) and Tax Codes.

• Projects to enact laws, ordinances, and policies, to develop, expand, and/or enhance utility and communications infrastructures.

• Projects to enrich and strengthen the management and leadership skills of senior Tribal government personnel, and senior management personnel of tribally owned companies.

• Projects to establish and implement technology management information systems to assist with the effective and efficient administration of tribal government programs.

• Projects to develop or amend tribal constitutions, government procedures and functions, by-laws or codes, and council or executive branch duties in order to improve the regulatory, judicial and/or administrative infrastructure of tribal and village governments. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

II. Award Information

Applications from Alaska Native entities may submit under either SEDS or Alaska SEDS but not both program areas. The SF 424 must clearly indicate the correct program area.

Funding Instrument Type: Grant.

Anticipated Total Program Area Funding: $2,000,000.

Anticipated Number of Awards: 10–20.

Average Projected Award Amount: $25,000–$125,000 for Individual Village Projects.

$25,000–$175,000 for Regional Non-profit and Village consortia.

Length of Project Period: 12, 17, 24, or 36 months.

Ceiling on amount of individual Awards: $175,000 for Regional non-profit and Village consortia.

$125,000 for Individual Village projects. *(Legal authority: Sections 803(a) f of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

An application that exceeds the upper value of the dollar range specified will be considered ''non-responsive'' and be returned to the applicant without further review. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

Floor Amount: $25,000 *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

III. Eligibility Information

Eligible Applicants:

• Federally Recognized Indian tribes in Alaska;

• Alaska Native villages, as defined in the Alaska Native Claims Settlement Act (ANSCA)and/or non-profit village consortia;

• Non-profit Alaska Native Regional Corporations/Associations in Alaska with village specific projects;

• Incorporated non-profit Alaska Native multi-purpose community-based organizations

• Non-profit Native organizations in Alaska with village specific projects. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b; 45 CFR 1336.33(a) (2).)*

Additional Information on Eligibility:

Cost Sharing or Matching: Grantees must provide at least 20 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-federal share. The required match can be computed by dividing total Federal funds by 80 percent for total project costs then subtracting the Federal portion. The remainder is the required match. For example, a project requesting $100,000 in Federal funds (per budget period) must provide a match of at least $ 25,000 ($100,000 / 80% = $125, 000–$100,000 = $25,000). Grantees must be able to verify commitments of the non-Federal resources. Failure to provide the non-federal share match will result in the disallowance of Federal funding commitment. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b) (3) of the Native American Program regulations.

Acceptable Proof of Non-profit Status includes:

• A copy of the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code; or

• A copy of a currently valid IRS tax exemption certificate; or

• Provide a copy of the articles of incorporation bearing the seal of the State or federally-recognized Tribe in which the corporation or association is domiciled. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

Resolution: Applicants are required to include a current signed Resolution (a formal decision voted on by the official governing body) in support of the project for the entire project period. The Resolution must indicate who is authorized to sign documents and negotiate on behalf of the Tribe or organization. The Resolution should indicate that the community was involved in the project planning process, and indicate the specific dollar amount of any non-federal matching funds (if applicable). *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

IV. Application and Submission Information

To request an application package, please contact: The ANA regional Training and Technical Assistance (T/TA) provider at: Native American Management Services, Inc., 11723 Old Glenn Highway, suite 201, Eagle River, Alaska 99577, Toll Free 877–770–6230, (907) 694–5711, Fax (907) 694–5775, P.J. Bell, Project Manager, E-mail: *pjbell@gci.net, http://www.anaalaska.org.* Region III: Alaska.

Content and Form of Submission

Organization and Preparation of Application: Due to the intensity and pace of the application review and evaluation process, ANA strongly recommends applicants organize, label, and insert required information in accordance with Part One, Part Two and Part Three as presented in the charts below. The application should begin with the information requested in Part One of the chart in the prescribed order. Utilizing this format will insure all information submitted to support an applicant's request for funding is thoroughly reviewed. Submitting information in this format will assist the panel reviewer in locating and evaluating the information. Deviation from this suggested format may reduce the applicant's ability to receive maximum points, which are directly related to ANA's funding review decisions. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

ANA Application Format: This format applies to all applicants submitting applications for funding. ANA will now require all applications to be labeled in compliance with the format provided in the program announcement. All pages submitted (including Government Forms, certifications and assurances) should be numbered consecutively. The paper size shall be 8½ x 11 inches, line spacing shall be a space and a half (1.5 line spacing), printed only on one side, and have a half-inch margin on all sides of the paper. The font size should be no smaller than 12-point and the font type

shall be Times New Roman. These requirements do not apply to the project Abstract Form, Letters of Commitment, the Table of Contents, and the Objective Work Plan. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

Submission Date and Time:

Deadline: The closing time and date for receipt of applications is 4:30 p.m. (Eastern Time Zone) on March 26, 2004. Mailed or hand-delivered applications received after 4:30 p.m. on the closing date will be classified as late. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, Attention: Lois B. Hodge, ANA No. 93612–2004, 370 L'Enfant Promenade, SW., Mail Stop: Aerospace Center 8th Floor-West, Washington, DC 20447–0002.

Hand Delivery: Applicant must provide an original application with all attachments, signed by an authorized representative and two copies. The Application must be received at the address below by 4:30 p.m. Eastern Standard Time on or before the closing date. Applications that are hand delivered will be accepted between the hours of 8 a.m. to 4:30 p.m., Monday through Friday. Applications may be delivered to: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, ACF Mail Room, Second Floor Loading Dock, Aerospace Center, 901 D Street, SW., Washington, DC 20024, Attention: Lois B. Hodge, ANA No. 93612–2004.

It is strongly recommended that applicants obtain documentation from the ACF Mail Room that the application was hand delivered on or before the closing date. Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

Late Applications: Applications that do not meet the deadline criteria will be considered unresponsive to the program announcement and late. To avoid errors, ANA will notify each late applicant that its application will not be considered for review in the current competition. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

Extension of Deadline: ANA may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, when there are widespread disruptions of mail service, or if the Chief Grants Management Officer makes a determination to extend or waive deadline requirements. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

Intergovernmental Review: Applications are not subject to Executive Order 12372.

Funding Restrictions:

ANA does not fund:

- Activities in support of litigation against the United States Government that are unallowable under OMB Circulars A–87 and A–122. *(Legal authority: Sections 803(a) and (d), and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b, and 2991b–3; 45 CFR 1336.50(a); 45 CFR 74.27 and 92. 22; OMB Circular A–122, Attachment B, Paragraph 10(g) and OMB Circular A–87, Attachment B, Paragraph 14(b))*
- Duplicative projects or does not allow any one community to receive a disproportionate share of the funds available for award. When making decisions on awards of grants the Agency will consider whether the project is essentially identical or similar, in whole or significant part, to projects in the same community previously funded or being funded under the same competition. The Agency will also consider whether the grantee is already receiving funding for a SEDS, Language, or Environmental project from ANA. The Agency will also take into account in making funding decisions whether a proposed project would require funding on indefinite or recurring basis. This determination will be made after it is determined whether the application meets the requirements for eligibility as set forth in 45 CFR 1336, Subpart C, but before funding decisions are complete. *(Legal authority: Sections 803 (a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*
- Projects in which a grantee would provide training and/or technical assistance (T/TA) to other tribes or Native American organizations that are otherwise eligible to apply. However, ANA will fund T/TA requested by a grantee for its own use or for its members' use (as in the case of a consortium), when the T/TA is necessary to carry out project objectives. *(Legal authority: Sections 803 (a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3; 45 CFR 1336.33(b)(1))*
- The purchase of real property or construction because those activities are not authorized by the Native American Programs Act of 1974, as amended. *(Legal authority: Sections 803 (a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3; 45 CFR 1336.33(b)(7))*
- Objectives or activities to support core administration activities of an organization. However, functions and activities that are clearly project related are eligible for grant funding. Under Alaska SEDS projects, ANA will consider funding core administrative capacity building projects at the village government level if the village does not have governing systems in place. *(Legal authority: Sections 803 (a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3 and 45 CFR 1336.33(b)(4))*
- Costs associated with fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable under an ANA grant award. *(Legal authority: Sections 803 (a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3; 45 CFR 1336.50; 45 CFR 74.27; OMB Circular A–122, Attachment B, Paragraph 23; OMB Circular A–87, Attachment B, Paragraph 21.)*
- Major renovation or alteration because those activities are not authorized under the Native American Programs Act of 1974, as amended. *(Legal authority: Sections 803 (a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*
- Projects originated and designed by consultants who provide a major role for themselves and are not members of the applicant organization, Tribe, or village. *(Legal authority: Sections 803 (a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*
- Project activities that do not further the three interrelated ANA goals of economic development, social development and governance or meet the purpose of this program announcement. *(Legal authority: Sections 803 (a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3; 45 CFR 1336.33(b)(5))*

Other Submission Requirements

An original and two copies of the complete application are required. The original copy must include all required forms, certifications, assurances, and appendices, be signed by an authorized representative, have original signatures, and be submitted unbound. The two additional copies of the complete application must include all required forms, certifications, assurances, and appendices and must also be submitted unbound. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

A completed application for assistance under this Program Announcement consists of Three Parts. Part One is the SF 424, Required Government Forms, and other required documentation. Part Two of the application is the project substance of the application. This section of the application may not exceed 45 pages. Part Three of the application is the Appendix. This section of the application may not exceed 20 pages (the exception to this 20 page limit applies only to projects that require, if relevant to the project, a Business Plan or any Third-Party Agreements). *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

PART ONE—FEDERAL FORMS AND OTHER REQUIRED DOCUMENTS

Part I of the application for funding must include the following	Content and location of part I required forms, certifications and documents	When to submit
SF 424, SF 424 A, and SF 424B	*http://www.acf.hhs.gov/programs/ofs/forms.htm*	By application due date.
Table of Contents	Applicant must include a table of contents that accurately identifies the page number and where the information can be located. Table of Contents does not count against application page limit.	By application due date.
Project Abstract	ANA Form: OMB Clearance Number 09800204—On ANA Web Site *http://www.acf.hhs.gov/programs/ana*.	By application due date.
Proof of Non-Profit Status	As described in this announcement under ''Other Eligibility Information''.	By application due date.
Resolution	Information for submission can be found in the Program Announcement Section ''Other Eligibility Information.''.	By application due date.
Documentation that the Board of Directors is majority Native American, if applicant is other than a tribe or Alaska Native Village government.	As described in this announcement under ''ANA Administrative Policies'' section.	By application due date.
Audit Letter	A Certified Public Accountant's ''Independent Auditors' Report on Financial Statement.'' This is usually only a two to three page document. (This requirement applies only to applicants with annual expenditures of $300,000 or more of federal funds). Applicant must also include that portion of the audit document that identifies all other federal sources of funding.	By application due date.
Indirect Cost Agreement	Organizations and Tribes must submit a current indirect cost agreement (if claiming in-direct costs) that aligns with the approved ANA project period. The In-direct Cost Agreement must identify the individual components and percentages that make up the indirect cost rate.	By application due date.
Non-Federal Share of Waiver Request, per CFR 1336.50(b).	A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program regulations (if applicable).	By application due date.
Certification regarding Lobbying Disclosure of Lobbying Activities—SF LLL.	May be found at *www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Certification regarding Maintenance of Effort	May be found at *www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Certification Regarding Debarment, Suspension and Other Responsibility Matters (Primary covered transactions and Lower Tier Transactions as appropriate).	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Drug-Free Workplace Certification	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Environmental Tobacco Smoke Certification	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.

PART TWO—APPLICATION REVIEW CRITERIA

Part II—Proposed Project	Application review criteria—this section may not exceed 45 pages
Criteria One	Project Introduction and Summary.
Criteria Two	Objective and Need for Assistance.
Criteria Three	Project Approach—Include an Objective Work Plan form for each year of project period.
Criteria Four	Organizational Capacity.

PART TWO—APPLICATION REVIEW CRITERIA—Continued

Part II—Proposed Project	Application review criteria—this section may not exceed 45 pages
Criteria Five	Results and Benefits Expected.
Criteria Six	Budget and Budget Justification Summary/ Cost Effectiveness.

PART THREE—APPENDIX

Part III—support documentation	Appendix—this section may not exceed 20 pages
	Part III of the submitted application should include only supplemental information or required support documentation that addresses the applicant's capacity to carry out and fulfill the proposed project. These items include: letters of agreement with cooperating entities, in-kind commitment and support letters, business plans, and a summary of the Third Party Agreements. (Do not include books, videotapes, studies or published reports and articles, as they will not be made available to the reviewers, or be returned to the applicant.

(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)

V. Application Review Information

Criteria: ACF Uniform Project Description

The UPD text should be used as general guidance in the development of projects. However, the specific ANA application submission format to be used in response to this announcement is located in section IV ''Application and Submission Information''.

Purpose: The Project Description is a major area by which an application is evaluated and ranked in competition with other applications for financial assistance. The Project Description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included if they present information clearly and succinctly. In preparing your Project Description, all information requested through each specific evaluation criteria should be provided. ANA uses this and other information to make funding decisions. It is important, therefore, that this information be included in the application. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

General Instructions: ANA is particularly interested in specific factual information and statements of measurable goals and performance indicators in quantitative terms. Project descriptions are evaluated on a basis of substance, not length. Extensive exhibits are not required. Cross-referencing should be used rather than repetition. Supporting information that does not directly pertain to an integral part of the grant-funded activity should be placed in the appendix. The application narrative should be in a 12-pitch font. A table of contents and an executive summary should be included. Each page should be numbered sequentially, including attachments or appendices. Please do not include books, videotapes or published reports because they are not easily reproduced, are inaccessible to the reviewers, and will not be returned to the applicant. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

Introduction: Applicants are required to submit a full Project Description and shall prepare this portion of the grant application in accordance with the following instructions and the specified evaluation criteria. The introduction provides a broad overview of the Project, and the information provided under each evaluation criteria expands and clarifies the project program-specific activities and information that reviewers will need to assess the proposed project. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

Project Summary: Provide a summary of the Project Description (a page or less) with reference to the funding request. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

Objectives and Need for Assistance: Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the Project Description, the applicant should provide information on the total range of projects currently being conducted and supported (or to be initiated) to ensure they are within the scope of the program announcement. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

Results or Benefits Expected: Identify the results and benefits to be derived by the community and its members. For example, applicants are encouraged to describe the qualitative and quantitative data collected, how this data will measure progress towards the stated results or benefits, and how performance indicators under economic and social development and governance projects can be monitored, evaluated and verified. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

Approach: Outline a plan of action that describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors, which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, extraordinary social and community involvement or ease of project replication by other tribes and Native organizations. List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution. Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms

as the number of people served and the number of activities accomplished. Examples of these activities would be the number of businesses started or expanded, the number of jobs created or retained, the number of people trained, the number of youth, couples or families assisted or the number elders participating in the activity during that reporting period. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the dates and schedule of accomplishments. List organizations, cooperating entities, consultants, or other key individuals who will work on the project, as well as a short description of the nature of their effort or contribution. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

Organizational Profiles: Provide information on the applicant organization(s) and cooperating partners with organizational charts, financial statements, audit reports or statements from CPA/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

Third-Party Agreements: Include written agreements between grantees and sub grantees or subcontractors or other cooperating entities. These agreements must detail scope of work to be performed, work schedules, remuneration, and other terms and conditions that structure or define the relationship. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

Budget and Budget Justification: Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424. Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allow ability of the proposed costs. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b)*

Additional Information: The following are requests for additional information that needs to be included in the application: Any non-profit organization submitting an application must submit proof of its non-profit status in the application at the time of submission. The non-profit organization shall submit one of the following verifiable documents: (a) A copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax exempt organizations described in Section 501(c)(3) of the IRS code, or (b) providing a copy of the currently valid IRS tax exemption certificate, or (c) providing a copy of the articles of incorporation bearing the seal of the State or federally-recognized Tribe in which the corporation or association is domiciled. Organizations incorporating in American Samoa are cautioned that the Samoan government relies exclusively upon IRS determinations of non-profit status; therefore, articles of incorporation approved by the Samoan government do not establish non-profit status for the purpose of ANA program eligibility. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

General: The following guidelines are for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. For purposes of preparing the budget and budget justification, ''Federal resources'' refers only to the ACF grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s); and last column, total budget. The budget justification should be a narrative.

- Personnel: The description of the costs of employee salaries and wages. Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), or time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, *etc.* Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.
- Fringe Benefits: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate. Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, *etc.*
- Travel: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel). Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.
- Equipment: Equipment means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000. (Note: Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.). Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy, which includes the equipment definition.
- Supplies: Costs of all tangible personal property other than that included under the Equipment category. Justification: Specify general categories of supplies and their costs. Show computations and provide other information that supports the amount requested.
- Contractual: Costs of all contracts for services and goods except for those, which belong under other categories such as equipment, supplies, construction, etc. Third-party evaluation contracts (if applicable) and contracts with secondary recipient organizations,

including delegate agencies and specific project(s) or businesses to be financed by the applicant, should be included under this category. Justification: All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and sub-recipients, other than States that are required to use Part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition (sole source) and exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000.). Recipients may be required to make available to ANA pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc. Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

• Other: Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs. Justification: Provide computations, a narrative description, and a justification for each cost under this category.

• Indirect Charges: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of the Interior, Department of Labor, the Department of Health and Human Services (HHS), or other Federal agency. Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

• Program Income: The estimated amount of income, if any, expected to be generated from this project. Justification: Describe the nature, source, and anticipated use of program income in the budget or refer to the pages in the application, which contain this information.

• Non-Federal Resources: Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF–424. Justification: The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process. A detailed budget must be prepared for each budget period.

• Total Direct Charges, Total Indirect Charges, and Total Project Costs *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

Evaluation Criteria

Criteria One: Approach (25 Points)

The applicant should provide a Project Description with objectives and discuss the project approach and the implementation plan. The Applicant's narrative should be clear and concise. It should include a logical breakdown of the project, and discuss in detail the strategy and approach the applicant intends to employ in order to accomplish the project objectives and activities over the project period.

In this section, the applicant should describe the project strategy using the Objective Work Plan (OWP). In the OWP, the applicant should identify the project objectives, time frames, proposed activities, outcomes, and evaluation activity, as well as the individuals responsible for completing the objectives and performing the activities. The project description, objective(s), approach, strategy and implementation plan are inter-related. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

The applicant should also include the names and activities of any organizations, consultants, or other key individuals who will contribute to the project. The Applicant should discuss ''Leveraged Resources'' (see Definitions) used to strengthen and broaden the impact of the proposed project. The Applicant should discuss commitments and how they impact the project. Applicant should provide ''Letters of Commitment'' that identify the time, dollar amount, and activity to be accomplished through partnerships. The applicant should discuss the relationship of non-ANA funded activities to those objectives and activities that will be funded with ANA grant funds. (Letters of Commitment should be included in the appendix). *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

Criteria Two: Objectives and Need for Assistance (20 Points)

Discuss the Need for Assistance. The need for assistance should clearly identify the physical, economic, social, financial, and institutional challenges and problem(s) requiring a solution that supports the funding request. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

Describe the Community (*see* Definitions) to be impacted by the project and the Community Involvement in the project. The Applicant should describe the community's long-range goals, and how the project supports these community goals. The applicant describes the planning and/or consultation efforts undertaken, and the proposed objectives and activities that reflect either the economic and social development or governance needs of the local community. Discuss the Geographic Location of the project and where the project and grant will be administered. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

Applications from National American Indian and Native American organizations should demonstrate a need for the project, explain how the project originated, and discuss the community-based program delivery strategy of the project, identify and describe the intended beneficiaries, and specifically address how this project will benefit the recipients. Applicant should show a clear relationship between the proposed project, the social and economic development strategy, and the community's long-range goals. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

Criteria Three: Organizational Profiles (20 Points)

Provide information on the applicant's organization and

cooperating partners. Include organizational charts, and information associated with experience in the program area. Describe the organizations capabilities such as the management structure, the administrative structure, and the program delivery process. If relevant to the project, applicants must provide a Business Plan or any Third-Party Agreements (include in the appendix section of the application). *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

Applicants are required to make a positive statement that they will give credit to the Administration for Native Americans, and reference the ANA funded project on any audio, video, and/or printed materials developed in whole or in part with ANA funds. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

If the applicant has audit exceptions, these issues should be addressed. (Applicants should list all current sources of federal funding, the agency, purpose, amount, and provide the most recent certified signed audit letter for the organization to be included in Part I of the application). *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

Applicants should provide evidence of its ability to successfully manage a project of similar scope. Applicant should provide ''staffing and position data''. This is a proposed staffing pattern for the project where the applicant highlights the new project and staff. All positions proposed for the project are the same positions discussed in the Objective Work Plan and in the proposed budget. Applicant should provide a paragraph of the duties and skills required for the proposed staff and a paragraph on qualifications and experience of current staff (Full position descriptions are required to be submitted and must be included in the appendix). Applicant should explain and discuss how the current and future staff will manage the proposed project. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

Note: Applicants are strongly encouraged to give preference to qualified Native Americans in hiring project staff and in contracting services under an approved ANA grant. *(Legal authority: Sections 803B(c)(6) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b–2.)*

Criteria Four: Results or Benefits Expected (20 Points)

In this section the applicant should discuss the ''Performance Indicators'' (*see* Definitions) and the Benefits Expected as a result of this Project. Performance indicators specifically identify qualitative and quantitative data directly associated with the project. Each applicant must have five indicators to support the applicant's project. Three of the performance indicators should be selected from the list below. Each grantee is required to develop two additional indicators that are project specific and directly support the success of the project objectives and goals. Each performance indicator should be discussed in the application, as well as the method for collecting the data and evaluating the project. Performance indicators will be reported to ANA in the grantee's quarterly report. Three of the five Performance indicators required, should selected from the following list: (1) The number of jobs created; (2) the number of workshops/classes provided; (3) the number of people to successfully complete a workshop/class; (4) the number of community-based small businesses established or expanded; (5) identify the tribal or village government business, industry, energy or financial codes or ordinances that were adopted; and (6) the number of children, youth, families or elders assisted. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

In this section discuss how the applicant will determine the success of the individual project components and the project as a whole. The applicant should describe how the success of the project would be evaluated and verified by an independent program monitoring and evaluation team. Applicant should provide a narrative on the specific performance indicators that can be analyzed, measured, monitored, and evaluated. For example, if requesting funds for a conference, workshop, or an educational activity, the applicant should discuss the value and long-term impact to the recipient and the community and discuss how the information has an impact on the project goals. What will the participants gain by attending the activity and how the knowledge, training, and skills gained, will improve the lives of children and families. Relate these performance indicators to the project goals, objectives, and outcomes. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

The applicant should discuss how the project will be sustainable or how the resulting product will be used to further the community's needs, goals, and objectives. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

Applicants should discuss and present objectives and goals to be achieved and evaluated at the end of each budget period. Project objectives support the identified need and should be measurable. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

Criteria Five: Budget and Budget Justification/ Cost Effectiveness (5/5 Points)

An applicant must submit an itemized budget detailing the applicant's Federal and non-Federal share with source(s) of funding cited. The applicant should provide a detailed line item Federal and Non-Federal share budget by year for each year of project funds requested. A budget narrative describing the line item budget should be attached for each year of project funds requested. The budget should include a line item justification for each Object Class Category listed under Section B—''Budget Categories'' of the ''Budget Information-Non Construction Programs on the SF 424A form. The budget should include the necessary details to facilitate the determination of allowable costs and the relevance of these costs to the proposed project. Up to five points will be awarded for the budget and budget justification. Up to an additional five points will be added to the applicant's score based on the demonstration of an effective cost-benefit relationship for the proposed project. This criterion reflects ANA's concern with ensuring that the expenditure of its limited resources yields the greatest benefit possible in achieving the economic and social self-sufficiency for Native American communities. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

Applicant should explain how the project components, not funded by ANA will be financed through other resources. The applicant is required to describe any specific financial circumstances, which may impact the project, such as any monetary or land settlements made to the applicant, and any restrictions on the use of those settlements. When the applicant appears to have other resources to support the proposed project and chooses not to use them, the applicant should explain why

it is seeking ANA funds and not utilizing its available resources to support the project. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

The non-federal budget share should identify the source and be supported by letters of commitment (*see* Definitions). Letters of commitment are binding when they specifically state the nature, the amount, and conditions under which another agency or organization will support a project funded with ANA funds. These resources may be human, natural, or financial, and may include other Federal and non-Federal resources. For example, a letter from another Federal agency or foundation pledging a commitment of $200,000 in construction funding to complement proposed ANA funded pre-construction activity is evidence of a firm funding commitment. Statements that additional funding will be sought from other specific sources are not considered a binding commitment of outside resources. Letters of Support merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters. They do not factually establish the authenticity of other resources and do not offer or bind specific resources to the project. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

If an applicant plans to charge or otherwise seek credit for indirect costs in its ANA application, a current copy of its Indirect Cost Rate Agreement should be included in the application, with all cost broken down by category so ANA reviewers can determine what is included in the indirect cost pool. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

The budget includes sufficient funds for principal representatives, such as the chief financial officer or project director from the applicant organization to travel to one ANA post-award grant training and technical assistance workshop. This expenditure is mandatory for new grant recipients and optional for grantees that have had previous ANA grant awards. Applicants may also include costs to travel to an ANA grantee conference. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

For business development projects, the proposal should demonstrate that the expected return on the ANA funds used to develop the project will provide a reasonable operating income and investment return within a specified time period. If a profit-making venture is being proposed, profits should be reinvested in the business in order to decrease or eliminate ANA's future participation. Such revenue should be reported as general program income. A decision will be made at the time of the grant award regarding appropriate use of program income. (See 45 CFR part 74 and part 92). *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

Criteria Six: Project Introduction and Summary/Abstract (5 Points)

The applicant should provide a Project Introduction. The Introduction will provide the reader an overview and some details of the proposed project. This is where the project is introduced to the peer review panel. Identify the name of the applicant, location of the community to be served by the proposed project, the project activities, amount requested, amount of matching funds to be provided, the length of time required to accomplish the project, and the outcomes or outputs to be achieved. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

Review and Selection Process

Initial Screening: Each application submitted under this program announcement will undergo a pre-review screening to determine if (a) the application was received by the Program Announcement closing date; (b) the application was submitted in accordance with Section VI, ''Application Submission Requirements''; (c) the applicant is eligible for funding in accordance with Section I of this program announcement; (d) the applicant has submitted the proper support documentation such as proof of non-profit status, resolutions, and required government forms; and (e) an authorized representative has signed the application. An application that does not meet one of the above elements will be excluded from the competitive review process. Ineligible applicant will be notified by mail within 30 business days from the closing date of this program announcement. ANA staff cannot respond to requests for information regarding funding decisions prior to the official applicant notification. After the Commissioner has made decisions on all applications, unsuccessful applicants will be notified in writing within 90 days. Applicants are not ranked based on general financial need. Applicants, who are initially excluded from competition because of ineligibility, may appeal the decision. Likewise, applicants may also appeal an ANA decision that an applicant's proposed activities are ineligible for funding consideration. The appeals process is stated in the final rule published in the **Federal Register** on August 19, 1996 (61 FR 42817 and 45 CFR part 1336, subpart C). *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

Competitive Review Process: Applications that pass the initial screening process will be analyzed, evaluated and rated by an independent review panel on the basis of the evaluation criteria specified below. The evaluation criteria were designed to analyze and assess the quality of a proposed community-based project, the likelihood of its success, and the ability to monitor and evaluate community impact and long-term results. The evaluation criteria and analysis are closely related and are wholly considered in judging the overall quality of an application. Applications will be evaluated in accordance with the program announcement criteria and ANA's program areas of interest. An evaluation is made if the project presented is an effective use of federal funds. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b.)*

Application Review Criteria: ANA has expanded the review criteria to allow for a more equitable distribution of points during the application review and competition process. ANA will improve the competitive review process through the use of six criteria that will evenly distribute evaluation points. The use of six criteria will standardize the review of each application and distribute the number of points more equitably. Based on the ACF Uniform Project Description, ANA's criteria categories are Project Introduction; Objectives and Need for Assistance; Project Approach; Organizational Capacity; Results and Benefits Expected; and Budget and Budget Narrative. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b)*

ANA has a policy of not funding duplicative projects or allowing any one community to receive a disproportionate share of the funds available for award. When making decisions on awards of grants the Agency will consider whether the project is essentially identical or similar, in whole or significant part, to projects in the same community previously funded or being funded under the same competition. The

Agency will also consider whether the grantee is already receiving funding for a SEDS project or for another project from ANA. The Agency will also take into account in making funding decisions whether a proposed project would require funding on a indefinite or recurring basis.

Application Consideration: The Commissioner's funding decision is based on an analysis of the application by the review panel, the panel review scores, recommendations of the ANA staff, comments of State and Federal agencies having contract and grant performance related information, and other interested parties. The Commissioner makes grant awards consistent with the purpose of the Native American Programs Act (NAPA), all relevant statutory and regulatory requirements, this program announcement, and the availability of appropriated funds.

The Commissioner reserves the right to award more, or less, than the funds described or under such circumstances as may be deemed to be in the best interest of the federal government. Applicants may be required to reduce the scope of projects based on the amount of approved award.

VI. Award Administration Information

Anticipated Announcement and Award Dates: 120 days after the due date of applications.

Award Notices: 120 days after the due date of applications.

Administrative and National Policy Requirements: 45 CFR part 74 and 45 CFR part 92 and 45 CFR part 1336, subpart C and 42 U.S.C. 2991 *et seq.*—Native American Programs Act of 1974;

Reporting Requirements:

Programmatic Reports: Quarterly.

Financial Reports: Quarterly.

Special Reporting Requirements: An original and two copies of each performance report and financial status report must be submitted to the Grants Officer. Failure to submit these reports when required will mean the grantee is non-compliant with the terms and conditions of the grant award and subject to administrative action or termination. Performance reports are submitted 30 days after each quarter (3-month intervals) of the project period. The final performance report, due 90 days after the project period end date, shall cover grantee performance during the entire project period. All grantees shall use the SF 269 (Long Form) to report the status of funds. Grantees shall submit quarterly Financial Status Reports that shall be due 30 days after the end of each quarter of each budget period. The final report shall be due 90 days after the end of the project period. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b; 45 CFR 74.51 and 74.52; 45 CFR 92.40 and 92.41)*

VII. Agency Contacts

Program Office Contact: ANA Applicant Help Desk at 202–690–7776 or toll free at 1–877–922–9262.

Grants Management Office Contact: Lois B. Hodge, 370 L'Enfant Promenade, SW., Aerospace Building 8th Floor-West, Washington, DC 20447–0002, Telephone: (202) 401–2344, E-mail: *Lhodge@acf.dhhs.gov.*

VIII. Other Information

Training and Technical Assistance: All potential ANA applicants are eligible to receive free T&TA in the SEDS, Language, or Environmental program areas. Prospective applicants should check ANA's web site for training and technical assistance dates and locations, or contact the ANA Applicant Help Desk at 1–877–922–9262. Due to the new application and program additions and modifications, ANA strongly encourages all prospective applicants to participate in free pre-application training. *(Legal authority: Sections 804 of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991c)*

Paperwork Reduction Act of 1995 (Public Law 104–13): Under the Paperwork Reduction Act of 1995, Public Law 104–13, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval of any reporting and record keeping requirements in regulations including program announcements. This program announcement does not contain information collection requirements beyond those approved for ANA grant applications under the Program Narrative Statement by OMB (Approval Number 0980–0204).

Assurances and Certifications and Standard Application Forms

Blank Federal Forms may be photocopied. Forms are also available electronically from the following Web site: *http://www.acf.hhs.gov/programs/ofs/form.htm.*

- SF–424A, Budget Information—Non construction Programs
- SF–424B, Assurances—Non construction Programs
- Non-Federal Share Waiver Request, per CFR 1336.50(b)
- Disclosure of Lobbying Activities—as revised by OMB in January 1996 to reflect the Lobbying Disclosure Act of 1995
- Certification Regarding Lobbying
- Certification Regarding Drug-Free Workplace Requirements
- Certification Regarding Environmental Tobacco Smoke
- Certification Regarding Maintenance of Effort
- Certification Regarding Debarment, Suspension and Other Responsibility Matters—Primary Covered Transactions
- Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Paperwork Reduction Act

This notice does not create any reporting or record keeping requirements requiring OMB clearance.

Dated: October 31, 2003.

Sheila K. Cooper,

Director of Program Operations, Administration for Native Americans.

[FR Doc. 03–28443 Filed 11–13–03; 8:45 am]

BILLING CODE 4184–01–P

Federal Register

Friday,
November 14, 2003

Part III

Environmental Protection Agency

40 CFR Part 350

Trade Secrecy Claims for Emergency Planning and Community Right-to-Know Information; and Trade Secret Disclosures to Health Professionals; Amendment; Direct Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 350

[SFUND–1988–0002; FRL–7584–8]

RIN 2050–AF10

Trade Secrecy Claims for Emergency Planning and Community Right-to-Know Information; and Trade Secret Disclosures to Health Professionals; Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This direct final action amends the trade secret regulations to remove the incorrect addresses in the regulations for mailing trade secrecy claims, petitions for disclosures, and any appeals to EPA determinations of insufficient trade secrecy claims. This action also amends the regulations to remove the outdated substantiation form for trade secrecy claims from the code of federal regulations. The most current substantiation form and the correct addresses to mail the trade secret claims, petitions and appeals will be posted on EPA program Web sites.

DATES: This rule is effective on January 13, 2004, unless EPA receives adverse comments by December 15, 2003. If we receive such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be submitted by mail. Comments may also be submitted electronically, by facsimile, or through hand delivery/courier. Send two copies of your comments to: U.S. Environmental Protection Agency, EPA Docket Center (EPA/DC), Superfund Docket, Mailcode 5305T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. SFUND–1988–0002. Follow the detailed instructions as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION** section. Copies of the documents relevant to this action (Docket No. SFUND–1988–0002) are available for public inspection during normal business hours from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays, at the Superfund Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: For general information, contact the Emergency Planning and Community Right-to-Know Hotline at (800) 424–9346 or (703) 412–9810, TDD (800) 553–7672, *http://www.epa.gov/epaoswer/hotline/*. For questions on the applicability of provisions contained in 40 CFR part 350 or on the contents of this notice, contact: Sicy Jacob, Chemical Emergency Preparedness and Prevention Office, (5104A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Telephone: 202–564–8019; Fax: 202–564–8233; e-mail: *jacob.sicy@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Affected Entities

Entities that may be affected by this action are those facilities subject to sections 303(d)(2) and (d)(3), 311, 312 and 313 of the Emergency Planning and Community Right-to-Know Act, specifically, those that wish to file trade secrecy claims for chemical identity in the reports submitted under these sections.

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 ID No. SFUND–1988–0002. You may also obtain information related to the final rule published on July 29, 1988 (53 FR 28772) under Docket ID No. 300–PQ–TS. 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 Superfund Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1742, and the telephone number for the Superfund Docket is (202) 566–0276.

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the ''Federal Register'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. 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 toward providing electronic access to all of the publicly available docket.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA

will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. EPA Dockets. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. SFUND–1988–0002. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. E-mail. Comments may be sent by electronic mail (e-mail) to *SUPERFUND.docket@epa.gov*, Attention Docket ID No. SFUND–1988–0002. 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 two copies of your comments to: U.S. Environmental Protection Agency, EPA Docket Center (EPA/DC), Superfund Docket, Mailcode 5305T, 1200 Pennsylvania Avenue, NW, Washington, D.C., 20460, Attention Docket ID No. SFUND–1988–0002.

3. By Hand Delivery or Courier. Deliver your comments to: Superfund Docket, EPA Docket Center, 1301 Constitution Avenue, NW., EPA West Building, Room B–102, Washington, DC 20004, Attention Docket ID No. SFUND–1988–0002. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Unit I.B.

4. By Facsimile. Fax your comments to: (202) 566–0224, Attention Docket ID. No. SFUND–1988–0002.

II. What Is the Authority for This Action?

These regulations are issued under sections 322, 323, and 328 of the Emergency Planning and Community Right-to-Know Act of 1986.

III. What Is the General Background for This Action?

The Emergency Planning and Community Right-to-Know Act contains provisions requiring facilities to report to State and local authorities, and EPA, the presence, use and releases of extremely hazardous substances (described in sections 302 and 304), and hazardous and toxic chemicals (described in sections 311, 312, and 313 respectively). The regulations are codified in 40 CFR parts 355, 370 and 372. A submitter may claim the chemical identity as trade secret in the reports submitted under sections 303, 311, 312 and 313. On July 29, 1988 (53 FR 28772), EPA published the procedures for making trade secret claims. These procedures are codified in 40 CFR part 350. The regulations also include procedures for filing petitions requesting disclosure of specific chemical identities submitted and claimed as trade secrets by facilities. EPA also published the form and instructions for substantiating a trade secrecy claim in the 1988 final rule. The address for mailing the claims and petitions requesting disclosure noted in 40 CFR 350.16 and 350.27 (instructions to the substantiation form) is outdated due to the change in contractor handling trade secret claims for EPA. The correct address to mail these claims and petitions was announced in two recent **Federal Register** documents, October 25, 2002 (67 FR 65566) and February 6, 2003 (68 FR 6149). It is possible that the address may change from time to time because the contractor managing this information for EPA may change. Therefore, EPA is amending 40 CFR 350.16 and 350.27 (instructions to the substantiation form) by giving a reference to obtain the correct address instead of publishing the address in the regulations.

Section 350.17(a) contains procedures for filing an appeal to an EPA determination of insufficiency with the EPA General Counsel. The address to mail these appeals, which is noted in this section, is also outdated, since EPA has moved to a new location. This amendment reflects that change.

All forms used to collect information must be approved and renewed every three years by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. Each approved and renewed substantiation form contains an OMB approval expiration date. The form also contains a Paperwork Reduction Act Notice, which provides a paperwork burden estimate for completing this form and an address for submitting comments on this burden estimate or any other aspect associated with the collection of this information. The OMB approval expiration date, the burden estimate and the address to submit comments that are on the substantiation form currently published in EPA's regulation at 40 CFR 350.27 are outdated. Since the OMB approval expiration date will change every three years, and the burden estimate and the address for submitting comments may change from time to time, EPA is revising 40 CFR 350.27 to remove the outdated substantiation form and provide references for obtaining the most current substantiation form.

EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. This action only corrects addresses for submitting trade secrecy claims and petitions for disclosures, and for appealing determinations of insufficient trade secrecy claims. These corrections are due to the change of address and location of contractor handling trade secrecy claims as well as EPA location. The only other change is to remove an outdated trade secret substantiation form. This action does not change any regulatory burden on any of the facilities subject to the regulations in 40 CFR part 350. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to amend the trade secret regulations to remove the incorrect addresses and outdated substantiation form. This rule will be effective on January 13, 2004 without further notice unless we receive adverse comment by December 15, 2003. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. What Are the Revisions?

Under section 322(f) of EPCRA and EPA's regulation at 40 CFR 350.23, EPA has the authority to disclose information to authorized representatives of the United States. Contractors and subcontractors who are hired to perform work for EPA in connection with EPCRA or regulations which implement EPCRA may be considered authorized representatives of the United States. EPA may engage contractors to assist with the handling and management of information submitted under EPCRA. The EPA contractor that handles trade secret claims submitted by facilities may change as the contract is recompeted and therefore the address for mailing the claims may change. The Agency is revising § 350.16 to provide a reference to obtain the correct address to mail trade secrecy claims and petitions for disclosure of information claimed as trade secret instead of publishing the address in the regulation. The address that appears in the current § 350.16 is for a contractor that is no longer authorized to handle trade secret claims. Any claims or petitions mailed to that address are forwarded to a new contractor as specified in the October 25, 2002 and February 6, 2003 **Federal Register** notices.

The EPA address in § 350.17(a) where a submitter may file an appeal to an EPA determination with the EPA General Counsel under § 350.11(a)(2)(i) or (b)(2)(i) is not correct. EPA has moved to a new location, and the amendment to this section reflects that change.

The third revision in the rule is to remove the substantiation form from § 350.27. Under the Paperwork Reduction Act, every federal agency must obtain approval from the Office of Management and Budget (OMB) before information can be collected from 10 or more members of the public. Since the substantiation form is used to collect information from facilities submitting trade secrecy claims, the Agency must prepare and submit to OMB for approval an Information Collection Request (ICR). The substantiation form contains the expiration date of OMB's approval. It also contains the burden estimate for completing this form and an address for submitting comments on the estimate or any other aspect associated with collection of this information. OMB usually approves the ICR and forms used to collect information for three years. EPA must then seek a renewal of the ICR and forms before the end of the three-year period; otherwise authority for collection of the information expires. The substantiation form that is currently printed in the Code of Federal Regulations shows an approval expiration date of October 31, 1990. The ICR and the substantiation form have been renewed several times since October 1990. That form also provides outdated information on the burden estimate. Further, because EPA has moved to a new location, the address on that form for submitting comments is incorrect. Since the renewal takes place every three years, rather than amending the regulations to reflect the new approval expiration date and any other change to the form every three years, the Agency is removing the outdated form from the Code of Federal Regulations and post the most current approved substantiation form on the EPA Program offices' Web sites, Chemical Emergency Preparedness and Prevention Office), *http://www.epa.gov/ceppo* and Toxics Release Inventory Program Division, *http://www.epa.gov/tri.* The form can also be obtained by contacting National Service Center for Environmental Publications (NSCEP) at (800) 490–9198 or (513) 489–8190.

Also, the mailing address for trade secrecy claims as required in the Instructions for completing the EPA Trade Secret Substantiation Form (§ 350.27) is also outdated. This amendment identifies the Web sites that provide the mailing address for submitting trade secrecy claims.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.''

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review. This action only corrects addresses for submitting trade secrecy claims and petitions for disclosures, and for appealing determinations of insufficient trade secrecy claims. These corrections are due to the change of address and location of contractor handling trade secrecy claims as well as EPA location. The only other change is to remove an outdated trade secret substantiation form. This action does not change any regulatory burden on any of the facilities subject to the regulations in 40 CFR part 350.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This action is only amending the regulations to provide the correct address to mail trade secrecy claims and petitions for disclosure, and any appeals to EPA determinations of insufficient trade secrecy claims. Also, the Agency is removing the substantiation form from the Code of Federal Regulations and post the current form on the program offices' Web sites. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations 40 CFR part 350 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050–0078, EPA ICR number 1428.05. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Abby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

Burdens means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et. seq*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, a small entity is defined as: (1) A small business that is defined by the Small Business Administration by category of business using North American Industrial Classification System (NAICS) and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

After considering the economic impacts of today's action on small entities, I certify that this rule will not have any economic impact on small entities. This action is only amending the regulations to provide the correct address to mail trade secrecy claims and petitions for disclosure, and any appeals to EPA determinations of insufficient trade secrecy claims. Also, the Agency is removing the substantiation form from the code of federal regulations and post the current form on the program offices' Web sites.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. This action is only amending the regulations to provide the correct addresses to mail trade secrecy claims, petitions for disclosures, and any appeals to EPA determinations of insufficient trade secrecy claims. Also, the Agency is removing the substantiation form from the code of federal regulations and post the current form on the program offices' Web sites.

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.''

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action is only amending the regulations to provide the correct address to mail trade secrecy claims and petitions for disclosure, and any appeals to EPA determinations of insufficient trade secrecy claims. Also, the Agency is removing the substantiation form from the code of federal regulations and post the current form on the program offices' Web sites. Thus, Executive Order 13132 does not apply to this 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.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. This proposed rule is only amending the regulations to provide the correct address to mail trade secrecy claims and petitions for disclosure, and any appeals to EPA determinations of insufficient trade secrecy claims. Also, the Agency is proposing to remove the substantiation form from the code of federal regulations and post the current form on the program offices' Web sites. Thus, Executive Order 13175 does not apply to this rule.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health & 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 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 action is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866 and (b) this action does not involve any environmental health or safety risks, therefore does not have a disproportionate effect on children.

In today's action, the Agency is only amending certain parts of the regulations in 40 CFR part 350 to remove an outdated substantiation form and correct the addresses to where the trade secrecy claims, petitions for disclosure, and appeals to determinations of insufficient trade secrecy claims can be mailed.

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(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective December 15, 2003 unless EPA receives adverse comments by December 15, 2003. If we receive such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

List of Subjects in 40 CFR Part 350

Environmental protection, Chemicals, Confidential business information, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 3, 2003.

Marianne L. Horinko,

Acting Administrator.

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

PART 350—TRADE SECRECY CLAIMS FOR EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW INFORMATION: AND TRADE SECRET DISCLOSURES TO HEALTH PROFESSIONALS

■ 1. The authority citation for part 350 continues to read as follows:

Authority: 42 U.S.C. 11042, 11043, and 11048 Pub. L. 99–499, 100 Stat. 1747.

■ 2. Section 350.16 is revised to read as follows:

§ 350.16 Address to send trade secrecy claims and petitions requesting disclosure.

The address and location to send all claims of trade secrecy under sections 303(d)(2) and (d)(3), 311, 312, and 313 of Title III and all public petitions requesting disclosure of chemical identities claimed as trade secret are posted on the following EPA Program Web sites, *http://www.epa.gov/ceppo and http://www.epa.gov/tri.* Any subsequent changes to the address and location will be announced in **Federal Register** Notices as these changes occur. Also, the changes will be posted on these Web sites. Submitters may also contact the Emergency Planning and Community Right-to-Know Hotline at (800) 424–9346 or (703) 412–9810, TDD (800) 553–7672, *http://www.epa.gov/epaoswer/hotline/* to obtain this information.

■ 3. Section 350.17 is amended by revising paragraph (a) introductory text to read as follows:

§ 350.17 Appeals.

(a) *Procedure for filing appeal.* A submitter may appeal an EPA determination under § 350.11(a)(2)(i) or (b)(2)(i), by filing an appeal with the General Counsel. The appeal shall be addressed to: The Office of General Counsel, U.S. Environmental Protection Agency, Mailcode 2310A, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

* * * * *

■ 4. Section 350.27 is amended by revising paragraph (a) and in paragraph (b) under the heading ''Where to Send the Trade Secrecy Claim'' to read as follows:

§ 350.27 Substantiation form to accompany claims of trade secrecy, instructions to substantiation form.

(a) The substantiation form to accompany claims of trade secrecy must be completed and submitted as required in § 350.7(a). The form is posted on the Chemical Emergency Preparedness and Prevention Office Web site, *http://www.epa.gov/ceppo* and the Toxics Release Inventory Program Division Web site, *http://www.epa.gov/tri.* Submitters may also contact the National Service Center for Environmental Publications (NSCEP) at (800) 490–9198 or (513) 489–8190 to obtain the form.

(b) * * *

Where To Send the Trade Secrecy Claim

The address to send all trade secrecy claims is posted on the following EPA Program Web sites, *http://www.epa.gov/ceppo* and *http://www.epa.gov/tri.* This information can also be obtained by contacting the Emergency Planning and Community Right-to-Know Hotline at (800) 424–9346 or (703) 412–9810, TDD

(800) 553–7672, *http://www.epa.gov/epaoswer/hotline/.*

* * * * *

[FR Doc. 03–28419 Filed 11–13–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 350

[SFUND–1988–0002; FRL–7584–9]

RIN 2050–AF10

Trade Secrecy Claims for Emergency Planning and Community Right-to-Know Information; and Trade Secret Disclosures to Health Professionals; Amendment

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking action to amend the trade secret regulations to remove the incorrect addresses in the regulations for mailing trade secrecy claims, petitions for disclosures, and any appeals to EPA determinations of insufficient trade secrecy claims. This proposed rule also amends the regulations to remove the outdated substantiation form for trade secrecy claims from the Code of Federal Regulations. The most current substantiation form and the correct addresses to mail the trade secret claims, petitions and appeals will be posted on EPA program Web sites.

DATES: Comments, identified by the docket control number SFUND–1988–0002 must be submitted by December 15, 2003.

ADDRESSES: Comments may be submitted by mail. Comments may also be submitted electronically, by facsimile, or through hand delivery/courier. Send two copies of your comments to: U.S. Environmental Protection Agency, EPA Docket Center (EPA/DC), Superfund Docket, Mailcode 5305T, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460, Attention Docket ID No. SFUND–1988–0002. Follow the detailed instructions as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For general information, contact the Emergency Planning and Community Right-to-Know Hotline at (800) 424–9346 or (703) 412–9810, TDD (800) 553–7672, *http://www.epa.gov/epaoswer/hotline/*. For questions on the applicability of provisions contained in 40 CFR part 350 or on the contents of this document, contact: Sicy Jacob, Chemical Emergency Preparedness and Prevention Office, (5104A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Telephone: 202–564–8019; Fax: 202–564–8233; e-mail: *jacob.sicy@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

In the ''Rules and Regulations'' section of today's **Federal Register**, EPA is issuing these revisions as a direct final rule without prior proposal because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this approval in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

This document concerns Trade Secrecy Claims for Emergency Planning and Community Right-to-Know Information and Trade Secret Disclosures to Health Professionals. For detailed information, please see the information provided in the direct final action that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

A. Affected Entities

Entities that may be affected by this action are those facilities subject to sections 303(d)(2) and (d)(3), 311, 312 and 313 of the Emergency Planning and Community Right-to-Know Act, specifically, those that wish to file trade secrecy claims for chemical identity in the reports submitted under these sections.

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 ID No. SFUND–1988–0002. You may also obtain information related to the final rule published on July 29, 1988 (53 FR 28772) under Docket ID No. 300–PQ–TS. 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 Superfund Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1742, and the telephone number for the Superfund Docket is (202) 566–0276.

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the ''Federal Register'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. 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 toward providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing

copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. EPA Dockets. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. SFUND–1988–0002. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. E-mail. Comments may be sent by electronic mail (e-mail) to *SUPERFUND.docket@epa.gov*, Attention Docket ID No. SFUND–1988–0002. 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 two copies of your comments to: U.S. Environmental Protection Agency, EPA Docket Center (EPA/DC), Superfund Docket, Mailcode 5305T, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460, Attention Docket ID No. SFUND–1988–0002.

3. By Hand Delivery or Courier. Deliver your comments to: Superfund Docket, EPA Docket Center, 1301 Constitution Avenue, NW., EPA West Building, Room B–102, Washington, DC 20004, Attention Docket ID No. SFUND–1988–0002. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Unit I.B.

4. By Facsimile. Fax your comments to: (202) 566–0224, Attention Docket ID. No. SFUND–1988–0002.

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. Send or deliver information identified as CBI only to the following address: Dorothy McManus, Mailcode 5104A, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington DC 20460. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

List of Subjects in 40 CFR Part 350

Environmental protection, Chemicals, Confidential business information, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 3, 2003.

Marianne L. Horinko,

Acting Administrator.

[FR Doc. 03–28420 Filed 11–13–03; 8:45 am]

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Federal Register

Friday,
November 14, 2003

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 1, 21, 25, 33, 121, 135
Extended Operations (ETOPS) of Multi-engine Airplanes; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 21, 25, 33, 121, 135

[Docket No. FAA–2002–6717; Notice No. 03–11]

RIN 2120–AI03

Extended Operations (ETOPS) of Multi-engine Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to issue regulations governing the design, maintenance, and operation of airplanes and engines for flights that go beyond certain distances from an adequate airport. This proposal would extend some requirements that previously applied only to two-engine airplanes to airplanes with more than two-engines. The proposed rule implements existing policy, industry best practices and recommendations, and international standards to ensure that long-range flights will operate safely.

DATES: Send your comments on or before January 13, 2004.

ADDRESSES: You may submit comments to DOT DMS Docket Number FAA–2002–6717 by any of the following methods:

- *Web Site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov.* including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Eric vanOpstal, Flight Standards Service, Air Transportation Division, AFS–200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3774; facsimile (202) 267–5229.

SUPPLEMENTARY INFORMATION: *Comments Invited.* The FAA invites interested persons to participate in this proposed rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impact that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Regulatory Notices

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*).

(2) On the search page type in the last five digits of the Docket number shown at the beginning of this notice. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number of the item you wish to view.

You can also get an electronic copy using the Internet through FAA's web page at *http://www.faa.gov/avr/arm/nprm/nprm.htm* or the **Federal Register**'s Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Background

The Federal Aviation Administration (FAA) has long-standing regulations that restrict the operations of two-engine air carrier airplanes operated under part 121, Title 14 of the Code of Federal Regulations (14 CFR). Under current regulations these airplanes may not be operated on routes that lie more than sixty minutes from an airport unless authorized by the Administrator. The premise for these restrictions was that two-engine airplanes were less safe than three and four engine airplanes particularly over very long distances.

History of ETOPS

In the 1980s, a new generation of very reliable, two engine airplanes came into service and changed the underlying premise that restricted the operations of these airplanes. The airline industry sought to take advantage of the

improvements in reliability, range, and payload capabilities that these new airplanes offered. Beginning in 1985, the FAA allowed air carriers to operate certain twin-engine airplanes on routes that included points more than sixty-minutes from an adequate airport under a formal program known as Extended Range Operation with Two Engine Airplanes (''ETOPS''). The regulatory basis of ETOPS was the deviation authority contained in 14 CFR section 121.161. With the cooperation of the airlines, manufacturers, and other interested groups, the FAA carefully controlled and monitored this new type of flight operation.

Historical Documents

Advisory Circulars 120–42 and 120–42A

In support of ETOPS, the FAA issued two Advisory Circulars (AC) 120–42 and 120–42A in 1985 and 1988 respectively. These two AC documents have been the basis for type design and operational practices for ETOPS to date. Initially, the FAA set a maximum approval of 120 minutes from an airport for ETOPS. During the nascent stage of ETOPS, air carriers gained significant service experience; the safety and efficiency of ETOPS became apparent. In 1988, the FAA increased that approval to 180 minutes based on demonstrated safety record of these operations.

Deviation Authority From § 121.161 Prior to ETOPS

Since the 1970s, the FAA has authorized two-engine operations on routes up to 75 minutes away from an airport exclusively in the Caribbean. These were not considered ETOPS flights. These flights were approved by the FAA as deviations under section 121.161, but were authorized before a formal ETOPS program was developed. These deviations were approved after a safety evaluation of the areas of operation, the airplanes, and the operators conducting them.

207 Minute ETOPS

In March 1999, the Air Transport Association (ATA) asked the FAA to extend the 180-minute ETOPS authorization an additional fifteen percent to 207-minutes. The FAA published the ATA letter and asked for comments (64 FR 22667, April 27, 1999). Several commenters suggested that the FAA should formalize ETOPS in the regulations rather than continuing to rely on the deviation authority in section 121.161 and advisory materials. In January 2000, the FAA approved 207 minute ETOPS and stated its intent to task an Aviation Rulemaking Advisory Committee (ARAC) Working Group to study the issues and to recommend regulations for ETOPS (65 FR 3522, January 21, 2000). In this same notice, the FAA solicited comments from the public on its decision to approve 207 minute ETOPS.

Polar Operations Letter

The increasing use of Polar flights, while creating economic benefits, has brought new challenges to extended operations such as climactic extremes. Due to these new challenges and to the increasing similarity among all long-range operations, experience began to show that ETOPS requirements and processes are generally applicable to all long-range operations including those by three and four engine airplanes and would improve their safety.

Harmonization With International Standards

Related International Activity

Two related activities should be noted. First, the Joint Aviation Authorities (JAA) of European nations has chartered a working group that is also developing standards and guidance material for extended operations. In ongoing efforts of both the FAA and JAA to coordinate regulatory requirements, one of the ARAC ETOPS Working Group tasks was to ''harmonize * * * standardized requirements across national boundaries and regulatory bodies.'' Toward that end, there are representatives who are members of both the ARAC ETOPS Working Group and the JAA Working Group. Also, the two groups met together twice in Europe to facilitate joint action and harmonization. Second, the International Civil Aviation Organization (ICAO) Air Navigation Commission (ANC) Operations Panel has decided to develop standards and recommended practices (SARPS) for extended range operations. In May of 2001, the ARAC ETOPS Working Group held one of its meetings in Montreal, Quebec, Canada (ICAO's headquarters city) for the purpose of briefing members of the ANC and ICAO Air Navigation Bureau staff.

ARAC ETOPS Working Group Task Statement

The FAA established the ARAC ETOPS Working Group through a notice in the **Federal Register** at 65 FR 37447, dated June 14, 2000. It was given the following tasks:

1. Review the existing policy and requirements found in Advisory Circular (AC) 120–42A, applicable ETOPS special conditions, and policy memorandums and notices, for certification and operational regulations and guidance material for ETOPS approvals up to 180 minutes.

2. Develop comprehensive ETOPS airworthiness standards for 14 CFR parts 25, 33, 121, and 135, as appropriate, to codify the existing policies and practices.

3. Develop ETOPS requirements for operations in excess of 180 minutes up to whatever extent that may be justified. Develop those requirements such that incremental approvals up to a maximum may be approved.

4. Develop standardized requirements for extended range operations for all airplanes, regardless of the number of engines, including all turbojet and turbopropeller commercial twin-engine airplanes (business jets), excluding reciprocating engine powered commercial airplanes. This effort should establish criteria for diversion times up to 180 minutes that is consistent with existing ETOPS policy and procedures. It should also develop criteria for diversion times beyond 180 minutes that is consistent with the ETOPS criteria developed by the Working Group.

5. Develop additional guidance and/or advisory material as the ARAC finds appropriate.

6. Harmonize such standardized requirements across national boundaries and regulatory bodies.

7. Any proposal to increase the safety requirements for existing ETOPS approvals up to 207 minutes must contain data defining the unsafe conditions that would warrant the safety requirements.

8. The Working Group will provide briefings to the Transport Airplane and Engine Issues group.

9. The recommendations should consider the comments received as a result of the April 27, 1999 and January 21, 2000 **Federal Register** notices.

10. Within one year of publication of the ARAC task in the **Federal Register**, submit recommendations to the FAA in the form of a proposed rule.

Formation and Membership of the ETOPS Working Group

Formation

Following the formal tasking notice in the **Federal Register**, the ARAC organized an ETOPS Working Group.

Membership

The ETOPS Working Group consisted of over 50 representatives of U.S. and foreign airlines, aircraft and engine manufacturers, pilots' unions, industry groups, air disaster support groups, and

representatives from the Joint Aviation Authority (JAA), International Civil Aviation Organization (ICAO) and the FAA.

In accordance with the task statement and the Working Group's work plan approved by the ARAC Air Carrier Operations Issues Group on August 15, 2000, the Working Group reviewed existing ETOPS documents and developed a risk assessment method for ETOPS and other long-range flights. The risk assessment method is comprised of three parts: a loss of thrust model; a system safety analysis using the FAR/JAR 25.1309 process; and an operational assessment assuring that pertinent operational considerations are taken into account.

On the basis of the risk model and their review of long-range operations, the Working Group used the following general concepts as the basis for proposed regulations and advisory material.

- Special considerations must be given for extended range flights to prevent the need for a diversion and to protect the airplane and passengers during the diversion when it cannot be prevented;
- Airplanes must be designed and built for the intended mission.
- Airplanes must be designed, manufactured, and maintained at a level that ensures the original reliability throughout the life of the airplane.
- When engine reliability reaches a certain level, as measured by the In Flight Shut Down (IFSD) rate (IFSD=0.01/1,000 hours), the risk of independent failures leading to loss of all thrust is not significant enough to require limiting the allowed time from an airport and other limiting factors come into play.
- For part 121 air carrier operations, ETOPS should be defined as flights more than 60 minutes from an adequate airport for two-engine airplanes and more than 180 minutes from an adequate airport for air carrier airplanes with more than two engines. For part 135 operations ETOPS should be defined as flights more than 180 minutes from an adequate airport.
- Because of extreme climactic conditions certain ETOPS requirements should be applied to Polar operations even if those operations would not otherwise be considered ETOPS
- Part 135 operations have unique considerations

Improvements in airplane engine and system reliability have reached a point that they may no longer be the constraining factor on the long-range flight operations. The Working Group found, however, and the FAA agrees, that it would be prudent for two-engine airplanes to remain within 180 minutes of an adequate airport whenever possible. There is a positive correlation between risk and diversion length. Thus the FAA believes that diversion lengths should be kept to a minimum.

ARAC ETOPS Working Group Concept General Observations

As already noted, the working group acknowledged that the reliability of aircraft engines and systems has improved to the point that it may not be limiting to the operation. The Working Group recommended that two-engine airplanes should be approved in many cases for 180 minutes ETOPS and ETOPS beyond 180 minutes may be appropriate in some situations. The Working Group recommended that airplanes with more than two engines should be approved for ETOPS beyond 180 minutes in many cases. Even though engine reliability has significantly improved, diversions are sometimes necessary for reasons that are unrelated to the number of engines on an aircraft and their reliability, such as passenger illness or other occurrences.

Regarding extended range operations by jet-powered airplanes under part 135, FAA policy for many years has permitted such flights up to 180 minutes from an airport, without additional ETOPS-like requirements. Operational experience has validated that policy, and the Working Group proposal continues existing policy and provides for flights with longer diversion times with appropriate additional requirements.

Regarding extended range operations by air carrier airplanes with more than two engines, those flights have been conducted without any ETOPS-like requirements since the air carrier jet era began. The Working Group's proposals would ensure the continued safety of those flights by adding requirements in areas that are not dependent upon the number of engines on the airplane, such as cargo fire protection duration.

The ETOPS Working Group has proposed regulations and guidance material in three specific areas: Type Design (parts 25 and 33); part 121 Operations; and part 135 Operations.

General Discussion of the Proposal

FAA Approach to the ARAC Recommendations

In developing this proposal the FAA has accepted ARAC recommendations without change where possible. The FAA made changes for clarity, to correct for incomplete ARAC recommendations, to ensure that requirements are legally sufficient, and to make improvements in style of presentation. The FAA provides explanation in this notice for any substantial differences with the ARAC recommendation.

General Issues

Terminology—Extended Operations (ETOPS)

This proposal has two primary objectives: (1) To create new regulations and amend existing regulations for the design, maintenance, and operation of aircraft used in ETOPS; thus far ETOPS has been allowed by the FAA's discretionary authority and supported by an Advisory Circular and; (2) To apply the lessons learned from ETOPS to all airplanes that are operated in Extended Operations (ETOPS) regardless of the number of engines. The acronym ETOPS would apply to all airplanes in Extended Operations and not just twin-engine airplanes. These rules would apply equally to airplanes operating over oceanic areas or routes entirely over land.

Risk Model

Item 3 of the ARAC tasking was to ''develop ETOPS requirements for operations in excess of 180 minutes up to whatever extent that may be justified.'' At the early ARAC ETOPS Working Group meetings, the FAA presented a new risk model for assessing risk on an ETOPS flight. The new approach for assessing the overall risk of critical thrust loss on an ETOPS flight considers such factors as the length of the flight and engine reliability in addition to the more traditional maximum diversion time.

The ARAC ETOPS Working Group adopted the FAA's proposed risk model and further developed it to apply it to three and four engine airplanes. It did this by including the corresponding engine failure rate that would be required to achieve an equivalent risk of critical thrust loss due to independent failures on three and four engine airplanes. We will now summarize the risk model used in the development of this proposed rule.

The basic premise that the FAA used in developing its risk model is that ETOPS service experience is excellent and that any changes to allow further expansion of ETOPS need to preserve this record. With this premise in mind, the basic objective is to define a risk model that would allow an expansion of two engine airplane operations to use the same routes as three and four engine airplanes with no substantial change in the overall risk.

Currently, we manage dual engine shut down risk on two engine airplanes by limiting the maximum allowable diversion distance and requiring a low engine in-flight shutdown rate. This is a one-dimensional risk model in that with a constant in-flight shutdown rate, the existing ETOPS requirements and policy consider only the maximum distance that an operator may plan a route from an enroute diversion airport. It assumes that there is a constant risk during the course of a flight with no consideration of how the actual diversion times vary along the track as different alternate airports come into and out of range of the airplane. This approach also does not consider the increase in overall risk that is created by increasing an airplane's range, and thus time aloft, by adding fuel. Further, this model provides no means to assess the effect on overall risk with changes with engine failure rates. Actual ETOPS involve continuously changing distances to alternates. Current ETOPS limits on maximum diversion time don't represent real world risk because diversions can occur anywhere along the track, not just at the maximum point. The new ETOPS risk model adopted for the development of this new proposed rule is based on the introduction of a ''two dimensional'' model to replace the ''one dimensional'' maximum diversion time/distance model currently in use.

The new ETOPS Exposure Index is a simplified form of several risk equations that have been developed over the past forty years. All share similar characteristics. The ARAC ETOPS Working Group compared several different mathematical representations for allowable risk versus engine failure rate. Each showed that an engine failure rate on the order of 0.01 per 1,000 engine flight hours was adequate to allow diversion times for two engine airplanes that for all practical purposes could be considered as unrestricted.

The new risk model consists of a comparative risk index based on a combination of range, average diversion distance, and engine failure rate. Independent cause dual engine shut down risk is driven by the footprint area of the route multiplied by the engine failure rate (E) squared. The footprint area is defined as the route length (L) multiplied by the average diversion distance (D). Note that the engine shut down rate is squared to account for loss of first engine and then loss of second engine. Therefore, we define ''ETOPS Exposure Index'' (EEI) as a function of:

- Footprint Area (Route Length × Average Diversion Distance) (L × D) and
- E^2 (Engine Failure Rate Squared)

$$EEI = L \times D \times E^2$$

The ETOPS Exposure Index can be used as an evaluation tool to assess risk of ETOPS operations due to independent engine failure causes. Assuming the following values for each of the terms of the equation:

- Route Length = 5500 nautical miles,
- Average Distance for 180 minute ETOPS = 800 nautical miles, and
- Engine failure rate at the current required level = 0.02 shutdowns/1,000 engine-hours or 50,000 hours time between shutdowns.

The EEI would then be:

$$EEI = 5500 \times 800 \times 0.02^2 = 1760$$

With the ETOPS Exposure Index fixed at this level, longer flights and greater maximum diversion distances can be offset by decreased engine failure rate. In other words, as E becomes smaller, L and/or D can increase appropriately. An engine failure rate of one-half the current requirement (E = 0.01/1,000 engine-hours) would allow a four times increase in ''footprint'' area.

$$EEI = L \times D \times E^2$$
$$EEI = 5500 \times 800 \times 0.02^2 = 1760 \text{ equals}$$
$$EEI = 5500 \times 3200 \times 0.01^2 = 1760 \text{ equals}$$
$$EEI = 11{,}000 \times 1600 \times 0.01^2 = 1760$$

In other words, with an engine failure rate that is one-half the current requirement for 180 minute ETOPS we could allow four times the average diversion distance or a combination of increased route length and average diversion distance with no change in the current ETOPS risk.

For a two engine airplane, engine failure rate has the biggest impact on ETOPS risk because the factor is squared. A reduction in the engine failure rate has a large impact on the size of an allowable footprint area for the same risk. Using the ETOPS Exposure Index concept with a reduction in the engine failure rate standard allows the development of ETOPS rules for two engine airplanes that minimize restrictions on airline operations while maintaining the current excellent ETOPS safety record.

Current in-service engines are capable of achieving better than 100,000 hours time between shutdowns (.01/1,000 engine-hours), or double the current ETOPS reliability standard. This represents two in-flight shutdowns in the entire life of a typical transport airplane. It is not reasonable to expect that two in-flight shutdowns due to independent causes in the entire life of a typical transport airplane would occur on the same flight.

With an IFSD rate of 0.01/1,000 hours, the probability of complete loss of thrust due to independent failures will be sufficiently low so that the main focus of long-range operational safety can be on reducing the possibility of other risk factors.

We emphasize that this risk model represents a good tool for evaluating the risk of critical thrust loss due to ''independent'' failure causes. The biggest threat to long-range operational safety continues to be the loss of thrust from multiple engines resulting from:

Common Cause Multiple Failures
Cascading Multiple Failures
Fuel Exhaustion

These threats are common to all long-range operations, regardless of the number of engines on the airplane.

Examples of common cause multiple failure events:

Eastern Airlines L1011 nearly lost all engines after improper installation of engine magnetic chip detectors.

B–747 volcanic ash cloud encounter during volcanic eruption in Alaska—All engines severely damaged by ash.

Example of potential cascading failure:

Worn-out second engine fails after application of higher power following failure of first engine

Examples of Fuel Exhaustion events:

Air Canada 767—No power landing into Gimli, Canada

Air Transat A330—No power landing in the Azores

Sources of Common Cause and Cascading Failures:

Common Design Faults
- Hardware
- Software

Environmental Exposures
- Weather
- Volcanic Ash Clouds
- Bird Strikes
- High Intensity Radiated Fields (HIRF)
- Lightning
- Simultaneous Maintenance on More than One Engine
- Contaminated Fuel

Sources of Fuel Exhaustion:

Operational Errors
- Fuel System Mismanagement
- Fuel Loading Errors

Misleading Fuel Quantity Indications

Misleading Fuel Loading Procedures particularly during a non-normal (MEL) dispatch

Constant awareness of potential sources of common cause failures, cascading failures, and fuel exhaustion is the key to continued long-range operational safety. This awareness, growing from operating experience, is the basis for continued ETOPS safety. ETOPS safety enhancements focus on defining methods to prevent potential threats caused by known sources.

Examples of Common Cause/Cascading Failure Prevention Strategies:

1. No single person performing simultaneous engine maintenance or servicing
2. Conservative fuel loading requirements
3. Intense rain/hail ingestion engine design requirements
4. Constant adherence to established ETOPS procedures without exception
5. Robust engine condition monitoring program

The FAA incorporated prevention strategies for these types of failures into airworthiness requirements and ETOPS policy as we learned of them. This proposal would codify those prevention strategies for known sources of common cause, cascading and fuel exhaustion failures that have not been incorporated into the regulations.

The ARAC ETOPS Working Group also looked at how the new risk model could be applied to airplanes with more than two engines. For these types of airplanes, the working group had to decide what a critical loss of thrust was in order to determine the impact that engine failure rate would have on overall risk. For a two-engine airplane, the risk model assumes that a loss of both engines is a critical thrust loss. This is because there is a general expectation that the result of such an occurrence would be a catastrophic loss of the airplane; though there are examples of safe landings following the loss of both engines. The working group applied a similar approach to define a critical thrust loss for airplanes with more than two engines.

The operating rules contained in 14 CFR part 121 have minimum performance requirements with two engines inoperative for airplanes that have more than two engines. Using this as a guide, the working group assumed that critical thrust loss for both three and four engine airplanes would be three engines. If three engines fail on either kind of airplane, there is a general expectation that the result would be a catastrophic loss of the airplane. In other words, the risk model assumes the fourth engine on a four-engine airplane provides no additional safety benefit compared to the loss of all engines on a three-engine airplane. As is the case for two-engine airplanes, there are examples where a flight crew was able to safely land a four-engine airplane following the loss of three of the engines. However, the ETOPS risk model makes the conservative assumption that this would result in loss of the airplane.

This assumption for three and four engine airplanes changes the risk model equations so that for these types of airplanes, the probability of the loss of three engines would be much more remote than the loss of both engines on a two engine airplane. Under this assumption there is a higher probability of losing three engines on a four-engine airplane than on a three-engine airplane. The following example illustrates the concept. A three-engine and a four-engine airplane are in-flight. Both airplanes suffer the loss of two-engines due to independent causes but can reach a diversion airport. However the loss of an additional engine for either airplane at this point would be catastrophic for the airplane. The three-engine airplane has a single engine that could possibly fail while the four-engine airplane has two engines that could possibly fail. In this unlikely situation, the four-engine airplane is at greater risk because the probability of experiencing an engine failure event increases with the number of engines. Assuming that the engine failure rate is the same for each type of airplane, a four-engine airplane would have twice the probability of losing one of the two remaining engines than the three-engine airplane would have of losing the one remaining engine.

Using the available risk model equations with these considerations, the ARAC ETOPS Working Group determined that the in-flight shutdown rate for a three engine airplane would be approximately 0.2 shutdowns per 1,000 engine-hours to have an equivalent risk of critical thrust loss compared to a two engine airplane with an in-flight shutdown rate of 0.01 per 1,000 engine-hours. On a four-engine airplane, the equivalent in-flight shutdown rate would be 0.1 per 1,000 engine-hours.

Because these rates are so high compared to the failure rates currently achieved by today's turbine engines, the FAA does not consider it necessary to specify in-flight shutdown rates for three and four engine airplanes other than as part of an operator's propulsion system monitoring program. Under these programs, the operator must notify the FAA and take corrective action if these rates are exceeded.

In-flight Shutdown (IFSD) Rate

Propulsion system monitoring is vital to ensure safe ETOPS flights. A propulsion system monitoring program is intended to detect adverse trends, to identify potential problems, and to establish criteria for when corrective action may be necessary. The certificate holder would have to ensure that its ETOPS airplanes have In-Flight Shutdown (IFSD) rates commensurate with the world fleet's operation for that airplane type. Propulsion system monitoring at the operator level has been accomplished via the guidance of AC 120–42A which defined specific IFSD rates for ETOPS.

Propulsion system problems and IFSD may be caused by type design deficiencies, ineffective maintenance or operational procedures. It is very important to identify the root cause of events so that appropriate corrective action may be determined. The diverse causes of propulsion system problems require different solutions. For example, type design problems may affect the world fleet of aircraft. If an individual certificate holder experiences a problem caused by a type design issue, it may not be appropriate for the FAA to reduce or withdraw the particular operator's ETOPS authority. However, maintenance or operational problems may be wholly, or partially, the responsibility of the certificate holder. If a certificate holder has an unacceptable IFSD rate risk attributed to maintenance or operational practices, then action carefully tailored to that certificate holder may be required.

The FAA does not use IFSD rate as the sole means to determine a certificate holder's ETOPS authority. The FAA considers the 12-month rolling average standard that occurs for a mature fleet after the commencement of ETOPS. A high IFSD rate could be due to the limited number of engine operating hours used as the denominator for the rate calculation or a small fleet. The effect may be an IFSD rate jump well above the standard rate due to a single IFSD event. The underlying causes for such a jump in the rate will have to be considered by the Administrator. Conversely, there may be occasions when a single ETOPS event may warrant corrective action even though the overall IFSD rate is not exceeded. In such a case, the cause would be certificate holder specific and may require changes to their operational, dispatch or maintenance procedures.

Configuration, Maintenance, and Procedures (CMP) Document

The use of a CMP document has been in the ETOPS criteria from AC 120–42, and later 120–42A, from the very first ETOPS airplane approvals. The CMP document defines airplane and propulsion system design configurations, maintenance procedures, and operational procedures required to comply with the ETOPS requirements that are not already a part of the original type design approved by the original issuance of the airplane and engine type certificates.

The CMP document is comprised of service bulletins, service letters,

maintenance manual references, and other pertinent documents which define the alterations, maintenance or operational requirements and limitations that the FAA requires to make an airplane type design suitable for ETOPS. The CMP is an amendment to the airplane type design defined in 14 CFR 21.31. The initial CMP approval, as a change to the type design, is analogous to other type design approvals for specific operations such as Category III autoland approval for autopilot systems that could involve design changes to a previously certified system.

After ETOPS approval, the CMP may be modified by any airworthiness directives (ADs) issued in accordance with part 39 that supersede existing CMP requirements. CMP document requirements will not increase except by AD.

Misconceptions about the criteria for revising CMP documents generated some of the biggest discussions in the ARAC ETOPS Working Group meetings. The FAA approved airplanes for ETOPS under the original AC 120–42 between 1985 and 1989 without a defined propulsion system reliability standard. The approach used in AC 120–42 to assess the suitability of an airplane-engine combination for ETOPS was to use a ''fix all problems'' approach. This process involved identifying the causes of propulsion system problems in service on the candidate airplane and including identified corrective actions into an approved CMP document as a condition for ETOPS approval. This was an ongoing process and the FAA conducted regular reviews to determine additional corrective actions as new problems occurred in service. As a result, the FAA routinely required the airplane manufacturer to revise the CMP documents during this period.

The ''fix all problems'' approach to airplane propulsion system assessment was carried over into the revised AC 120–42A at the end of 1988, and continues on in this notice in proposed part 25 Appendix L paragraph II(a)(ii). However, revision A of the AC added a propulsion system reliability standard as a provision for ETOPS type design approval that did not exist in the original AC. With an established propulsion system reliability standard, the FAA now had a gauge to monitor the safety of the approved ETOPS fleet without a need to continually update the CMP as new problems occurred. Also, several ETOPS operators began objecting to the FAA requiring them to continually upgrade existing ETOPS approved airplanes without any input to the changes being required.

The FAA recognized that our previous practice of requiring upgrades to already approved airplanes without prior public review created an undue burden on operators. As a result, the FAA changed its approval process for revisions to CMP documents. The FAA documented this change in an internal memorandum signed by the managers of the Transport Airplane Directorate, and the Engine and Propeller Directorate on April 3, 1990. In that memo, the directorate managers noted that the AC gave them the responsibility for the continuing airworthiness of the type design CMP standard and that the CMP should not be changed unless the reliability of the airplane-engine combination is not achieving or maintaining the reliability objective, or some other unsafe condition arises. As with any type design, the FAA permits manufacturers and operators to incorporate minor changes and routine enhancements by service bulletins or production design changes. However, the FAA will not mandate such enhancements in a revision to the CMP standard. The memo concludes by stating that the Transport Airplane and the Engine and Propeller Directorates plan to use the AD process to control the continuing airworthiness type design requirements of the ETOPS CMP standard.

As a result of the joint memo, the FAA established strict guidelines for CMP revisions to ensure that the requirements of the basic CMP standard originally approved for an airplane-engine combination are not increased without going through the AD process.

The FAA approves revisions to an airplane's CMP document for the following reasons:

1. When incorporating the CMP standard for a newly approved airplane-engine combination into an existing CMP document.
2. When correcting errors in previous revisions.
3. When ADs are issued that supersede existing CMP requirements.
4. When approving optional alternatives to existing requirements.
5. When mandating changes to the CMP by an AD.

The FAA aircraft certification offices have used these guidelines since issuance of the joint memo to approve CMP revisions. Because operators had already complied with several revisions to previously approved CMP documents in force at the time the FAA issued the new CMP guidelines, the FAA worked with the airlines and the manufacturers to establish ''baseline'' CMP requirements for each ETOPS approved airplane-engine combination. The affected operators agreed to ensure that all of the requirements of these baseline CMPs are incorporated into their ETOPS fleets. Thereafter, the new CMP revision guidelines would be the standard way of making subsequent revisions.

Summary of the Proposed Changes

The following chart summarizes which operations would be affected by the proposed rule changes:

	Current requirements		Proposed rule		
	Up to 60 minutes	Beyond 60 minutes	Up to 60 minutes	Beyond 60 min up to 180 minutes	Beyond 180 minutes
Part 121 two engine	Section 121.161 applies.	Advisory material and policy letters.	No change	Would apply (Would codify previous practice).	Would apply.
Part 121 more than two engine.	No current regulation	No current regulation	No change	No change	Would apply.
Part 135	No current regulation	No current regulation	No change	No change	Would apply.

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The chart below summarizes ETOPS regulations before and after the proposed changes.

Proposed ETOPS requirement	Under current advisory circulars and policy			Under the proposed regulation		
	Twins	**More than two engines**	**Part 135 operations**	**Twins**	**More than two engines**	**Part 135 operations**
Applicability	More than 60 minutes from an adequate airport	Does not apply to turbine engine airplanes.	Does not apply	More than 60 minutes from an adequate airport	More than 180 minutes from an adequate airport	More than 180 minutes from an adequate airport
Terminology	ETOPS (Extended Operations for Two Engine Airplanes)	ETOPS does not currently apply to turbine engine airplanes with more than two engines	ETOPS does not currently apply to part 135 operations	ETOPS (Extended Operations)	ETOPS (Extended Operations)	ETOPS (Extended Operations)
Maximum permissible distance from an adequate airport	207 minutes	Not regulated	180 minutes	240 minutes with certificate holder approval, beyond 240 minutes with route specific approval	To maximum system limitation	240 minutes
Cargo fire suppression	Diversion limit plus 15 minutes	Not required	Not required	Diversion limit plus 15 minutes.	Diversion limit plus 15 minutes (6 year compliance period)	Not required
Rescue and fire fighting service capability	ICAO category 4	Not required	Not required	ICAO category 4 up to 180 min, ICAO category 7 beyond 180 min	ICAO category 7	Not required
Passenger recovery plan	Required for polar operations	Required for polar operations	Required for polar operations	Required	Required	Required
Engine reliability standards	IFSD rates: 0.02/1000 hrs for 180 min, 0.19/1000 hrs for 207 min	None	None	IFSD rates: 0.05/1000 hrs for 120 min, 0.02/1000 hrs for 180 min, 0.01/1000 hrs for > 180 min	IFSD rates: 0.2/1000 hrs for 3 engine airplanes, 0.1/1000 hrs for 4 engine airplanes	Not specified
Areas of designated ETOPS applicability	Polar	Polar	Polar	Applies	Applies	Applies
Time-limited systems	Per type design approval limit for the airplane (up to 207 min).	No requirement	No requirement	Specified in part 25, Appendix L	Specified in part 25, Appendix L	Specified in part 25, Appendix L
Dispatch weather requirements for alternate	Applies	No requirement	No requirement	Applies	Applies	Applies
ETOPS maintenance program	Required	No requirement	No requirement	Required	Required	Required
Communication capabilities	SATCOM required for 207 min ETOPS	No requirement	No requirement	Additional com required. SATCOM beyond 180 min..	Additional com required. SATCOM beyond 180 min..	Additional com required. SATCOM beyond 180 min..

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Section-by-Section Discussion of the Proposal

We begin the discussion by clarifying the term ''ETOPS''. Since its inception eighteen years ago, the term ''ETOPS'' has described extended-range operations of two-engine air carrier airplanes under a deviation from 14 CFR 121.161. The term has gained broad acceptance among operators and regulators throughout much of the world.

This proposal would create regulatory requirements for extended operations for all air carrier airplanes. As described previously, the thresholds for applicability would vary by the number of engines and type of operation. In its deliberations, the Working Group stated that it struggled with the question of whether to use a new term to describe the operations of airplanes beyond 180 minutes from an adequate airport. Early on, the Working Group considered and agreed to the term ''LROPS'' which stands for Long Range Operations to describe flights beyond the 180-minute threshold. However, as their efforts progressed the Working Group found that the use of two terms (ETOPS and LROPS) for two-engine airplanes flying beyond 60 minutes and 180 minutes from an airport quickly became awkward and cumbersome. Further, the Working Group members representing the maintenance community expressed great concern that the introduction of the LROPS term would needlessly create confusion among the maintenance community and would also require painstaking and potentially expensive revisions to numerous maintenance manuals and programs. In order to avoid any potential confusion, the Working Group recommended the use of the term ETOPS for all air carrier extended range operations irrespective of the number of engines.

The FAA strongly agrees with this recommendation. The FAA also believes that the addition of a new term could needlessly create confusion. Further it would potentially dilute the intent of this proposal, which is to codify existing ETOPS standards and procedures and to extend those concepts to airplanes with more than two engines. The FAA believes that the introduction of a new term could be misinterpreted as creating a new operational concept as opposed to the extension of an existing one.

The proposed amendments to the Type Design Rules 14 CFR parts 25 and 33 and supporting advisory material are a consolidation of requirements taken from AC 120–42A, the 777 Special Conditions, and JAA Information Leaflet (IL) 20. The materials contained in the proposed Airplane Type Design Rule (part 25) and AC are a compilation of the existing AC120–42A, 777 Special Condition, and JAA IL20.

The following discussion takes each of the Rule sections and attempts to capture all of the comments and discussion from the ARAC activities.

Part 1

Section by Section Discussion of the Proposed Changes to Part 1

Section 1.1—General Definitions

The proposed definitions were adopted directly from the ARAC recommendation. This proposal would establish three different definitions of ETOPS in three significant ways. In each case, the acronym would stand for ''extended operations'' for all airplanes regardless of the number of engines. The definition would vary in part 121, however, depending on whether the airplane involved has two engines or more than two engines. This proposal also would introduce ETOPS into part 135 for the first time, where ETOPS would have a third definition. The FAA believes the remainder of the proposed definitions for section 1.1 are self-explanatory.

Part 21

The amendments to part 21 would create reporting requirements for the holders of type certificate for two-engine ETOPS airplanes and ETOPS eligible engines. This would require type certificate holders to closely monitor the performance of their products to ensure their continuing reliability. These amendments would also ensure that the FAA is kept apprised of any existing or potential problems in a timely manner.

Section by Section Discussion of the Proposed Changes to Part 21

Proposed New Section 21.4—ETOPS Reporting Requirements

This proposal would add a new regulation consisting of two parts, Early ETOPS Problem Reporting & Tracking for all ETOPS airplanes, and ETOPS Operational Service Reliability Reporting for two-engine airplanes.

Explanation

1. Reporting for all ETOPS airplanes. The proposed rule is a codification of what the FAA considers to be one of the essential and objective elements of the early ETOPS Special Conditions (SC) for the B777 aircraft; specifically as they pertain to problem tracking and reporting. The FAA accepts the ARAC recommendation and proposes it as a new section 21.4. Section 21.4 would require the type certificate holder to establish an early ETOPS problem reporting system. The proposed system would contain a means for the prompt identification of those problems that could impact the safety of ETOPS operations in order that they may be resolved in a timely manner. The system would also contain the process for the timely notification to the responsible FAA office of all relevant problems encountered, and identification of corrective actions deemed necessary and provide for appropriate FAA review of all planned corrective actions. The system would be in place for the first 250,000 engine-hours of fleet operating experience after the airplane enters service.

For two-engine ETOPS airplanes the system would remain in effect beyond 250,000 engine-hours of fleet operating experience until the fleet has demonstrated a specified and stable IFSD rate consistent with the approved diversion time of the aircraft. For the service period, this system would define the sources and content of in-service data that will be made available to the type certificate holder in support of the problem tracking system. The content of the data provided would include the data necessary to evaluate the specific cause of all service events reportable under section 21.3(c) of part 21, in addition to any other failure or malfunction that could affect the safety of ETOPS operation. Ten event occurrences, specifically defined with respect to reliable, safe ETOPS operation that would require reporting are defined in the proposal.

2. Reporting for two engine ETOPS airplanes. Paragraph (b)(1) of the proposed section 21.4 would require engine and airplane manufacturers to report periodically on the reliability of their two-engine airplane fleets. Reporting would include: IFSD events, IFSD rates, and ETOPS fleet statistics. This reporting may be combined with the reporting required by section 21.3. The proposed rule also would require the identification of cause and appropriate corrective action to assure reliable, safe ETOPS operations.

The periodic reporting of the reliability required of the manufacturers of engines and airplanes approved for ETOPS service would begin at the introduction of the product into service and continue throughout its product life. The interval of the reporting would be more frequent early in its product cycle and generally longer later in its product service life, especially after the product has achieved maturity with regard to engine reliability. Reliability would be indicated by a stable engine

shutdown event rate at or below the target values.

Generally, early product service life reporting on a quarterly basis is adequate, especially considering the fact that the manufacturers report engine failure events as they occur under the requirements of section 21.3. Event rates may fluctuate considerably early in the product's service life cycle because, although the fleet is growing in numbers of engine-airplane combinations in service, the accumulation of engine flight hours is generally slow. Typically, event rates are not very stable when the fleet cumulative time is less than 1 or 2 million engine flight hours. Therefore the focus should be on event occurrences, not failure rates, with a small fleet typical of early service time.

After maturity (a stable engine shutdown event rate at or below the target values) with a large fleet, reporting intervals continue on a quarterly basis. Regardless of fleet size, fleet age, and state of maturity, engine failures are reported under the requirements of section 21.3.

3. Paragraph (b)(2) of the proposed section 21.4 identifies world fleet IFSD rate/reliability requirements. The standards in section 21.4(b)(2)(i) are the IFSD rates compatible with the current FAA ETOPS AC and Policy for operation up to 180 minutes (including North Pacific operation). The standard in section 21.4(b)(2)(ii) is an IFSD rate compatible with operation beyond 180 minutes to 240 minutes and beyond, as contained in the proposed Operational rule and guidance material.

As discussed in this proposed NPRM, an IFSD rate of 0.01/1,000 Engine Flight Hours (EFH) is consistent with an extremely improbable risk of a dual in-flight power loss from independent causes for a two-engine airplane, even assuming a decision of practically unlimited duration. The rates given are not operator specific, but rather apply across the fleet of a given airplane-engine combination.

The FAA expects implementation of corrective action will maintain an acceptable in-flight shutdown rate below the required levels. This is borne out by the current ETOPS fleet in-flight shutdown rates, which have achieved and consistently maintained rates at or below 0.01 per 1,000 engine-hours. If the normal airworthiness monitoring process is not sufficient by itself to maintain an acceptable propulsion system reliability for a particular airplane-engine combination, then the FAA may require additional corrective actions, or reduce or withdraw the ETOPS diversion authority as described in section 21.4(c), if the risk of dual power loss is unacceptably high. Before such action is taken, however, the certificate holder and the FAA will assess the fleet-wide risk based upon the risk model developed for ETOPS presented in this preamble.

Part 25

Section by Section Discussion of the Proposed Changes to Part 25

Proposed Change to Paragraph 25.857(c)(2)—Cargo Fire Suppression

The proposed change to section 25.857(c)(2) would require that the applicant furnish the certified time capability of a Class C cargo fire suppression system in the Airplane Flight Manual (AFM) in accordance with section 25.1581(a)(2). The time capability of a system is the maximum length of time a system can suppress a fire.

Explanation

The proposed new section 121.633 and part 135, Appendix H, paragraph E would specify that the time that an operator needs to fly to a planned ETOPS alternate may not exceed the maximum time capability specified in the Airplane Flight Manual for the airplane's most time limited system. This change to section 25.857(c)(2) and a similar requirement in the new Appendix L, section I, paragraph (e)(4) will ensure that the Airplane Flight Manual provides the information that the operators will need regarding the fire suppression system to comply with the operating requirements. The justification for these changes is further discussed in the explanations for those proposed operating rules.

Proposed New Section 25.1535—ETOPS Approval

A proposed new section 25.1535 would prescribe the requirements for obtaining ETOPS type design approval.

Explanation

This new rule in the body of part 25 is effectively a pointer to a new Appendix L, which sets out additional design, analysis and test requirements for ETOPS type design approval. This rule also requires that in showing compliance with part 25 rules the applicant must consider the maximum length ETOPS mission. The applicant must also consider the effects of airplane system failure on crew workload and passenger physiological needs during a diversion of the maximum time considered. The system safety assessment required by section 25.1309 is an example of a rule where the ETOPS mission profile would be considered in an analysis to determine compliance. The ETOPS mission profile (including the maximum diversion time) could also affect the compliance analysis for section 25.1011(b) concerning oil endurance, and section 25.571 governing structural fatigue and damage tolerance.

This proposed rule is crucial to ensure that throughout the airplane design, the ETOPS mission profile is properly considered, and the standard of compliance is high because of it. The ''ETOPS Scenario'' diagram and the ETOPS significant systems definition that would be provided in the associated advisory circular for this rule are good tools that system designers can use to assess all conditions although they are not regulatory. There are also additional requirements in Appendix L to provide focus on those airplane systems that have, historically, been important to ETOPS operations such as electrical power, APU, and fuel systems. The emphasis on these specific airplane systems does not mean that these are the only airplane systems that are important to ETOPS. The section 25.1535 and Appendix L requirements along with the advisory circular guidance for ETOPS significant systems and the ETOPS mission profile provide the basis for assessing other airplane systems for ETOPS approval.

Proposed New Part 25 Appendix L—Extended Operations

A proposed new appendix L to part 25 defines additional airworthiness requirements for ETOPS approval.

Explanation

Appendix L would codify the airworthiness standards unique to ETOPS from Advisory Circular 120–42A, the Boeing 777 ETOPS special conditions, and the 207-minute ETOPS Policy Letter EPL 20–01. The requirements of Appendix L would go beyond simply considering the ETOPS mission in applying the basic part 25 requirements.

Since we would not require an applicant to comply with these ETOPS requirements in order to receive a basic part 25 type certificate, we decided that a separate appendix to part 25 would be the best location for these additional requirements for ETOPS.

Appendix L Format

Appendix L is organized into three sections. Section I sets out design requirements that all airplanes must comply with for ETOPS approval. Section II prescribes specific requirements for two engine airplanes. Section III prescribes specific

requirements for airplanes with more than two engines.

The proposed numbering system and organization of Appendix L is a significant departure from the ARAC recommendation. As an aid to readers familiar with the original ARAC proposal, Tables 1 and 2 cross-reference the original Appendix L paragraph numbers recommended by ARAC to the reorganized appendix proposed in this notice.

TABLE 1.—CROSS-REFERENCE OF ARAC PROPOSED AND NEW APPENDIX L PARAGRAPH NUMBERS

Original ARAC Proposal		New	
L25.1		Appendix L	Applicability
L25.2	(a)	Section I	(a)
	(a)(i)	Section I	(a)(1)
	(a)(i)(1)	Section I	(a)(1)(i)
	(a)(i)(2)	Section I	(a)(1)(ii)
	(a)(ii)	Section I	(a)(2)
	(a)(ii)(1)	Section I	(a)(2)(i)
	(a)(ii)(2)	Section I	(a)(2)(ii)
	(a)(ii)(3)	Section I	(a)(2)(iii)
	(a)(iii)	Section I	(a)(3)
	(b)	Section I	(b)
	(b)(i)	Section I	(b)(1)
	(b)(i)(1)	Section I	(b)(1)(i)
	(b)(ii)	Section I	(b)(1)
	(b)(iii)	Section I	(b)(1)(ii)
	(b)(iv)	Section I	(b)(2)
	(b)(iv)(1)	Section I	(b)(2)(i)
	(b)(iv)(2)	Section I	(b)(2)(ii)
L25.3	(i)	Section II	(b)(1)
	(ii)	Section II	(b)(2)(ii)
	(iii)	Section I	(c)
L25.4		Section II, Section III	
	(a)	Section II, Section III	(a)
	(a)(i)	Section II, Section III	(a)(1)
	(a)(ii)	Section II, Section III	(a)(1)
	(a)(iii)	Section II	(a)(2), (a)(3)
		Section III	(a)(2)
	(a)(iv)	Section II	(a)(4)
	(a)(iv)(a)	Section II	(a)(4)(i)
	(a)(iv)(b)	Section II	(a)(4)(ii)
	(a)(iv)(c)	Section II	(a)(4)(iii)
	(a)(v)	Section II	(a)(3)
		Section III	(a)(2)
	(a)(vi)	Section II	(a)(5)
		Section III	(a)(3)
	(a)(vii)	Section I	(d)
	(b)	Omit	
	(b)(i)	Section II	(b)(9)
		Section III	(b)(6)
	(b)(i)(1)	Section II	(b)(4)
	(b)(i)(1)(a)	Section II	(b)(4)(i)
	(b)(i)(1)(b)	Section II	(b)(4)(ii)
	(b)(i)(2)	Section II	(b)(6)
	(b)(i)(2)	Section III	(b)(3)
	(b)(i)(3)	Section II	(b)(7)
	(b)(i)(3)	Section III	(b)(4)
	(b)(i)(3)(a)	Section II	(b)(7)(i)
		Section III	(b)(4)(i)
	(b)(i)(3)(a)(i)	Section II	(b)(7)(i)(1)
		Section III	(b)(4)(i)(1)
	(b)(i)(3)(a)(ii)	Section II	(b)(7)(i)(2)
		Section III	(b)(4)(i)(2)
	(b)(i)(3)(a)(iii)	Section II	(b)(7)(i)(3)
		Section III	(b)(4)(i)(3)
	(b)(i)(3)(a)(iv)	Section II	(b)(7)(i)(4)
		Section III	(b)(4)(i)(4)
	(b)(i)(3)(a)(v)	Section II	(b)(7)(i)(5)
		Section III	(b)(4)(i)(5)
	(b)(i)(3)(a)(vi)	Section II	(b)(7)(i)(6)
		Section III	(b)(4)(i)(6)
	(b)(i)(3)(b)	Section II	(b)(7)(ii)
		Section III	(b)(4)(ii)
	(b)(i)(3)(c)	Section II	(b)(7)(iii)
		Section III	(b)(4)(iii)
	(b)(i)(3)(d)	Section II	(b)(7)(iv)
		Section III	(b)(4)(iv)

TABLE 1.—CROSS-REFERENCE OF ARAC PROPOSED AND NEW APPENDIX L PARAGRAPH NUMBERS—Continued

Original ARAC Proposal		New	
	(b)(i)(3)(e)	Section II	(b)(7)(v)
		Section III	(b)(4)(v)
	(b)(ii)	Section II	(b)(8)
		Section III	(b)(5)
	(b)(ii)(a)	Section II	(b)(8)(i)
		Section III	(b)(5)(i)
	(b)(ii)(b)	Section II	(b)(8)(ii)
		Section III	(b)(5)(ii)
	(b)(ii)(c)	Section II	(b)(8)(iii)
		Section III	(b)(5)(iii)
	(b)(ii)(d)	Section II	(b)(8)(iv)
		Section III	(b)(5)(iv)
	(b)(iii)	Section II	(b)(3)
		Section III	(b)(1)
	(c)	Section II, Section III	(c)
	(c)(i)	Section II, Section III	(c)(1)
	(c)(ii)	Section II, Section III	(c)(2)
L25.5		Section I	(e)(4)

TABLE 2.—CROSS-REFERENCE OF NEW AND ARAC PROPOSED APPENDIX L PARAGRAPH NUMBERS

New		Original ARAC Proposal	
Appendix L	Applicability	L25.1.	
Section I		L25.2.	
	(a)	L25.2	(a)
	(a)(1)	L25.2	(a)(i)
	(a)(1)(i)	L25.2	(a)(i)(1)
	(a)(1)(ii)	L25.2	(a)(i)(2)
	(a)(1)(iii)	New.	
	(a)(2)	L25.2	(a)(ii)
	(a)(2)(i)	L25.2	(a)(ii)1
	(a)(2)(ii)	L25.2	(a)(ii)(2)
	(a)(2)(iii)	L25.2	(a)(ii)(3)
	(a)(3)	L25.2	(a)(iii)
	(b)	L25.2	(b)
	(b)(1)	L25.2	(b)(i), (b)(ii)
	(b)(1)(i)	L25.2	(b)(i)(1)
	(b)(1)(ii)	L25.2	(b)(iii)
	(b)(2)	L25.2	(b)(iv)
	(b)(2)(i)	L25.2	(b)(iv)(1)
	(b)(2)(ii)	L25.2	(b)(iv)(2)
	(b)(3)	New.	
	(c)	L25.3	(iii)
	(d)	L25.4	(a)(vii)
	(e)	New.	
	(e)(1)	New.	
	(e)(2)	New.	
	(e)(3)	New.	
	(e)(4)	L25.5.	
	(e)(5)	New.	
Section II		L25.4.	
	(a)	L25.4	(a)
	(a)(1)	L25.4	(a)(i), (a)(ii)
	(a)(2)	L25.4	(a)(iii)
	(a)(3)	L25.4	(a)(iii), (a)(v)
	(a)(4)	L25.4	(a)(iv)
	(a)(4)(i)	L25.4	(a)(iv)(a)
	(a)(4)(ii)	L25.4	(a)(iv)(b)
	(a)(4)(iii)	L25.4	(a)(iv)(c)
	(a)(5)	L25.4	(a)(vi)
	(b)(1)	L25.3	(i)
	(b)(2)(i)	New.	
	(b)(2)(ii)	L25.3	(ii)
	(b)(3)	L25.4	(b)(iii)
	(b)(4)	L25.4	(b)(i)(1)
	(b)(4)(i)	L25.4	(b)(i)(1)(a)
	(b)(4)(ii)	L25.4	(b)(i)(1)(b)
	(b)(5)	New.	

TABLE 2.—CROSS-REFERENCE OF NEW AND ARAC PROPOSED APPENDIX L PARAGRAPH NUMBERS—Continued

New		Original ARAC Proposal	
	(b)(6)	L25.4	(b)(i)(2)
	(b)(7)	L25.4	(b)(i)(3)
	(b)(7)(i)	L25.4	(b)(i)(3)(a)
	(b)(7)(i)(1)	L25.4	(b)(i)(3)(a)(i)
	(b)(7)(i)(2)	L25.4	(b)(i)(3)(a)(ii)
	(b)(7)(i)(3)	L25.4	(b)(i)(3)(a)(iii)
	(b)(7)(i)(4)	L25.4	(b)(i)(3)(a)(iv)
	(b)(7)(i)(5)	L25.4	(b)(i)(3)(a)(v)
	(b)(7)(i)(6)	L25.4	(b)(i)(3)(a)(vi)
	(b)(7)(ii)	L25.4	(b)(i)(3)(b)
	(b)(7)(iii)	L25.4	(b)(i)(3)(c)
	(b)(7)(iv)	L25.4	(b)(i)(3)(d)
	(b)(7)(v)	L25.4	(b)(i)(3)(e)
	(b)(8)	L25.4	(b)(ii)
	(b)(8)(i)	L25.4	(b)(ii)(a)
	(b)(8)(ii)	L25.4	(b)(ii)(b)
	(b)(8)(iii)	L25.4	(b)(ii)(c)
	(b)(8)(iv)	L25.4	(b)(ii)(d)
	(b)(9)	L25.4	(b)(i)
	(c)	L25.4	(c)
	(c)(1)	L25.4	(c)(i)
	(c)(2)	L25.4	(c)(ii)
Section III		L25.4.	
	(a)	L25.4	(a)
	(a)(1)	L25.4	(a)(i), (a)(ii)
	(a)(2)	L25.4	(a)(iii), (a)(v)
	(a)(3)	L25.4	(a)(vi)
	(b)(1)	L25.4	(b)(iii)
	(b)(2)	New.	
	(b)(3)	L25.4	(b)(i)(2)
	(b)(4)	L25.4	(b)(i)(3)
	(b)(4)(i)	L25.4	(b)(i)(3)(a)
	(b)(4)(i)(1)	L25.4	(b)(i)(3)(a)(i)
	(b)(4)(i)(2)	L25.4	(b)(i)(3)(a)(ii)
	(b)(4)(i)(3)	L25.4	(b)(i)(3)(a)(iii)
	(b)(4)(i)(4)	L25.4	(b)(i)(3)(a)(iv)
	(b)(4)(i)(5)	L25.4	(b)(i)(3)(a)(v)
	(b)(4)(i)(6)	L25.4	(b)(i)(3)(a)(vi)
	(b)(4)(ii)	L25.4	(b)(i)(3)(b)
	(b)(4)(iii)	L25.4	(b)(i)(3)(c)
	(b)(4)(iv)	L25.4	(b)(i)(3)(d)
	(b)(4)(v)	L25.4	(b)(i)(3)(e)
	(b)(5)	L25.4	(b)(ii)
	(b)(5)(i)	L25.4	(b)(ii)(a)
	(b)(5)(ii)	L25.4	(b)(ii)(b)
	(b)(5)(iii)	L25.4	(b)(ii)(c)
	(b)(5)(iv)	L25.4	(b)(ii)(d)
	(b)(6)	L25.4	(b)(i)
	(c)	L25.4	(c)
	(c)(1)	L25.4	(c)(i)
	(c)(2)	L25.4	(c)(ii)

We discuss each paragraph of the proposed new Appendix L below.

Section I—Design Requirements

I(a) Airplane Systems

I(a)(1) Operation in Icing Conditions

I(a)(1)(i)

ETOPS airplanes would have to comply with the requirements of section 25.1419 for operation in icing conditions.

Explanation

Section 25.1419 sets out the requirements for certifying a transport category airplane for flight into icing conditions. This requirement is optional in that an applicant may choose to not apply for approval in icing conditions. However, from a practical standpoint no one would request certification of an airplane that did not meet this requirement. This proposed new regulation makes this approval mandatory for ETOPS approval.

I(a)(1)(ii)

The airframe and propulsion system ice protection would have to be capable of continued safe flight and landing at engine-inoperative and decompression altitudes in icing conditions. Following the loss of an engine at cruising altitude, an airplane will drift down to a lower (engine-inoperative) altitude. A decompression altitude is an altitude to which an airplane must descend following the loss of cabin pressure. Decompression altitudes are 10,000 feet MSL and below.

Explanation

This paragraph would codify AC 120–42A, paragraph 8(b)(11) for airframe ice protection. The applicant would have to demonstrate that the airplane is capable of continued safe flight and landing at

the decompression altitudes. This rule would require the applicant to demonstrate to the FAA that the anti-icing systems on the airplane will assure the airplane's capability to continue to operate during a worst-case diversion. The ARAC Working Group recommended a standard that would require the capability to safely divert if anti-icing cannot be shown available for all scenarios. This recommended standard tacitly assumes that airplane ice protection is not necessarily required during an ETOPS diversion. We disagree with this recommendation. Paragraph 8(b)(11) of AC 120–42A says that the airframe and propulsion ice protection should be shown to provide adequate capability for the intended operation. The AC says that this should account for prolonged exposure to lower altitudes associated with the engine-out diversion, cruise, holding, approach and landing. We do not interpret this paragraph as allowing circumstances where anti-icing would not normally be available during an ETOPS diversion. An applicant would have to address any failure conditions where the ice-protection systems would not be available during an ETOPS diversion as part of the safety analysis required by section 25.1309.

The preamble justification provided in the ARAC proposal stated that this rule ''will also require the applicant to demonstrate that the non-heated (or ''non-deiced'') areas of the airplane will not pick up a load of ice that would make the airplane uncontrollable or create too much drag to complete the diversion.'' This statement is consistent with how the FAA has applied the criteria of AC 120–42A paragraph 8.(b)(11) for all airplanes certified using that policy. However, the ARAC recommendation did not include this specific provision. We have added this requirement into the proposed rule as a new paragraph I(a)(1)(iii). It is consistent with ARAC's recommendation and consistent with what has been standard ETOPS type certification practice to consider the accumulation of ice on the non-heated or non-deiced areas of the airplane.

The associated advisory material for this proposed requirement will describe the conditions and assumptions that an applicant may use in simulating a diversion icing environment for showing compliance with the proposed rule. The advisory material will also provide guidance for developing analyses or testing that would justify not having to assume that the entire diversion would be in icing conditions.

I(a)(2) Electrical Power Supply

I(a)(2)(i) and (ii)

These paragraphs would establish reliability requirements for the electrical power supply system on an ETOPS flight.

Explanation

Paragraphs I(a)(2)(i) and (ii) are basically a restatement of section 25.1309 for the electrical power supply system in consideration of the ETOPS mission. We agree with the ARAC's apparent intent that these paragraphs, in conjunction with the new sections 25.1535(a) and (b), codify paragraphs 8(b)(1), 8(b)(6), 8(b)(7) and 8(c)(4) of AC 120–42A for the electrically powered ETOPS significant systems. These paragraphs establish the overall system safety objectives for these systems in extended operations.

The proposed rule is not as explicit as AC 120–42A in stating the types of functions that an applicant would need to consider in applying the safety objectives of section 25.1309 for an ETOPS mission. The general philosophy of the proposed rule is to let the existing policy associated with section 25.1309 compliance determine the design analysis for ETOPS. This philosophy is consistent with paragraph (c)(1) of the Boeing Model 777 ETOPS special conditions, which requires the applicant to comply with part 25 with regards to the ETOPS mission. Although we discuss this regulatory philosophy here in reference to the specific electrical power supply system requirements, it also applies to other ETOPS significant systems that are not specifically addressed in the proposed rule.

The FAA's intent for paragraphs I(a)(2)(i) and (ii) is to assure that the applicant properly focuses on electrical power redundancy and reliability when considering ETOPS mission scenarios in showing compliance with section 25.1309. On a two-engine airplane, the potential lack of redundancy available for electrical power generation makes this requirement especially important. However, the new emphasis is in paragraph (ii). It will be up to the applicant to demonstrate which functions would reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions. It is not realistic, for instance, for an applicant to state that operating for an extended period of time on suction feed would not reduce the capability of the airplane to cope with adverse operating conditions (for example, negative g or turbulence). Additionally, the applicant would have to determine what navigation and communication systems must be powered by emergency generation sources during a worst case ETOPS diversion.

I(a)(2)(iii)

This paragraph would require at least three independent electrical generation sources for airplanes being certified for greater than 180 minutes.

Explanation

Paragraph I(a)(2)(iii) would codify the three generator requirement of paragraph 8.(b)(8) in AC 120–42A. However, the ARAC recommendation only applies this requirement to airplanes being certified for greater than 180-minute ETOPS. The AC specifies three generators for any ETOPS approval. This specific requirement created much discussion within the ARAC ETOPS Working Group. Paragraph I(a)(2)(iii) as proposed in this notice represents the compromise position that allowed working group consensus. The following paragraphs are the ARAC's recommended justification for this requirement. The FAA is publishing them without comment.

This topic is inextricably linked to the discussion about MMELs. The MMEL or Master Minimum Equipment List allows an airplane operator to fly without equipment not on this fully functioning. There is concern that without a specific number of generators required in the rule, the MMEL could strip away some of the redundancy required for long-range flight. The arguments against a prescriptive number are generally as follows:

(1) Defining a number of generators would not assure proper system reliability (for example, is it better to have three generators with a Mean Time Between Failures (MTBF) of 20,000 hours each, or four generators with an MTBF of 3,000 each?)

(2) Defining a number of generators would either artificially constrain or give a ''pass'' to future airplane designs. For instance, if a new airplane had a system architectural need for 8 generating systems, requiring three in the ETOPS rule would not assure an adequately safe design.

(3) Trying to address the formation of the MMEL in part 25 is impractical and inconsistent with agreed-to policies for MMEL development.

''Nonetheless, it was agreed that there should be a tie-in between the analysis performed for Part 25 ETOPS approval and the analysis the Flight Operations Evaluation Review Board (FOEB), who develop the MMEL, used in determining dispatch criteria. This is almost always the case in today's process, but

formalizing the process would be a positive step.

''Therefore, an additional paragraph has been added to the ETOPS regulation to require a minimum number of electrical generators. This requirement codifies the existing AC 120–42A electrical generator redundancy criteria. The intent of this requirement is to ensure future airplanes to be certified for ETOPS have an electrical generation system architecture equivalent to the 737, 757, 767, 777 and A310, 320, A330 era airplanes. Future airplane electrical system architectures may be significantly different from today's airplanes, but the architecture must be equivalent from the perspective of robustness to independent failure scenarios.''

I(a)(3) Time Limited Systems

This paragraph would require that the applicant state the capability of most time limiting ETOPS significant system in the airplane flight manual.

Explanation

As stated previously for the revised paragraph 25.857(c)(2), this requirement would provide the information that the operators would need to comply with the applicable operating requirements. Advisory Circular 120–42A has two main categories of ETOPS approval (120 minutes and 180 minutes) based on demonstrated propulsion system reliability. The ETOPS approval, as stated in the airplane flight manual in currently approved ETOPS airplanes, identifies the maximum approved diversion time based as one of these two times. In order to qualify for the ETOPS type design approval, the applicant must design the airplane time-limited systems to support this maximum approved diversion time with an additional 15 minutes capability to allow for airplane holding, approach and landing.

In the context of proposed paragraph I(a)(3), we do not consider the propulsion system as a time-limited ETOPS significant system. Proposed Appendix L, section II(a), codifies the service experience method for ETOPS approval from AC 120–42A. Paragraph II(a)(4) of this section defines the required world fleet in-flight shutdown rate with each level of ETOPS operational approval. In this particular case, the level of ETOPS approval refers to the operational approval authority defined in the operating rules, not the time-limited system capability required in paragraph I(a)(3).

I(b) Propulsion System

I(b)(1) Fuel System Design

This paragraph would require design features to ensure that fuel necessary to complete an ETOPS mission will be available at the flow and pressure required for the engine, during a diversion for the longest time being approved for the airplane. The proposed rule includes a requirement for alerts to the crew when the fuel available to the engines falls below the level required to complete the mission which can occur because of fuel mismanagement, abnormal transfer between tanks, and fuel loss.

Explanation

Fuel system design and the ability of the crew to properly deal with fuel system malfunctions are arguably the most important issues facing the designer of ETOPS airplanes. The proposed rule (with corresponding AC guidance) addresses the need for:

(1) Positive fuel pressure at the engine fuel pump (no suction feed);

(2) Fuel availability following system failures (no hidden/trapped fuel, functional crossfeed valves, etc.); and

(3) Flight deck alerts when fuel available to the engines falls below the level required to complete the mission.

The proposed requirements would codify the intent of paragraph 8.(b)(2)(iii) of AC 120–42A, paragraph (c)(3)(i)(C) of the Boeing 777 ETOPS special conditions, and items 7 and 8 of the type design provisions of the 207 minute ETOPS Policy Letter EPL 20–1.

There has been some discussion regarding newer generation airplanes (B777) and their system architecture being the standard by which operations beyond 180 minutes will be judged. Currently, all transport category aircraft are required to perform suction feed testing as part of basic part 25 certification, which requires the applicant to simulate an all Alternating Current (AC) power loss at the highest altitude the airplane is used in service (''service ceiling''). The testing is performed to demonstrate that in the event of an all AC power loss, there is still ability (at some safe altitude) to re-start the engines after flameout on suction feed and generate thrust to a safe landing. This demonstration does not, however, provide any assurance that the engines can operate on suction feed for the long duration diversion times envisioned for ETOPS. The engines are certified with a minimum engine fuel pump inlet pressure limit of typically one-half pound per square inch (0.5 psi) above the ambient air pressure, or the fuel vapor pressure, whichever is higher. Section 25.955 requires that the airplane fuel system deliver fuel to the engine at this minimum pressure for the maximum fuel flow required by the engine. Without the fuel boost pressure, airplanes cannot comply with § 25.955. The fuel system design requirements proposed in this notice are intended to ensure that continued operation on suction feed is not a practical possibility on ETOPS airplanes. Paragraph I(b)(1) would be applicable to all ETOPS airplanes irrespective of the number of engines.

Loss of normal electrical power to the boost pumps is the primary cause of the loss of fuel system boost pressure. A specific fuel feed capability requirement has been added for twin-engine ETOPS operations beyond 180 minutes that is intended to address the concerns about loss of fuel boost pressure raised in the development of the 207 minute ETOPS policy. The 207-minute policy included a provision to also address fuel cross-feed capability following the failure of normal electrical power. Proposed paragraph I(b)(1)(i) would require that the applicant design the airplane fuel system with a fuel boost pump in each main tank and the capability to operate at least one crossfeed valve by a back-up electrical generation source other than the primary engine driven or APU driven generators. There is an exception in the proposed rule for fuel system designs for situations when electrical power does not provide required fuel boost pressure or crossfeed valve actuation. Although this is a specific design requirement applicable to two engine airplanes for ETOPS beyond 180 minutes, the overall design objective underlying paragraph I(b)(1) is applicable to all ETOPS airplanes. The applicant may use the same design features required by paragraph I(b)(1)(i) as part of their compliance with paragraph I(b)(1) for airplanes not specifically covered by this subparagraph.

The other possible source of the loss of fuel boost pressure is mechanical failure of fuel system components. These include pump failures or performance degradation, valve failures, and plumbing failures causing internal or external fuel leaks that result in significant fuel pressure loss. Possible design alternatives to address mechanical failures as a source of loss of fuel system boost pressure are:

1. Redundancy (additional boost pumps, cross-feed valves, etc.)

2. Improved component reliability (including any instructions for continued airworthiness necessary to maintain that level of reliability)

3. Enlarged main fuel tank capacity (to minimize the effect of loss of boost pressure in other fuel tanks)

4. A time-limited engine fuel inlet pressure limit at which the engine can demonstrate acceptable operation and integrity for the longest diversion time for which the airplane manufacturer is requesting approval.

Each of these design alternatives has advantages and disadvantages that the manufacturer would need to consider in designing an airplane to comply with the proposed rule.

We intend that the proposed paragraph I(b)(1) would preclude all causes of loss of system boost pressure in extended operations. This is consistent with the overall safety objectives established by the part 25 airworthiness standards for potentially catastrophic failure conditions.

Proposed paragraph I(b)(1)(ii) would require flight deck alerts when the fuel available to the engines falls below that required to complete the mission. The FAA's intent is that the required flight deck alerts would give flight crews clear warning of impending fuel exhaustion with enough time to safely land the airplane before the condition becomes critical. As a minimum, the manufacturer would have to design the flight deck alerts to address the types of failures or human errors that have resulted in airline fuel exhaustion events in service.

Examples of fuel exhaustion events include an Air Canada Boeing 767 that landed on an abandoned runway after both engines flamed out from fuel exhaustion. In this case, the normal low fuel alerts did not function because of a fuel quantity indication system failure. The fuel exhaustion was caused by the crew not receiving a low fuel alert, in combination with an unapproved airplane dispatch and a fueling error. An Air Tran Airbus A330 landed in the Azores following flameout of both engines caused by fuel exhaustion due to an unrecognized engine fuel leak. The AC provides guidance on critical fuel system alerts derived from these types of fuel loss events that have occurred in the current generation of aircraft.

I(b)(2) APU design

If operation of an auxiliary power unit (APU) were needed to comply with the ETOPS requirements, the applicant would have to demonstrate that the APU has adequate reliability for that operation. Also, if in-flight start and run capability is necessary, the APU in-flight operating envelope would have to extend to the maximum operating altitude of the airplane or 45,000 feet, whichever is lower.

Explanation

The electrical system reliability standard contained in AC 120–42A envisions three independent alternating current (AC) electrical generators. Besides the two engine driven generators, an auxiliary power unit (APU) could drive a third generator to meet this standard. Auxiliary power units are separately controlled small engines that are installed on an aircraft to power services when the main aircraft engines are not running. Airlines normally use an airplane APU at the gate to provide electrical power for onboard lighting and an air source for the air conditioning system between flights. Besides this normal function, the FAA may allow an airline to use an APU powered electrical generator during a revenue flight when a main engine generator is not working.

The electrical system reliability requirements proposed in this notice do not specifically require three independent generators except for airplanes being certified for ETOPS diversion times greater than 180 minutes. Current two engine aircraft that the FAA has approved for ETOPS would only be able to comply with the proposed requirement for electrical system reliability by having three independent generators. Other required aircraft system functions also may be powered by an APU. Proposed paragraph I(b)(2) of the rule would require that if the applicant is going to rely on the APU for compliance with the ETOPS requirements:

(1) The APU has to have adequate reliability; and

(2) If it must be started and run in-flight, the APU must demonstrate that it has the capability to start and perform its intended function up to the maximum operating altitude of the airplane, or 45,000 feet, whichever is lower.

The major reason for wanting high altitude APU in-flight start capability is to avoid having flight level changes that would cause the flight to have to cross through established flight track systems just to start the APU. Also, once the flight leaves the established track system it can be very difficult, or impossible to re-enter the track system, reducing the pilot's flexibility to fly the optimum flight plan. Having an in-flight start capability up to 45,000 feet mitigates these concerns.

''Adequate'' reliability consumed much of the Working Group's discussion time during development of the rule. This term can only be placed in context by understanding the overall electrical and pneumatic system architecture of the airplane. For instance, if an applicant has installed generators with inadequate reliability, their mean time between failure (MTBF) may require an extremely reliable APU generator in order to comply with the electrical system reliability objectives of § 25.1309. This would drive the applicant into a significant APU reliability demonstration program. The reverse could also be true. An electrical system may have generators with an excellent MTBF of 100,000 hours with additional non-APU back-up sources. In this case, the ''required'' reliability of the APU would be less than for current airplane electrical systems with APU driven generators. However, the applicant would have to present a convincing system level reliability analysis backed by validated component reliability data before the FAA would accept an assumption of lower APU reliability from that required for today's airplanes.

An APU has traditionally been used only to ''back-up'' the electrical system, and the proposed new regulatory and advisory material focuses on this function. No current aircraft utilizes an APU to provide ''back-up'' pneumatic system capability to meet ETOPS significant system reliability standards. However, the associated advisory circular addresses the possible operational need for APU pneumatics on the ground to power the cabin air conditioning system following an airplane diversion. If the APU is necessary as a bleed source to comply with section 25.1309 or the new section 25.1535, the applicant would have to define the operating envelope of where it can perform this intended function. The FAA requires this for any APU required function under the existing airworthiness standards of part 25. Currently most APUs can only provide both bleed air and electrical power at lower cruise altitudes, and cannot provide enough bleed air to power an air conditioning pack at the airplane service ceiling. The applicant would have to fully account for the use of a ''limited'' ETOPS APU operating envelope in substantiating compliance with section 25.1309 or section 25.1535. In accounting for a limited APU operating envelope, the applicant would have to address the operational implications, including air traffic control, of having to descend to a lower altitude in order to use the required APU function.

ARAC recommended the following language for paragraph I(b)(2): ''If operation of the APU installation is required to comply with this appendix, the applicant must * * *''. Except for

the electrical system, which has specific requirements in proposed Appendix L, all other potential airplane system functions that could be powered by an APU are addressed by the overall ETOPS requirement contained in section 25.1535(a). Examples include the cabin pressurization and hydraulic systems, which may be powered by an APU. The ARAC recommended proposed rule and preamble states the intent that this requirement should not be limited to just electrical system reliability. We have corrected this oversight by replacing ''this appendix'' with section 25.1535 in proposed paragraph I(b)(2).

I(b)(3) Engine Oil Tank Design

The engine oil filler cap design would have to comply with a proposed change to section 33.71(c)(4), which will require oil tank cap designs that prevent hazardous oil loss in the event of an oil tank cap installation error.

Explanation

See the proposed change to section 33.71(c)(4) for an explanation of the reasons for this change. We added paragraph I(b)(3) to Appendix L to ensure that engines installed on ETOPS airplanes comply with the part 33 requirement.

I(c) Engine Condition Monitoring

The applicant would have to define and validate, as required, an engine condition monitoring process in accordance with part 33, Appendix A, paragraph A33.4.

Explanation

This requirement would codify paragraph a(5) of Appendix A of AC 120–42A and paragraph (b)(2) of the Boeing Model 777 ETOPS special conditions.

With the propulsion system reliabilities existing on today's long range airplanes, the FAA is very concerned that the biggest threat to ETOPS safety is the risk associated with common cause, cascading failures and fuel exhaustion. Several of the proposed requirements in this notice would address these threats. The engine condition monitoring process requirement specifically addresses the potential of additional engine failure or failures resulting from the increased thrust or service demands on the remaining engine or engines.

Operators would be required, in the proposed changes to parts 121 and 135, to have an engine condition monitoring program as part of their ETOPS maintenance program. Paragraph I(c) of Appendix L and paragraph A33.4 in part 33 would require the airplane and engine manufacturer to provide the instructions necessary for an operator to develop this program.

Since the potential for a catastrophic loss of thrust is greater on a two engine airplane than on airplanes with more than two engines, this proposed rule would require that the applicant validate the engine condition monitoring process for use on two engine airplanes before ETOPS approval. For airplanes with more than two engines, the applicant would need only to define the process.

I(d) Configuration, Maintenance and Procedures

The applicant would have to identify configuration, maintenance, or operational standards necessary to maintain appropriate reliability or to obtain required capability for ETOPS in a Configuration, Maintenance, and Procedures (CMP) document.

Explanation

Paragraph I(d) of the proposed rule would codify material AC 120–42A. All existing policy on revising CMP documents would remain in force under the new rule. This is discussed more fully previously under general issues in the general discussion of the proposal.

I(e) Airplane Flight Manual

This paragraph would specify certain information that the airplane flight manual (AFM) must contain for ETOPS approval.

Explanation

This proposed requirement would codify paragraph 8(f)(1) of AC 120–42A. ARAC did not include this paragraph in their proposed rule draft. However, there are provisions within the AC paragraph that the FAA has required in all ETOPS type design approvals issued since 1985. The ETOPS approval statement contained in AC subparagraph 8(f)(1)(vi) is particularly important as applicants have based their airplane flight manual ETOPS approval statements on this wording. We are proposing to add the relevant provisions from AC paragraph 8(f)(1) into this notice in order to maintain continuity with the historical AFM ETOPS requirements.

The two provisions from AC 120–42A that we are not proposing to incorporate directly into proposed paragraph I(e) are subparagraphs 8(f)(1)(iii) and (v). Subparagraph 8(f)(1)(iii) addresses inclusion of the performance data used to comply with the engine-inoperative diversion criteria of the flight dispatch considerations in the operational approval section of the advisory circular. Contrary to this advisory circular provision, the FAA has not required that the performance data be included in the approved parts of the AFM and have not included this provision in the proposed rule. Subparagraph 8(f)(1)(v) asks for a description or reference to a document containing the approved airplane configuration CMP standard. The CMP document identification has traditionally been included in the ETOPS approval statement defined in subparagraph 8(f)(1)(vi) for ETOPS airplanes approved under the existing policy. Therefore, we have combined subparagraphs 8(f)(1)(v) and 8(f)(1)(vi) from the AC into the new proposed paragraph I(e)(5).

We are also proposing to add the original AFM requirement from the ARAC proposal into paragraph I(e)(4). This proposed requirement is not in AC 120–42A. This proposed paragraph would require the applicant to define the maximum ETOPS diversion time capability required by paragraph I(a)(3) into the airplane flight manual in accordance with § 25.1581(a)(2), ''Furnishing Information.'' This proposed requirement provides a cross-reference to proposed paragraph I(a)(3), which would require that the ETOPS capability defined by most limiting ETOPS significant system capability be stated in the airplane flight manual.

Section II—Two Engine Airplanes

In addition to the requirements of section I, an applicant for a two engine airplane would have to also show compliance with one of three proposed requirements of section II.

II(a) Service Experience Method

The applicant would have to demonstrate that the airplane and engine combination for which approval is sought has the required airplane and propulsion system capability to safely conduct an ETOPS mission with the maximum diversion for which approval is sought, and has achieved required airframe and propulsion system reliability based upon fleet in-service experience.

Explanation

Proposed sub-section II(a) would codify part of the existing approval process based on service experience, as contained in AC 120–42A for two engine airplanes. This includes the most significant aspect of this process, the propulsion system assessment contained in Appendix 1 of the advisory circular. The AC process is predicated on having a sufficient amount of service

experience to give the FAA enough data to assess the overall suitability of a two-engine airplane for ETOPS approval.

The AC type design assessment criteria are divided into two parts. The first part defines specific system design capability and safety objectives in order to provide a minimum design standard for airplanes operating in ETOPS. This part of the AC criteria is addressed in proposed section 25.1535(a) and (b), and section I of proposed part 25 appendix L.

The second part of the AC process is a review of in-service problems and identification of appropriate corrective actions to prevent problems that could have an adverse effect on ETOPS safety. Part of this review is to establish that the airplane and propulsion systems have an appropriate level of reliability to meet the safety objectives defined in the AC. Appendix 1 of the AC defines an amount of service experience that would normally be required in order to give a sufficient database to evaluate propulsion system reliability. We are proposing to address this second part of the AC type design assessment process in sub-section II(b) of this notice.

II(a)(1) Required Service Experience

This paragraph would require that an applicant who desires to obtain ETOPS type design approval using service experience conduct a reliability review after accumulating 250,000 worldwide fleet engine hours on the airplane and engine combination for which approval is being sought. The number of hours could be reduced if adequate compensating factors are identified which give a reasonable equivalent database. A significant portion of the 250,000 engine hours would have to be obtained on the candidate airplane.

Explanation

Proposed paragraph II(a)(1) would codify the service experience eligibility criteria from paragraph a(1) of Appendix 1 of AC 120–42A.

II(a)(2) Propulsion System Assessment

Paragraph II(a)(2)(i) would require an applicant to conduct a propulsion system assessment based on data collected from the entire fleet of the specific airplane and engine combination for which approval is sought. Paragraph II(a)(2)(ii) would require an applicant to identify corrective actions to prevent future occurrences of engine in-flight shutdowns or loss of thrust control.

Explanation

Paragraph II(a)(2)(i) would codify the reliability data base criteria from paragraph b. of Appendix 1 of AC 120–42A. ARAC did not include the reliability data base criteria in their proposed rule draft, but did have it in their associated draft advisory material. In paragraph 10(a)(iii) of the draft part 25 advisory circular, ARAC stated ''A propulsion system assessment must be based on the following data, collected from the entire fleet of the specific airplane/engine combination type for which approval is sought* * *''. Since ARAC clearly stated its intent that an applicant ''must'' conduct a propulsion system assessment on the specific list that follows, and based on the clear reference to the existing policy from Appendix 1 of AC 120–42A, we have incorporated this section from the ARAC draft advisory circular into proposed paragraph II(a)(2)(i) of this notice.

Paragraph II(a)(2)(ii) would codify the intent of the propulsion system assessment criteria from paragraph 3 of Appendix 1 of AC 120–42A. This is the so-called ''fix-all-problems'' requirement that has been the practice for all ETOPS type design approvals that the FAA has given using the service experience approval process defined in AC 120–42A.

The corrective actions that the applicant identifies in compliance with proposed paragraph II(a)(2) would be included in the approved configuration, maintenance, and procedures (CMP) document as a condition of the ETOPS approval.

II(a)(3) Airplane systems assessment

The applicant would have to show compliance with section 25.1535(a) using available in-service reliability data for ETOPS significant systems. The applicant would have to identify corrective actions to prevent future occurrences of ETOPS significant system failures occurring in service.

Explanation

The first part of this paragraph would codify the intent of paragraph 8(c)(1) of AC 120–42A for those ETOPS significant airplane systems addressed in proposed § 25.1535(a). This AC paragraph states that the analysis and demonstration of airframe and propulsion system failure effects and reliability provided by the applicant should be based on in-service experience and the longest diversion time for the airplane.

The second part of proposed paragraph II(a)(3) is an extension of the ''fix-all-problems'' approach used in the propulsion system assessment that we are proposing in paragraph II(a)(2). For all airplanes approved using the policy contained in AC 120–42A, the FAA has required an applicant to define effective corrective actions for all in-service problems known to result in, or potentially result in, airplane diversions. The FAA has required this in order to enter ETOPS service with the highest quality airplane. An applicant rarely considers known system failure conditions to be acceptable occurrences in service that they account for in their system failure analyses submitted for compliance with section 25.1309. Therefore, this fix all problems approach is appropriate in reassessing compliance with the applicable airworthiness requirements of proposed section 25.1535(a).

The corrective actions that the applicant identifies in compliance with proposed paragraph II(a)(3) would be included in the approved configuration, maintenance, and procedures (CMP) document as a condition of the ETOPS approval.

II(a)(4) In-Flight Shutdown (IFSD) Rates

This proposed paragraph defines propulsion system reliability standards for three levels of ETOPS type design approval.

(i) *For operations up to 120 minutes:* a rate of approximately 0.05 or less per 1,000 fleet engine hours with a CMP intended to bring the rate down to 0.02.

(ii) *For operations up to 180 minutes:* a rate of approximately 0.02 or less per 1,000 engine hours with an existing 120 minute CMP standard, or new or additional CMP requirements that have been demonstrated to achieve this in-flight shutdown rate.

(iii) *For operations greater than 180 minutes:* a rate of approximately 0.01 or less per 1,000 engine hours with an existing 120 minute or 180 minute CMP standard, or new or additional CMP requirements that have been demonstrated to achieve this in-flight shutdown rate.

Explanation

This proposed paragraph would codify the propulsion system reliability standards from Appendix 1 of AC 120–42A. In addition, we are proposing to add the reliability standard of 0.01 per 1,000 engine hours for ETOPS greater than 180 minutes that ARAC proposed in their recommended draft ETOPS rule.

The original ARAC recommendation refers to ''target threshold'' or ''target'' rate. These terms do not adequately define what would constitute an acceptable or unacceptable in-flight shutdown rate for showing compliance with this proposed requirement. The FAA has similar concerns about the term ''approximately'' as used in this

proposal, but this term is in the existing AC 120–42A policy and has been applied successfully since issuance of the AC. Therefore, the FAA has tentatively chosen to retain the term ''approximately'' as used in the existing AC policy in this proposed rule.

We have added the qualifier ''or less'' to the proposed in-flight shutdown rate requirement. Without this term, the rule could be interpreted to mean that the in-flight shutdown rate ''must'' be the approximate value specified. We clearly do not intend that an applicant with an in-flight shutdown rate well below the requirement would not be in compliance with the rule. We have added this additional qualifier in order to clarify this intent.

The original ARAC recommendation for operations up to 120 minutes was written in the following manner: ''with a required list of corrective actions that would result in continuing improvement toward an IFSD rate of 0.02 per 1000 fleet engine-hours.'' We have added ''in the CMP document'' in order to clarify where the list of corrective actions must be contained.

For the proposed requirements for both operations up to 180 minutes and operations greater than 180 minutes we have added a provision that considers the effect that existing or new CMP standards have on compliance with the required in-flight shutdown rate. In the past, we granted ETOPS approvals using a 180-minute CMP standard developed from the 120 minute ETOPS CMP documents. This has occurred when the applicant has substantiated, through service experience, additional requirements that would achieve the desired in-flight shutdown rate for those airplanes incorporating the additional requirements. The added provision proposed in this notice is a statement of existing practice for granting 180-minute ETOPS approval where the 120-minute standard had to be modified. This notice proposes to codify this existing practice into the rule as noted above.

II(a)(5) Airplane Flight Test Requirements

This paragraph would require a flight test to validate the adequacy of the airplane's flying qualities, performance, and the flight crew's ability to deal with engine inoperative and non-normal worst case system failure conditions expected to occur in service.

Explanation

This paragraph would codify the intent of paragraph 8(d)(3) of AC 120–42A. The original ARAC proposed paragraph stated that the proposed flight test would validate ''non-normal worst case probable system failure conditions.'' This proposed wording would not adequately reflect how the FAA has applied the AC paragraph being codified.

The term ''probable'' as used in the original ARAC proposal would have a specific meaning within the type certification community. As defined by Advisory Circular 25.1309–1A, probable failures are those anticipated to occur one or more times during the entire operational life of each airplane. Probable failures would most likely only include significant single failures, or more frequent double failures. However, we have required applicants for ETOPS type design approval under AC paragraph 8(d)(3) to demonstrate multiple failure conditions that are much less frequent in service, such as

(i) the loss of all normal electrical power;

(ii) flight controls powered by an emergency backup hydraulic source; and

(iii) loss of normal flight instruments.

These types of failure conditions would be expected to occur during the life of a fleet of airplanes, but not necessarily on each airplane. We believe that ARAC may have intended to include these failure conditions by using the qualifying term ''worst case'' in their proposal, however, we are not confident that it would be interpreted correctly with the wording as ARAC proposed. We have deleted the word ''probable'' and replaced it with system failure conditions ''expected to occur in service'' in the proposed rule. This clarification more accurately reflects how the FAA has applied the paragraph 8(d)(3) of AC 120–42A.

II(b) Early ETOPS Method

This part of section II defines requirements that an applicant would have to comply with to certify an airplane for ETOPS without first accumulating the service experience that would be required in section II(a).

Explanation

This section would codify the early ETOPS process defined in the Boeing Model 777 ETOPS special conditions 25–ANM–84 for two engine airplanes. These special conditions defined requirements that allowed the FAA to approve the Boeing Model 777 airplane for ETOPS without the service experience normally expected under the policy in AC 120–42A. The intent of this proposed sub-section of Appendix L is to define requirements that would allow the FAA to grant ETOPS approval concurrent with the original type certification of an airplane.

II(b)(1) Relevant Experience Assessment

The applicant would have to identify specific corrective actions taken on the airplane design to address relevant design, manufacturing, operational and maintenance problems experienced on previously certified part 25 airplanes manufactured by the applicant. Specific corrective actions would not be required if the nature of the problem is such that it would not have a significant impact on the safety or reliability of the system. The proposed rule would require that this assessment include the relevant experience of supplier provided ETOPS Group 1 significant systems and similar or identical equipment utilized on aircraft built by other manufacturers.

Explanation

This proposed rule would codify paragraph (c)(2) of the Boeing Model 777 ETOPS special conditions 25–ANM–84. The term ''relevant experience'' as used in the proposed rule means the design, manufacturing, operational or maintenance problems that have, or could have, resulted in the types of occurrences that would be included in propulsion system and airplane system assessments conducted in accordance with a service experience based ETOPS approval process proposed in section II(a).

The intent of this proposed requirement is to take advantage of service experience on other airplane types built by the applicant as much as is practical. This relevant experience assessment is in lieu of service experience on the actual airplane to be approved and is a major compensating factor for that direct service experience.

One of the five key elements of the early ETOPS process on the Boeing Model 777 was the ''relevant experience assessment,'' or ''lessons learned.'' Simply stated, the intent is for the applicant to review the failures on previous airplane/engine combinations, and assure that the causes of those failures are mitigated. While simple in concept, the execution of this assessment is significant in scope. One of the most significant aspects of this proposed rule is that an applicant with no previous transport category manufacturing experience would not be eligible to receive early ETOPS approval. The FAA considers the relevant experience assessment as elemental to the early ETOPS process. Without the ability to perform this assessment including lessons learned on manufacturing and engineering processes, the FAA could not

confidently grant an early ETOPS approval.

Beyond a certain level of commonality, past experience may not be relevant to a new design. This is particularly true where a specific design feature that contributed to problems in previous airplanes is not a part of the new airplane design. However, the demonstration of the applicability of past experience to the new design is inherent in the relevant experience assessment.

This proposed rule would require that the applicant identify corrective actions taken to preclude similar problems from occurring on the new airplane. Removal from the design of a system, sub-system, or component that has had problems in the past may be an acceptable corrective action, as long as it precludes similar problems from occurring.

Where new technology is introduced, the lessons learned assessment becomes impractical, as there is no previous experience with this technology. While this is true, there may still be applicable relevant experience. For example, an applicant's previous experience with new technology introductions may lead to changes in manufacturing and quality control processes. Further, lessons learned of general applicability can be introduced into the new technology design, such as a general design practice to prevent cross-connector installation.

II(b)(2) Propulsion System Design

II(b)(2)(i) Engine ETOPS Eligibility

This paragraph would require that the engines to be installed on the airplane be approved for ETOPS eligibility in accordance with proposed new section 33.200.

Explanation

Proposed new section 33.200 would require that an engine intended for a two engine ETOPS airplane that does not have the service experience required by part 25, section II(a), would have to comply with certain requirements. The ARAC proposed rule draft did not specifically state that the engines installed in an early ETOPS airplane must be certified in accordance with section 33.200. We have corrected that oversight in this notice.

We intend that section II(b) of this notice apply to all new airplanes and engines. We have considered the possibility that an applicant may install an already certified engine with existing service experience onto a new airplane. In this case, the combined service experience and early ETOPS approval method of proposed section II(c) would provide a way of certifying this type of mixed configuration.

II(b)(2)(ii) Design To Preclude In-Flight Shutdowns

The applicant would have to design the propulsion system to preclude failures and malfunctions that could result in an engine in-flight shutdown. In addition, the applicant would have to substantiate compliance with this requirement by analysis, test, in-service experience on other airplanes, or other means that the propulsion system will minimize failures and malfunctions with the objective of achieving the following in-flight shutdown rates:

(i) 0.02 or less per 1,000 engine fleet hours for 180 minute ETOPS or less;

(ii) 0.01 or less per 1,000 engine fleet hours for ETOPS beyond 180 minutes.

Explanation

ARAC provided the following justification for this proposed rule. ''This rule section requires that the propulsion system be designed to preclude failures and malfunctions that could result in an engine in-flight shutdown. Propulsion systems on previous airplanes were designed and certified to be ''fail-safe,'' in compliance with section 25.901 of part 25; in other words, any single failure, or probable combination of failures, would not jeopardize continued safe flight and landing of the airplane. Because safe flight following an engine shutdown is required by part 25, preventing engine in-flight shutdowns has not been a major design objective on some previous airplane designs. The additional design requirement in this section to preclude failures and malfunctions that could result in an engine in-flight shutdown has an enormous effect on propulsion system reliability in that normal design decisions must now consider whether a failure or malfunction might result in an engine in-flight shutdown. The method of compliance to this section may vary from applicant to applicant, but the intent remains—all design features of the propulsion system must preclude shutdowns or power losses. This intent is also captured in the proposed part 33 rule.''

We agree with the justification that ARAC provided. The ''design to preclude failures and malfunctions that could result in an engine in-flight shutdown'' is one of the most important features of the early ETOPS special conditions that we required for the Boeing Model 777 airplane. The FAA had a similar justification for this requirement in the preamble to those special conditions. However, the proposed rule that ARAC recommended did not clearly state this intent. We have modified the original ARAC proposal to clarify this stated ARAC intent and bring the proposed rule in line with the existing Boeing Model 777 ETOPS special conditions.

ARAC did not provide a specific justification for the proposed in-flight shutdown rate analysis requirement. Boeing has submitted such an analysis under compliance with paragraph (c)(5) of the ETOPS special conditions for the Model 777 airplane. Paragraph (c)(5) of those special conditions requires the applicant to define specific new analyses that will be used to assure engine and airplane system design integrity. The addition of a predicted in-flight shutdown rate analysis into this proposed rule would codify this method of compliance with the Boeing ETOPS special conditions.

Since in-service experience does not exist on a new airplane, we have also changed the ARAC proposed rule language for the in-flight shutdown rate analysis to clarify that the in-service experience to be considered in this analysis would be from other airplanes. Applicable service experience would include the same basic engine design or other propulsion system components on other airplanes manufactured by the applicant, or by other manufacturers if the applicant has access to that data and can substantiate its applicability to the new airplane design.

II(b)(3) Maintenance and Operational Procedures

The applicant would have to validate all ETOPS significant systems maintenance and operational procedures. Any problems found would have to be tracked and resolved through the problem tracking system and resolution system proposed in paragraph (II)(b)(8).

Explanation

This proposed rule would codify the intent of paragraph (d)(2) of the Boeing Model 777 ETOPS special conditions. The special conditions paragraph requires the applicant to have a program to systematically detect and correct problems occurring as a result of improper execution of maintenance and flight operations. Boeing has complied with this requirement by validating maintenance and operational procedures important to the safety of ETOPS operations. This proposed rule would codify this method of compliance.

Human error continues to be a major cause of engine in-flight shutdowns and forced airplane diversions. The proposed maintenance validation requirement, combined with the proposed requirement to operate and

maintain the test airplane during the airplane demonstrate test in paragraph II(b)(7) using the recommended operations and maintenance manual procedures, are part of the FAA's overall regulatory objective to minimize human errors in the ETOPS rule. The FAA intends that the proposed ETOPS type design requirements would result in an airplane entering service with validated maintenance and operational procedures that minimize the possibility of human error in ETOPS operations.

II(b)(4) Propulsion System Validation Test

This paragraph would require the applicant for an early ETOPS airplane to comply with the 3,000-cycle engine test in the proposed new § 33.200(c) with the installed engine configuration. The test engine would have to be configured with a complete airplane nacelle package, including engine-mounted equipment except for any configuration differences necessary to accommodate test stand interfaces with the engine nacelle package. At the conclusion of the test, the test hardware would have to be:

(i) visually inspected in according to the applicant's on-wing inspection recommendations and limits; and

(ii) completely disassembled and inspected in accordance with the service limits submitted in compliance with § 25.1529.

Explanation

Proposed paragraph II(b)(4) would codify paragraphs (e)(3) and (e)(6) of the Boeing Model 777 ETOPS special conditions for the airplane propulsion system installation. These special conditions paragraphs require vibration testing and a 3,000-cycle engine demonstration test on the installed engine configuration. The proposed § 33.200(c) would combine these two special conditions test requirements into one test based on how Boeing complied with these paragraphs for the Model 777 airplane.

The original ARAC recommended rule draft proposed the following wording for the first sentence of this paragraph: ''The *propulsion system* for which approval is being sought * * *'' The FAA defines the airplane propulsion system based on the definition of the powerplant installation contained in § 25.901(a), which states:

''For the purpose of this part, the airplane powerplant installation includes each component that—

(1) Is necessary for propulsion;

(2) Affects the control of the major propulsive units; or

(3) Affects the safety of the major propulsive units between normal inspections or overhauls.''

The components and systems covered by the overall definition of ''propulsion system'' include the fuel system and the engine and fuel system flight deck controls. We do not intend that the proposed propulsion system validation test in paragraph II(b)(4) would include any propulsion system components outside of the airplane nacelle package. We have made two changes to the original ARAC wording in order to clarify the intended test configuration. We have replaced ''propulsion system'' with ''installed engine configuration'' in the first sentence. We have changed the second sentence to clarify that the test engine must be configured with a complete airplane nacelle package, including engine-mounted equipment except for any configuration differences necessary to accommodate test stand interfaces with the engine nacelle package. These proposed changes are consistent with a recent revision of the Boeing Model 777 ETOPS special conditions.

The Boeing Model 777 ETOPS special conditions did not originally require a post-test teardown inspection. However, all three-engine companies, in cooperation with Boeing, conducted post-test teardown inspections on the original baseline engines installed on the Model 777 series airplanes based on their own experience of what would constitute an adequate evaluation.

The FAA reviewed the data from the 3,000-cycle tests for the three original engine types installed on the Model 777 and found that most of the early in-service 777 engine failure modes could have been discovered with additional inspection and analysis of the 3,000-cycle test engine and propulsion system hardware. Part conditions noted in the teardown inspection reports for the three baseline 777 engine types did later occur in service, and they resulted in engine in-flight shutdowns or airplane diversions.

In order to provide a consistent standard for a post-test evaluation of the 3,000-cycle test hardware, the FAA is proposing an enhanced 3,000-cycle test requirement in proposed paragraph II(b)(4) of Appendix L and § 33.200(c). The standard would require a complete teardown inspection of the engine and airplane nacelle test hardware after completion of the test. The FAA intends that the enhanced teardown inspection requirement for the 3,000-cycle test hardware would catch potential sources of engine in-flight shutdowns or diversions.

An enhanced post-test teardown inspection requirement is part of a revision to the Boeing Model 777 ETOPS special conditions that the FAA developed for the Model 777–300ER program. The ARAC ETOPS Working Group had knowledge of our intent to revise the Model 777 ETOPS special conditions in this manner as they developed their recommendations.

Even though paragraphs II(b)(4) and § 33.200(c) address the same proposed post-test teardown inspection requirement, the wording for the requirement in paragraph II(b)(4) is different from that in § 33.200(c). The FAA considers that the intent of the proposed post-test teardown and inspection requirement in parts 25 and 33 to be identical. However, the specific language used in each part is tailored to the unique aspects of the engine and airplane type certification processes used to show compliance with this requirement.

See the discussion for the proposed new § 33.200(c) for a complete explanation of the proposed 3,000-cycle engine test requirement.

Proposed paragraph II(b)(4) is largely a ''pointer'' to the proposed requirements to perform an engine cyclic endurance test in part 33. The purpose of this paragraph in the rule is to assure that the entire installed engine configuration (engine accessories, nacelle, thrust reverser, etc.) is installed on the test vehicle during the part 33 testing. Since the proposed part 33 requirement only covers the engine type design, this proposed rule is necessary.

II(b)(5) New Technology Demonstration Testing

The applicant would have to conduct testing to demonstrate the suitability of any technology new to the applicant.

Explanation

This paragraph would codify paragraph (e)(4) of the Boeing Model 777 ETOPS special conditions. The ARAC left this requirement from the special conditions out of its recommended rule proposal, even though the associated part 25 draft advisory circular provided with their recommendation refers to this as a requirement. We propose to add the new technology demonstration testing requirement to the notice for completeness.

II(b)(6) APU Validation Test

This paragraph would require an applicant to complete a test consisting of 3,000 equivalent airplane operational cycles on an auxiliary power unit that the applicant uses to comply with the

electrical power supply system requirements of paragraph I(a)(2) of this proposed appendix.

Explanation

This paragraph would codify paragraph (e)(5) of the Boeing Model 777 ETOPS special conditions.

As we stated in the section on APU design for proposed paragraph I(b)(2), current twin engine airplanes approved for ETOPS only comply with the proposed requirement for electrical system reliability contained in this notice by having three independent electrical generators. On these airplanes, the third independent electrical generator is normally powered by an auxiliary power unit. To assure that an APU would have the proper reliability at entry into service, the proposed rule would require the applicant to conduct an APU endurance test in a similar manner to that proposed in paragraph II(b)(4) for the main engines. The phrase ''equivalent airplane operational cycles'' requires the applicant to test the APU in an environment that the APU would be operating in an airline ETOPS operation. In most cases this would include starting and operating the APU in extremely cold temperatures representative of high altitude operation or ground operations in extremely cold climates. This would also include operation in high temperature environments, and with simulated pneumatic and electrical loads. Further amplification of the interpretation of ''equivalent airplane operational cycles'' is found in the draft part 25 advisory circular.

II(b)(7) Airplane Demonstration Test

This paragraph would require the applicant to conduct an airplane flight test to demonstrate that the airplane, its components and equipment are capable of and function properly during ETOPS and ETOPS diversions. This flight test may be coordinated with, but would not be in place of the function and reliability flight testing required for compliance with § 21.35(b)(2).

The proposed requirement includes several conditions that the applicant would have to comply with in conducting this test. Among these are:

(1) The flight test program would have to include:
  (i) Flights simulating actual ETOPS operation;
  (ii) demonstration of maximum normal flight duration with maximum diversions;
  (iii) maximum time engine inoperative diversions;
  (iv) non-normal conditions to demonstrate the airplanes capability to safely; conduct an ETOPS diversion,
  (v) diversions into representative operational diversionary airports; and
  (vi) repeated exposure to humid and inclement weather on the ground followed by long-range operations at normal cruise altitude.
(2) The flight testing would have to validate the adequacy of the airplane's flying qualities, performance and the flight crew's ability to deal with adverse operating conditions.
(3) The engine-inoperative diversions would have to be evenly distributed among the number of engines in the applicant's flight test program.
(4) The test airplane would have to be operated and maintained using the recommended operations and maintenance manual procedures during the test.
(5) At the completion of the test, the ETOPS Group 1 significant systems would have to undergo an airplane visual inspection and the engines would have to also undergo an internal gas path inspection.

Explanation

This paragraph would codify the airplane demonstration test requirement of paragraph (e)(7) of the Boeing Model 777 ETOPS special conditions. The original version of the special conditions effective July 1, 1994 required the applicant to fly one complete airplane for at least 1,000 flight-cycles simulating an actual airline operation.

The FAA developed the 1,000-cycle airplane demonstration test requirement with the intent of exposing the candidate airplane to the conditions where the greatest numbers of in-flight shutdowns occur. Most in-flight shutdowns occur during takeoff and climb. Failures that tend to occur only during certain portions of a flight are known as ''cyclic'' failures. An example of a cyclic failure would be a tire failure where exposure to the high tire speeds that could lead to a tire failure would only occur during takeoff or landing. These are in contrast to failures that are more likely to occur as components age, which are known as ''hourly'' failures. An example of an hourly failure is an electric cooling fan failure where the fan runs continuously to cool electronic components.

The failure modes associated with takeoff- and climb-related in-flight shutdowns tend to be cyclic in nature for a couple of reasons. In cases where the loads and stresses on engine or airplane hardware increase as engine power or thrust increases, the takeoff portion of the flight is most critical. Failure modes that occur due to improper maintenance or engine servicing, for instance loss of engine oil due to improper assembly of an oil tube connection, also tend to occur early in the flight. A larger number of airplane flights increases the exposure to these types of failures. Therefore, the FAA considered a cyclic type of test to be the most appropriate airplane validation test for the original 777 ETOPS special conditions.

Although the fewest in-flight shutdowns occur during cruise, this is the phase of flight that is most important to an ETOPS operation. Traditionally, the FAA and industry have avoided trying to differentiate between those in-flight shutdowns that may occur during cruise from those that would only occur in a non-ETOPS environment. The main reason for this approach in existing ETOPS policy is that by correcting all causes of in-flight shutdowns, we gain confidence in the overall integrity of the propulsion system design. Since an enhanced 3,000-cycle engine demonstration test proposed for paragraph II(b)(4) of Appendix L and § 33.200(c) would provide adequate cyclic exposure, the FAA has concluded that the airplane validation program should emphasize exposure to the cruise phase of flight.

During the three 1,000-cycle tests conducted for the original 777 engine installation certification programs, only 91 of the total 1,000 cycles were of durations of two hours or more. Since we intend for the airplane demonstration test to simulate an actual airline operation, this would better be accomplished through longer duration flight cycles. Long duration flight exposure provides additional confidence that the design accounts for cruise-related failure modes that cannot be evaluated in a cyclic test environment. Such failure modes could include freezing of entrapped water condensation or binding of propulsion system components, neither of which would likely occur in a sea level test facility.

Based on these considerations, the FAA has determined that the airplane demonstration test requirement should be refocused on those conditions that are most prevalent in an ETOPS operating environment. Those conditions include long flights to a variety of airports with broad variations of airport elevation, temperature, and humidity. It is also important that these flights expose the airplane to several enroute climbs, such as may occur with a fully loaded 777–300ER on a long-

range flight, and a number of engine-inoperative diversions. As such, the FAA proposes that the specific test conditions described in the sub-paragraphs to proposed paragraph II(b)(7) more clearly state the objectives of the test program. Those objectives include demonstrations that the aircraft, its components, and equipment are capable of and function properly during long-range operations and airplane diversions, including engine-inoperative diversions.

This change in focus constitutes a significant departure from the original purpose of the 1,000-cycle airplane demonstration test requirement discussed in the preamble to the Boeing Model 777 ETOPS special conditions. However, the proposed changes to the 3,000 cycle test requirement and the airplane demonstration test that we propose for this rule would provide an overall better evaluation of a new airplane design for ETOPS approval.

The original ARAC proposal recommended the following wording for paragraph II(b)(7)(i)(4): ''Non-normal conditions to demonstrate the airplane's capability to safely conduct an ETOPS diversion under worst case probable system failure conditions.'' This is similar language for a flight test demonstration of non-normal operating conditions to Section III—Airplanes with more than two engines that proposed for paragraph II(a)(5). For similar reasons to those in the explanation for paragraph II(a)(5), we have deleted the word ''probable'' in proposed paragraph II(b)(7)(i)(4) and replaced it with system failure conditions ''expected to occur in service'' in the proposed rule.

Human error continues to be a major cause of engine in-flight shutdowns and forced airplane diversions. The proposed requirement in paragraph II(b)(7)(iv) to operate and maintain the test airplane using the recommended operations and maintenance manual procedures, combined with the proposed maintenance validation requirement in paragraph II(b)(3), are part of the FAA's overall regulatory objective to minimize human errors in the ETOPS rule. The FAA intends that the proposed ETOPS type design requirements would result in an airplane entering service with validated maintenance and operational procedures that minimize the possibility of human error in ETOPS operations.

During the certification of the B777 for early ETOPS, the special conditions required that the airplane demonstration test be conducted using the airline maintenance and operations manuals. The purpose of this requirement was three-fold: (1) To assure that the airplane test was as close to an airline simulation as possible, (2) to assure that the maintenance and operations products were mature at entry into service, and (3) to assure that no maintenance or operations procedures would erroneously contribute to system failures.

In developing their draft rule, the ARAC ETOPS Working Group fully concurred with the proposed requirement to assure maintenance and operational product maturity at entry into service. However, the working group also recognized that validation of these products could be accomplished in different fashions. Nonetheless, ARAC noted that the proposed associated advisory circular (AC) recommends that the maintenance manual should be used for all testing necessary for ETOPS validation (component, engine and airplane). Tasks such as LRU replacement, testing following removal/replacement of parts, etc., must be validated per the requirements of the rule. The proposed AC does provide amplification, however, on what maintenance manual sections should be validated, namely only those sections pertinent to Groups 1 and 2 ETOPS significant systems. For instance, while validation of a landing gear maintenance task may be prudent for product readiness, the landing gear is not considered ETOPS critical, and therefore validation of related maintenance procedures would not be required.

As we said in the discussion for the proposed 3,000 cycle test requirement in paragraph II(b)(4), the FAA has concluded from a review of in-service experience of the Model 777 series airplanes that the 3,000-cycle engine and propulsion system test in proposed paragraph II(b)(4) of Appendix L and § 33.200(c) provides an adequate opportunity to discover cyclic-related failure modes associated with the design, provided that the engine and airplane manufacturers conduct an adequate post-test evaluation. For similar reasons, proposed subparagraph II(b)(7)(v) would require a post-test external and internal visual inspection of the airplane demonstration test engines and propulsion system hardware. The applicant would have to identify, track and resolve any abnormal conditions found during these inspections in accordance with the provisions of the proposed problem tracking and resolution system requirement of paragraph II(b)(8).

The proposed paragraph II(b)(7)(v) would require the manufacturer to visually inspect the airplane ETOPS significant systems per the Instructions for Continued Airworthiness of section 25.1529 following the airplane demonstration test. The stated objective for this inspection in the proposed rule is to identify any abnormal conditions that could result in an in-flight shutdown or diversion. We have proposed this paragraph as ARAC recommended. However, many of the airplane ETOPS significant systems have components that are not amenable to visual inspection. An example is an electronic controller for airplane electrical load management. We request comments on this specific aspect of the proposed rule. If a visual inspection alone is not a sufficient post-test inspection requirement, what additional post-test inspections or tests should be incorporated into the final rule? If certain ETOPS significant systems should not be covered by this post-test inspection requirement, then what should be the criteria in the final rule for their exclusion? We invite commenters to respond to other commenters' suggestions because the FAA may select one or more commenter recommended approaches for the final rule.

The FAA proposed a change to the airplane demonstration flight test requirement in a revision to the Boeing Model 777 ETOPS special conditions for the Model 777–300ER type certification program. The ARAC ETOPS Working Group had knowledge of our intent to revise the Model 777 ETOPS special conditions in this manner as they developed their recommendations. We have provided a more detailed justification of the airplane demonstration test requirement changes proposed in this notice in the preamble for that special conditions revision.

II(b)(8) Problem Tracking and Resolution System

This paragraph would require the applicant to establish a problem tracking and resolution system to address problems, as identified in proposed 21.4(a)(5), encountered on ETOPS significant systems during airplane and engine testing that could affect the safety of ETOPS operations.

Explanation. This paragraph would codify the problem tracking system requirements of paragraph (f) from the Boeing Model 777 ETOPS special conditions.

The special conditions problem tracking system requirement is divided into two parts: the problem tracking/reporting required during type certification testing, and that required during the ''early ETOPS'' period of the first 250,000 hours of operation after the

airplane enters service. The proposed paragraph II(b)(8) addresses the first part of the special conditions requirement. The second part is captured in the proposed new § 21.4(a).

The original ARAC recommendation would have required the problem tracking and resolution system to address ''relevant'' problems encountered. The term ''relevant'' is subjective and may result in inconsistent application of the proposed rule. Furthermore, we have identified the types of problems that must be reported in the post type certification period in proposed new § 21.4(a)(5). In order to assure consistency with the companion post type certification problem reporting requirement contained in proposed § 21.4(a), we have replaced the term ''relevant'' with the phrase ''as identified in § 21.4(a)(5)''.

In evaluating the importance of this proposed rule, the FAA has reviewed the experience on the first early ETOPS airplane. The FAA approved the Model 777–200 powered by Pratt & Whitney PW4077 engines for ETOPS on May 30, 1995 and the airplane entered airline service in June 1995. By all accounts, it was a very successful new model introduction. This was followed by the FAA ETOPS approval of the Model 777–200 powered by General Electric GE90–77B and Rolls-Royce RB211-Trent 877–17 engines in October 1996. Based on data supplied by Boeing, the in-flight shutdown (IFSD) rate for all three-engine types was zero for at least the first year in service. The Pratt & Whitney PW4000 reached a peak 12-month rolling average IFSD rate of 0.018/1,000 hours in October 1996. The General Electric GE90 reached a peak of 0.021 for one month in July 1998 and the Rolls-Royce Trent reached a peak of 0.016 in December 1997.

Although the in-flight shutdown rates stayed within the allowable 0.02/1,000 hour standard for 180 minute ETOPS, Boeing and the engine manufacturers reported to the FAA new design problems that they discovered on each engine type after ETOPS approval. The FAA was concerned that the design problems being discovered may have been an indication of a failure of the early ETOPS process to identify these failure modes before they occurred in service. Some failure modes had the potential of resulting in in-flight shutdowns had they occurred under different circumstances or they had not been detected during maintenance for unassociated reasons. Had every one of these events resulted in an engine in-flight shutdown, the resulting IFSD rates for each engine type would have been significantly higher. However, Boeing, the engine manufacturers, the FAA, the airlines, and other regulatory authorities worked together to prevent in-flight occurrences of these failure types.

The FAA did not expect that the early ETOPS process would eliminate ALL failures. That is why the FAA required a problem tracking system in the Model 777 ETOPS special conditions. The actual in-flight shutdown rates prove that Boeing and the engine manufacturers successfully managed these early in-service problems to maintain the safety of B777 ETOPS operations worldwide. A robust problem tracking, reporting, and resolution process was key to the continued safe operation of the Boeing Model 777 and will be an essential component of future early ETOPS programs. The proposed problem reporting and resolution requirements in paragraph II(b)(8) and new § 21.4(a) are important to the continued success of airplanes approved for ETOPS using the early ETOPS process proposed in this notice.

II(b)(9) Reliability Demonstration Acceptance Criteria

The applicant would have to show that the type and frequency of failures that occur during the airplane flight test program and the airplane demonstration test proposed by paragraph II(b)(7), are consistent with the type and frequency of failures or malfunctions that would be expected to occur on currently certified ETOPS airplanes.

Explanation

This paragraph would codify paragraph (h)(1) of the Boeing Model 777 ETOPS special conditions. This proposed paragraph is the so-called ''type and frequency'' requirement that is the final indicator of ETOPS suitability in the Boeing Model 777 ETOPS special conditions.

The FAA's intent for the type and frequency requirement is that it would provide an objective standard that we could use to assess an airplane's suitability for ETOPS. Significant propulsion system failures occurring during type certification testing, including the additional ETOPS testing that would be required in section II of proposed Appendix L, are an indicator that an airplane may not yet be ready to enter ETOPS service. Our intent is that the proposed type and frequency requirement would identify when an airplane is not suitable based on available test data.

We did not intend that the proposed type and frequency requirement would provide a meaningful measurement of reliability. It is not possible to measure system reliability with any degree of statistical confidence with the limited amount of test experience obtained during a reasonable type certification program.

A lack of significant failures during type certification testing does not assure an ETOPS-suitable design at entry into service. It is for this reason that the proposed problem tracking system requirement exists. As we said in the explanation for proposed paragraph II(b)(8), the FAA concludes from the Boeing Model 777 experience that a manufacturer can successfully manage early in-service problems to maintain the safety of worldwide ETOPS operations during the initial introductory service period with the data provided by the enhanced problem tracking system that would be required by proposed in paragraph II(b)(8).

The combination of these two proposed requirements form the key supports of the early ETOPS safety standard for two-engine airplanes proposed in this notice. The proposed type and frequency requirement gives the basis for denying ETOPS approval for airplanes with known significant design problems. The proposed problem tracking and resolution system gives the FAA confidence that we have the means to safely manage a fleet of airplanes and engines that do not experience significant problems until after ETOPS approval.

The original ARAC proposed wording for paragraph II(b)(9) referred to failures that occur during the ''airplane and engine validation programs.'' This wording is inconsistent with the Boeing Model 777 ETOPS special conditions, which refers to failures that occur during ''the airplane flight test program and the airplane demonstration test.'' Nowhere does the proposed rule use the term ''validation program.'' We think that the special conditions wording more accurately describes what testing is covered by this proposed requirement and have changed the proposal accordingly.

The ARAC draft had an additional qualifying phrase on the airplane models that the candidate airplane's failures and malfunctions would be compared to. In addition to ''presently certified ETOPS airplanes,'' the ARAC draft added the phrase ''or any non-ETOPS derivative models of those aircraft or engines.'' This added phrase is not in the existing Boeing Model 777 ETOPS special conditions. We are proposing that the proposed type and frequency requirement for two engine airplanes include a comparison with an existing fleet of ETOPS approved

airplanes that are currently operating at a stable level of reliability in ETOPS service. It would not be appropriate to make this comparison with a non-ETOPS approved fleet. The FAA does not require the operators of non-ETOPS fleets to maintain a level of reliability consistent with the ETOPS standard for two-engine airplanes.

We speculate that the ARAC may have intended that the added phrase ''or any non-ETOPS derivative models of those aircraft or engines'' would address a manufacturer that initially would have no previously approved ETOPS airplanes in service from which to base a type and frequency comparison. The proposed rule would not specifically require that the comparison be with currently certified ETOPS airplanes by that manufacturer. If an applicant does not currently have an existing ETOPS approved airplane in service from which to base a type and frequency comparison, the proposed rule would allow the manufacturer to use available data for ETOPS approved airplanes of other manufacturers. It is not necessary that the applicant use a single existing airplane model in the comparison that would be required by proposed paragraph II(b)(9). We have not included this phrase in proposed paragraph II(b)(9).

In finding compliance with the proposed type and frequency requirement, we would be looking at the significance of the problems that occur during the type certification testing and whether or not they would require a design change prior to type certification of the airplane. Manufacturers continually make improvements to enhance their designs based on in-service experience. These design improvements may eliminate nuisance problems that are not, in themselves, safety related. In addition, certain failures that occur in service are expected during the life of the product at a known low rate of occurrence and are not indicative of a significant design shortcoming. We could find compliance with the proposed reliability demonstration acceptance criteria even though we might expect that these types of failures or problems occurring during airplane flight testing could also occur on a mature ETOPS fleet.

In contrast, the types of failures or problems that would give the FAA concern about compliance with the proposed reliability demonstration acceptance criteria would fall into two categories:

(1) A major failure that would require a significant redesign before the airplane could receive a basic part 25 type certificate. In other words, a problem that makes the airplane unsafe without a significant redesign and testing.

(2) Random ETOPS significant failures occurring during the test program at a frequency greater than would be expected on a mature ETOPS fleet. ETOPS significant failures would be those that result in the events listed in proposed § 21.4(a)(5).

II(c) Combined Service Experience and Early ETOPS Method

This proposed paragraph would allow an applicant to combine certain elements of the early ETOPS process proposed in section II(b) with a reduced amount of service experience from what would be required by paragraph II(a)(1) to obtain ETOPS approval.

Explanation

The early ETOPS process proposed in section II(b) of Appendix L would define requirements for obtaining ETOPS type design approval without the service experience that would be required by section II(a). Proposed sub-section II(c) would define requirements for obtaining ETOPS approval with a combination of service experience and elements of the early ETOPS process.

The FAA has accepted, in principle, the concept of trading a limited amount of service experience for the airplane demonstration test requirements contained in the 777 early ETOPS special conditions. The FAA did this based on a concept already contained in Advisory Circular 120–42A, which allows a reduction in the normal amount of service experience if ''adequate compensating factors exist which give a reasonable equivalent database.'' The FAA considers that elements of the early ETOPS process may be used to provide ''adequate compensating factors.'' Since the 777 early ETOPS process provides a method for obtaining ETOPS approval without any service experience, a minimum amount of actual service experience would provide an adequate evaluation if the applicant complies with the other elements of the early ETOPS process.

Proposed section II(c) would codify this concept into the ETOPS rule. The proposed rule would allow two methods of reduced service experience in place of the complete early ETOPS process contained in section II(b). Paragraph II(c)(1) would specifically require only 15,000 engine hours of service experience if the applicant complies with the following elements of sections II(a) and (b):

(a)(5) Airplane flight test requirements,
(b)(1) Relevant experience assessment,
(b)(2) Propulsion system design,
(b)(3) Maintenance and operational procedures,
(b)(4) Propulsion system validation test,
(b)(5) New technology demonstration testing,
(b)(6) APU validation test,
(b)(8) Problem tracking and resolution system, and
(b)(9) Reliability demonstration acceptance criteria.

In addition to the airplane flight test requirement from the service experience method, paragraph II(a)(5), these are all of the elements of the early ETOPS process except for the airplane demonstration test in proposed paragraph II(b)(7). We have added three paragraphs to the original ARAC proposal. The first is the airplane flight test requirement from the service experience method, paragraph II(a)(5). Without some required airplane flight-testing, the ARAC proposal would not result in an equivalent demonstration of a capability to safely operate in an ETOPS environment. Paragraph II(a)(5) would require an applicant for ETOPS approval based on service experience to conduct a flight test to validate the adequacy of the airplane's flying qualities, performance and the flight crew's ability to deal with engine inoperative and non-normal worst case system failure conditions expected to occur in service. The FAA considers that an applicant who does not complete the airplane demonstration flight test requirement in accordance with proposed paragraph II(b)(7) as part of a combined ETOPS approval method must as a minimum complete the flight testing that would be required if the applicant were using service experience only.

The second is proposed paragraph (b)(5), new technology testing. We have added the new technology testing requirement here and in section III because we could find no valid reason to exclude it when every other requirement of proposed early ETOPS section is included except for the airplane demonstration test requirement. Since ARAC overlooked the new technology testing requirement in their original proposal as discussed above for proposed paragraph II(b)(5), we assume that it would have been included in proposed paragraph II(c)(a) had they not overlooked it.

The third paragraph we have added is the reliability demonstration acceptance criteria in proposed paragraph II(b)(9). In section II(a) for a service experience based approval, in-flight shutdown rate provides the FAA with a reliability objective to assess a design's suitability.

In the early ETOPS method proposed in section II(b), the reliability demonstration acceptance criteria provides a way to compare the airplane flight test history to existing ETOPS approved airplanes as a way to assess design suitability. Without some defined criteria for assessing the suitability of a design for ETOPS approval, we would have no way of determining if a candidate airplane were acceptable when an applicant chooses to use the combined approach. Therefore, we have added the reliability demonstration acceptance criteria requirement to proposed paragraph II(c)(1). Since we consider this to be a significant departure from ARAC's original recommendation and ARAC did not clearly state their intent for this section, we request specific comments on this particular proposal.

The second method for reduced service experience proposed in paragraph II(c)(2) would allow some level of service experience other than 15,000 engine hours, provided the applicant defines compensating factors that provide an equivalent level of safety to that provided using any of the other methods. This method would allow an applicant some latitude to create an ETOPS approval program tailored to the unique aspects of the airplane model.

Section III—Airplanes With More Than Two Engines

In addition to the requirements of section I, an applicant for an airplane with more than two engines would have to show compliance with the proposed requirements of section III.

Explanation

This section of Appendix L would define those specific requirements that would be applicable to airplanes with more than two engines. In order to achieve an equivalent risk of a critical loss of thrust during an ETOPS flight due to independent failure causes, the in-flight shutdown rate for twins needs to be ten times lower than four engine airplanes and 20 times lower than three engine airplanes to achieve an equivalent level of safety for ETOPS. For maximum diversion times greater than 180 minutes, the proposed standard for two engine airplanes is 0.01 shutdowns per 1,000 engine-hours. The associated in-flight shutdown rate to achieve the same level of safety would be 0.2 for three engine airplanes and 0.1 for four engine airplanes. These levels of reliability are inherent in current generation turbine engines without the need for specific propulsion system requirements beyond those now in parts 33 and 25. The FAA is concerned that we may inadvertently encourage a lower standard than is already normally achieved by specifying these high in-flight shutdown rates in the proposed rule for three and four engine airplanes. Therefore, we have not included any of the proposed propulsion system requirements that would be applicable to two engine airplanes into proposed Appendix L, section III.

What remains for section III are the proposed airplane level system requirements from section II including a flight test demonstration of airplane and propulsion system capability during a maximum ETOPS diversion. Since we are equally concerned about human error caused critical multiple failures for airplanes with more than two engines as we are for twins, we are also proposing a maintenance and operational procedure validation requirement in section III. Except as noted, the explanation for each of the proposed paragraphs in section III is the same as for section II.

III(a) Service Experience Method

The applicant would have to demonstrate that the airplane and engine combination for which approval is sought has the required airplane and propulsion system capability to safely conduct an ETOPS mission and maximum diversion and has achieved required airplane system reliability based upon fleet in-service experience.

Explanation

This proposed requirement is the same as in section II with the exception that ''propulsion system'' has been removed from the last phrase of the proposed requirement. Otherwise, the explanation is the same as for paragraph II(a).

III(a)(1) Required Service Experience

This paragraph would require that an applicant who desires to obtain ETOPS type design approval using service experience conduct a reliability review after accumulating 250,000 worldwide fleet engine hours on the airplane and engine combination for which approval is being sought. The number of hours would be allowed to be reduced if adequate compensating factors are identified which give a reasonable equivalent database. A significant portion of the 250,000 engine hours would have to be obtained on the candidate airplane.

Explanation

The explanation for this proposed paragraph is the same as for proposed paragraph II(a)(1).

III(a)(2) Airplane Systems Assessment

The applicant would have to show compliance with section 25.1535(a) using available in-service reliability data for ETOPS significant systems. The applicant would have to identify corrective actions for all causes or potential causes of ETOPS significant system failures occurring in service that are shown to be effective in preventing future occurrences.

Explanation

The explanation for this proposed paragraph is the same as for proposed paragraph II(a)(3).

III(a)(3) Airplane Flight Test Requirements

This paragraph would require a flight test to validate the adequacy of the airplane's flying qualities, performance and the flight crew's ability to deal with engine inoperative and non-normal worst case system failure conditions expected to occur in service.

Explanation

The explanation for this proposed paragraph is the same as for proposed paragraph II(a)(5).

III(b) Early ETOPS Method

This part of section II defines requirements that an applicant would have to comply with to certify an airplane for ETOPS without first accumulating the service experience that would be required in section III(a).

Explanation

Proposed section III(b) is the same as proposed section II(b) except that the relevant experience assessment and propulsion system design requirements have been removed from the proposed section III requirements. Otherwise, the explanation is the same as for paragraph II(b).

III(b)(1) Maintenance and Operational Procedures

Under this proposed requirement, the applicant would have to validate maintenance and operational procedures for ETOPS Significant Systems. The applicant would have to track and resolve any problems discovered during the validation process using the proposed Problem Tracking and Resolution System as described by paragraph (b)(5).

Explanation

The explanation for this proposed paragraph is the same as for proposed paragraph II(b)(3).

III(b)(2) New Technology Demonstration Testing

The applicant would have to validate all ETOPS significant systems maintenance and operational procedures. Any problems found would have to be tracked and resolved through the problem tracking system and resolution system proposed in paragraph III(b)(5).

Explanation

The explanation for this proposed paragraph is the same as for proposed paragraph II(b)(5).

III(b)(3) APU Validation Test

This paragraph would require an applicant to complete a test consisting of 3,000 equivalent airplane operational cycles on an auxiliary power unit that the applicant uses to comply with the electrical power supply system requirements of paragraph I(a)(2) of this proposed appendix.

Explanation

The explanation for this proposed paragraph is the same as for proposed paragraph II(b)(6).

III(b)(4) Airplane Demonstration Test

This paragraph would require the applicant to conduct an airplane flight test to demonstrate that the airplane, its components and equipment are capable of and function properly during ETOPS and ETOPS diversions. This flight test may be coordinated with, but would not be in place of the function and reliability flight testing required for compliance with § 21.35(b)(2).

The proposed requirement includes several conditions that the applicant would have to comply with in conducting this test. Among these are:

(1) The flight test program would have to include:
  (i) flights simulating actual ETOPS operation;
  (ii) demonstration of maximum normal flight duration with maximum diversions;
  (iii) maximum time engine inoperative diversions;
  (iv) non-normal conditions to demonstrate the airplanes capability to safely conduct and ETOPS diversion;
  (v) diversions into representative operational diversionary airports; and
  (vi) repeated exposure to humid and inclement weather on the ground followed by long-range operations at normal cruise altitude.
(2) The flight testing would have to validate the adequacy of the airplane's flying qualities, performance and the flight crew's ability to deal with adverse operating conditions.
(3) The engine-inoperative diversions would have to be evenly distributed among the number of engines in the applicant's flight test program.
(4) The test airplane would have to be operated and maintained using the recommended operations and maintenance manual procedures during the test.
(5) At the completion of the test, the ETOPS Group 1 significant systems would have to undergo an airplane visual inspection and the engines would have to also undergo an internal gas path inspection.

Explanation

The explanation for this proposed paragraph is the same as for proposed paragraph II(b)(7).

III(b)(5) Problem Tracking and Resolution System

This paragraph would require the applicant to establish a problem tracking and resolution system to address problems, as identified in proposed section 21.4(a)(5), encountered on ETOPS significant systems during airplane and engine testing that could affect the safety of ETOPS operations.

Explanation

The explanation for this proposed paragraph is the same as for proposed paragraph II(b)(8).

III(b)(6) Reliability Demonstration Acceptance Criteria

The applicant would have to show that the type and frequency of failures that occur during the airplane flight test program and the airplane demonstration test proposed by paragraph III(b)(4), are consistent with the type and frequency of failures or malfunctions that would be expected to occur on presently certified ETOPS airplanes, or any non-ETOPS derivative models of those aircraft or engines.

Explanation

As discussed above for proposed paragraph II(b)(9), the original ARAC draft did not differentiate between two engine airplanes from airplanes with more than two engines in the applicability of the type and frequency requirement. The ARAC proposal for this paragraph included the added phrase ''or any non-ETOPS derivative models of those airplanes or engines'' for those airplanes and engines that could be included in this comparison of reliability. As we discussed above for proposed paragraph II(b)(9), we have deleted this phrase from the proposed rule for two engine airplanes because an applicant would not necessarily have to do the comparison to previously approved airplanes manufactured by that applicant. We are now proposing to separately state the requirements for airplanes with more than two engines in proposed section III of Appendix L. We have retained this provision in the proposed requirement for airplanes with more than two engines in paragraph III(b)(6) since previous ETOPS experience may not exist on airplanes with more than two engines at the time this proposed rule becomes effective.

III(c) Combined Service Experience and Early ETOPS Method

Explanation

With the exception of any specific propulsion system requirements that are being applied to airplanes with more than two engines as discussed above, the explanation for proposed section III(c) is the same as for proposed section II(c).

Part 33

Global Issues for Part 33

The overall philosophy behind ETOPS type design approval is to build upon the improved reliability observed in today's engines, resulting in an even higher level of reliability for future engine products. However, the FAA recognizes that even with the advances in design and manufacturing technology, loss of thrust control (LOTC), in-flight shutdown (IFSD), or other power loss events will continue to occur. Therefore the overall intent of these ETOPS type design requirements are to minimize the likelihood of an engine power loss during ETOPS operations.

Specifically, the part 33 ETOPS related amendments require the engine manufacturers to use their best design and manufacturing practices, skills and lessons learned in designing and manufacturing the new product. The intent is to eliminate from the design all known ETOPS relevant failures, malfunctions, or design related maintenance errors experienced in their other relevant FAA certified engine models. These failures include but are not limited to loss of thrust control, in-flight shutdown, or other power loss events.

It is important to note that complying with the part 33 ETOPS requirements for certification makes the product ''eligible'' for ETOPS operation only, and in no way implies an approval

separate from the aircraft or operator. Therefore, compliance with these requirements does not constitute an operational or aircraft level approval for ETOPS operations.

Discussion of General Issues in Part 33

ETOPS Engine Testing

A 3,000-cycle test would be required for ETOPS engine eligibility. This test simulates 3,000 flights from engine startup to engine shutdown. A 3,000-cycle test was first required for the early ETOPS approval of two-engine aircraft under an FAA Early ETOPS Special Condition. However, prior to and subsequent to that Special Condition, other aircraft types with new engines, and others with derivative engine types, have successfully demonstrated the requisite level of reliability in service for ETOPS using normal certification procedures. However, the FAA considers that new two-engine airplane-engine combinations intended for immediate ETOPS operations should be required to undergo a cyclic endurance ground test to give confidence that the requisite level of reliability for such operations will be achieved at entry into service.

The technical basis for applying this test to two-engine airplanes rather than all airplanes, is that the allowable IFSD rate needed to maintain safe flight throughout the diversion and landing is an order of magnitude greater for a three or four engine aircraft as compared to a two-engine aircraft (assuming equivalent risk and flight duration). This also assumes that the aircraft can maintain safe flight throughout the diversion and land with one engine inoperative.

The FAA has concluded from a review of in-service experience that the 3,000-cycle engine and propulsion system test provides an adequate opportunity to discover cyclic-related failure modes associated with the design. However this is predicated upon an adequate post-test evaluation to identify conditions that could result in an in-flight shutdown, power loss, or inability to control engine thrust. An FAA review of the data from the 3,000-cycle tests for three new engine types has shown that most of the early in-service engine failure modes could have been discovered using a more thorough teardown inspection and analysis of a 3,000-cycle test engine and propulsion system hardware. This would include evaluating hardware condition against the required lessons learned analysis, and also to evaluate abnormal or other wear or distress conditions not currently addressed in the Instructions for Continued Airworthiness (ICA).

In light of the FAA experience certifying and monitoring the Boeing 777, and in order to provide a consistent standard for post-test evaluation, the FAA proposes to require a complete teardown inspection of the engine hardware after completion of the test. The inspection would include an analysis of any abnormal conditions found. The analysis would consider the possible consequences of similar occurrences in service to determine if they might become sources of engine in-flight shutdowns, power loss, or inability to control engine thrust. The intent of this requirement is to identify potential sources of engine in-flight shutdowns or diversions and prevent these from occurring in the future.

The basic premise behind the engine demonstration tests required by this proposal is that the tests will provide a useful validation of the inherent level of reliability that was the product of an enhanced design and test process. The FAA's expectation for these tests is that significant failures will not occur. The probability of significant failures occurring on a single engine test program is so low that if any do occur, it would be indicative of a design that is not suitable for ETOPS approval. This expectation is addressed in the ''type and frequency'' requirement of the rule.

FAA General Changes to the ARAC Proposal for Part 33

The ARAC ETOPS recommendations for part 33 engine rulemaking addresses the Tasking Statement objectives for part 33 and incorporates the fundamental elements to achieve the Tasking Statement's stated objective. The FAA has concluded that the fundamental elements of the ARAC Recommendations, along with the identified changes, supports achieving the target level of safety and reliability necessary for safe ETOPS operations for engines installed in two-engine aircraft at entry-into-service.

However the FAA has identified a number of areas where the level of detail in the ARAC rule recommendation is not adequate to fully address a fundamental element, or has details that the FAA believes are inappropriate or lacking in adequate detail. Also, for the purpose of clarity, completeness, and terminology usage, and to follow required rule format, the ARAC rule recommendation has been reorganized within part 33.

FAA Changes From the ARAC Part 33 Rule Recommendations

1. Format and Organization

The Rule has been reformatted and reorganized to include all early ETOPS design, lessons learned, and test requirements under one specific rule. The rule number is 33.200, which resides in new part 33 subpart G, Special Requirements. The ARAC recommendations divided the ETOPS requirements between existing § 33.90 Initial Maintenance Inspection (IMI) and a specific ETOPS rule. Section 33.90 retains the provision to utilize the ETOPS testing for compliance purposes. The reorganization is generally as follows:

ARAC recommendation paragraph number	New paragraph number
33.90(a)	Same
33.90(b)	Same
33.90(b)(1)	33.200(c)(1)
33.90(b)(2)	33.200(c)(2)
33.90(b)(3)	33.200(f)
33.100(a)(1)	33.200(a)
33.100(a)(2)	33.200(b)
33.100(b)	33.200(c)/(d)/(e)

2. Revision of the 10-Year Limit on Service Data To Be Reviewed for the Lessons Learned Analysis From Section 33.200(b)

The ARAC proposal for section 33.200(b) limited the assessment of past design problems that have resulted in loss of thrust control, in-flight shutdown, or other power loss to ''the applicant's other relevant type design approvals provided within the past ten years.''

''Ten years'' as used in the rule, is considered to be the time frame relevant to design/manufacture evolving technology for which the applicant must show that problems especially relevant to ETOPS have been addressed in the design for which early ETOPS eligibility is sought. For example, an early 1980's certified engine with a relatively lower level of reliability, would not be appropriate to use the applicant's experience base of lessons learned for compliance with section 33.200(b) for an engine certified in year 2000; a much better experience base would be engines certified from 1990, which as an industry group have very good reliability. The intent is to continuously build upon the improved reliability seen in today's engines into even higher levels of reliability.''

The corresponding part 25 requirement proposed by ARAC does not contain such a time limit on the relevant experience assessment, nor

does the Boeing 777 ETOPS Special Condition, which is the basis for this proposed requirement. The relevant experience assessment that Boeing submitted for compliance with the Special Condition's requirement consisted of data from a ten year time period immediately prior to the B777 design development. The FAA approved this ten-year period at the time because it included three previous major airplane certification programs (Models 757, 767, and 737–300). For the current Model 777–300ER type certification program, the assessment was updated to include the additional relevant experience that has occurred since the original database was developed. Coincidentally, this covers a ten-year time period. However, the FAA cannot draw a conclusion from this experience that a ten-year period will always provide adequate data for all manufacturers that may apply for an early ETOPS approval. Therefore, the FAA has included a provision that the 10-year limit applies if adequate data exists to do the assessment. If the FAA determines that the applicant's other relevant type design approvals provided within the past ten years do not constitute an adequate database, the FAA will determine the extent of additional data required to be included in the relevant experience assessment based on the following factors:

a. The manufacturer's level of experience in certifying engines installed on Transport Category airplanes,

b. Recent experience certifying new engines,

c. Completeness of the manufacturer's design practices/manuals used in the development of new engines, and

d. Any other factors that the manufacturer may want to present to the FAA for consideration.

3. Insertion of the Word ''Independently'' in the Test Section of Section 33.200(c)(2)

The ARAC Recommendation 3,000 cycle test requires all rotors to be unbalanced to 90% of a limit value, however the actual rule text is not specific as to whether each rotor is to be unbalanced independently. The FAA has verified that it was the ARAC's intent that each rotor must be unbalanced independently relative to its individual rotor limit. So the word ''independently'' is inserted to clarify that each individual rotor must be unbalanced to the specified 90% limit value.

4. Addition of Inspection Criteria for Post 3,000 Test [See 33.200(e)(3)(i)(C)]

The ARAC Recommendations specify hardware layout inspections in accordance with the Instructions for Continued Airworthiness (ICA) and the Lessons Learned analysis. The FAA proposes to add a third inspection criteria as follows: ''Inspect in a manner to identify wear or distress conditions which could result in IFSD, LOTC or other power loss, and which are not specifically identified by 33.200(b) or addressed within the current ICA.'' It should be noted that the ARAC Recommendation's AC material discusses such an inspection method and that the recent FAA B777 Special Condition for ETOPS also included a similar inspection requirement.

5. Clarification of an Incomplete Statement Relating to Post-Test Hardware Condition [See § 33.200(e)(3)(ii)]

The ARAC Recommendation contains a requirement that post-test hardware condition be such that no distress is observed that could result in a power loss. However many engine parts if distressed and operated long enough will fail and potentially cause a power loss. As written, distress in many parts could be predicted to result in power loss over an inappropriately long period of operation. Therefore the FAA proposes to define the period of operation to make this judgment as follows; ''* * * within a period of operation before the component, assembly or system would likely have been inspected or functionally tested for integrity while in service''.

6. Revision of Interim Inspection To Be Used for § 33.90 Compliance

The ARAC Recommendations propose to use the 3,000-cycle test for § 33.90 compliance by means of an interim on-wing inspection method. The FAA concurs with the basic on-wing inspection approach. However, the ARAC Recommendations only specify a visual inspection for § 33.90 compliance purposes. This Recommendation does not meet the most basic existing Method of Compliance (MoC) for a § 33.90 inspection. The FAA proposes to revise the ''visual only'' inspection to be an inspection acceptable to the Administrator, and specify an acceptable MoC within the AC. Currently for an on-wing type inspection for § 33.90 compliance, the FAA would accept an inspection that does all of the following:

(1) Full borescope inspection of accessible gas path stages or areas of the fan, compressor, combustor, and turbine modules, to the serviceable limits of the ICA.

(2) For Full Authority Digital Electronic Control (FADEC) equipped engines, observe and interrogate the FADEC system for fault messages and status messages, both current or previously recorded, to the serviceable limits of the ICA.

(3) Inspect all oil system chip detectors and filters for contamination.

(4) Inspect all fuel system filters for contamination.

(5) Test a sample of main engine oil for contaminants that might indicate impending internal failure.

(6) Conduct a complete visual inspection of the inlet, exhaust, and externals, to the serviceable limits of the ICA.

(7) Conduct a power calibration to show that the engine can produce power or thrust within established limits, and is free of surge or stall when operated in accordance with the Operating Instructions.

General pass/fail criteria for the above items is serviceable in accordance with the ICA, unless otherwise approved by the Administrator.

The above method of compliance has been established for conventionally designed engines, and is discussed further in the companion AC. Other inspections or checks, or deletion of non-applicable items may be necessary for new or unconventional designs.

7. Addition of Oil Tank Design Requirement

The FAA is proposing to revise the current requirements of § 33.71(c)(4), which addresses oil tank caps. The proposed revision would incorporate a new ETOPS eligibility design requirement for oil tanks intended to prevent hazardous oil loss in the event of an oil tank cap installation error. The FAA is aware of a number of single and dual engine oil loss events due to oil tank cap installation errors, and is concerned that these types of problems will continue to occur, potentially resulting in an unsafe condition during extended operations. The FAA believes it prudent to address this situation by requiring oil tanks to be designed to accommodate cap installation errors without hazardous oil loss. The proposed rule would not allow compliance by maintenance procedures; the necessary physical features or characteristics must be part of the oil tank design. The rule is intended to protect against hazardous oil loss when oil tank cap installation errors occur.

8. Engine Endurance Test With Vibration

The ARAC Recommendations include a 3,000-cycle endurance test with main rotor unbalance. The Recommendations specify the minimum unbalance as being an ''average value'' of the peak vibration level observed during required vibration surveys. In section 33.200(c)(2)(iv), the term ''average value'' is being replaced by the term ''equivalent value'' to better address the concept of cumulative damage. For example, utilizing an average value could result in less cumulative damage due to vibration then if the 90% requirement was precisely maintained over the test duration. By computing and working to an equivalent value of rotor unbalance, cumulative damage will always be equal to or greater then a test conducted with a steady value of 90% unbalance. The equivalent value is a Miner's rule summation calculation, and is further described in the companion AC.

Section-by-Section Discussion of the Proposal

Proposed New Appendix A, Paragraph A33.3(c), Extended Operations (ETOPS) Requirements

A proposed new Appendix A Paragraph A33.3(c) would define new engine condition monitoring requirements necessary for obtaining ETOPS type design eligibility approval.

Explanation

This section requires inclusion of a power assurance check methodology into the ICA for all engine models requiring ETOPS eligibility. A special requirement exists for engines to be installed in twin-engine aircraft applications, that being the power assurance method must be validated by test or experience.

Proposed Revision to Section 33.71(c)(4)—Oil Tanks

A proposed revision to section 33.71(c)(4) would define new oil tank design requirements necessary for obtaining ETOPS type design eligibility approval.

Explanation

See the explanation in paragraph 7 of this section, above.

Proposed Revision to Section 33.90—Initial Maintenance Inspection (IMI)

A proposed revision of section 33.90 would define requirements for utilizing ETOPS type design eligibility test data obtained during section 33.200 testing for section 33.90 compliance purposes.

Explanation

The fundamental requirements of section 33.90 are unchanged; except for the inclusion of a provision to allow utilization of data obtained under section 33.200 testing to show compliance to section 33.90 IMI.

Proposed New Section 33.200—Early Extended Operations (ETOPS) Eligibility and Test Requirements

A proposed new section 33.200 would define overall requirements for obtaining ETOPS type design eligibility approval.

Explanation

Compliance with this section results in an engine model that is eligible for two-engine ETOPS operation before the service experience required under 14 CFR part 25, Appendix L, Section II, paragraph (a) is achieved. The individual subparagraphs are discussed below:

Sections 33.200(a) and 33.200(b)

These sections require an applicant to establish a design quality process acceptable to the Administrator that will ensure that the type design minimizes the possibility of power loss failure events.

These rule sections require the applicant to use its best design practices, including all its corporate knowledge, skills and lessons learned in the design and manufacture of the engine. The intent is to eliminate from the design all known failures, malfunctions or design related maintenance errors experienced in other relevant FAA certified engines, and that are especially relevant to ETOPS. Such events include loss of thrust control, in-flight shutdown, or other power loss events.

Compliance may be shown by evidence acceptable to the Administrator that the applicant's design quality assurance process has demonstrated the capability to eliminate causes of engine failures, malfunctions, and design related maintenance problems known to have occurred within the applicant's commercial engine experience base. The applicant should also show that the design quality process would preclude the recurrence of that cause in the new design. Also, the design quality process and design features must address all applicable failures, malfunctions, and maintenance problems that could affect ETOPS even if they occurred on taxi, if such an event could have occurred in-flight.

The FAA will determine the extent of data required to be included in the relevant experience assessment based on the following factors:

(1) The manufacturer's level of experience in certifying engines installed on Transport Category airplanes;

(2) Recent experience certifying new engines;

(3) Completeness of the manufacturer's design practices and manuals used in the development of new engines; and

(4) Any other factors that the manufacturer may want to present to the FAA for consideration.

If adequate data exists the time period of consideration will be the prior 10 years of applicant experience.

Section 33.200(c)

The intent of this testing is to simulate in-service operation; and to simulate the extent of time that the engine will operate at maximum continuous power for the longest diversion time in an ETOPS scenario, and at a level of engine vibration that exceeds expected service operation. The test is not intended to duplicate or repeat or replace the endurance test required by section 33.87.

Explanation

This 3,000-cycle test requirement simulates the typical field service operation expected to be encountered in the first 250,000 fleet hours (typically two years of service) and the extent of time that an engine will operate in the event of a diversion at maximum continuous power for the longest diversion time expected. In addition, the test is required to be conducted at a level of vibration for the complete test that exceeds expected service exposure. The new test is an important part of the early ETOPS eligibility determination for both the engine and propulsion system of the airplane. No other type of engine vibration testing can simulate the vibration induced by imbalance of its rotors running through the speed and power ranges experienced in service. The test is required to simulate 3,000 cycles of service operation (typically two years) in a short time span. This test is similar to that conducted for the original certification of the three engine types used on the B777 under the Special Conditions. Those tests were also a combination of engine cyclic endurance with high cycle fatigue (HCF) vibration induced by way of imbalancing the main rotors of the engine.

Section 33.200(d)

The purpose of this test is to establish thrust characteristics, and ensure that

the engine can deliver rated takeoff power or thrust within approved limits prior to the start of the test.

Section 33.200(e)

This section establishes what the required inspections are and what the pass/fail criteria is for section 33.200 compliance. Further detail on a MoC for this section can be found in the companion advisory circular.

Section 33.200(f)

This section establishes the requirements for utilizing paragraph 33.200(c) 3,000-cycle test data to show compliance to section 33.90 Initial Maintenance Inspection. The companion AC provides details of an acceptable MoC.

Part 121

Global Issues for Part 121

FAA General Changes to the ARAC Proposal for Part 121

(1) Section 121.368 Has Become 121.374

The ARAC proposed rule number had to be changed due to other FAA rule writing projects. The content and concepts from the proposal were retained wherever possible within the new rule. Specific format changes and the differences between this proposed rule and the ARAC proposal are discussed in each section below.

Section-by-Section Discussion of the Proposed Changes to Part 121

Proposed New Section 121.7 Definitions and Designations

The FAA proposes to add a new section in part 121 for definitions applicable to ETOPS.

Explanation

Many of the terms used in the proposed regulatory and guidance material for ETOPS under this part are unique to these operations. Requirements and concepts for ETOPS require precise definition to assure common understanding and compliance. Definitions are added for:

Adequate Airport
ETOPS Alternate
ETOPS Area of Operation
ETOPS Dual Maintenance
ETOPS Entry Point
ETOPS Maintenance Significant System
ETOPS Qualified Personnel
Maximum Diversion Time
One Engine Inoperative Cruise Speed (Approved)

The following areas are designated as ETOPS areas by the Administrator in which the planning, operational, and equipage requirements for ETOPS apply. The areas are defined as:

NOPAC
North Pacific
Polar Areas
North Pole
South Pole

Proposed New Section 121.97 (b)(1)(ii) Airports: Required Data

The FAA proposes to clarify the ''public protection'' requirement of section 121.97 to include consideration of facilities available for public safety, protection, and welfare during regular and irregular operations (including diversions to the airport).

Explanation

Airlines must consider passenger facilities when selecting an ETOPS Alternate and in diversion planning. The facilities at an airport or in the immediate area must be sufficient to protect the passengers and crew from the elements and to see to their welfare during the time required to transport them onward.

By definition, ETOPS operations are those with long segments over water or remote areas. Some of these remote areas are affected by severe weather conditions such as, but not limited to, extreme cold or high winds and cold temperatures. Some of the airports that are well positioned for use as enroute alternates are in remote areas. These airports may have only limited or seasonal facilities that could be used to shelter passengers and crew after an unscheduled landing. As ETOPS operations have expanded in scope and extended in length, operations over more remote areas with more extreme weather possibilities have become routine. Northern Canada and the Russian Far East are typical examples. Facilities at some of the airports in those areas have not been maintained because of political, economic and military changes. It cannot be assumed that the passengers and crew of an aircraft will be safe simply because a safe landing can be made at an airport. Therefore, certificate holders are obligated to be aware of the available facilities and satisfy them that there will be adequate facilities to protect the passengers and crew should it be necessary to make an unscheduled landing for any reason.

These are new requirements. The FAA is proposing to add these additional requirements to this regulation because it has learned that not all certificate holders have planned for these contingencies in the past, apparently because the current wording of the regulation did not require them to do so. The FAA believes regulations are needed to prudently insure carriers recognize ''the duty of an air carrier to provide service with the highest possible degree of safety in the public interest * * *'' 49 U.S.C. sec. 44701 (d)(1)(A). The ARAC recommendation included arguments that since ETOPS flights are generally international flights, treaties limit damages for negligence that passengers on international flights may recover from airlines. The ARAC further stated that absent the compelling motivation of unlimited liability for proven damages available to domestic passengers, carrier motivation to avoid findings of negligence may also be lessened somewhat.

Others have pointed out that in the Polar Policy letter the FAA has already included instructions and requirements detailing the treatment of passengers in case of diversions or accidents and the facilities to be made available for them. Further, the addition of passenger related contingencies are based on rules, regulations and International Treaties, which have been and are in the process of being enacted for the protection of passengers well being such as: ''Aviation Disaster Family Assistance Act of 1996'', the DOT/NTSB Task Force Report on Assistance to Families of Aviation Disasters of 1997, Public Law 105–148 of 1997 (105th Congress), ICAO Circular 285–AN166 (33rd Assembly, 2001), European Union Regulation (EG) 2027/97, the ''Convention for the Unification of Certain Rules for International Carriage by Air'' of 1999 and others. Providing for the safety, security, comfort and well being of all of the occupants of an airplane has become especially important on long range flights because of increasing medical consequences. It was also pointed out that ignoring those requirements expose the carriers to increasing liability claims and to loss of business because of passengers' discomfort.

Proposed New Sections 121.99(c) and (d) Communications Facilities

The FAA proposes to add sections 121.99(c) and 121.99(d). Section 121.99(c) would create a baseline ETOPS equipage requirement for flag operations. Section 121.99(d) would create an additional equipage requirement for operations beyond 180-minutes.

Explanation

Under this proposal a certificate holder would have to provide for voice communication between the crew and air traffic services and the crew and the certificate holder wherever and whenever it is available. In areas where voice communication is not possible,

the certificate holder would have to provide a non-voice communication system, such as High Frequency (HF) data link, to ensure communication capability.

Paragraph 121.99(d) would apply on to ETOPS flights planned on greater than 180-minutes and would require the installation of an additional communication system. This communication system would have to be capable of providing immediate satellite based voice communication of land-line telephone-fidelity between the flight crew and air traffic services and between the flight crew and the company. The term ''immediate'' in the context of this section would mean the time period required to connect an ordinary land-line telephone call. The modifiers ''land-line telephone-fidelity'' are included as performance standards to describe the faithful reproduction of sound. The FAA is essentially describing Satellite Communication (SATCOM). At this time, only SATCOM provides this capability and compliance with this proposed rule. The FAA acknowledges that technological innovation may create alternatives to SATCOM or render the system obsolete. Certificate holders would be required to equip airplanes used in ETOPS beyond 180 minutes with SATCOM or other system that offers equivalent or enhanced capability. The FAA notes that the ARAC consolidated these requirements in a single paragraph (c) in their recommendation. The FAA elected to reformat for clarity.

Both paragraphs (c) and (d) would require the certificate holder to consider ''potential routes and altitudes necessary for diversion to ETOPS alternates'' when assessing the availability of voice communication facilities. The ARAC recommended that the FAA amend paragraph 121.99(a) to include the above-quoted language. The FAA has elected not to amend paragraph 121.99(a). Paragraph 121.99(a) is the baseline requirement for all domestic and flag certificate holders operating under part 121. The FAA believes the equipage and communication performance requirements for ETOPS should be separate and distinct from the baseline communication requirement for part 121. Further, the FAA has proposed amending paragraph 121.99(a) in the Area Navigation (RNAV) proposed rulemaking. *See* 67 FR 77326 (December 17, 2002).

The origin of paragraph 121.99(d) is the 207-minute policy letter, which conditioned extension of section 121.161 deviation authority upon the installation SATCOM for operation on those routes. See 65 FR 3520 (January 21, 2000). The purpose of this proposal is to ensure that flight crews have the best communication capability in the event of an extended diversion. During a diversion, crew workload increases considerably. The use of an unwieldy communication system during a diversion would needlessly distract the crew from more important cockpit duties. SATCOM is not available in all regions of the world. In those regions, flight crews must have another means to communicate with the certificate holder and air traffic services.

Proposed New Section 121.106 Required Rescue Fire Fighting Capability at ETOPS Alternate Airports

The FAA proposes to add new section 121.106, requiring a rescue fire fighting capability at an airport designated as an ETOPS alternate.

Explanation

Currently, part 139 does not require any aircraft rescue fire fighting (RFF) capability at airports designated as Takeoff and Destination alternates. Alternate airports are referred to in part 139 but not defined. The common perception of an alternate airport is that it is an airport that is used infrequently, when diversions occur. The original use of the definition was limited to the destination or takeoff airports. There was no specific mention of the en route alternate until Advisory Circular 120–42, Extended Range Operation With Two Engine Airplanes (ETOPS), was issued in 1985. The airport regulations specified in part 139 were first published in 1972 prior to the inception of ETOPS. For these reasons, and as outlined further, we propose new section 121.106 to include the requirement for RFF at an en route alternate airport.

Normally a flight diverts to its destination alternate airport because of poor weather at the destination airport or the aircraft having a low fuel state. In contrast, a diversion to an ETOPS en route alternate is likely attributable to an engine or system failure or medical emergency. Throughout the ETOPS flight the designation of the en route alternate may be revised, with consideration of the designated en route alternate airport maintaining an adequate level of weather and runway conditions to safely land the airplane. At the most critical point of an ETOPS en route diversion there is no other choice as to the diversion airport. It remains necessary to ensure that all the facilities and services are adequate to ensure that a safe landing can be made at the diversion airport in the event that it is necessary to divert. Thus, some have argued that there is an increased importance of a rescue fire fighting service at airports designated as an ETOPS en route alternate. Further, they have argued that establishing such a requirement in the Federal Aviation Regulations is consistent with ICAO Annex 6, Part I, Attachment E, wherein an ''adequate alternate aerodrome'' is defined. The definition includes a list of various facilities and services, including ''rescue and fire fighting'', as being necessary. (An attachment to ICAO Annex is intended as a guide or supplementary material to ICAO Standards and Recommended Practices and as such, is not a requirement.)

The fact that en route diversions have occurred in the past and will continue to occur necessitates evaluation of the facts surrounding those events and the needs they identify. ETOPS operators in the United States (as well as Europe) operating across the North Atlantic have encountered difficulties in being able to designate certain Canadian airports as ETOPS en route alternates due to the reduction of RFF service capability (Canadian airport privatization) and numerous military base closures.

History has shown that in-flight diversions occur for a variety of reasons, other than In-Flight Shutdown (IFSD) of two engine aircraft. Any aircraft conducting extended range operations could experience a critical emergency requiring diversion to an en route alternate airport. Thus, it is proposed by some that a regulation be established to require an en route alternate for all extended range flight operations (aircraft with 2, 3, and 4 engines) because, in such an event requiring a diversion, a simple emergency evacuation in a hostile environment (for example, due to cold temperatures) could be deadly, or in a similar way, a mechanical event requiring a need to land could result in an unanticipated accident, such as a runway overrun and thus become catastrophic. It is further argued by some that these considerations have led to the conclusion that some level of accident mitigation systems should be required for airports designated as en route alternate airports. This accident mitigation protection is provided for at airports designated as origin and destination airports in the regulations of part 121, and the appropriate levels of protection are specified in the airport certification regulations designated as part 139.

Part 139 specifies the level of aircraft Rescue and Fire Fighting (RFF) as a function of aircraft size. This level of protection is deemed the ''Index'' and

specifies the amount of agent for fire extinguishment and the number of vehicles to deliver the agent proportionate to the size of the largest airplane using the airport. In the international Standards of ICAO, the length and width of the aircraft fuselage determines the ''RFF Category''. An allowance for reducing the index/category is provided in the event that the aircraft only uses the airport infrequently *i.e.*, less than 700 movements in the busiest consecutive three months with the airplane in the highest category. This is termed a remission factor. Even though frequency of operations may allow a reduction of service levels by 1 Category, this reduction will no longer be allowed after January 2005 under the ICAO Standards. ICAO RFF category range from 1 to 10. As an example, the ICAO category of RFF 4, which is nearly equivalent to Index A in part 139, provides at least 1 firefighter and 1 vehicle with the ability for immediate fire suppression or ground assistance to occupants.

Contradicting the arguments of those who support RFF at enroute alternates, some have stated that based on the last sixteen years of ETOPS operations with well over 2.5 million ETOPS flights around the world, there is no record of a single incident where a twin on an ETOPS phase of flight with a mechanical event diverted to an ETOPS alternate and the landing resulted in an unanticipated accident, such as a runway overrun and thus became catastrophic, and required the RFF services. It was further argued that the probability of an ETOPS flight diverting on the ETOPS portion of the flight, landing at an ETOPS alternate, resulting in an accident or a catastrophic situation is very remote, and need not be considered. However, some have pointed out that the fact that an event has not happened does not mean it will never happen, and industry needs to be proactive and provide a level of safety as a margin, should the situation arise.

Some have pointed out that requiring high levels of RFF protection for the enroute alternate airports would either severely limit the selection of diversion airports necessitating longer divert times, or demand the communities supporting these enroute alternate airports increase their level of emergency service beyond that currently available. However, it can be argued that for airplanes on long diversions a pad may need to be built in so that a minimum level of RFF capability is assured at the time of landing.

Even though currently not required by part 139, the FAA considers it very desirable to have some minimum level of RFF protection at the ETOPS alternates. Taking into account the various opinions expressed in the ARAC recommendations, the FAA proposes to establish a minimum RFF of 4 for ETOPS operations below 180 minutes, and a minimum RFF of 7 for diversion times greater than 180 minutes. This reflects the RFF requirements stated in FAA Order 8400.10, Flight Standards Handbook Bulletins for Air Transportation, HBAT 99–15 titled Level of Rescue and Fire Fighting Services (RFFS) for ETOPS En Route Alternates, and the 207-Minute ETOPS Policy.

Similar to the allowance contained in HBAT 99–15, the proposed regulation allows for an off airport response time of thirty minutes, however, the required equipment must be available on-scene for the arrival of the diverting airplane and should remain for as long as their services are needed. In contrast to a destination or departure airport, the diversion airport has time to muster community emergency service assets to provide the necessary emergency response following notification of the aircraft diversion. This provision for the use of off-airport emergency services necessitates that a robust communications link must be established in order to provide sufficient time to muster the necessary RFF personnel and equipment. Further, local community emergency services support of required RFF response in providing equipment and personnel is considered prudent.

In all cases the certificate holder must ensure that the flight crews are provided current information (in plain language) concerning the RFF capability for those airports designated as alternate airports

Proposed New Section 121.122 Communication Facilities

The FAA proposes to add a communication facilities requirement for supplemental operators. This section would mirror section 121.99, which applies to flag and domestic operators.

Explanation

The FAA believes it is necessary to create comparable communication requirement for supplemental operators to ensure consistency among part 121 operations. To this end, the FAA proposes communication requirements similar to those in section 121.99. For example, paragraph 121.122(a) is based on the existing paragraph 121.99(a), which is the basic communication requirement for domestic and flag operators. Similarly paragraphs 121.122(b) and (c) are based on the proposed sections 121.99(c) and (d) respectively which would establish communication requirements for ETOPS. See discussion above for 121.99(c) and (d) for the rationale of ETOPS communication requirements.

Proposed New Paragraph 121.135(b)(10) Contents

Add a new 14 CFR 121.135(b)(10) to require performance data to support ETOPS.

Explanation

The FAA proposes to insert a new requirement for performance data in the manual required by this section to support ETOPS as paragraph (b)(10), and to renumber existing paragraphs 121.135(b)(10) through (24) to new paragraphs 121.135(b)(11) through (25). Since ETOPS are conducted under a special authorization, there is an additional performance data requirement to support these operations. The flight crew and dispatchers should have available the engine inoperative and cabin depressurization cruise data used by the certificate holder to plan flights and operate under ETOPS.

Proposed New Paragraph 121.135(b)(26) Contents (New)

Add paragraph 121.135(b)(26) to require a passenger recovery plan for flag and supplemental operations in the certificate holder's manual.

Explanation

The FAA proposes to add paragraph 121.135(b)(24) to require a passenger recovery plan for flag and supplemental operations in the certificate holder's manual. The FAA introduced the requirement for an airline to develop and maintain a passenger recovery plan for flights authorized in the North Pole area of operation by policy letter in March 2001.

It is incumbent that a carrier account for contingencies when diversions occur to airports not normally served by the carrier. When a diversion occurs in an area where the carrier has a substantial operational infrastructure, (that is, a carrier serves many destinations in Europe but is forced by operational circumstances to divert to an airport not served by the carrier but within the region) that diversion plan becomes a simple matter of describing how the carrier's assets within the region can supply immediate logistical support to the diversion aircraft. This can be called a regional passenger recovery plan applicable to a stated geographical area.

However, a carrier with an extensive route system extending over remote areas has a responsibility to devise a

plan of substance to recover the passengers, crew, and aircraft in the event of a diversion within a remote area. The plan should be of sufficient detail to demonstrate that the recovery operation can be readily affected, and the basic needs of the diverted customers and crew can be provided for in the interim.

The certificate holder must demonstrate that a regional plan is robust enough to handle diversion scenarios within that region by showing the effectiveness and adequacy of communications; coordination; facilities; accuracy of NOTAM and weather information; and operability of support ground equipment. The recovery plan should also address the care and safety of passengers and crew at the diversion airport, and include the plan of operation to extract the passengers and crew from that airport. The certificate holder must maintain the accuracy and completeness of its recovery plan as part of its annual audit.

Proposed Change to Section 121.161 Airplane Limitations: Type of Route

The FAA proposes to revise section 121.161(a) to create ETOPS route authority within the regulations and to move away from ETOPS conducted under the Administrator's deviation authority.

Explanation

As discussed earlier in this proposal, deviation from section 121.161(a) has been the regulatory basis of ETOPS since its inception. The FAA issued AC 120–42 and AC 120–42A to provide guidance for carriers seeking to conduct ETOPS. However as ETOPS evolved from an exceptional kind of operation to a prevalent kind of operation, the need for amending paragraph 121.161(a) has become became apparent. The proposed paragraph 121.161(a) would describe when and where the requirements of ETOPS would apply and furthermore would contain a pointer to the new Appendix O. Appendix O would contain the approval requirements for the different ETOPS time thresholds and ETOPS areas of applicability. ETOPS would no longer be conducted under the Administrator's deviation authority under this proposal but would have a distinct regulatory basis.

The FAA proposes to add a new paragraph 121.161(d) that would limit operations of reciprocating engine powered airplanes to routes no more than 60 minutes away from an adequate airport at single-engine inoperative speed in still air and standard conditions. This new section would have language allowing the Administrator to grant deviations. The FAA believes that, although not possible at present, reciprocating engines may someday achieve the reliability necessary for operations beyond 60 minutes.

Proposed New Section 121.374 ETOPS Maintenance Requirements

(1) Format changes

ARAC proposal	NPRM draft
121.368 ETOPS Maintenance	121.374 ETOPS Maintenance Elements.
(a) CMP	(a) CMP.
(b) Initial maintenance and training procedures	(b) CAMP. (g) Maintenance training.
(c)(1) CMP requirements	Deleted.
(c)(2) Pre-departure service check	(b)(1) Pre-departure service check.
(c)(3) Verification procedures	(b)(3) Verification program.
(c)(4) Preclude dual maintenance	(b)(2)(i) Preclude dual maintenance.
(c)(5) Procedures if dual maintenance cannot be avoided	(b)(2)(ii) Procedures if dual maintenance cannot be avoided.
(c)(6) APU in-flight start program	(f) APU in-flight start program.
(d) Centralized maintenance control	(b)(5) Centralized maintenance control.
(e) Changes to maintenance and training procedures	(h) Procedural changes.
(f) ETOPS task identification	(b)(4) ETOPS task identification.
(g) ETOPS document	(b)(6) ETOPS document.
(h) ETOPS parts control	(b)(7) ETOPS parts control.
(i) ETOPS reliability program	(b)(8) ETOPS reliability program.
None	(b)(8)(i) Reporting requirements.
(j) Investigate each IFSD	(b)(8)(ii) Investigation requirements.
(j) Also contained IFSD rates	(c) Propulsion system monitoring.
(k) Engine condition monitoring	(d) Engine condition monitoring.
(l) Oil consumption program	(e) Oil consumption monitoring.
(m) APU in-flight start program	(f) APU in-flight start program.

Explanation

A crucial element of ETOPS is a robust maintenance program that complements the standard airplane-engine maintenance program. ETOPS maintenance practices are designed to preclude and protect diversions through closely controlled procedures such as engine condition monitoring, oil consumption monitoring, the aggressive resolution of reliability issues, and procedures to reduce the risks of human error during maintenance of airplane systems and engines. For the past 18 years, AC 120–42 and AC 120–42A have provided guidance describing the specialized maintenance requirements necessary for ETOPS. The FAA proposes to codify the guidance from the AC. These requirements would apply to all airplanes used in ETOPS regardless of the number of the engines installed.

This proposal would require operators to develop an ETOPS maintenance program that addresses or incorporates the following elements:

(a) Configuration, Maintenance, and Procedures (CMP) Compliance

Each certificate holder would have to establish a system to ensure compliance with the CMP. The importance of the CMP is discussed more fully above in the General Discussion of the Proposal.

(b) Continuous Airworthiness Maintenance Program (CAMP)

A CAMP is a comprehensive oversight program to ensure the continuing airworthiness of an airplane. A CAMP includes but is not limited to maintenance tasks, inspection tasks, auditing requirements, and data analysis. CAMP is required by part 121 Subpart L. The proposed regulation would expand the scope of the CAMP for ETOPS operators to encompass issues unique to ETOPS. The following are considered basic additional

elements of a CAMP for an ETOPS operator:

(1) ETOPS Pre-Departure Service Check

The pre-departure service check is designed to ensure that ETOPS significant systems will perform their intended function throughout the flight. An ETOPS pre-departure service check would have to verify the status of ETOPS significant systems. Some certificate holders conducting ETOPS flights have elected to add other items to their check as a result of operational experience and knowledge gained from their reliability programs. Regardless of any additional items an operator may add to a check, the focal point of this check must be inspection, servicing, and maintenance of ETOPS significant systems.

(2) Dual Maintenance

Dual maintenance is a concept relating to repetition of maintenance errors on redundant systems. There have been instances of a single mechanic repeating a maintenance error on multiple systems. An example of dual maintenance error is failing to install o-rings on engine oil or fuel components on multiple engines. Establishing procedures to avoid dual maintenance can minimize the probability of such errors. The use of two or more mechanics reduces the risk of this type of error. Routine tasks on multiple similar elements, such as oil and fuel filter changes, should never be scheduled and assigned on the same maintenance visit.

However, the FAA is aware that under some limited circumstances, dual maintenance may be unavoidable. For instance, a pilot's report of a discrepancy on an ETOPS significant system may require maintenance on one engine at the same time as a scheduled maintenance event for the other engine. In such cases, the certificate holder must establish and follow procedures to mitigate the risk of a common cause human error.

(3) Verification Program

The verification program ensures the effectiveness of ETOPS maintenance actions. Verification programs are designed to identify any potential problems and may consist of ground tests, flight tests, use of built in test equipment (BITE), and other tests as appropriate. Verification action must be accomplished following corrective action to an ETOPS significant system, primary system failure, IFSD or in response to significant adverse trends. The certificate holder must establish procedures to clearly indicate who is going to initiate the action and what verification action is necessary. A verification flight may be performed in combination with an ETOPS revenue flight, provided the verification phase is documented as satisfactorily completed upon reaching the ETOPS entry point.

(4) Task Identification

ETOPS maintenance programs include numerous tasks that are critical to ETOPS. Under this proposal, the certificate holder would have to identify specific tasks that must be accomplished by ETOPS qualified personnel. These ETOPS-specific tasks are performed during all phases of maintenance. On the other hand, some tasks in an ETOPS maintenance program are identical to tasks on a non-ETOPS airplane. The FAA realizes that tasks, such as checking seat belts prior to a flight, do not involve ETOPS significant systems and may be performed by non-ETOPS qualified personnel. ETOPS specific tasks would either be identified on the certificate holder's routine work forms and related instructions or parceled together and identified as an ''ETOPS package.''

(5) Centralized Maintenance Control Procedures

The certificate holder would have to develop and clearly define in their program ETOPS related procedures, duties, and responsibilities, such as the involvement of centralized maintenance control. The function of centralized maintenance control is to be a focal point for operational aspects of ETOPS maintenance and to ensure that ETOPS aircraft are airworthy. Procedures and centralized control processes would be established which would preclude an airplane being dispatched for ETOPS flights after a propulsion system shut-down, significant primary airframe system failure, or significant adverse trends in system performance without appropriate corrective action having been taken. Confirmation of corrective maintenance would require appropriate verification action prior to an ETOPS flight. Depending on the size and scope of the ETOPS operation, the maintenance control entity could be an entire department or one ETOPS-qualified individual for a small operation. ''Centralized maintenance control'' is also referred to as ''technical services center'', ''maintenance operations control (MOC)'', and ''maintenance coordination center'' among other terms within industry.

(6) ETOPS Program Document

The certificate holder would have to develop a document that identifies all ETOPS requirements, including supportive programs, procedures, duties, and responsibilities. The ETOPS program document would be for use by personnel involved in ETOPS and would be readily accessible to those personnel. This document need not be inclusive but should at least reference the maintenance program and other requirements, and clearly indicate where they are located in the certificate holder's document system. The ETOPS program document would have to be submitted to the CHDO for approval at least 60 days before beginning ETOPS flights and be subject to revision control.

(7) ETOPS Parts Control

Under this proposal, the certificate holder would have to develop a parts control program that ensures the proper parts and configurations are maintained for ETOPS airplanes. The program would have to include procedures to verify that the parts installed on ETOPS airplanes during parts borrowing or pooling arrangements, as well as those parts used after repair or overhaul, maintains the necessary ETOPS configuration. In many cases, certificate holders utilize the Illustrated Parts Catalog (IPC) as the ETOPS parts controlling document. However, other methods may be used provided that the configuration standard of the airplane and engine is maintained.

(8) Reliability Program

The certificate holder would have to develop an ETOPS Reliability Program or the certificate holder's existing Reliability Program would have to be supplemented. This program should be designed to identify and prevent ETOPS related problems. The program would be event-oriented and incorporate reporting procedures for critical events detrimental to ETOPS flights. For those certificate holders that do not have a FAA approved reliability program, their Continuing Analysis and Surveillance (CAS) would have to be enhanced to achieve ETOPS reliability goals. Reliability data would have to be readily available for use by the certificate holder and the FAA to ensure that an acceptable level of reliability is achieved and maintained.

The reporting requirements differ from the ARAC recommendation. The ARAC proposal indicated that the reporting requirements for ETOPS would be satisfied through reporting required by sections 121.363, 121.703, 121.704 and 121.705. Due to other FAA rulemaking activity to amend sections 121.703 and 121.704, the reporting requirements of 121.703 and 121.704

would not apply in the manner as understood by the Working Group. In order to adjust for these changes, the FAA proposes to codify the existing list of reportable events from Advisory Circular 120–42A.

(1) The following are in addition to the reporting requirements in section 121.703 and would include:

(a) In-flight shutdowns.

(b) Diversions or turnback.

(c) Uncommanded power changes or surges.

(d) Inability to control the engine or obtain desired power.

(e) Problems with systems critical to ETOPS.

(f) Any other event detrimental to ETOPS.

(2) Certificate holders would also be required to furnish the following information:

(a) Airplane identification (type and N-number).

(b) Engine identification (make and serial number).

(c) Total time, cycles and time since last shop visit.

(d) For systems, time since overhaul or last inspection of the discrepant unit.

(e) Phase of flight.

(f) Corrective action.

This proposed regulation would require certificate holders to conduct an investigation into the cause of the occurrence of any event listed above in addition to any event described in section 121.703. The certificate holder would have to submit findings and description of corrective action taken to the CHDO. The FAA expects certificate holders to investigate events above in conjunction with manufacturers. The report must be submitted in the manner prescribed by section 121.703(e).

(c) Propulsion System Monitoring

Propulsion system monitoring is vital to ensure safe ETOPS flights. A propulsion system-monitoring program is intended to detect adverse trends, to identify potential problems, and to establish criteria for when corrective action may be necessary. Propulsion system problems and IFSD may be caused by type design deficiencies, ineffective maintenance, or operational procedures. It is very important to identify the root cause of events so that corrective action may be determined. The diverse causes of propulsion system problems require different solutions. For example, type design problems may affect an entire fleet of aircraft. If an individual certificate holder experiences a problem caused by a type design issue, it may not be appropriate for the FAA to withdraw ETOPS authority. Fundamental design problems that require an effective hardware (or software) final fix will normally be corrected by an FAA Airworthiness Directive. Inspections may be satisfactory as an interim solution but long-term design solutions are required for terminating action. However, maintenance or operational problems may be wholly, or partially, the responsibility of the certificate holder. In these cases, the cause would be specific to that certificate holder and may require changes to their operational, dispatch or maintenance procedures. Propulsion system monitoring should be used to ensure that airplane and engine reliability stay within approximate IFSD rates as described in the proposed regulation.

(d) Engine Condition Monitoring

The certificate holder would have to monitor the condition of engines on ETOPS airplanes. The monitoring program would describe the engine performance parameters to be tracked, method of data collection, analysis, and corrective action processes. It would detect deterioration in engine performance by tracking parameters such as rotor speeds, exhaust gas temperatures, and fuel flow and to allow for corrective action before safe operation is affected. The program should reflect the manufacturer's instructions and industry practices. Engine limit margins must be maintained so that prolonged engine inoperative diversions may be conducted without exceeding approved engine limits at all approved power levels and expected environmental conditions. Engine margins are maintained through this program to account for the effects of additional engine loading demands such as electrical and pneumatic systems that may be required during a diversion. If oil analysis such as Spectrographic Oil Analysis Program (SOAP) would be relevant, it should be included.

(e) Oil Consumption Monitoring

The certificate holder would have to establish an engine oil consumption monitoring program to ensure that there is enough oil to complete any ETOPS flight. The certificate holder's consumption limit would not be allowed to exceed the manufacturer's recommendations, and would have to be sensitive to oil consumption trends. The program would have to track the amount of oil added at the departing ETOPS station with reference to the running average consumption. The monitoring must be continuous up to and including the oil added at the ETOPS departure station. For example, after servicing, the oil consumption may be calculated by maintenance personnel as part of the pre-departure check or may be automatically calculated by the certificate holder's computer software program. The amount of oil added could also be reported to centralized maintenance control for calculation prior to the ETOPS flight. If an Auxiliary Power Unit (APU) is required for ETOPS, then its oil consumption for the APU must be included in the program.

(f) APU In-Flight Start Program

If APU in-flight start capability is required for ETOPS, the certificate holder would be required to establish an in flight start and run monitoring program. The primary function of an APU is to provide backup electrical power in the event of a main system failure such as engine in-flight shut down or generator loss. This program would have to ensure that the APU in-flight start capability would continue at a level of performance and reliability established by the manufacturer or the FAA. The program would have to be acceptable to the Administrator and include periodic sampling of each ETOPS airplane's APU in-flight starting capabilities. Certificate holders with existing approved programs may continue under that authority under this proposal. Sampling intervals may be adjusted according to system performance and fleet maturity. The Advisory Circular accompanying this proposal contains guidance for APU reliability and performance assessment.

(g) Maintenance Training

The certificate holder would have to develop additional ETOPS specific training that focuses on the special nature of ETOPS and is required for all personnel involved in ETOPS. This training would be in addition to the certificate holder's accepted maintenance training program to qualify individuals for specific airplane and engines. This program may be incorporated into the accepted maintenance training curricula. The certificate holder would have to review the entire maintenance-training program with the CHDO to ensure that it adequately supports ETOPS training requirements. The goal of this program is to ensure that all personnel involved in ETOPS are provided the necessary training so that the ETOPS maintenance requirements are properly accomplished.

The program must establish a system to qualify ETOPS maintenance personnel. ETOPS qualified maintenance personnel are those who

have successfully completed the certificate holder's ETOPS training program and who have satisfactorily performed extended range tasks under the direct supervision of an FAA certificated maintenance person who has had previous experience with maintaining the particular make and model aircraft being utilized under the certificate holder's maintenance program. For new aircraft introduction, the previous experience for training can be obtained from the manufacturers training program.

(h) Procedural Changes

Following approval of the maintenance and training procedures established to qualify for ETOPS; substantial changes to those procedures must be submitted to the Certificate Holding District Office (CHDO) and approved before they may be adopted. The determination of what constitutes substantial changes should be negotiated between the certificate holder and the CHDO. This is to allow some flexibility depending on the certificate holder's ETOPS experience and performance history. The CHDO may require submission of all changes for a new ETOPS operator or for an operator experiencing difficulties. However, as experience is gained the CHDO may reevaluate what changes it needs to approve.

Continuing Surveillance

As with all other operations, the CHDO may also monitor all aspects of the ETOPS operations it has authorized, to ensure that the levels of reliability achieved in ETOPS operations remain at acceptable levels, and that the operation continues to be conducted safely. In the event that an acceptable level of reliability is not maintained, if significant adverse trends exists, or if critical deficiencies are detected in the type design or in the conduct of ETOPS operations, the CHDO may initiate a special evaluation, impose operational restrictions, and ensure the operator adopts corrective actions in order to resolve the problems in a timely manner. The CHDO should alert the appropriate FAA Aircraft Certification Office and Aircraft Evaluation Group when problems associated with airplane design or operations are identified.

Proposed New Paragraph 121.415(a)(4) Crewmember and Dispatcher Training Requirements

The FAA proposes to add a new requirement to train crewmembers and dispatchers in their roles and responsibilities in the certificate holder's passenger recovery plan to the certificate holder's approved training program.

Explanation

Crewmember and dispatcher involvement in seeing to the welfare of passengers following a diversion often is an important factor in the success of post diversion passenger handling. With ETOPS and the possibility of diversion to a remote foreign airport with reduced services and facilities available for passenger welfare, it is increasingly important that the certificate holder have a passenger recovery plan and that crew members and dispatchers understand their role in that plan. Current regulations do not require training for crewmembers or dispatchers in their role in a certificate holder's passenger recovery plan. The role of the crewmembers and dispatchers must be defined and the training program tailored around those defined roles.

Proposed Change to Paragraph 121.565(a) Engine Inoperative: Landing; Reporting Below

Explanation

The FAA proposes a minor revision to paragraph 121.565(a) to delete the reference to stopping the rotation of an engine, which applies only to propeller driven airplanes. This is to be replaced with terminology * * * ''whenever an engine is shut down * * *'' that applies to all reciprocating engines and turbine powered engines.

Proposed New Section 121.624 Dispatch Requirements for an ETOPS Alternate Airport

The FAA proposes to add a regulation, which specifies the dispatch requirements for an ETOPS alternate, and the requirements for a valid ETOPS alternate after takeoff.

Explanation

Most airplanes operate in an environment where there is usually a choice of diversion airports available within a close proximity to the route of flight. The available airports usually have significant infrastructure and facilities for routine handling of aircraft, crews, and passengers. An airplane conducting ETOPS may have only one alternate within a range dictated by the endurance of a particular airframe system (for example, cargo fire suppressant) and therefore the approved maximum diversion time for that route. Additionally, the alternates may be isolated and less completely equipped to deal with passenger aircraft. Therefore, it is important that any airport designated as an ETOPS alternate has the capabilities, services and facilities to safely support the airplane and its passengers and crew during the diversion.

A regulatory requirement for an ETOPS alternate meets a prudent planning requirement for an en route diversion alternative for all long-range aircraft in the event of an engine failure, an airplane system failure or a serious passenger problem. A new regulation is required to specify the dispatch and en route requirements for ETOPS alternates. In addition, past experience in ETOPS operations of twin-engine aircraft with en route diversions for reasons other than engine failure justify the imposition of a requirement to designate en route alternate for all long-range operations with airplanes with two or more engines. The additional operational challenges of these routes are equally demanding of all airplanes, regardless of the number of engines, and include such issues as extremes in terrain and meteorology, as well as limited navigation and communications infrastructure.

At dispatch, an enroute alternate must meet the alternate weather requirements specified in the certificate holder's operations specifications. Due to the natural variability of weather conditions with time, as well as the need to determine the suitability of a particular enroute alternate prior to departure, such requirements are higher than the weather minimums required to initiate an instrument approach. This is necessary to assure that the instrument approach can be conducted safely if the flight must divert to an alternate airport. The visual reference necessary to safely complete an approach and landing is determined, among other things, by the accuracy with which the airplane can be controlled along the approach path by reference to instruments and the accuracy of the ground-based instrument aids, as well as the tasks the pilot is required to accomplish to maneuver the airplane so as to complete the landing. For these reasons the weather minima for non-precision approaches are generally higher than for precision approaches.

The weather conditions at the time of arrival should provide a high assurance that adequate visual references are available upon arrival at decision height (DH) or minimum descent altitude (MDA), and the surface wind conditions and corresponding runway surface conditions must be within acceptable limits to permit the approach and landing to be safely completed with an engine and/or systems inoperative.

The proposed section (d) would require operators to designate only those airports as ETOPS alternates that

adequately protect the passengers and crew from the elements and see to their welfare.

Proposed Change to Section 121.625 Alternate Airport Weather Minimums

Explanation

The purpose of the proposed amendment to section 121.625 is to clarify the intent of this regulation as being applicable to destination and takeoff alternates only and not to ETOPS alternates requirements. ETOPS alternate requirements are the subject of proposed new regulation, section 121.624 ETOPS Alternates.

Proposed Change to Section 121.631 Original Dispatch or Flight Release, Redispatch or Amendment of Dispatch or Flight Release

The FAA proposes to modify section 121.631 to specify weather requirements for ETOPS alternates while a flight is en route and the availability of the option to amend the dispatch or flight release to add another ETOPS alternate if a required ETOPS alternate becomes unavailable.

Explanation

The FAA proposes to modify section 121.631 to address weather conditions required at designated ETOPS alternates while a flight is en route. This regulation is consistent with the standards and practices of AC 120–42A, the advisory circular that provided guidance for ETOPS since 1985.

The proposed regulation also specifies the action required of the pilot in command and, in the case of flag operations, the dispatcher, in the event a required, designated alternate becomes unavailable and no other qualifying airport is available. In that event, the flight may not continue as an ETOPS flight unless another track that qualifies is available. The FAA recognizes that this may sometimes cause disruptions in scheduled operations and anticipates that carriers will adjust the enroute alternate weather minimums upward on routes on which this becomes more than a very infrequent problem.

Proposed New Section 121.633 Planned ETOPS Diversion Time Limitations

The FAA proposes to add new regulation section 121.633 to require that planned ETOPS diversion times not exceed the time limit specified in the Airplane Flight Manual (AFM) for the airplanes most time-limited system minus 15 minutes. For airplanes with more than two engines and type certificated before the effective date of this regulation, the effective date for compliance with paragraph 121.633(b) is proposed to be not later than six years following the date on which this rule becomes effective.

Explanation

Section 121.633 has been developed to codify the two-engine airplane operating practices with regard to diversion time and time critical systems and to expand those regulations to include airplanes with more than two engines in long-range operations.

The premise of ETOPS has been to preclude a diversion and, if it were to occur, to have programs in place that protect the diversion. Under this concept, propulsion systems are designed and tested to assure an acceptable level of in-flight shutdown; other airplane systems are designed and tested to ensure their reliability. However, despite the best design/testing, and maintenance practices, situations have occurred which required an airplane to divert. In-service data has also shown that all airplanes, regardless of the number of engines, divert from time to time for various causes. Airplanes with more than two engines currently are operated in areas where there are a limited number of enroute airports, where the support infrastructure is marginal or with challenging weather conditions. All such operations should adopt the same 'preclude and protect' concept.

Under the 'preclude and protect' concept, various failure scenarios need to be considered. For example, during the design of the airplane, time limited systems such as cargo compartment fire suppression/containment capability are considered. The fuel planning process accounts for the possibility of decompression and/or the failure of an engine with considerations for icing.

If airplanes with more than two engines plan to operate in areas where en route airports are farther than 180 minutes or in north polar areas where weather conditions can be challenging at certain times of the year, these operations should be required to meet the standards to ensure that all efforts are made to preclude a diversion and, if a diversion were to occur, procedures are in place to protect that diversion. This would include systems capability to protect the aircraft and its occupants during the entire length of the diversion. As such, for ETOPS operations less than 180 minutes the one engine inoperative cruise speed maximum diversion time to any ETOPS alternate may not exceed the time specified in the Airplane Flight Manual (AFM) for the airplane's most time-limited system, minus 15 minutes. The 15 minutes allows time for approach and landing. The cruise speed is calculated as if in still air under standard temperature conditions.

In ETOPS operations wind becomes an increasingly significant factor with increasing diversion times and should be considered in ETOPS operations beyond 180 minutes to assure that AFM system time limits are not exceeded. For example, while diverting with an engine inoperative, it is essential to ensure that there is sufficient amount of oil in the tank for continuous operation of the remaining engines at Maximum Continuous Thrust for the actual duration of divert. As a result, for ETOPS operations with approved diversion times greater than 180 minutes the one engine inoperative cruise speed (approved) maximum diversion time is calculated by taking into account forecast wind and temperature. The maximum diversion time may not exceed the time specified in the airplane flight manual for the airplane's most time-limited system, minus 15 minutes for approach and landing.

However, there are some other time limited systems, like cargo fire suppression, which may not have as much relevance to the one engine inoperative diversion time. The FAA believes that the likelihood of an engine failure at the critical point followed by cargo fire to be extremely remote. Thus ETOPS beyond 180 minutes, cargo fire suppression requirement would be based on covering the diversion distance authorized (maximum diversion time authorized at the approved one engine inoperative speed) at the all engine operating speed. It has already been stated that for ETOPS operations beyond 180 minutes wind becomes an increasingly significant factor with increasing diversion times and should be considered. Therefore this proposed rule requires that for ETOPS beyond 180 minutes, cargo fire suppression time required be based on the airplane operating at all engine operating speed with actual wind. For ETOPS at or below 180 min, there is precedent in AC 120–42, for cargo fire suppression for the maximum diversion time based on one engine inoperative speed. This proposal would codify that practice. The cargo fire suppression time in all cases shall also include 15 minutes allowance for holding, approach and landing.

During development of their recommendation the ARAC ETOPS Working Group had much discussion regarding aircraft utilized in long haul operations. Some three and four-engine airplanes routinely operate on routes with diversion times that exceed aircraft

system capabilities such as cargo fire suppression. The FAA believes equivalent cargo fire suppression capabilities should exist among the entire fleet of airplanes conducting ETOPS. The proposed regulation would require the modification of those airplanes. The FAA recognizes that a transition period to gain full compliance with the proposed rule is necessary for the industry. The FAA finds that these modifications can be accomplished within the scheduled maintenance D check cycle (6 years) based on ARAC recommendations. This proposal would grant the operator sufficient time to adequately plan for and incorporate necessary modifications in the 6-year time frame proposed.

The FAA recognizes this proposal would allow three and four engine airplanes to continue to operate on routes with diversion times up to and including 180 minutes without having to update time-limited system capabilities. The FAA seeks comment on how it should address this discrepancy in the future.

Proposed New Section 121.646 Fuel Supply Required Following Depressurization

We propose to add a new rule, section 121.646, to specify the fuel supply required following depressurization. Current regulations contain no requirement for a fuel supply sufficient to reach an en route diversion airport.

Explanation

ICAO Annex 6, Part I, section 4.3.6.4(d) requires consideration of additional fuel in the event of loss of pressurization. Fuel consumption increases considerably at the lower altitudes flown following a loss of pressurization. Although section 121.329 requires descent following cabin depressurization ''to an altitude that will allow successful termination of the flight,'' there is no explicit requirement in part 121 for a fuel supply in the event of cabin depressurization to assure a safe landing. It should be noted that an interpretation can be made that fuel to provide for cabin pressurization is required because of the requirement of section 121.329.

Both AC 120–42 and 120–42A considered the fuel supply required at the most critical point in the ETOPS area of operation in the event of the cabin depressurization, and also considered the possibility of a simultaneous failure of an engine. As the probability of depressurization is comparable between two, three, and four-engine airplanes, the proposed section 121.646 would retain the AC conditions for fuel supply to an ETOPS alternate in the event of cabin depressurization for all ETOPS operations.

For airplanes with more than two engines the section 121.329 implied fuel supply requirement becomes a proposed regulatory requirement. Paragraph 121.646(a) applies to operations more than 90 minutes (with all engines operating at cruising power) and less than 180 minutes (at the approved one engine inoperative cruise speed) from an adequate airport, while the requirements in paragraph 121.646(b) apply for operations greater than 180 minutes (at the approved one engine inoperative cruise speed) from an adequate airport.

Further, the AC required consideration of fuel for icing at the cabin depressurization cruise altitude and consideration of errors in wind forecasting. Studies done by the Atmospheric Environment Service of Canada with the assistance of airplane manufacturers under the second Canadian Atlantic Storms Program (CASP II) confirm that the probability of a continuous or repetitive significant icing encounter is very small on a long flight segment. The airspeeds associated with cruise at cabin depressurization altitude are not conducive to ice build-up. Moreover, pilots can avoid icing with minor changes in altitude or by changing the cruise speed, either of which can have a large effect on ice accretion. Based on the CASP II study, considering the probability of encountering depressurization at the critical point and icing on the same flight, an argument was made that fuel for icing in addition to fuel for depressurization is not deemed necessary. However, as a conservative measure, paragraph 121.646(b)(C)(iv) requires fuel to compensate for the greater of the effect of airframe icing (including the fuel used by engine and wing anti-ice during this period) during 10 percent of the time for which icing is forecast, or a combination of fuel for engine anti-ice, and for some models of airplanes based on their characteristics and the manufacturer's recommended procedures fuel for wing anti-ice for the time during which icing is forecast.

Based on the weather forecasting techniques of the early 1980s, the AC required a five percent fuel pad to account for wind forecast errors. However, winds aloft forecasting has improved dramatically in the last twenty years as a result of the following:

- The sophistication of wind forecast models have experienced a quantum improvement. These models provide forecasts based on a wider range of inputs and more accurate extrapolation throughout the altitude profile.
- Wind forecasting responsibilities have been assigned to computers with vastly increased capacity, capability, and speed.
- The flow of input data has significantly increased; largely as a result of systems that automatically downlink weather information at much more frequent intervals. Additionally, weather is measured on a worldwide grid of collection points. This grid has nearly four times the collection points compared to the grid used previously.
- Information gleaned from satellite downlinks and satellite depictions of air mass movement are added to the data stream, not only to fine tune forecasting at frequently flown altitudes, but also to provide more accurate forecasts at lower altitudes (10,000 to 15,000 feet) where the decompression profiles are flown.

This information is collected, analyzed, and distributed worldwide by the World Area Forecast System (WAFS). This centralized distribution of weather information provides for a consistent level of accuracy that can eliminate the assignment of arbitrary penalties, provided that individual airlines subscribe to the service and make use of this level of information.

Therefore, given the documented improvements in forecasting accuracy when using WAFS, a more accurate means of determining the fuel used during a decompression profile involves adding a pad to the actual forecast winds in making the fuel calculation rather than adding an arbitrary fuel penalty. The addition of a five-percent wind error pad provides an accurate case-by-case adjustment as compared with a five-percent fuel penalty, while preserving the necessary level of safety. However, if a certificate holder elects not to use such accurate winds in the computation of decompression fuel, then the proposed rule will require the operator to continue applying the five percent fuel pad to account for wind forecast errors.

Section 121.646 requires accounting for any airplane performance degradation on the fuel requirement. In addition, if APU is a required power source, then its fuel consumption also must be accounted for.

Proposed New Paragraph 121.687(a)(6) Dispatch Release: Flag and Domestic Operations

We propose to add new paragraph 121.687(a)(6), which would add the ETOPS approval basis to the content of the dispatch release under which the flight is being dispatched.

Explanation

The proposal assures that the pilot in command of an ETOPS flight is notified as to the time basis, (for example, 120-minute or 180-minute ETOPS) including the Minimum Equipment List (MEL) limitations, under which the flight is dispatched.

Proposed New Paragraph 121.689(a)(8) Flight Release Form: Supplemental Operations

The FAA proposes to add a new paragraph 121.689(a)(8) to add the ETOPS time basis to the content of the flight release of each ETOPS flight.

Explanation

The proposal assures that the pilot in command of an ETOPS flight is aware of the limitations (for example, 120-minute or 180-minute ETOPS) including the minimum Equipment List (MEL) limitations, under which the flight is released.

Proposed New 14 CFR 121 Appendix O Requirements for ETOPS Approvals

Appendix O to Part 121 would establish the operational requirements and limitations for the various ETOPS diversion time thresholds and areas of ETOPS applicability. In very general terms, Appendix O would codify existing approvals and operational practices that have been developed since 1985 and it would also establish requirements for ETOPS flights that certificate holders may elect to operate in the future. These latter ETOPS flights would have diversion time bases exceeding 180 minutes and are not authorized at this time. The FAA points out again that 207-minute ETOPS flights are an extension of the 180-minute authority and not an independent diversion time authority.

A. ETOPS Authorizations: Airplanes With 2 engines

(a) 75 Minutes ETOPS

The proposed 75-minute ETOPS diversion authority is a codification of the criteria that was specified in AC 120–42A. This deviation authority has traditionally been used for operations in the Caribbean, Western Atlantic, and less frequently, in the North Atlantic areas of operation.

(b) 90-Minute ETOPS (Micronesia)

This ARAC recommendation for a new diversion authorization is to establish a 90-minute ETOPS authority for exclusive use on Micronesia routes. This geographical area has been served with ETOPS approved airplanes with operational authority to dispatch at 120 minutes. The only difference between the proposed 90-minute level in comparison to 120-minute ETOPS is to require the ETOPS pre-departure check on the outbound segment only. The nature of flights to serve this area involves destinations to islands at frequencies such that it becomes unreasonable for the operator to have an ETOPS certified mechanic stationed at the arrival location. An alternative means is for the operator to carry on board each flight a certified ETOPS mechanic that would conduct the ETOPS pre-departure check prior to the return to the return flight. This option is an inefficient use of a certified mechanic. The Micronesia route structure is such that it lies beyond a 75-minute authority (which would allow for the operation to be conducted without requiring the ETOPS pre-departure check for the return flight), but short of requiring the full 120-minute diversion. The Micronesia area in terms of weather and airport availability is similar to the area associated with ETOPS conducted in the Caribbean area.

The FAA proposes to allow for a 90-minute ETOPS diversion authority for use in Micronesia routes provided that the airplane is type design approved, and configured to the CMP standards for 120-minutes. The operations are to be conducted to 120-minute ETOPS standards and requirements and MEL requirements, with the exception that the ETOPS pre-departure check will not be required for the return leg of the round trip flight.

(c) 120 Minutes

The FAA proposed 120-minute ETOPS diversion authority is a codification of the criteria that was specified in AC 120–42A. The airplane and engine combination would have to be ETOPS type design approved for a minimum of 120-minutes and configured to the standards specified in the CMP document. All flight operations dispatched or released to 120-minute ETOPS standards would have to comply with MEL requirements specified for the operation.

(d) 138 Minutes

The FAA proposed 138-minute ETOPS diversion authority is a codification of the criteria that is specified in the 138-minute ETOPS policy letter. No changes to the present existing requirements are proposed. Operators may request 138-minute ETOPS operational approval on an airplane engine combination that has an ETOPS type design approval of 120-minutes provided that the airplane engine combination has been assessed by the FAA for the extended diversion length. In such cases the dispatch authority may only be exercised on a flight-by-flight exception basis. The operator will be required to amend and use a MEL that has been amended to include those items that are specified for operations beyond 120-minutes. Operators approved to conduct 138-minute ETOPS with an airplane and engine combination that has 180-minute ETOPS type design approval may do so without any restriction to frequency of use. The operator must dispatch or release such flights in accordance with the MEL provisions for ETOPS beyond 120 minutes.

(e) 180 Minutes

The FAA proposed 180-minute ETOPS diversion authority is a codification of the criteria that was specified in AC 120–42A. The airplane and engine combination would have to be ETOPS type design approved for a minimum of 180-minutes and configured to the standards specified in the CMP document for 180-minutes. All flight operations dispatched or released to 180-minute ETOPS standards would have to comply with MEL requirements specified for the operation.

(f) Greater Than 180 Minutes

The FAA accepts the ARAC recommendations to include the increased ETOPS diversion authorizations beyond 180-minutes. ETOPS beyond 180 minutes has been in use on a limited, flight by flight exception basis, since March 2000 with the issuance of the 207-minute ETOPS policy. The industry has demonstrated its capability to maintain the necessary engine and systems reliability for such operations using the B–777 airplane. Certain geographical areas of the world have few adequate airports along flight routing, and are separated by a distance that is farther than what could be flown within 180-minutes. Other geographical areas have severe weather patterns and weather systems that at times would not allow for the designation and use of area airports as ETOPS alternates. In these cases the air carrier would benefit with better dispatch reliability and added safety of the flight with the ability to flight plan with diversion times that exceed 180-minutes to avoid exposure to such conditions.

The authority for this increased diversion distance flight planning is dependent on the demonstrated capability of the operator's ETOPS program, and the use of an airplane and engine combination that is approved for such operations. The FAA therefore

proposes that eligibility of an air carrier to conduct ETOPS beyond 180 minutes will be dependant on the air carrier already having ETOPS approval to conduct 180-minute ETOPS with the requested airplane and engine combination. It will therefore not be possible for the air carrier to bypass the 180-minute ETOPS approval process before making application for ETOPS approvals beyond 180-minutes.

Air carriers that are authorized to conduct ETOPS beyond 180-minutes will be required to consider all available airports that are within 180-minutes of the routing being planned for use as ETOPS alternates. This is to minimize the dispatch diversion time to 180-minutes when possible, and thereby minimizes the risk of the extended exposure when possible. The proposed rule in Appendix O requires that:

''In conducting all such operations, operators shall make every attempt to minimize diversion time along the preferred track and plan ETOPS at maximum diversion distances of 180 minutes or less. If conditions prevent the use of adequate airports within 180 minutes as ETOPS alternates, the route may be flown beyond 180 minutes subject to the requirements provided for the specific area of operations.''

In March 2000 the FAA implemented the 207-minute ETOPS policy that required certain airplane system capabilities and that specific equipment be operable at time of dispatch or flight release for a 207-minute planned route. This included enhanced communication capability with the use of SATCOM, or with the use of SATCOM data link. It also required that the flight crew before entering the extended range entry point receive company communication to update the flight plan information based on a review of the airplane status and systems capability, as well as an update on all available alternates along the flight route. For airplane capabilities, single engine autoland is required to be operative at dispatch for a 207-minute ETOPS flight. The policy letter also specified additional system and equipment operability that cannot be deferred for such operations through the use of a minimum equipment list (MEL). This includes the fuel quantity indicating system (FQIS), the auxiliary power unit (APU) to its full electrical and pneumatic designed capability, and the autothrottle system.

The ETOPS ARAC recommended that the additional requirements that were introduced by the FAA for 207-minute ETOPS continue as requirements for all ETOPS diversion authorizations greater than 180-minutes. The FAA accepts the recommendation.

(1) North Pacific

ETOPS authority for the North Pacific area of operation is a codification of the FAA 207-minute ETOPS policy letter. This authority allows on a flight by flight exception basis flight planning to an ETOPS alternate up to 207-minutes, when an ETOPS alternate within 180-minutes is not available. As with the previous 207-minute ETOPS policy, this exception is limited to circumstances such as political or military concern, volcanic activity, airport weather below dispatch requirements, temporary airport conditions and other weather related events. The airplane and engine combination must as a minimum be ETOPS type design approved for 180-minutes and configured to the standards specified in the CMP document for 180-minutes. All flight operations dispatched or released to 207-minute ETOPS standards have to comply with an approved MEL required for 180-minutes that includes the additional items specified in this part for operations beyond 180-minutes. In all cases, the time required to fly the distance to the planned ETOPS alternate or alternates, at the approved one engine inoperative cruise speed, in still air and standard day temperature, may not exceed the time specified in the Airplane Flight Manual for the airplane's most time limited system time minus 15 minutes. This means that the most time limiting system on the airplane used for a 207-minute ETOPS flight cannot be less than 222-minutes.

(2) Polar Area (North Pole) and North of NOPAC

This authorization for use in the North Pole allows for a diversion authority of 240-minutes on a flight-by-flight exception basis. This dispatch authority may be used when the area experiences temporary extreme weather conditions that cause airport closures, extreme cold temperatures, or weather below dispatch minimums. Consideration for other weather related conditions and events such as volcanic activity that are particular to this area of the world may be given.

The operator will be required to establish criteria to be used when flight planning in order to determine if the use of a 240-minute authority is appropriate in order to designate an ETOPS alternate. These criteria and procedures developed must be accepted by the FAA and published in the certificate holder's manual for the use of dispatchers and pilots.

For such operations, the airframe and engine combination must be type design approved for a minimum of 240 minute ETOPS and configured to the standards as specified in the Configuration Maintenance and Procedures (CMP) Standard for such operations. For such operations, the requirements in paragraph C, Polar Area (North & South Pole) and ETOPS beyond 180 minutes North of the NOPAC area, of this appendix apply.

(3) 240 Minutes Area of Operations

There are several geographical areas that have few airports available for use as an ETOPS alternate, and those airports are situated at a distance beyond what could be flown in 180-minutes. These areas include the Pacific oceanic areas between the U.S. west coast and Australia, New Zealand and Polynesia; the south Atlantic oceanic areas; the Indian Oceanic areas; and the oceanic areas between Australia and South America. The FAA proposes that a diversion authority of up to 240-minutes be established for use in these geographical areas. Operators that apply for this authority must have as a prerequisite 180-minute ETOPS authority and experience with the requested airframe and engine combination.

When planning flight routes in these areas, the operator will be required to designate the nearest available ETOPS alternate along the planned flight route, and always within a maximum of 240-minutes. Whenever possible along the planned route, designated ETOPS alternates should be within 180-minutes. In all cases for ETOPS beyond 180 minutes, the time required to fly the distance to the planned ETOPS alternate(s), at the approved one engine inoperative cruise speed, correcting for wind and temperature, may not exceed the time specified in the Airplane Flight Manual for the airplanes most time limited system time (except for cargo fire suppression), minus 15 minutes. The flight routing must also be within the time required to fly the distance to the planned ETOPS alternate or alternates, at the all engines operating cruise speed, correcting for wind and temperature, that is specified in the Airplane Flight Manual for the airplane's cargo fire suppression system time minus, 15 minutes.

For such operations, the airframe/engine combination must be type design approved for a minimum of 240 minute ETOPS and configured to the standards as specified in the Configuration Maintenance and Procedures (CMP) Standard for such operations.

(4) Beyond 240 Minutes Area of Operations

The FAA proposes a new ETOPS diversion limit that is beyond 240-minutes. This authority would be available only to those operators that have considerable experience with ETOPS, including operations with routes requiring 240-minutes ETOPS. At a minimum, the operator would have to have 24 consecutive months of ETOPS experience with operations 180 minutes and greater, of which at least 12 consecutive months were at 240-minute ETOPS on the airframe and engine combination for which the authority is requested.

There are only a few routes that would require a diversion time greater than 240-minutes from an ETOPS alternate. The geographical areas with routes that would be best flown with such an authority are the Pacific oceanic areas between the U.S. west coast and Australia, New Zealand and Polynesia; the south Atlantic oceanic areas; the Indian Oceanic areas; the oceanic areas between Australia and South America, and South Pole area. The FAA proposes that for such routes, the authority to dispatch or release a flight that would be more than 240-minutes from an ETOPS alternate would be granted only for specific city pairs served. In planning the route, the operator would be required to always designate the nearest available ETOPS alternate(s). In all cases for ETOPS flight segments that are beyond 180 minutes, the time required to fly the distance to the planned ETOPS alternate(s), at the approved one engine inoperative cruise speed, correcting for wind and temperature, may not exceed the time specified in the Airplane Flight Manual for the airplanes most time limited system time (except for cargo fire suppression), minus 15 minutes. The flight routing must also be within the time required to fly the distance to the planned ETOPS alternate or alternates, at the all engines operating cruise speed, correcting for wind and temperature, that is specified in the Airplane Flight Manual for the airplane's cargo fire suppression system time minus, 15 minutes.

For such operations, the airframe and engine combination would have to be type design approved for the maximum authorized ETOPS diversion time. All requirements specified in the Configuration Maintenance and Procedures (CMP) Standard for beyond 240 minute ETOPS would be applicable to such operations.

B. ETOPS Authorizations: Airplanes With More Than 2 Engines

The flight planning for long-range flights traversing remote areas with few airports available for a non-scheduled landing should not be different because of the number of engines installed. Flights in all engine configurations have experienced conditions requiring landings short of the planned destination. The conditions included onboard technical failures, adverse atmospheric flight conditions, and increasingly, passengers that develop life threatening medical conditions that require prompt medical care. The preclude and protect philosophy that has been a foundation for two-engine airplane ETOPS has similar application and benefit to flight operations that are conducted with 3 and 4-engine airplanes.

The FAA proposes that ETOPS practices apply to flights conducted with 3 and 4-engine airplanes on routes where the flight will be more than 180-minutes from an adequate airport. Operations in any area up to a maximum diversion time up to 240-minutes (based on the one-engine inoperative speed flown in still air) may be conducted on a routine basis. For all such operations, the nearest available ETOPS alternate within 240 minutes diversion time must be specified. If an ETOPS alternate is not available within 240 minutes, the operator may conduct the flight by designating the nearest ETOPS alternate on the planned route that is within the airplanes most time limited system capability as specified by § 121.633 of this chapter.

On all such operations, MEL limitations for ETOPS apply and in addition, the Fuel Quantity Indicating System (FQIS) and the communication requirements specified in § 121.99 and § 121.122 as appropriate must be operational. The airframe/engine combination must be type design approved for the maximum authorized ETOPS diversion time.

C. Polar Area (North & South Pole) and ETOPS Beyond 180 Minutes North of the NOPAC Area

The ARAC ETOPS recommendation includes the adoption of the FAA Polar Policy that was issued March 2001. Because of extreme cold weather during the winter months and the limited availability of supporting services and facilities, it is proposed that the Polar, the area north of N 78°00″, be designated as an area of ETOPS applicability. Except for intrastate operations within the State of Alaska, ETOPS requirements would apply regardless of the number of engines or an airplane's proximity to an airport. Support of a necessary diversion and subsequent recovery in such areas would require the following items to be addressed by the operator:

(1) Designation and requirements for airports that may be used for enroute diversions
(2) Recovery plan for passengers at diversion alternates
(3) Fuel freeze strategy and monitoring requirements for Polar operations
(4) Communication capability for Polar operations
(5) MEL considerations for Polar operations
(6) Training issues for Polar operations
(7) Crew considerations during solar flare activity
(8) Special equipment for Polar operations such as cold weather anti-exposure suits.

In order to receive authorization to conduct polar operations, the operator would be required to conduct an FAA observed validation of its polar program. As part of the validation, the operator would be required to exercise its reaction and recovery plan that would be implemented in the event of a diversion to a designated polar area alternate airport.

Part 135

Global Issues for Part 135

Discussion of General Issues in Part 135

(1) Defining a safe operation for ETOPS

The intent of the proposed amendments to part 135 is to establish ETOPS safety standards for commuter and on-demand operators that are adapted for the unique nature of those operations. Regardless of whether a commercial flight is operated under part 121 or part 135, the same safety considerations of ETOPS apply. The FAA believes that these proposals would preclude and protect any diversions.

The applicability of ETOPS requirements would differ from part 121 to part 135. Part 135 casts a wider net than part 121. Part 135 operators range from one or two person companies operating a single Cessna 172 to larger companies that operate fleets of turbojets. As a practical matter, these amendments would not affect the vast majority of part 135 operators. Unlike a typical part 121 operator, a part 135 on-demand operators may fly on a given route only once or twice in a year. This proposal takes into account these differences.

Under this proposal, ETOPS requirement under part 135 would

apply to: (1) Flights that operate on routes containing a point greater than 180 minutes from an adequate airport based on a single-engine inoperative speed in still air and standard conditions; (2) and flights that operate in designated geographical areas. In contrast to part 121, there would be no distinction between airplanes with two engines and those with more than two engines.

Recent Changes to Part 135

In 1998, the FAA added part 119 to 14 CFR. This amendment modified the types of operations permitted in accordance with part 135. Among the changes was an allowance for infrequent scheduled operations with airplanes with 9 or fewer seats and a maximum payload capacity of 7,500 pounds. These airplanes often do not have the range capability to operate on routes to which ETOPS requirements would apply to this proposal. This proposal would not allow the use of many of these aircraft in ETOPS even if they are modified with additional fuel tanks that would give them additional range. The reason is that range capability is necessary but not sufficient for ETOPS. There are other airplane system capabilities and redundancies that are required for safe ETOPS flights. These issues are discussed in further detail in the following section.

ICAO Standards

This proposal would make part 135 regulations more consistent with paragraph 4.7.1 of Annex 6 of ICAO Standards and Recommended Practices (SARPs). That paragraph states: ''Unless the operation has been specifically approved by the State of the Operators, an aeroplane with two turbine power-units shall not, except as provided in 4.7.4, be operated on a route where the flight time at single engine cruise speed to an adequate en-route alternate aerodrome exceeds a threshold time established for such operations by that State.'' This SARP does not specify a time threshold for two-engine ETOPS but clearly assumes the existence of one. The SARP was written to give signatory States the flexibility to determine appropriate time thresholds.

Safety Study

In 2000, Robert Breiling of the National Business Aviation Association (NBAA) conducted a study of airplane accidents between 1964 and 1999. This study may be purchased directly from NBAA, 1200 18th Street, NW.; Washington, DC 20036–2506. This study revealed that there was not a single accident with a two-engine airplane in long-range operations. Historically the vast majority of airplanes operated in accordance with part 135 have not had the range capability for routes that would require ETOPS beyond 180 minutes, thus the FAA never found sufficient safety justification for proposing rules.

In 1996, manufacturers began delivering airplanes to part 135 operators that had vastly improved range capability. These new-generation two-engine airplanes have ranges up to 6,500 nautical miles and are capable of operating on routes that would require diversion times in excess of 180 minutes. Thus the FAA believes that regulations are necessary to assure the safe operation of such flights if an operator elects to conduct them.

Existing FAA Policy

In 1996, the European Joint Aviation Authorities (JAA) proposed a regulation that would have limited commercial operations of small airplanes to less than 120 minutes from an aerodrome, unless specifically approved by the State authority. In our response, we expressed our view that 180-minutes would be the U.S. threshold for these type of operations. The FAA disagreed with the JAA 120-minute threshold because it would have shut down a number of part 135 operators that have been conducting these operations safely for many years. By policy the FAA has not authorized operations beyond 180 minutes for part 135 operators.

(2) Specific Differences Between Part 121 ETOPS

As noted earlier the ETOPS requirements for part 135 would differ from those of part 121 due to the differing nature of those operations. For instance, the presence of adequate crash, fire and rescue equipment is an important consideration for part 121 operations, which may operate many times per year to a single location with a relatively large number of passengers. Although adequate RFF service is desirable for any long-range operations, it is not feasible to require the presence of crash, fire and rescue equipment at an airport before authorizing an on-demand operation that may operate only once a year with very few passengers. Therefore, no such requirement exists in part 135.

Another difference is that part 135 would not identify specific IFSD rates for authorization. IFSD rates have less predictive value in small fleets of airplanes with lower annual cycles that are prevalent among part 135 operators.

(3) Nomenclature

The issue of nomenclature was controversial among ARAC participants from the part 135 community. The consensus decision was the use of the term ETOPS in lieu of alternatives including Commercial On-Demand Operations (CODEOPS). The FAA accepts the ARAC recommendation and proposes to use the acronym ETOPS defined as Extended Operations for part 135 operations.

(4) Airplane and Engine ETOPS Type Design and Transition Period

Type-Design

No specific type design approval has ever been required by part 25 or part 33 before an airplane can be flown over long-ranges in accordance with part 135. The proposed ETOPS rule was drafted to allow currently-certified airplanes to operate in accordance with ETOPS procedures without requiring a new type design approval. However, when an operator first applies to the FAA for approval to use a certain airplane in ETOPS (beyond 180 minutes from an airport), the operator must demonstrate that the airplane meets certain system and equipment requirements specified the proposed Appendix H and the guidance contained in the ETOPS Advisory Circular.

The proposed changes to airplane and engine certification rules in this NPRM will apply to any new airplane certified under part 25, regardless of whether the airplane is to be operated in accordance with part 135 or part 121. As newly designed airplanes are granted type-design approvals incorporating the requirements for ETOPS contained in part 25 or part 33, the flight manual will specify each time-limited system, and the maximum time that system can safely operate.

Transition

The proposed rule allows a transition period of eight years from the date the revised part 25 and part 33 are published during which certificate holders may continue to add airplanes of current designs to their part 135 fleets. After that date, the proposed rule requires that airplanes added to a certificate holder's fleet be type-certificated in accordance with the new ETOPS design requirements. This method of transition recognizes the excellent safety record of current airplane designs, and avoids penalizing certificate holders who may have made significant capital investments in airplanes. The length of this transition period was set at eight years because it is typical of the time required for a new,

long-range turbine-powered airplane to go from initial design to the time it is commonly available to the majority of certificate holders. However, this transition period applies only to type design. The transition period will allow manufacturers to produce newly compliant aircraft and for those aircraft to become readily available in the aircraft marketplace. The operational practices required in part 135 Subpart H would become effective immediately. These standards for operation, maintenance and dispatching of ETOPS would contribute to the continued safe operation of part 135 long-range aircraft operations.

(5) Approved One-Engine Inoperative Speed

When scheduled air carriers apply for route authority over a route requiring ETOPS, FAA approves a one-engine inoperative speed for a specific route flown by that operator in a specific airplane model. This speed is then used to determine fuel reserves and maximum diversion distances for all subsequent flights. Unlike scheduled air carriers, an on-demand operator may only operate once over any given route-of-flight, and they must be able to do so with relatively short notice. Flexibility is required for ETOPS conducted in accordance with part 135. It is therefore not feasible to require pre-approval of a single one-engine inoperative speed for certificate holders operating ETOPS on each route in accordance with part 135. Instead, when a certificate holder applies for ETOPS approval, the operator will suggest a range of speeds within the certified limits for a specific model of airplane. The FAA will approve this range of speeds for that operator. When planning for a specific flight, the certificate holder will select a single speed within this range and ensure that this selected speed is used to determine both fuel reserves and maximum diversion distances.

(6) Polar Operations

The increasing use of Polar flights, while creating economic benefits, has brought new challenges to the extended operations. Due to these pressures and to the increasing commonality of all long-range operations, the data began to show that ETOPS requirements and processes are generally applicable to all long-range operations including those by three and four engine airplanes and would improve the safety and viability of all long range operations. The FAA polar policy issued March 2001 provides the requirements for approval to conduct these operations. Given the nature of part 135 on-demand operations, it is conceivable that flights in the designated polar area may occur. Polar operations require the designation of airports that may be used in the event a diversion is necessary, and it requires that the operator have a passenger recovery plan. The recovery plan should address the care and safety of passengers and crew at the diversion airport, and include the plan of operation to extract the passengers and crew from that airport. The certificate holder would have to maintain the accuracy and completeness of its recovery plan. As the rule would apply to those part 135 on-demand operations that can be conducted less than 180 minutes from an airport as well as those operations conducted as ETOPS, the FAA proposes section 135.98 to be a separate requirement from ETOPS requirements. The proposed section 135.98 for polar operations excludes intrastate operations within the State of Alaska.

FAA General Changes to the ARAC Proposal for Part 135

The following table cross-references the ARAC proposed rules with what the FAA has proposed in this NPRM. The ARAC proposal included several requirements that were in their Advisory Circular, but were not included in their proposed rules. The FAA has therefore included these ARAC Advisory Circular requirements into this NPRM in order to codify the ARAC proposal.

ARAC proposal	NPRM
135 Appendix H ETOPS	135 Appendix H ETOPS.
Paragraph H Maintenance Program Requirements	Paragraph Maintenance. Program Requirements.
None	H(a) Configuration, Maintenance & Procedures (CMP).
H(a) CAMP	H(b) CAMP.
None	H(b)(1) ETOPS Pre-departure service check.
H(2)(a) procedures to preclude dual maintenance	H(b)(2) procedures to preclude dual maintenance.
H(2)(b) verification procedures	H(b)(3) verification program.
None	H(b)(4) task identification.
None	H(b)(5) centralized maintenance control procedures.
None	H(b)(6) ETOPS program document.
None	H(b)(7) ETOPS parts control.
None	H(b)(8) Enhanced CAS.
H(3) reporting requirements	H(b)(8)(a) reporting requirements.
H(4) periodic report of engine hours & cycles	None.
H(5) corrective action	H(b)(8)(b) corrective action.
None	H(c) propulsion system monitoring.
None	H(d) engine condition monitoring.
None	H(e) oil consumption monitoring.
H(2)(c) APU in-flight start program	H(f) APU in-flight start program.
None	H(g) maintenance training.
None	H(h) procedural changes.

Section-by-Section Discussion of the Proposed Changes to Part 135

Proposed New Section 135.98 Polar Operations

The FAA proposes a new rule for the conduct of flights in the North Pole area as defined as the region north of N 78°00′.

Explanation

Operations in this defined area, with the exception of intrastate operations within the State of Alaska, would require specific approval. Operators applying for polar authority would be required to address specific areas identified in proposed paragraphs 135.98 (1) through (8). All certificate holders conducting polar operations would have to develop a plan for recovering passengers at designated diversion airports. The recovery plan

should address the care and safety of passengers and crew at the diversion airport.

Proposed Change to Section 135.345 Pilots: Initial, Transition, and Upgrade Ground Training

The FAA proposes to amend section 135.345 by adding subject material to be included in the pilot training requirement.

Explanation

The additional training includes ETOPS for those operators that will have ETOPS authority. It would also add the requirement for training on the operator's passenger recovery plan that would apply for those operators conducting ETOPS, and those operators conducting non-ETOPS polar flights. The recovery plan should address the care and safety of passengers and crew at the diversion airport, and include the plan of operation to extract the passengers and crew from that airport. It is therefore important that crew members are adequately trained so that they understand their role in the certificate holder's passenger recovery plan.

Proposed New Section 135.364 Multi-Engine Airplane Limitations:

Maximum Distance From an Airport

The FAA proposes to add a new rule, section 135.364, which establishes the maximum distance that a multi-engine airplane may be operated from an airport that meets the requirements of part 135.

Explanation

The rule would allow flight operations beyond 180-minutes when approved by the FAA, and conducted to the ETOPS requirements specified in part 135, Appendix H.

Proposed Change to Section 135.411 Applicability

The proposal would add paragraph (d) to require ETOPS operators to maintain the aircraft under a maintenance program in accordance with paragraph (a)(2) and the additional requirements of Appendix H of this part.

Explanation

The ARAC proposed that part 135 operators could maintain their airplanes under paragraph 135.411(a)(1) for 9 or less passenger seats with an approved aircraft inspection program under section 135.419 or under paragraph 135.411(a)(2) for ten or more passenger seats. This proposal differs from ARAC's proposal in that it would require all part 135 operators to maintain their aircraft in accordance with paragraph 135.411(a)(2). The FAA does not feel that an inspection program approved under section 135.419 will support the ETOPS requirement. A CAMP approved under paragraph 135.411(a)(2) sets the same foundation to support ETOPS operations as part 121.

The ARAC recommended periodic reporting of airplane and engine operating hours and cycles. The FAA did not include this recommendation because the information is currently available and reported to the FAA by the engine manufacturers.

Proposed New Part 135 Appendix H

Appendix H to part 135 would establish the certification, airplane, operation and maintenance requirements for ETOPS operations.

A. Definitions

The FAA proposes to use the following definitions applicable to ETOPS. Many of the terms used in the proposed regulatory and guidance material for ETOPS under this part are unique to these operations. Requirements and concepts for ETOPS require precise definition to assure common understanding and compliance.

1. ETOPS: Extended Operations.
2. ETOPS Dual Maintenance.

B. Certificate Holder Experience Prior To Conducting ETOPS

Safety is enhanced when, prior to conducting ETOPS, a certificate holder gains operational experience in the type of airplane capable of ETOPS, and with the operational environment typically encountered on longer range flights (up to 180 minutes) in areas where airports available for an enroute diversion are limited. Typically, this involves prior operational experience on overwater flights to international areas of operation in accordance with part 135.

Operators requesting authority to operate ETOPS would have to show operating experience on international routes with a transport category turbine powered airplane. For this particular case, experience with international operations does not include operations from the 48 contiguous States to Canada and Mexico. This experience can only be obtained on extended flight operations that involve oceanic crossings.

A minimum 12 months operating experience is required. The proposal allows for up to 6 months credit toward the 12-month requirement for those operators that were certificated under part 135 or part 121 prior to the effective date of this rule. Additionally, for operators with previous ETOPS experience with other airplane types may have that experience credited in whole, or in part to the 12 month experience requirement.

C. Airplane Requirements

The proposed regulation would require that airplanes operated in ETOPS be certificated to the new section 25.1535 standards. In order to allow for a smooth industry transition to this requirement for a period of 8 years following the effective date of the new part 25 regulation with airplanes certificated to the present part 25 standards could be used in ETOPS if they have specific electrical and fuel system capabilities. Such an airplane would have to be found acceptable to the FAA after consultation with the type certificate holder. The determination that an airplane is acceptable for ETOPS is a simply a verification that the airplane electrical and fuel systems are capable of supporting the intended operation. This provision would apply to airplanes added to the operator operations specifications on or before the date that is 8 years after the new part 25 is in effect. Airplanes added to the operating certificate after the 8-year period would have to be certificated to the new part 25 standards.

D. Certificate Holder Requirements

The ARAC recommended that part 135 flights conducted under ETOPS authority be limited to a maximum diversion time of 240 minutes from an enroute alternate airport, at a speed selected by the certificate holder from a range of speeds approved by the FAA that is within the certificated operating limits of the airplane, with one engine inoperative (under standard conditions in still air). This was deemed to be sufficient for the routes that could be expected for an on-demand type operation. Having an upper limit would enable an operator to maintain an operational readiness and the required reliability especially when these types of operations may occur infrequently. The FAA accepts the recommendation and reflects it in the proposed rule.

The proposed rule would require the certificate holder to have the means and the procedure to allow flight crews to have in-flight access to current weather and operational information on all enroute alternate, destination and destination alternate airports proposed for each ETOPS flight. By validated ETOPS practices, flights can be launched on the basis of weather forecasts that are revised and updated while the flight is enroute. It is essential

that the flight crew be informed and aware of changing weather as well as airport status.

E. Operational Requirements

The proposed rule would require that the flight crew only plan and conduct ETOPS on instrument flight rules. The FAA believes that ETOPS cannot be conducted safely under visual flight rules. The flight crew may not proceed beyond the ETOPS entry point unless the weather and operating conditions at the required enroute alternate airports are reviewed and expected to be at or above the operating minimums specified in the operations specifications during the period in which that airport may be expected to be used based on expected estimated times of arrival at that airport. The planned route of flight may be amended while en route to allow use of additional enroute alternate airports provided weather is forecast to be at or above operating minima and the airport is within the maximum ETOPS diversion time.

In ETOPS operations wind becomes an increasingly significant factor with increasing diversion times and should be considered in ETOPS operations beyond 180 minutes to assure that Airplane Flight Manual (AFM) system time limits are not exceeded. For example, while diverting with an engine inoperative, it is essential to ensure that there is sufficient amount of oil in the tank for continuous operation of the remaining engines at Maximum Continuous Thrust for the actual duration of divert. As a result, for ETOPS operations with approved diversion times greater than 180 minutes the one engine inoperative cruise speed (approved) maximum diversion time, taking forecast wind and temperature into account, to each ETOPS alternate may not exceed the time specified in the airplane flight manual for the airplane's most time-limited system minus 15 minutes (for approach and landing). However, there are some other time limited systems like cargo fire suppression, where the use of cargo fire suppression may not have as much relevance to the one engine inoperative diversion time. Data was presented that showed the likelihood of an engine failure at the critical point followed by cargo fire is extremely remote. Hence for ETOPS beyond 180 minutes, cargo fire suppression requirement would be based on covering the diversion distance authorized (maximum diversion time authorized at the approved one engine inoperative speed) at the all engine operating speed. Therefore this proposed rule requires that for ETOPS beyond 180 minutes with airplanes equipped with a Class C cargo fire suppression system, the cargo fire suppression time required be based on the airplane operating at all engine operating speed with actual wind.

The certificate holder may continue ETOPS with airplanes that lack the airplane flight manual information regarding time-limited systems (*e.g.* cargo fire suppression) for a period not to exceed 8 years from the effective date of this rule. See the discussion in the airplane requirements above.

F. Communications Requirements

The proposal would establish the minimum standard for communication for ETOPS. Two independent transmitters and two independent receivers, appropriate to the planned route, would be required for ETOPS flights. At least one of each would have to be capable of voice communication. If operating in areas where voice communication is not possible or of poor quality, alternate systems (data link, SATCOM, etc.) may be used.

G. Fuel Planning Requirements

An airplane should not be released for an ETOPS flight unless it carries sufficient fuel and oil to meet the requirements of section 135.223, and any additional fuel that may be determined in accordance with the critical fuel reserves of this section. In establishing the critical fuel reserves, the operator would determine the fuel necessary to fly to the most critical point and execute a diversion to an ETOPS alternate under the conditions outlined in paragraph 1(b) of this section for the critical fuel scenario. The computed critical fuel reserve would be compared to the normal section 135.223 fuel requirements for the flight. If it is determined by this comparison that the fuel to complete the critical fuel scenario exceeds the fuel that would be on board at the most critical point, as determined by section 135.223 requirements, additional fuel should be included to the extent necessary to safely complete the critical fuel scenario.

To determine the critical fuel reserves necessary, the operator would plan on that which is operationally the most critical considering both time and the airplane configuration, such as one engine inoperative or all engines running. For those airplanes that are not certificated to operate above Flight Level (FL) 450, the flight would also be planned for failure of the pressurization system to an altitude of 10,000 feet or at an altitude in compliance with the oxygen supply requirements of section 135.157. (ICAO Annex 6, Part I, section 4.3.6.4(d) for fuel planning requires consideration of additional fuel in the event of loss of pressurization).

The critical fuel scenario would require an immediate descent to the determined altitude and continued cruise at the planned one-engine inoperative speed to the enroute alternate and upon reaching the alternate airport, a descent to 1,500 feet, hold for 15 minutes, and then conduct an instrument approach and land.

A pad for wind speed error would be required. Based on the weather forecasting techniques of the early 1980s, ETOPS critical fuel planning required a five percent fuel pad to account for wind forecast errors. However, winds aloft forecasting has improved dramatically in the last twenty years as a result of sophisticated wind modeling with super computers, and weather information that is automatically down linked at much more frequent intervals. There are many more collection points, as well as satellite depictions of air mass movement. This information is collected, analyzed, and distributed worldwide by the World Area Forecast System (WAFS). This centralized distribution of weather information provides for a consistent level of accuracy that can eliminate the assignment of arbitrary penalties, provided that individual airlines subscribe to the service and make use of this level of information. Therefore, given the documented improvements in forecasting accuracy when using WAFS, a more accurate means of determining the fuel used during a decompression profile involves adding a pad to the actual forecast winds in making the fuel calculation rather than adding an arbitrary fuel penalty. The addition of a five-percent wind error pad provides an accurate case-by-case adjustment as compared with a five-percent fuel penalty, while preserving the necessary level of safety. However, if a certificate holder elects not to use such accurate winds in the computation of decompression fuel, then the proposed rule will require the operator to continue applying the five percent fuel pad to account for wind forecast errors.

Consideration of fuel for icing at the cabin depressurization cruise altitude is also required. Studies done by the Atmospheric Environment Service of Canada with the assistance of airplane manufacturers under the second Canadian Atlantic Storms Program (CASP II) confirm that the probability of a continuous or repetitive significant icing encounter is very small on a long

flight segment. The airspeeds associated with cruise at cabin depressurization altitude are not conducive to ice build-up. Moreover, pilots can avoid icing with minor changes in altitude or by changing the cruise speed, either of which can have a large effect on ice accretion. Based on the CASP II study, considering the probability of encountering depressurization at the critical point and icing on the same flight, an argument was made that fuel for icing in addition to fuel for depressurization is not necessary. However, as a conservative measure, this section requires fuel to compensate for the greater of the effect of airframe icing (including the fuel used by engine and wing anti-ice during this period) during 10 percent of the time for which icing is forecast, or a combination of fuel for engine anti-ice, and for some models of airplanes based on their characteristics and the manufacturer's recommended procedures fuel for wing anti-ice for the time during which icing is forecast.

The proposal also requires that the fuel supply be increased by 5 percent to account for deterioration in cruise fuel burn performance unless the certificate holder has a program established to monitor airplane in-service deterioration of cruise fuel burn performance and includes in fuel supply calculations fuel sufficient to compensate for any such deterioration.

Finally, if the APU is a power source required by this appendix, then its fuel consumption must be accounted for.

H. Maintenance Program Requirements

(a) Configuration, Maintenance, and Procedures (CMP)

This type design document establishes the baseline configuration standard for each specific airplane and engine combination used in ETOPS. The importance of the CMP is discussed more fully above in the discussion of part 25 amendments of this proposal.

(b) Continuous airworthiness maintenance program (CAMP)

A CAMP is a comprehensive oversight program to ensure the continuing airworthiness of an airplane. A CAMP includes but is not limited to maintenance tasks, inspection tasks, auditing requirements, and data analysis. CAMP is required by section 135.411(a)(2). The proposed regulation would expand the scope of CAMP for ETOPS operators to encompass issues unique to ETOPS. The following are considered basic additional elements of a CAMP for an ETOPS operator.

(1) ETOPS pre-departure service check

The pre-departure service check is designed to ensure that ETOPS significant systems will perform their intended function throughout the flight. An ETOPS pre-departure service check would have to verify the status of ETOPS significant systems. Some certificate holders conducting ETOPS flights have elected to add other items to their check as a result of operational experience and knowledge gained through reliability data. Regardless of any additional items an operator may add to a check, the focal point of this check must be inspection, servicing, and maintenance of ETOPS significant systems.

(2) Dual Maintenance

There have been instances of a single mechanic repeating a maintenance error on multiple systems. An example of dual maintenance is failing to install o-rings on engine oil or fuel components on multiple engines. Establishing procedures to avoid dual maintenance can minimize the probability of such errors. The use of two or more mechanics reduces the risk of this type of error. Routine tasks on multiple similar elements, such as oil and fuel filter changes, should never be assigned on the same maintenance visit.

However, the FAA is aware that under some limited circumstances, dual maintenance may be unavoidable. For instance, a pilot's report of a discrepancy on an ETOPS significant system may require maintenance on one engine at the same time as a scheduled maintenance event for the other engine. In such cases, the certificate holder must establish and follow procedures to mitigate the risk of a common cause human error jeopardizing the ETOPS flight.

(3) Verification Program

The verification program ensures the effectiveness of ETOPS maintenance actions. Verification programs are designed to identify any potential problems and may consist of ground tests, flight tests, use of built in test equipment (BITE), and other tests as appropriate. Verification action must be accomplished following corrective action to an ETOPS significant system, primary system failure, IFSD or in response to significant adverse trends. The certificate holder must establish procedures to clearly indicate who is going to initiate the action, what verification action is necessary. A verification flight may be performed in combination with an ETOPS revenue flight, provided the verification phase is documented as satisfactorily completed upon reaching the ETOPS entry point.

(4) Task Identification

ETOPS maintenance programs include numerous tasks. Under this proposal, the certificate holder would have to identify specific tasks that must be accomplished by ETOPS qualified personnel. These ETOPS-specific tasks are performed during all phases of maintenance. On the other hand, some tasks in an ETOPS maintenance program are identical to tasks on a non-ETOPS airplane. The FAA realizes that tasks, such as checking seat belts prior to a flight, do not involve ETOPS significant systems and may be performed by non-ETOPS qualified personnel. ETOPS specific tasks would either be identified on the certificate holder's routine work forms and related instructions or parceled together and identified as an ''ETOPS package.''

(5) Centralized Maintenance Control Procedures

The certificate holder would have to develop and clearly define in their program ETOPS related procedures, duties, and responsibilities, such as involvement of centralized maintenance control. The function of centralized maintenance control is to be a focal point for operational aspects of ETOPS maintenance and to ensure that ETOPS aircraft are airworthy. Procedures and centralized control processes would be established which would preclude an airplane being dispatched for ETOPS flights after a propulsion system shut-down, significant primary airframe system failure, or significant adverse trends in system performance without appropriate corrective action having been taken. Confirmation of corrective maintenance would require appropriate verification action prior to dispatch on an ETOPS flight. Depending on the size and scope of the ETOPS operation, the maintenance control entity could be an entire department or one ETOPS-qualified individual for a small operation. ''Centralized maintenance control'' is also referred to as ''technical services center'', ''maintenance operations control (MOC)'', and ''maintenance coordination center'' among other terms within industry.

(6) ETOPS Program Document

The certificate holder would have to develop a document that identifies all ETOPS requirements, including supportive programs, procedures, duties, and responsibilities for use. The ETOPS program document would be for use by personnel involved in ETOPS and would be readily accessible to those

personnel. This document need not be inclusive but should at least reference the maintenance program and other requirements, and clearly indicate where they are located in the certificate holder's document system. The ETOPS program document would have to be submitted to the CHDO for approval at least 60 days before beginning ETOPS flights and be subject to revision control.

(7) ETOPS Parts Control

Under this proposal, the certificate holder would have to develop a parts control program that ensures the proper parts and configurations are maintained for ETOPS airplanes. The program should include procedures to verify that the parts installed on ETOPS airplanes during parts borrowing or pooling arrangements, as well as those parts used after repair or overhaul, maintains the necessary ETOPS configuration. In many cases, certificate holders utilize the Illustrated Parts Catalog (IPC) as the ETOPS parts controlling document. However, other methods may be used provided that the configuration standard of the airplane and engine is maintained.

(8) Enhanced Continuing Analysis and Surveillance (CAS)

The certificate holder would have to enhance their existing CAS in order to achieve ETOPS reliability goals. This program should be designed to identify and prevent ETOPS related problems. The program would be event-oriented and incorporate reporting procedures for critical events detrimental to ETOPS flights. Reliability data would have to be readily available for use by the certificate holder and the FAA to ensure that an acceptable level of reliability is achieved and maintained.

In addition to the reporting requirements in section 135.415, the following items would have to be reported within 72 hours to the CHDO.

(a) In-flight shutdowns.

(b) Diversions or turnback.

(c) Uncommanded power changes or surges.

(d) Inability to control the engine or obtain desired power.

(e) Problems with systems critical to ETOPS.

(f) Any other event detrimental to ETOPS.

(2) Certificate holders would also be required to furnish the following information:

(a) Airplane identification (type and N-number)

(b) Engine identification (make and serial number)

(c) Total time, cycles and time since last shop visit.

(d) For systems, time since overhaul or last inspection of the discrepant unit.

(e) Phase of flight.

(f) Corrective action

This proposed regulation would require certificate holders to conduct an investigation into the cause of the occurrence of any event listed above in addition to any event described in section 135.415. The certificate holder would have to submit findings and description of corrective action taken to the CHDO. The FAA expects certificate holders to investigate events above in conjunction with manufacturers. The report must be submitted in the manner prescribed by section 135.415(e).

(c) Propulsion System Monitoring

Propulsion system monitoring is vital to ensure safe ETOPS flights. A propulsion system-monitoring program is intended to detect adverse trends, to identify potential problems, and to establish criteria for when corrective action may be necessary.

Propulsion system problems and IFSD may be caused by type design deficiencies, ineffective maintenance, or operational procedures. It is very important to identify the root cause of events so that corrective action may be determined.

The diverse causes of propulsion system problems require different solutions. For example, type design problems may affect an entire fleet of aircraft. If an individual certificate holder experiences a problem caused by a type design issue, it may not be appropriate for the FAA to withdraw ETOPS authority. The FAA will normally address by an Airworthiness Directive fundamental design problems that require an effective hardware (or software) final fix. Inspections may be satisfactory as an interim solution but long-term design solutions are required for terminating action. However, maintenance or operational problems may be wholly, or partially, the responsibility of the certificate holder. In these cases, the cause would be specific to that certificate holder and may require changes to their operational, dispatch or maintenance procedures.

(d) Engine Condition Monitoring

The certificate holder would have to monitor the condition of engines on ETOPS airplanes. The monitoring program would describe the engine performance parameters to be tracked, method of data collection, and corrective action processes. It would detect deterioration in engine performance by tracking parameters such as rotor speeds, exhaust gas temperatures, and fuel flow and allow for corrective action before safe operation is affected. The program should reflect the manufacturer's instructions and industry practices. Engine limit margins must be maintained so that prolonged engine inoperative diversions may be conducted without exceeding approved engine limits at all approved power levels and expected environmental conditions. Engine margins are maintained through this program to account for the effects of additional engine loading demands such as electrical and pneumatic systems that may be required during a diversion. If oil analysis such as Spectrographic Oil Analysis Program (SOAP) is meaningful, it should be included.

(e) Oil Consumption Monitoring

The certificate holder would have to establish an engine oil consumption-monitoring program to ensure that there is enough oil to complete any ETOPS flight. The certificate holder's consumption limit would not be allowed to exceed the manufacturer's recommendations, and would have to be sensitive to oil consumption trends. The program would have to track the amount of oil added at the departing ETOPS station with reference to the running average consumption. The monitoring must be continuous up to and including the oil added at the ETOPS departure station. For example, after servicing, the oil consumption may be calculated by maintenance personnel as part of the pre-departure check or may be automatically calculated by a computer program. The amount of oil added could also be reported to centralized maintenance control for calculation prior to the ETOPS flight. If an Auxiliary Power Unit (APU) is required for ETOPS, then its oil consumption must be included in the program.

(f) APU In-Flight Start Program

If APU in-flight start capability is required for ETOPS, the certificate holder would be required to establish an in flight start and run monitoring program. The primary function of an APU is to provide backup electrical power in the event of a main system failure such as engine in-flight shut down or generator loss. This program would have to ensure that the APU in-flight start capability will continue at a level of performance and reliability established by the manufacturer or the FAA. The program would have to be acceptable to the Administrator and include periodic sampling of each ETOPS airplane's APU in-flight starting

capabilities. Certificate holders with existing approved programs may continue under that authority under this proposal. Sampling intervals may be adjusted according to system performance and fleet maturity. The Advisory Circular accompanying this proposal contains guidance for APU reliability and performance assessment.

(g) Maintenance Training

The certificate holder would have to develop additional ETOPS specific training that focuses on the special nature of ETOPS and is required for all personnel involved in ETOPS. This training would be in addition to the certificate holder's accepted maintenance training program to qualify individuals for specific airplanes and engines. This program may be incorporated into the accepted maintenance training curricula. The certificate holder would have to review the entire maintenance-training program with the CHDO to ensure that it adequately supports ETOPS training requirements. The goal of this program is to ensure that all personnel involved in ETOPS are provided the necessary training so that the ETOPS maintenance requirements are properly accomplished.

The program must establish a system to qualify ETOPS maintenance personnel. ETOPS qualified maintenance personnel are those who have successfully completed the certificate holder's ETOPS training program and who have satisfactorily performed extended range tasks under the direct supervision of an FAA certificated maintenance person who has had previous experience with maintaining the particular make and model aircraft being utilized under the certificate holder's maintenance program. For new aircraft introduction, the previous experience for training can be obtained from the manufacturers training program.

(h) Procedural Changes

Following approval of the maintenance and training procedures established to qualify for ETOPS; substantial changes to those procedures must be submitted to the CHDO and approved before they may be adopted. The determination of what constitutes substantial changes should be negotiated between the certificate holder and the CHDO. This is to allow some flexibility depending on the certificate holder's ETOPS experience and performance history. The CHDO may require submission of all changes for a new ETOPS operator or for an operator experiencing difficulties. However, as experience is gained the CHDO may reevaluate what substantial changes it needs to approve.

(i) Reporting

The FAA proposes to require certificate holders to report the operating hours and cycles for each airplane and engine authorized for use in ETOPS on a quarterly basis to the CHDO and the respective manufacturers. These reports would allow the FAA and manufacturers to ensure safe operations and to anticipate potential problems.

Continuing Surveillance

As with all other operations, the CHDO may also monitor all aspects of the ETOPS operations it has authorized, to ensure that the levels of reliability achieved in ETOPS operations remain at acceptable levels, and that the operation continues to be conducted safely. In the event that an acceptable level of reliability is not maintained, if significant adverse trends exists, or if critical deficiencies are detected in the type design or in the conduct of ETOPS operations, the CHDO may initiate a special evaluation, impose operational restrictions, and ensure the operator adopts corrective actions in order to resolve the problems in a timely manner. The CHDO should alert the appropriate FAA Aircraft Certification Office and Aircraft Evaluation Group when problems associated with airplane design or operations are identified.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices (SARPS) that correspond to these proposed regulations. ICAO SARPS are currently being developed for ETOPS and we expect that this proposed rule and rules currently being developed in Europe would affect the ICAO SARPS. We expect that there will be some differences between the rule developed in the United States and the rules developed in Europe.

Economic Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency must propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. sections 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis for U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation.).

In conducting these analyses, FAA has determined this proposed rule: (1) Would have benefits that justify its costs, would be a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and would be ''significant'' as defined in DOT's Regulatory Policies and Procedures; (2) would not have a significant economic impact on a substantial number of small entities; (3) would not constitute a barrier to international trade; and (4) would not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. The FAA has placed these analyses in the docket and summarized them as follows.

Cost Savings

The ability to fly the most direct route between two points results in time and fuel savings and thus reduces operating costs. The mileage savings for a two-engine ETOPS flight can be very significant. For example, a two-engine operator approved for 180 minutes flying the Great Circle Route, the shortest distance between two points on the earth, between Milan, Italy and Barbados would save over 1,300 nautical miles compared to a routing staying within 60 minutes of an adequate airport.

Part 121 operators of two-engine airplanes will elect to incur the costs associated with the higher ETOPS requirements based on their judgment of whether cost savings would exceed the cost of compliance. A new 2-engine ETOPS operator operating a single daily roundtrip is estimated to save 38 minutes per round trip. This timesaving is based on the reported timesaving of a current twin-engine Part 121 ETOPS

operator operating a route beyond 180-minutes. The operator reported that operating beyond 180-minutes saved 27 minutes on a westbound trans-Pacific flight and 11 minutes on the return leg. The annual hours saved would total approximately 231 hours based on a single daily roundtrip. The total annual savings based on hourly operating costs of $4,500 would be $1,040,000; the ten-year savings would be $10.4 million or $7.3 million, discounted. The costs of the proposed rule to this operator are estimated in the Cost section at $106,500 or $75,900, discounted. This operator would have net cost savings of $10.3 million or $7.2 million, discounted over a 10-year period.

Part 121 operators of three- or four-engine airplanes would be required to make a similar judgment if they elect to fly beyond 180-minutes ETOPS. However, the net cost savings would take longer to achieve than if the rule had not been proposed since there are proposed costs that are not currently required for three- or four-engine airplanes to fly beyond 180-minutes. A part 121 operator of a three- or four-engine fleet serving a single route beyond 180-minutes assuming the same time savings of 38 minutes per round trip and a single daily roundtrip would have total annual savings of $1,965,000 based on an hourly operating costs of $8,500. The ten-year savings would be $19.7 million or $13.8 million, discounted. The costs of the proposed rule to this operator are estimated in the Cost section at $3.7 million or $2.8 million, discounted. This operator would have net cost savings of $16 million or $11 million, discounted over a 10-year period.

Part 135 operators currently are not permitted to operate beyond 180-minutes from an airport meeting minimum requirements but the proposed rule would allow these operators to do so. Those that elect to incur the costs associated with the proposed rule would experience cost savings attributable to the proposed rule. The timesaving varies by route, airplane speed, and prevailing winds. A part 135 operator with less fuel capacity would be able to avoid a fuel stop in each direction, which would result in significant timesaving. The FAA estimates that a part 135 operator would save 2 hours of flying time per round trip by operating beyond 180-minutes. A part 135 operator with a fleet of four airplanes, with each airplane operating 12 roundtrips beyond 180-minutes ETOPS per year would save 96 hours annually or 960 hours over a 10-year period. The cost savings associated with the timesaving would total $9.6 million or $6.7 million, discounted. The costs of the proposed rule to this operator are estimated in the Cost section at $1.1 million or $777,000, discounted. This operator would experience net cost savings of $8.5 million or $6.0 million, discounted over a 10-year period based on an airplane operating cost of $10,000 per hour.

The net cost savings to individual operators are summarized in Table 1.

TABLE 1.—NET TEN-YEAR COST SAVINGS TO INDIVIDUAL NEW ETOPS OPERATORS

	New 2-engine operator	3 or 4-engine operator	Part 135 operator
Total Cost savings	$10,395,000	$19,650,000	$9,600,000
Total Cost	106,500	3,676,100	1,030,400
Net Cost Savings	10,288,500	15,973,900	8,569,600
Present Cost savings	7,300,400	13,800,200	6,742,100
Present Cost	75,900	2,789,200	741,100
Net Present Cost Savings	7,224,500	11,011,000	6,001,000

An applicant seeking certification of a new type engine (as opposed to an applicant seeking a type certificate through an amendment of an existing type certificate or through supplemental type certificate procedures) for ETOPS eligibility would realize cost savings under proposed 33.200(f). Proposed 33.200(f) would allow the applicant to interrupt the 3000 cycle engine test required by 33.200(c) to show compliance with the existing initial maintenance inspection (IMI) test and inspection required by sections 33.90(a–b). The applicant would then resume the ETOPS test to complete the requirements of section 33.200. Thus the applicant for a new type design engine would only have to provide one engine to complete the existing IMI test and inspection and the 3,000-cycle test of the proposed section 33.200(f) rather than 2 engines. The 3,000-cycle test is estimated in the Cost section to cost $6.5 million or $6.1 million, discounted. The FAA requests comments and data addressing this issue.

Manufacturers of business airplanes do not have direct offsetting cost savings. These manufacturers would only voluntarily incur these costs after making a business decision that they could recoup their costs by the sale of airplanes capable of operating beyond 180-minutes ETOPS. The substantial net cost savings that could be achieved by a part 135 operator operating beyond 180-minutes ETOPS would aid the market demand for such airplanes by business airplane operators.

The total cost savings to operators are estimated at $1.09 billion over a ten-year period or $762.3 million, discounted as shown in Table 2. These savings are based on the following assumptions:

- There are currently 3 2-engine operators flying beyond 180 minutes on an exception basis. It is assumed they will routinely fly 231 hours each beyond 180 minutes.
- There are currently 7 ''low cost'' passenger carriers (AirTran, America West, ATA, Frontier, JetBlue, Southwest, and Spirit as defined by the *Aviation Daily*). It is assumed each would operate 4 ETOPS airplanes on a single route.
- There are currently 13 U.S. operators of 3- or 4-engine aircraft and it is assumed each would operate 1 route beyond 180 minutes.
- There are 81 Part 135 operators that both meet the proposed aircraft and maintenance requirements and each would save 96 hours annually.

TABLE 2.—TEN-YEAR COST SAVINGS TO OPERATORS

Cost-savings to—	Cost savings	Present value
3 Existing 2-engine Operators	$31,185,000	$21,901,225
7 New 2-engine Operators	72,054,500	50,596,140

TABLE 2.—TEN-YEAR COST SAVINGS TO OPERATORS—Continued

Cost-savings to—	Cost savings	Present value
13 3- or 4-engine Operators	207,660,700	143,142,935
81 Part 135 Operators	777,600,000	546,108,480
Total Cost Savings	1,089,210,700	762,255,500

The net cost-savings to the industry are reduced by the costs incurred by the operators and manufacturers. These costs are addressed in the Cost section. These costs are estimated to be less than the estimated savings and the net cost-savings to the industry are estimated at $823.9 million or $530.2 million, discounted as shown in Table 3.

TABLE 3.—TEN-YEAR NET COST-SAVINGS OR COSTS TO INDUSTRY

Category	Cost savings or cost	Present value
Existing 2-engine Operators	$20,449,500	14,341,826
7 New 2-engine Operators	72,019,500	50,571,560
13 3- or 4-engine Operators	159,866,200	106,879,435
81 Part 135 Operators	694,137,600	486,079,380
Reporting and Certification Costs for:		
3 models of 3- or 4- engine airplanes	(11,875,500)	(9,797,100)
5 Business Aircraft Manufacturers Part 25 costs	(36,065,000)	(33,720,900)
5 Business Aircraft Manufacturers Part 33 Costs	(50,625,000)	(47,337,500)
Current Part 135 Operators:		
Aircraft Replacement Costs	(24,000,000)	(22,440,000)
Total Net Cost Savings	823,907,300	530,234,875

In addition to cost savings to operators there are other benefits of the proposed rule.

Benefits

Accidents due to diversions are non-existent for twin-engine aircraft operating under parts 121 or 135 and for more than two engine aircraft operating under part 121. The FAA believes the proposed weather provisions of the rule would reduce the probability of an accident occurring and the provision requiring rescue fire fighting services at ETOPS alternate airports would minimize the impact if an accident were to occur. In addition, the FAA believes the proposed requirements to require certificate holders to develop and implement passenger recovery plans for ETOPS alternate airports would better protect passengers and crew if a diversion is made for any reason.

Benefits cannot be assigned to specific provisions of the proposed rule; rather, it is assumed that the proposed revisions would work together to prevent diversions and to reduce the impact of any diversions that do occur. Aviation routes not supported within 180-minute diversion authority tend to be routes over remote areas of the world that are uniquely challenging. The additional operational challenges of these routes are equally demanding of all airplanes, regardless of the number of engines, and require all operators to equip their aircraft and train their personnel to prevent diversions and to minimize the impact of diversions that do occur. All operators must support any diversion that occurs and the subsequent recovery by providing the added planning, training and expertise demanded by the event. The FAA believes the requirements of the proposed rule provide the support and procedures necessary to minimize the stress on the airplane, crew, and passengers inherent in a diversion experience.

The FAA believes that the proposed ETOPS requirements would increase the system reliability of an operator that decides to conduct ETOPS operations and thus costly diversions could be reduced. One study that only addressed the cost of an ''irregular'' operation, unrelated to an ETOPS-type diversion, estimated the cost of a single diversion of a wide-body international flight with passengers having an overnight stay at another airport at between $89,400 and $181,800 [1]. The estimate is based on 200 passengers and 400 passengers and includes allowance for hotel, meals and telephone, aircraft operating costs, lost opportunity cost, and revenue lost from the diverted flight to passengers switching to another carrier. Omitting the opportunity cost would reduce these estimates by $10,000 resulting in a minimum cost of approximately $79,000. The cost of a diversion to a remote site would incur significant costs since recovery times as long as 48 hours are anticipated and per passenger costs may exceed the estimate included in the study. A worst-case scenario presented by Airbus in a CD labeled LROPS involves an engine loss and diversion to an airport in Siberia. Airbus estimated the recovery costs could be as high as $1 million including passenger accommodations, chartering an airplane to ferry the passengers to their destination, chartering an airplane to ferry a replacement engine, ferrying the repaired airplane to its station, and loss of airplane use. The FAA requests comments on the number of diversions that might be avoided on flights beyond 180-minutes as a result of the proposed rule and seeks diversion cost data.

Costs

Compliance with the proposed rule is voluntary for all operators, airframe-engine manufacturers. Since the decision is voluntary, the FAA has estimated the cost to current ETOPS operators for the cost of provisions not incurred by current practices and has estimated the cost savings and costs to individual operators, and airframe and engine manufacturers. The FAA has also

[1] ''Improving Airline Profitability Through Better Estimated Times of Arrival and Terminal Area Flight Information: a Benefit Analysis of PASSUR'' Darryl Jenkins and Bill Cotton. Available at *http://www.passur.com/report.*

estimated the total cost to industry based on a set of assumptions as to the number of operators and airplane manufacturers that would voluntarily participate.

The FAA estimates that the cost of the rule to a new entrant part 121 operator of a twin-engine airplane would be approximately $106,500 over 10 years more than the operator would incur under the existing deviation policy and procedures. This reflects the cost of preparing and maintaining passenger recovery plans and maintenance investigation and resolution costs for a four-airplane ETOPS operation.

A part 121 operator of a three- or four-engine fleet serving a single route beyond 180-minutes would incur costs of approximately $3.7 million over 10 years. It is assumed that the route would require a four-airplane fleet with 60 crewmembers, supported by 2 dispatchers and 20 mechanics.

A part 135 operator seeking authorization to conduct ETOPS operations beyond 180-minutes would incur costs of approximately $1.0 million over 10 years. This estimate is based on a fleet of 4 airplanes flown by a crew of 16 pilots and maintained by 2 certified mechanics, and each aircraft conducts a monthly ETOPS operation. The fleet excludes aircraft with a Class C cargo compartment. Aircraft with Class C cargo compartments would add $1.5 million to the cost. All aircraft are capable of operating between the West Coast-Hawaii. Currently 6 operators that are authorized to fly between the West Coast and Hawaii only operate airplanes that would not be acceptable to the FAA under the proposed rule. These operators would have to upgrade to an acceptable aircraft at an estimated cost of $4 million per aircraft to continue these flights.

A business aircraft manufacturer would incur reporting and investigation costs that would be required by the proposed provisions of part 21 estimated at $3.2 million over 10 years. This expenditure would by incurred to fund 2 full-time staff for reporting purposes and a full-time staff member to conduct investigations of incidents. The manufacturer would also incur airplane ETOPS certification costs of $7.2 million. This would consist of design costs of $6 million, and assessment and validation costs of $1.2 million. Engine certification costs that would be required to make an engine ETOPS eligible would cost $10.1 million. This would consist of design costs $3.2 million, testing costs of $6.5 million and establishing engine-monitoring procedures at a cost of $400,000. The total cost to a business aircraft manufacturer for reporting and investigation, and airframe and engine certification would be $20.6 million.

The manufacturer of an existing three- or four-engine airplane would incur additional reporting costs under part 21 of $1.9 million to include operators that choose to fly beyond 180-minutes, supplemental certification costs of $1.9 million to allow operators of existing three- or four-engine airplanes to increase the capacity of the cargo fire suppression system required for beyond 180-minute ETOPS and other required costs of $200,000 for a total cost of $4 million.

The quantified costs to all the individual entities affected by the proposed rule are summarized in Table 4. The FAA requests comments and data addressing these estimates.

TABLE 4.—ESTIMATED TEN YEAR QUANTIFIED COSTS OF PROPOSED RULE TO INDIVIDUAL ENTITIES

Cost area	Total cost	Present value
Cost to a New Part 121 Twin-Engine ETOPS Operator	$106,500	$75,900
Cost to a 3- or 4-Engine Operator	3,676,500	2,789,500
Cost to a Part 135 Operator	1,030,400	741,100
Costs to a Business Aircraft Manufacturer for Reporting and Investigation, and Certification of Airframe and ETOPS-Eligible Engine	20,560,000	18,474,500
Reporting and Certification Costs to Manufacturer of 3- or 4-engine airplane	3,958,500	3,265,700

In addition, the total cost of the provisions of the proposed rule for existing two-engine ETOPS operators over a ten-year period beyond those incurred to comply with the existing policy and guidance is estimated at $10.7 million or $7.6 million, discounted.

The total costs to the industry are estimated at $265.3 million over a ten-year period or $217.7 million, discounted as shown in Table 5. These costs are based on the following assumptions:

- Costs to existing 2-engine operators as shown in the Regulatory Evaluation.
- Costs for a single operator, as shown in the Regulatory Evaluation, are multiplied by the number in the first column for each row to obtain the Total Cost and Present Value columns.
- There are currently 7 ''low cost'' passenger carriers (AirTran, America West, ATA, Frontier, JetBlue, Southwest, and Spirit as defined by the *Aviation Daily*). It is assumed each would operate 4 ETOPS airplanes on a single route.
- There are currently 13 U.S. operators of 3- or 4-engine aircraft and it is assumed each would operate 1 route beyond 180 minutes.
- There are 81 Part 135 operators that both meet the proposed aircraft and maintenance requirements.
- There are 3 ''makes'' of 3- or 4-engine airplanes (B–747, DC–10, MD–11).
- There are 5 ''major'' business airplane manufacturers serving this market segment. (Boeing, Cessna, Gulfstream, Raytheon, and Sabreliner)

There are 6 current Part 135 operators using airplanes that could not be upgraded to meet the specifications of the proposed rule. It would cost each operator approximately $4 million to replace a single airplane to meet the specifications.

TABLE 5.—ESTIMATED TEN-YEAR COSTS TO INDUSTRY

Costs incurred by—	Total cost	Present value
Existing 2-engine Operators	$10,735,500	$7,559,400
7 New 2-engine Operators	745,500	531,300
13 3- or 4-engine Operators	47,794,500	36,263,500
81 Part 135 Operators	83,462,400	60,029,100
Reporting and Certification Costs for:		

TABLE 5.—ESTIMATED TEN-YEAR COSTS TO INDUSTRY—Continued

Costs incurred by—	Total cost	Present value
3 makes of 3- or 4-engine airplanes	11,875,500	9,797,100
5 Business Aircraft Manufacturers Part 25 Costs	36,065,000	33,720,900
5 Business Aircraft Manufacturers Part 33 Costs	50,625,000	47,337,500
Current Part 135 Operators:		
Aircraft Replacement Costs	24,000,000	22,440,000
Total Costs	265,303,400	217,678,800

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This proposed rule would affect airframe and engine manufacturers and part 121 and part 135 operators engaged in ETOPS operations. All United States manufacturers of transport category airplanes exceed the Small Business Administration small entity criteria of 1,500 employees for aircraft manufacturers. Those U.S. manufacturers include: Boeing, Cessna, Gulfstream, Lockheed Martin, McDonnell Douglas, Raytheon, and Sabreliner. All United States manufacturers of ETOPS-capable engines exceed the Small Business Administration small entity criteria of 1,000 employees for aircraft engine manufacturers. Those U.S. manufacturers include: General Electric, Pratt & Whitney, and Rolls Royce. All United States operators of transport category airplanes that are currently authorized to conduct 180-minute ETOPS operations exceed the Small Business Administration small entity criteria of 1,500 employees for scheduled and non-scheduled air transportation firms. Those U.S. operators include: American, American Trans Air, Continental, Delta, United, U.S. Airways, and UPS. There are a number of small non-scheduled part 121 operators that operate 3- or 4-engine aircraft that have the capability to operate ETOPS flights beyond 180 minutes. Those operators include: Atlas, Evergreen, Gemini, Kalitta, Southern Air, Polar, and World. There are a number of small non-scheduled part 135 operators that operate 2-engine aircraft that have the capability to operate ETOPS flights beyond 180 minutes. These non-scheduled part 121 and part 135 operators are not required to conduct beyond 180-minute ETOPS operations. Those who voluntarily decide to equip their aircraft and conduct the required training and planning under this proposed rule will have made their own business decisions that the costs associated with this NPRM are less than the cost savings of operating beyond 180-minute ETOPS flights. The FAA therefore certifies that the proposed rule would not have a significant economic impact on a substantial number of small operators. The FAA seeks public comments regarding this finding and requests that all comments be accompanied with detailed supporting data.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

In accordance with the above statute, the FAA has assessed the potential effect of this proposed rule and determined that it would impose requirements on airframe and engine manufacturers that both domestic and foreign firms would have to comply with. U.S. operators of 3- and 4-engine aircraft that seek authority to operate beyond 180-minutes ETOPS flight would have to comply with the same proposed equipment and training provisions regardless of the country of origin of the aircraft or engine manufacturer. Also the FAA does not believe that U.S. operators of 3- and 4-engine airplanes would be placed at a competitive disadvantage to foreign operators of 3- and 4-engine airplanes as a result of this proposed rule. The FAA seeks public comments regarding this finding and requests that all comments be accompanied with detailed supporting data.

The FAA concludes that these proposed requirements would have a neutral impact on foreign trade and, therefore, create no obstacles to the foreign commerce of the United States.

Unfunded Mandates Reform Act Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.''

This proposed rule does not contain such a mandate. The requirements of Title II do not apply.

Paperwork Reduction Act

This proposal contains new information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA will submit the information requirements associated with this proposal to the Office of Management and Budget for its review. A summary of those requirements follows.

Title: Extended Operations (ETOPS) of Multi-engine Airplanes

Summary: The regulations currently prohibit operators of two engine airplanes from flying more than one hour from an adequate airport. The NPRM would codify current practices that permit certificated air carriers to obtain approval under the Administrator's deviation authority to operate two-engine airplanes further than one hour from an adequate airport. It would also add regulations for ETOPS for all carriers regardless of the number of engines. ETOPS is voluntary for operators and manufacturers.

Use of the information: This rule is necessary to support the following elements of the FAA's strategic plan:

• *Global leadership*—The worldwide aviation industry is interested in extended operations. Civil aviation authorities of other countries and international aviation organizations are carefully watching the FAA's efforts to develop rules to govern extended operations. This proposed rule will enhance worldwide air travel safety and efficiency.

• *System efficiency*—Allowing extended operations allows operators to take more direct routes to long-range destinations and improves overall system efficiency.

Safety—The proposed rule addresses the safety aspects of extended operations.

Respondents: The likely respondents to this proposed information requirement are airplane manufacturers and air carriers who wish to operate on routes that go more than one hour from an adequate airport.

Frequency: Initial authorization and additional annual requirements.

Annual Burden Estimate:

This collection of information includes four areas:

1. Operators who elect to use the ETOPS alternative would have to prepare a *passenger recovery plan* applicable to each ETOPS alternate airport listed in the carrier's operations specifications. The FAA estimates that the initial preparation of such plans would require 100 staff hours, and to keep the plans up-to-date and viable would expend an additional 50 hours annually.

2. Operators are required under 121.703 to file mechanical reliability reports concerning the failure, malfunction, or defect for 17 areas. This proposal, however, would require that operators investigate *certain failures and submit findings and corrective actions* acceptable to the FAA. The FAA believes that there is a 5% probability of such a failure that would require additional reporting, and that such action could be resolved in two staff days.

3. Section 121.374 would require each certificate holder operating beyond the 180-minutes to have an *ETOPS maintenance program* in addition to the program currently required by 121.367. The program consists of 18 areas, including manual preparation, establishing procedures, and conducting training. The FAA estimates that it would take 3 months to develop.

4. Section 121.374 would require the certificate holder to *develop and write procedures for a pre-departure check.* The FAA estimates that it would take 6 weeks to develop this check. In addition, the carrier must *develop and write procedures* for identifying ETOPS specific procedures, which is estimated to take 8 hours. Carriers must also *supplement their existing reliability program;* estimated time to complete is 100 hours.

Each of these four areas is covered under three types of operators: 2-engine, 3–4 engine, and business jets. In addition, there are reporting requirements for parts 21, and 25 certification requirements. The burden is estimated based on the assumption that there will be 7 new 2-engine ETOPS Part 121 operators, 13 Part 121 3- or 4-engine operators and 81 business jet operators. Since many aspects of the proposed rule are voluntary the actual burden may vary significantly. The hours and costs per hour break down as follows:

Two-engine operators:

Passenger recovery plans—For current operators using ETOPS, estimate 19 plans × 100 hours × $75 = $142,500 for the initial plan. Thereafter, operators would spend 40 hours annually reviewing and validating the plan for a total 10-year cost of $655,000.

Initial development = 100 hrs × 19 plans = 1900 hours
Initial cost = $142,500
Recurring hours = 40 hrs × 19 plans × 9 years = 6840 hours
Recurring cost = $513,000
Total Hours = 8,740
Total Cost = $655,500

For estimated 7 new ETOPS operators:

Initial development = 100 hrs × 7 plans = 700 hours
Initial cost = $52,500
Recurring hours = 40 hrs × 7 plans × 9 years = 2520 hours
Recurring cost = $189,000
Total Hours = 3220
Total Cost = $241,500

Reporting failures and findings

For existing operators:

Initial = 16 hrs × 1,400 incidents = 22,400 hours × $45 = $1,008,000
Total over 10 years = 224,000 hours × $45 = $10,080,000
For estimated 7 new operators:
Initial = 16 hours × 7 operators × 10 incidents per = 1,120 hours × $45 = $50,400
Total over 10 years = 11,200 hours = $504,000

3- or 4-engine airplanes

Passenger recovery plans

For estimated 13 new ETOPS operators

Initial development = 100 hrs × 13 plans = 1,300 hours
Initial cost = 1,300 hours × $75 = $97,500
Recurring hours = 40 hrs × 13 plans × 9 years = 4680 hours
Recurring cost = $351,000
Total Hours = 5,980
Total Cost = $448,500

ETOPS Maintenance Program

For estimated 13 new ETOPS operators

Program document:

One time cost of 520 hours × 13 = 6760 hours × $85 = $574,600

Pre-departure check program:

240 hours × 13 = 3,120 hours × $85 = $265,200

ETOPS specific procedures:

8 hours × 13 = 104 hours × $85 = $8,840

Reliability program:

200 hours × 13 = 2600 hours × $85 = $221,000

Pre-departure service check:

2 hours × 3 planes × 360 days × 13 = 28080 hours × $45 = $1,263,600
Total Hours = 280,800
Total Cost = $12,636,000

Reporting Failures and Findings

16 hours × 10 incidents × 13 = 2080 hours × $45 = $93,600
Total Hours = 20,800
Total Cost = $936,000

Training

Initial Training

• 44 hours × 20 mechanics × 13 = 11440 hours × $45 = $514,800

• 16 hours × 20 pilots × 13 = 4160 hours × $173 = $719,680
• 4 hours × 40 flight attendants × 13 = 2080 hours × $52 = $108,160
• 12 hours × 8 dispatchers × 13 = 1248 hours × $38 = $47,424
Total Hours = 18,928
Total Cost = $1,390,064

Recurrent Training

• 1 hour × 20 mechanics × 13 × 9 = 2340 hours × $45 = $105,300
• 1 hour × 20 pilots × 13 × 9 = 2340 hours × $173 = $404,820
• 1 hour × 40 flight attendants × 13 × 9 = 4680 hours × $52 = $243,360
• 1 hour × 8 dispatchers × 13 × 9 = 936 hours × $38 = $35,568
Total Hours = 10,296
Total Cost = $789,048

Ten Year Training

Total Hours = 29,224
Total Cost = $2,179,112

Business Jets

For estimated 81 new ETOPS operators

Maintenance program:
50 hours × 81 = 4050 hours × $100 = $405,000

Pre-departure service check:
1 hour × 24 inspections × 81 = 1944 hours × $45 = $87,480
Total Hours = 19,440
Total Cost =$874,800

Continuing Analysis Surveillance Program (CASS)
100 hours × 81 = 8100 hours × $45 = $364,500

Monitoring programs.
1 mechanic × 81 × 2080 hours = 168480 × $45 = $7,581,600
Total Hours = 1,684,800
Total Cost = $75,816,000

Training

Initial Training

• 4 hours × 2 mechanics × 81 = 648 hours × $45 = $29,160

Recurrent Training

• 1 hour × 2 mechanics × 81 × 9 = 1458 hours × $45 = $65,610
Total Hours = 2,106
Total Cost = $94,770
Quarterly reporting:
8 hours × 81 = 648 hours × $45 = $29,160
8 hours × 81 × 10 = 6480 hours × $45 = $291,600
For operations north of latitude N78:
Recovery plan:
Initial development t = 40 hrs × 81 plans = 3240 hours
Initial cost = 3240 hours × $75 = $243,000
Recurring hours = 10 hrs × 81 plans × 9 years = 7290 hours
Recurring cost = 7290 × $75 = $546,750
Total Hours = 10,530
Total Cost = $789,750

Training

Initial Training

• 16 hours × 16 pilots × 81 = 20736 hours × $173 = $3,587,328

Recurring Training

• 1 hour × 16 pilots × 81 × 9 = 11664 hours × $173 = $2,017,872
Total Hours = 32,400
Total Cost = $5,605,200

Part 21

Expanded ETOPS reporting:
Two engineer aides × 2080 = 4,160 hours × $45 = $187,200
Total Hours = 41,600
Total Cost = $1,872,000
New ETOPS reporting:
For estimated 5 new ETOPS manufacturers
Two engineer aides × 2080 = 4,160 hours × 5 = 20,800 hours × $45 = $936,000
Total Hours = 208,000
Total Cost = $9,360,000

Investigation of shutdown causes:
2,000 hours × 5 = 10,000 hours × $67.50 = $675,000
Total Hours = 100,000
Total Cost = $6,750,000

Part 25

One time certification for fire suppression:
25,000 hours (for 3 type certificates) × $75 = $1,875,000 million

In summary, the FAA estimates that the one-time and first year burden of the paperwork requirements for ETOPS operators and manufacturers would be approximately 357,000 hours and cost $21.2 million, undiscounted. The ten-year burden is estimated at 2.7 million hours and the undiscounted cost is estimated $132.8 million as shown in the attached table.

In addition, there are other certification costs that are difficult to sort by information requirements. Some of these other costs are manufacturing costs with additional reporting requirements.

The FAA is soliciting comments to—

(1) evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) evaluate the accuracy of the agency's estimate of the burden;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may submit comments on the information collection requirement by January 13, 2004, and should direct them to the address listed in the **ADDRESSES** section of this document. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the **Federal Register**, after the Office of Management and Budget approves it.

SUMMARY OF INITIAL AND TOTAL PAPERWORK HOURS AND COSTS

Category	Initial hours	Initial cost	Ten year hours	Ten year costs
2-engine:				
Recovery Plans:				
Existing	1,900	$142,500	8,740	$655,500
New	700	52,500	3,320	241,500
Reporting:				
Existing	22,400	1,008,000	224,000	10,080,000
New	1,120	50,400	11,200	504,000
More than 2-engine:				
Recovery Plans	1,300	97,500	5,980	448,500

SUMMARY OF INITIAL AND TOTAL PAPERWORK HOURS AND COSTS—Continued

Category	Initial hours	Initial cost	Ten year hours	Ten year costs
ETOPS Program document	6,760	574,600	6,760	574,600
Pre-departure Program	3,120	265,200	3,120	265,200
ETOPS SpecificProcedures	104	8,840	104	8,840
Reliability Program	2,600	221,000	2,600	221,000
Pre-departure Service Check	28,080	1,263,600	280,800	12,636,000
Reporting Failures	2080	93,600	20,800	936,000
Training	18928	1,390,064	29,224	2,179,112
Business Jets:				
ETOPS Maintenance Program	4050	405,000	4,050	405,000
Pre-departure Service Check	1944	87,480	19,440	874,800
CASS	8100	364,500	8,100	364,500
Monitoring Programs	168,480	7,581,600	1,684,800	75,816,000
Training	648	29,160	2,106	94,770
Quarterly Reporting	648	29,160	6,480	291,600
Polar Recovery Plan	3,240	243,000	10,530	789,750
Polar Training	20,736	3,587,328	32,400	5,605,200
Part 21:				
ETOPS Reporting:				
Expanded	4,160	187,200	41,600	1,872,000
New	20,800	936,000	208,000	9,360,000
Shutdown Investigations	10,000	675,000	100,000	6,750,000
Part 25: Certification	25,000	1,875,000	25,000	1,875,000
Total	356,898	21,168,232	2,739,154	132,848,872

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action 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, and therefore would not have federalism implications.

Plain Language

Executive Order 12866 (58 FR 51735, Oct. 4, 1993) requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain unnecessary technical language or jargon that interferes with their clarity?
- Would the regulations be easier to understand if they were divided into more (but shorter) sections?
- Is the description in the preamble helpful in understanding the proposed regulations?

Please send your comments to the address specified in the **ADDRESSES** section.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this proposed rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. We have determined that the notice is not a major regulatory action under the provisions of the EPCA.

Executive Order 13211—Energy Supply, Distribution, or Use

Executive Order 13211 requires agencies to submit a Statement of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, for matters identified as significant energy actions. A significant energy action is an action that (1) is significant under Executive Order 12866 and is likely to have a significant adverse effect on the supply, distribution, or use of energy or (2) is designated by the administrator of the Administrator of OIRA as a significant energy action. This proposed rule would save fuel for operators who obtain authorization for ETOPS routes and would therefore have a significant positive effect on energy use. We are not required to submit a Statement of Energy Effects for this proposed rule because we do not expect this rule to have a significant adverse effect on the supply, distribution, or use of energy and the Administrator of OIRA has not identified it as a significant energy action.

List of Subjects

14 CFR Part 1

Air transportation.

14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 33

Aircraft, Aviation safety.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Alcohol abuse, Aviation safety, Charter flights, Drug abuse, Drug testing, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 135

Air taxis, Aircraft, Airmen, Alcohol abuse, Aviation safety, Drug abuse, Drug testing, Reporting and recordkeeping requirements.

The Proposed Amendment

For the reasons discussed in the preamble, the Federal Aviation Administration proposes to amend part 14 CFR parts 1, 25, 33, 121, and 135 as follows:

PART 1—DEFINITIONS

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

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

2. Amend § 1.1 by adding the definitions of ''Early ETOPS'', ''ETOPS Configuration, Maintenance and Procedures Standard (CMP)''. ''ETOPS Significant Systems'', ''Extended Operations (ETOPS)'', ''Group 1 Systems'', ''Group 2 Systems'', and ''In-flight shutdown (IFSD)'', to read as follows:

§ 1.1 General Definitions.

* * * * *

Early ETOPS means obtaining ETOPS type design certification without first gaining service experience on the airplane/engine combination to be certified.

* * * * *

ETOPS Configuration, Maintenance and Procedures Standard (CMP) means specific airframe and engine configuration minimum requirements, including any special inspection, hardware life limits, Master Minimum Equipment List (MMEL) constraints and maintenance practices found necessary by the FAA to establish the suitability of that airframe and engine combination for ETOPS.

* * * * *

ETOPS Significant Systems means the airplane propulsion system and any other airplane systems whose failure could adversely affect the safety of an ETOPS flight, or whose functioning is important to continued safe flight and landing during an airplane diversion. Each ETOPS significant system is either a Group 1 or Group 2 system based on the relationship to the number of engines, or to continued safe engine operation.

Extended Operations (ETOPS) means an airplane flight operation in which a portion of the flight is operated beyond a predetermined time threshold, as identified in parts 121 and 135 of this title, from an adequate airport based on an approved one engine inoperative cruise speed under standard conditions in still air.

* * * * *

ETOPS Group 1 Systems: Group 1 Systems include any systems that relate to the number of engines on the airplane and are important to the safe operation of the airplane on an ETOPS flight. The following provides additional discriminating definitions of an ETOPS Group 1 Significant System:

(1) A system for which the fail-safe redundancy characteristics are directly linked to the number of engines (for example, hydraulic system, pneumatic system, electrical system).

(2) A system that may affect the proper functioning of the engines to the extent that it could result in an in-flight shutdown or uncommanded loss of thrust (for example, fuel system, thrust reverser or engine control or indicating system, and engine fire detection systems).

(3) A system which contributes significantly to the safety of an engine inoperative ETOPS diversion and is intended to provide additional redundancy to accommodate the system(s) lost by the inoperative engine. These include back-up systems such as an emergency generator or APU.

(4) Any system essential to prolonged operation at engine inoperative altitudes including anti-icing systems for a twin-engine airplane if single engine performance results in the airplane operating in the icing envelope.

ETOPS Group 2 Systems: Group 2 Systems are systems that do not relate to the number of engines on the airplane, but are important to the safe operation of the airplane on an ETOPS flight. The following provides additional discriminating definitions of an ETOPS Group 2 Significant System:

(1) A system the failure of which would reduce the capability of the airplane or the ability of the crew to cope with an ETOPS diversion, (for example, long-range navigation or communication, equipment cooling, or systems important to safe operation on a ETOPS diversion after a decompression.)

(2) Time-limited systems including cargo fire suppression and oxygen if the duration of ETOPS dependent on the availability of such systems.

(3) Systems whose failure would result in excessive crew workload or have operational implications or significant detrimental impact on flight crew or passengers physiological well being for an ETOPS diversion (for example flight control forces that would be exhausting for a maximum ETOPS diversion, system failures that would require continuous fuel balancing to ensure proper Center of Gravity (CG), or a cabin environmental control failure that could cause extreme heat or cold that it could incapacitate the crew or cause physical harm to the passengers).

(4) Any other system specifically installed to enhance the safety of long-range operations including an ETOPS diversion regardless of the applicability of paragraphs (1), (2) and (3) of this definition (for example SATCOM, GPS).

* * * * *

In-flight shutdown (IFSD) means when an engine ceases to function in flight and is shutdown, whether self-induced, crew initiated or caused by some other external influence. (The FAA considers IFSD for all causes, for example. flameout, internal failure, crew initiated shutoff, foreign object ingestion, icing, inability to obtain and/or control desired thrust.)

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

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

Authority: 42 U.S.C. 7572; 49 U.S.C. 106(g), 40105, 40113, 44701–44701, 44707, 44709, 44711, 44713, 44715, 45303.

4. Add § 21.4 to read as follows:

§ 21.4 ETOPS reporting requirements.

(a) *Early ETOPS problem reporting, tracking, and resolution.* (1) The holder of a type certificate of an airplane that has been approved for ETOPS without service experience in accordance with section II, paragraph (a), or section III, paragraph (a), of Appendix L of 14 CFR part 25 must establish a system for reporting, tracking, and promptly resolving problems encountered with ETOPS Significant Systems.

(2) The system must contain a means for the prompt identification of problems with ETOPS Significant Systems, for the reporting of such problems to the responsible FAA certification office, and for proffering solutions to and obtaining FAA approval for the resolution of the problems. The implementation of the problem resolution can be accomplished by way of an FAA approved change(s) in the type design, the manufacturing process, or an operating or maintenance procedures.

(3) The reporting system must be in place for the first 250,000 fleet engine hours. For a two-engine ETOPS airplane, the reporting requirement remains in place until the fleet has demonstrated a stable in-flight shutdown rate in accordance with paragraph (b)(2) of this section for the maximum diversion time for which the airplane has been certified.

(4) If the airplane or engine type certificated is a derivative of a previously certificated airplane or engine, the type certificate holder may, with prior authorization from the Administrator, report only on systems that have changed from the original type certificate.

(5) For the early ETOPS service period, an applicant must define the sources and content of in-service data that will be made available to them in support of their problem reporting and

tracking system. The content of this data must be adequate to evaluate the specific cause of all service incidents reportable under § 21.3(c) of part 21, in addition to any occurrences that could affect the safety of ETOPS operations and must be reported, including:

(i) In-flight shutdown events, and for twin-engine ETOPS airplanes, in-flight shutdown rates;

(ii) Inability to control the engine or obtain desired power;

(iii) Precautionary thrust reductions (except for normal troubleshooting as allowed in the aircraft manual);

(iv) Degraded propulsion in-flight start capability;

(v) Inadvertent fuel loss or fuel unavailability, or uncorrectable fuel imbalance in flight;

(vi) Technical air turn backs or diversions associated with an ETOPS Group 1 Significant System;

(vii) Inability of an ETOPS Group 1 Significant System, designed to provide backup capability after failure of a primary system, to provide the required backup capability in-flight;

(viii) A complete loss of any electrical power generating system or hydraulic power system during an operation of the aircraft;

(ix) Any event that would jeopardize the safe flight and landing of the airplane on an ETOPS flight;

(x) Unscheduled engine removals for conditions that could result in one of the reportable items listed above.

(b) ETOPS operational service reliability reporting for two-engine airplanes.

(1) *Two engine reliability reporting.* Type Certificate Holder of engines and airplanes used in ETOPS service must report monthly on the reliability of their two-engine airplane fleets in service. The Administrator may approve reporting on a quarterly basis if the airplane and engine demonstrate sustained IFSD rates below those identified in paragraph (b)(2) of this section. This reporting may be combined with the reporting requirements of § 21.3. Causes of propulsion system in-flight shutdown must be investigated by the manufacturer(s), and where appropriate for the safety and airworthiness of ETOPS operations, FAA approved corrective action must be implemented. Reporting must include:

(i) Propulsion system in-flight shutdown events (excluding normal training events)

(ii) In-flight shutdown rates for all causes (excluding normal training events).

(iii) ETOPS fleet utilization, including a list of operators, their ETOPS diversion time authority, flight hours, and cycles.

(2) *ETOPS World Fleet In-Flight Shutdown Rate Requirements.* Type Certificate Holders of engines and airplanes approved for ETOPS service must monitor and report the worldwide fleet in-flight shutdown rates by airplane-engine type combinations to ensure appropriate rates are maintained. ETOPS 12 month rolling average in-flight shutdown rates must be maintained at the following levels:

(i) A threshold rate of 0.05 per 1,000 fleet engine hours for two-engine airplanes in ETOPS for initial approval up to 120 minutes, with continuing improvement toward a rate of 0.02 per 1,000 fleet engine hours;

(ii) A rate of 0.02 per 1,000 fleet engine hours for two-engine airplanes in ETOPS up to 180 minutes, and as provided for flight by flight exception based operations up to 207 minutes maximum diversion time in the North Pacific area of operation as defined in 14 CFR Part 121;

(iii) A rate of 0.01 per 1,000 fleet engine hours for twin-engine airplanes in ETOPS beyond 180 minutes, except as provided for flight by flight exception based operations up to 207 minutes maximum diversion time in the North Pacific area of operation as defined in 14 CFR Part 121.

PART 25—AIRPLANE TYPE DESIGN

5. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702 and 44704.

6. Amend § 25.857 by revising paragraph (c)(2) to read as follows:

§ 25.857 Cargo compartment classification.

* * * * *

(c) * * *

(2) There is an approved built-in fire extinguishing or suppression system controllable from the cockpit. For ETOPS approval, the certified time capability of the system must be provided as required by § 25.1581(a)(2).

* * * * *

7. Add § 25.1535 to read as follows:

§ 25.1535 ETOPS approval.

Each applicant seeking type design certification for ETOPS must:

(a) Comply with the requirements of this part considering the maximum mission time and the longest diversion time for which approval is being sought.

(b) Consider crew workload and operational implications and the flight crew's and passengers' physiological needs of continued operation with failure effects for the longest diversion time for which approval is being sought, and

(c) Comply with the requirements of Appendix L of this part.

8. Add Appendix L to read as follows:

Appendix L to Part 25—Extended Operations (ETOPS)

This appendix defines additional airworthiness requirements for the approval of an airplane-engine combination for Extended Operations (ETOPS) in accordance with § 25.1535. Two engine airplanes must comply with Sections I and II of this appendix. Airplanes with more than two engines must comply with Sections I and III of this appendix.

Section I—Design Requirements

(a) Airplane Systems. (1) Operation in icing conditions. (i) The airplane must be certificated for operation in icing conditions in accordance with § 25.1419.

(ii) The airframe and propulsion system ice protection must be capable of continued safe flight and landing at engine inoperative and decompression altitudes in icing conditions.

(iii) The applicant must show that the unprotected areas of the airplane will not collect a load of ice that would make the airplane uncontrollable or create too much drag to safely complete a diversion in icing conditions.

(2) *Electrical power supply.* The electrical power supply system must be designed so that—

(i) The occurrence of any failure condition which would prevent the continued safe flight and landing of the airplane on an ETOPS flight is extremely improbable, and

(ii) The occurrence of any other failure conditions which would reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions on an ETOPS flight is improbable.

(iii) For airplanes to be certificated for usage on routes further than 180 minutes from a suitable airport, the airplane must be equipped with at least three independent electrical generation sources.

(3) *Time limited systems.* For each ETOPS Significant System that is time limited, the system capability must be defined. The most limiting ETOPS Significant System capability must be stated in the Airplane Flight Manual per the requirements of paragraph (e)(4) of Section I of this appendix.

(b) *Propulsion systems.* (1) Fuel system design. Fuel necessary to complete an ETOPS mission, including a diversion for the longest time for which approval is being sought, must be available to the operating engine or engines at the pressure and flow required by § 25.955 under any airplane failure condition not shown to be extremely improbable. Examples of the types of failures to be considered include crossfeed valve failures, automatic fuel management system failures, and normal electrical power generation failures.

(i) For two engine airplanes to be certificated for usage on routes further than 180 minutes from a suitable airport, one fuel boost pump in each main tank and actuation

capability of at least one crossfeed valve must be able to be powered by a back-up electrical generation source other than the primary engine driven or APU driven generators, unless the required fuel boost pressure or crossfeed valve actuation is not provided by electrical power.

(ii) Alerts must be displayed to the flight crew when the quantity of fuel available to the engines falls below that level required to complete the mission. These alerts must include provisions for abnormal fuel management or transfer between tanks, and possible loss of fuel.

(2) *APU design.* If operation of the APU installation is required to comply with this appendix, the applicant must substantiate that:

(i) The APU has adequate reliability for that operation, and;

(ii) If in-flight start and run capability is necessary, the APU in-flight operating envelope shall extend to the maximum operating altitude of the airplane, but need not exceed 45,000 feet.

(3) *Engine oil tank design.* The engine oil tank filler cap must comply with section 33.71(c)(4).

(c) *Engine condition monitoring.* Procedures for an engine condition monitoring process must be defined and validated in accordance with Part 33 Appendix A, paragraph 33.3(c).

(d) *Configuration, maintenance and procedures.* If the airplane, propulsion, and ETOPS Significant System assessments identify configuration, maintenance or operational standards necessary to maintain appropriate reliability for ETOPS, the applicant must identify the appropriate standards in a Configuration, Maintenance and Procedures (CMP) document.

(e) *Airplane flight manual.* The airplane flight manual must contain the following information.

(1) Special limitations, including any limitations associated with operation of the airplane up to the maximum diversion time being approved.

(2) Required markings or placards.

(3) The airborne equipment, installation, and flight crew procedures required for extended operations.

(4) The maximum diversion time capability of the airplane for ETOPS required by paragraph (a)(3) of this appendix in accordance with § 25.1581(a)(2), ''Furnishing information.''

(5) The following statement: ''The type design reliability and performance of this airframe-engine combination has been evaluated in accordance with § 25.1535 and found suitable for (*state maximum diversion time*) extended operations (ETOPS) with the incorporation of the approved airplane configuration CMP standard contained in (*state description or reference to a document containing the approved CMP standard*). This finding does not constitute approval to conduct ETOPS.''

Section II—Two Engine Airplanes

An applicant for a two engine airplane must use one of the methods described in paragraphs (a), (b), or (c) of Section II of this appendix to certify the airplane for Extended Operations.

(a) *Service experience method.* The applicant must demonstrate that the airplane and engine combination for which approval is sought has the required airplane and propulsion system capability to safely conduct an ETOPS mission and maximum diversion and has achieved required airframe and propulsion system reliability based upon fleet in-service experience.

(1) *Required service experience.* After accumulating 250,000 worldwide fleet engine hours on the airplane and engine combination for which approval is sought, a reliability review must be performed. The number of hours may be reduced if adequate compensating factors are identified which give a reasonable equivalent database. Where experience on another airplane is applicable, a significant portion of the 250,000 hours must be obtained on the candidate airplane.

(2) *Propulsion system assessment.* (i) The applicant must conduct a propulsion system assessment based on the following data, collected from the entire fleet of the specific airplane and engine combination for which approval is sought:

(A) A list of all engine shutdown events both ground and in-flight for all causes (excluding normal training events) including flameouts. The list should provide identification (engine and airplane model and serial number), engine configuration and modification history, engine position, circumstances leading up to the event, phase of flight or ground operation, weather/environmental conditions, and reason for shutdown. In addition, similar information should be provided for all occurrences where control of desired thrust level was not attained.

(B) Unscheduled engine removal rate (accumulated 6- and 12-month rolling averages), removal summary, time history of removal rate and primary causes for unscheduled removal.

(C) Dispatch delays, cancellations, aborted takeoffs (includes those induced by maintenance or crew error) and en-route diversions chargeable to the propulsion system.

(D) Total engine hours and cycles and engine hour population (age distribution).

(E) Mean time between failure of propulsion system components that affect reliability.

(F) IFSD rate based upon a 6- and 12-month rolling average.

(ii) All causes or potential causes of engine in-flight shutdowns or loss of thrust control occurring in service must have corrective actions that are shown to be effective in preventing future occurrences.

(3) *Airplane systems assessment.* Airplane systems must comply with the requirements of § 25.1535(a) using available in-service reliability data for ETOPS significant systems. All causes or potential causes of ETOPS significant system failures occurring in service must have corrective actions that are shown to be effective in preventing future occurrences.

(4) *In-flight shutdown (IFSD) rates.* The demonstrated airplane and engine combination world fleet propulsion system 12 month rolling average IFSD rate must be commensurate with the level of ETOPS approval being sought.

(i) For operations up to 120 minutes: A rate of approximately 0.05 or less per 1,000 fleet engine hours with a required list of corrective actions in the CMP document that would result in continuing improvement toward an IFSD rate of 0.02 per 1,000 fleet engine hours.

(ii) For operations up to 180 minutes: A rate of approximately 0.02 or less per 1,000 fleet engine hours with an existing 120 minute CMP standard, or new or additional CMP requirements that have been demonstrated to achieve this in-flight shutdown rate.

(iii) For operations beyond 180 minutes: A rate of approximately 0.01 or less per 1,000 fleet engine hours with an existing 120 minute or 180 minute CMP standard, or new or additional CMP requirements that have been demonstrated to achieve this in-flight shutdown rate.

(5) *Airplane flight test requirements.* A flight test must be conducted to validate the adequacy of the airplane's flying qualities, performance and the flight crew's ability to deal with engine inoperative and non-normal worst case system failure conditions expected to occur in service.

(b) *Early ETOPS method.*

(1) *Relevant experience assessment.* The applicant must identify specific corrective actions taken on the airplane design to address relevant design, manufacturing, operational and maintenance problems experienced on previously certified Part 25 airplanes manufactured by the applicant. Specific corrective actions are not required if the nature of the problem is such that the problem would not significantly impact the safety or reliability of the system. Relevant problems are those problems on ETOPS Group 1 Significant Systems that have or could have resulted in in-flight shutdowns or diversions. To experience of supplier-provided ETOPS Group 1 Significant Systems and similar or identical equipment utilized on aircraft built by other manufacturers must be included.

(2) *Propulsion system design. (i) Engine ETOPS eligibility.* The engine must be approved for ETOPS eligibility in accordance with § 33.200.

(ii) *Design to preclude in-flight shutdowns.* The applicant must design the propulsion system to preclude failures or malfunctions that could result in an engine in-flight shutdown. The applicant must substantiate compliance with this requirement by analysis, test, in-service experience on other airplanes, or other means. The analysis must show that the propulsion system design will minimize failures and malfunctions with the objective of achieving the following in-flight shutdown rates: 0.02 per 1,000 engine fleet hours for ETOPS (180 minutes or less) 0.01 per 1,000 engine fleet hours for ETOPS (beyond 180 minutes).

(3) *Maintenance and operational procedures.* The applicant must validate all ETOPS significant systems maintenance and operational procedures. Any problems found as a result of the validation must be tracked and resolved through the Problem Tracking and Resolution System required by Section II, paragraph (b)(8) of this appendix.

(4) *Propulsion system validation test.* The installed engine configuration for which

approval is being sought must comply with § 33.200(c). The test engine must be configured with a complete airplane nacelle package, including engine-mounted equipment except for any configuration differences necessary to accommodate test stand interfaces with the engine nacelle package. At the conclusion of the test, the propulsion system must be:

(i) Visually inspected according to the applicant's on-wing inspection recommendations and limits.

(ii) Completely disassembled and the propulsion system hardware must be inspected in accordance with the service limits submitted in compliance with § 25.1529. Any potential sources of in-flight shutdown, loss of thrust control, or other power loss encountered during this inspection must be tracked and resolved in accordance with Section II, paragraph (b)(8) of this appendix.

(5) *New technology demonstration testing.* Testing must be conducted to substantiate the suitability of any technology new to the applicant, including substantially new manufacturing techniques.

(6) *APU validation test.* If utilizing an APU in order to meet the requirements of paragraph (a)(2) of section I of this appendix, one APU of the type to be certificated with the airplane must complete a test consisting of 3,000 equivalent airplane operational cycles. Following completion of the demonstration test, the APU must be disassembled and inspected. Any potential sources of in-flight start problems or run problems or both must be identified, tracked and resolved in accordance with Section II, paragraph (b)(8) of this appendix.

(7) *Airplane demonstration test.* For each airplane and engine combination to be certificated one or more airplanes must conduct flight-testing that demonstrates that the aircraft, its components and equipment are capable of and function properly during ETOPS and ETOPS diversions. This flight-testing may be coordinated with, but is not in place of flight-testing required for compliance to § 21.35(b)(2).

(i) The flight test program must include:

(A) Flights simulating actual ETOPS operation including normal cruise altitude, step climbs, and APU operations if paragraph (b)(2) of section I of this appendix applies.

(B) Demonstration of maximum normal flight duration with maximum diversion time for which eligibility is sought.

(C) Engine inoperative maximum time diversions to demonstrate the airplane and propulsion system capability to safely conduct an ETOPS diversion, including a repeat of a maximum continuous thrust (MCT) diversion on the same engine.

(D) Non-normal conditions to demonstrate the airplane's capability to safely conduct an ETOPS diversion under worst-case system failure conditions expected to occur in service.

(E) Diversions into representative operational diversionary airports.

(F) Repeated exposure to humid and inclement weather on the ground followed by long-range operations at normal cruise altitude.

(ii) The flight testing must validate the adequacy of the airplane's flying qualities, performance and flight crew's ability to deal with the conditions of paragraphs (b)(7)(i)(C), (b)(7)(i)(D), and (b)(7)(i)(E) of Section II of this appendix.

(iii) The engine-inoperative diversions must be evenly distributed among the number of engines in the applicant's flight test program except as required by paragraph (b)(7)(i)(C) of Section II of this appendix.

(iv) The test airplane or airplanes must be operated and maintained using the recommended operations and maintenance manual procedures during the airplane demonstration test.

(v) At the completion of the airplane or airplanes demonstration testing, the ETOPS significant systems must undergo an airplane visual inspection per the Instructions for Continued Airworthiness of § 25.1529. The engines must also undergo a gas path inspection. These inspections are intended to identify any abnormal conditions that could result in an in-flight shutdown or diversion. Any abnormal conditions must be identified, tracked and resolved in accordance with paragraph (b)(8) of Section II of this appendix.

(8) *Problem tracking and resolution system.* A problem tracking and resolution system must be established to address problems, as identified in § 21.4(a)(5), encountered on the ETOPS significant systems during airplane and engine testing that could affect the safety of ETOPS operations. If the airplane or engine type certificated is a derivative of a previously certificated airplane or engine, the criteria of § 21.4(a)(4) may apply.

(i) The system must contain a means for prompt identification of problems that could impact the safety of ETOPS operations.

(ii) The system must contain the process for the timely notification to the responsible FAA office of all relevant problems encountered, and corrective actions deemed necessary, in a manner that allows for appropriate FAA review of all planned corrective actions.

(iii) The system must be in effect during the phases of airplane and engine development that will be used to assess early ETOPS eligibility.

(iv) Upon Type Certification, the certificate holder must comply with problem tracking and resolution system requirements of § 21.4.

(9) *Reliability demonstration acceptance criteria.* For airplane, propulsion and ETOPS significant systems, the type and frequency of failures that occur during the airplane flight test program and the airplane demonstration test required by paragraph (b)(7) of Section II of this appendix must be consistent with the type and frequency of failures or malfunctions that would be expected to occur on presently certified ETOPS airplanes.

(c) *Combined service experience and early ETOPS method.*

(1) The in-service experience requirements of paragraph (a)(1) may be reduced to 15,000 engine hours provided compliance to paragraphs (a)(5), (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), (b)(6), (b)(8), and (b)(9) of Section II of this appendix have been met.

(2) Additionally, as allowed by § 21.21(b)(1), the in-service experience requirements of paragraph (a)(1) of Section II of this appendix may be reduced to some level other than 15,000 engine hours provided compensating factors that provide an equivalent level of safety are provided.

Section III—Airplanes With More Than Two Engines

An applicant for an airplane with more than two engines must use one of the methods described in the following paragraphs (a), (b) or (c) of Section III of this appendix to certify the airplane for Extended Operations.

(a) *Service experience method.* The applicant must demonstrate that the airplane and engine combination for which approval is sought has the required airplane and propulsion system capability to safely conduct an ETOPS mission and maximum diversion and has achieved required airplane system reliability based upon fleet in-service experience.

(1) *Required service experience.* After accumulating 250,000 worldwide fleet engine hours on the airplane and engine combination for which approval is sought, the applicant must perform a reliability review. The number of hours may be reduced if adequate compensating factors are identified which give a reasonable equivalent database. Where experience on another airplane is applicable, a significant portion of the 250,000 hours must be obtained on the candidate airplane.

(2) *Airplane systems assessment.* Airplane systems must comply with the requirements of § 25.1535(a) using available in-service reliability data for ETOPS significant systems. All causes or potential causes of ETOPS significant system failures occurring in service must have corrective actions that are shown to be effective in preventing future occurrences.

(3) *Airplane flight test requirements.* The applicant must conduct a flight test to validate the adequacy of the airplane's flying qualities, performance and the flight crew's ability to deal with engine inoperative and non-normal worst case system failure conditions expected to occur in service.

(b) *Early ETOPS method.*

(1) *Maintenance and operational procedures.* The applicant must validate all ETOPS Significant Systems maintenance and operational procedures. The applicant must track and resolve any problems found as a result of the validation through the Problem Tracking and Resolution System required by paragraph (b)(5) of Section III of this appendix.

(2) *New technology demonstration testing.* The applicant must conduct testing to substantiate the suitability of any technology new to the applicant, including substantially new manufacturing techniques.

(3) *APU validation test.* If utilizing an APU in order to meet the requirements of paragraph (a)(2) of section I of this appendix, one APU of the type to certificated with the airplane must complete a test consisting of 3,000 equivalent airplane operational cycles. Following completion of the demonstration test, the APU must be disassembled and inspected. Any potential sources of in-flight start problems or run problems or both must be identified, tracked and resolved in accordance with paragraph (b)(5) of Section III of this appendix.

(4) *Airplane demonstration test.* For each airplane and engine combination to be certificated, the applicant must conduct flight-testing with one or more airplanes to demonstrate that the aircraft, its components and equipment are capable of and function properly during ETOPS and ETOPS diversions. This flight-testing may be coordinated with, but is not in place of flight-testing required for compliance to § 21.35(b)(2).

(i) The flight test program must include:

(A) Flights simulating actual ETOPS operation including normal cruise altitude, step climbs, and APU operations if compliance to paragraph I (b)(2) of this appendix is necessary.

(B) Demonstration of maximum normal flight duration with maximum diversion time for which eligibility is sought.

(C) Engine inoperative maximum time diversions to demonstrate the airplane and propulsion system's capability to safely conduct an ETOPS diversion, including a repeat of a maximum continuous thrust (MCT) diversion on the same engine.

(D) Non-normal conditions to demonstrate the airplane's capability to safely conduct an ETOPS diversion under worst case system failure conditions expected to occur in service.

(E) Diversions into representative operational diversionary airports.

(F) Repeated exposure to humid and inclement weather on the ground followed by long-range operations at normal cruise altitude.

(ii) The flight testing must validate the adequacy of the airplane's flying qualities, performance and flight crew's ability to deal with the conditions of paragraphs (b)(4)(i)(C), (b)(4)(i)(D), and (b)(4)(i)(E) of Section III of this appendix.

(iii) The engine-inoperative diversions must be evenly distributed among the number of engines in the applicant's flight test program except as required by paragraph (b)(4)(i)(C) of Section III of this appendix.

(iv) The test airplane or airplanes must be operated and maintained using the recommended operations and maintenance manual procedures during the airplane demonstration test.

(v) At the completion of the airplane or airplanes demonstration testing, the ETOPS Significant Systems must undergo an airplane visual inspection per the Instructions for Continued Airworthiness of § 25.1529. The engines must also undergo a gas path inspection. These inspections are intended to identify any abnormal conditions that could result in an in-flight shutdown or diversion. The applicant must identify, track and resolve any abnormal conditions in accordance with paragraph (b)(5) of Section III of this appendix.

(5) *Problem tracking and resolution system.* The applicant must establish a problem tracking and resolution system to address problems, as identified in § 21.4(a)(5), encountered on the ETOPS Significant Systems during airplane and engine testing that could affect the safety of ETOPS operations. If the airplane or engine type certificated is a derivative of a previously certificated airplane or engine the criteria of § 21.4(a)(4) may apply.

(i) The system must contain a means for prompt identification of problems that could impact the safety of ETOPS operations.

(ii) The system must contain the process for the timely notification to the responsible FAA office of all relevant problems encountered, and corrective actions deemed necessary, in a manner that allows for appropriate FAA review of all planned corrective actions.

(iii) The system must be in effect during the phases of airplane and engine development that will be used to assess early ETOPS eligibility.

(iv) Upon type certification, the problem tracking and resolution system will revert to the requirements of § 21.4.

(6) *Reliability demonstration acceptance criteria.* For ETOPS significant systems, the type and frequency of failures that occur during the airplane flight test program and the airplane demonstration test required by paragraph (b)(4) of this section must be consistent with the type and frequency of failures or malfunctions that would be expected to occur on presently certified ETOPS airplanes, or any non-ETOPS derivative models of those aircraft or engines.

(c) *Combined service experience and early ETOPS method.*

(1) The in-service experience requirements of paragraph (a)(1) of Section III of this appendix may be reduced to 15,000 engine hours provided compliance to paragraphs (a)(3), (b)(1), (b)(2), (b)(3), (b)(5), and (b)(6) of Section III of this appendix have been met.

(2) Additionally, as allowed by § 21.21(b)(1), the in-service experience requirements of paragraph (a)(1) of Section III of this appendix may be reduced to some level other than 15,000 engine hours provided compensating factors that provide an equivalent level of safety are provided.

PART 33—ENGINE CERTIFICATION

9. The authority citation for part 33 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702–44704.

10. Amend § 33.71 by revising paragraph (c)(4) to read as follows:

§ 33.71 Lubrication system.

* * * * *

(c) * * *

(4) Each oil tank cap must provide an oil-tight seal. For applicants seeking type design eligibility for engines to be installed in an Extended Operations (ETOPS) airplane in accordance with § 25.1535, the oil tank must be designed to prevent a hazardous quantity of oil loss due to oil tank cap installation errors.

* * * * *

11. Revise § 33.90 to read as follows:

§ 33.90 Initial maintenance inspection test.

Each engine, except engines being type certificated through amendment of an existing type certificate or through supplemental type certification procedures, must complete one of the following tests on an engine that substantially conforms to the final type design to establish when the initial maintenance inspection is required:

(a) An approved engine test that simulates the conditions in which the engine is expected to operate in service, including typical start-stop cycles.

(b) An approved engine test in accordance with §§ 33.200(c) and 33.200(f) of this part.

12. Add subpart G of part 33 to read as follows:

Subpart G—Special Requirements: Turbine Aircraft Engines

§ 33.200 Early extended operations (ETOPS) eligibility and test requirements.

Each applicant seeking engine type design eligibility for an engine to be installed in a twin-engine ETOPS airplane that does not have the service experience required by 14 CFR part 25, Appendix L, section II, paragraph (a) must comply with the following:

(a) The engine must be designed using a design quality process acceptable to the Administrator, which assures that design features of the engine minimize the occurrence of failures, malfunctions, or maintenance errors that could result in loss of thrust control, in-flight shutdown, or other power loss.

(b) The design features of the engine must address problems that have been shown to result in loss of thrust control, in-flight shutdown, or other power loss, when compared to the applicant's other relevant type design approvals received within the past ten years, providing that adequate service data is available within that ten year period. Applicants without applicable engine service experience may show equivalent experience and equivalent knowledge of problem mitigating design practices to that gained from actual service experience in a manner acceptable to the Administrator.

(c) The following test must be conducted on an engine that substantially conforms to the type design and in accordance with an approved test plan that consists of:

(1) *Simulated ETOPS Mission Cyclic Endurance.* The test must include a minimum of 3,000 representative service start-stop mission cycles (take-off, climb, cruise, descent, approach, landing and thrust reverse), plus three simulated diversion cycles at maximum continuous thrust for the maximum diversion time for which ETOPS eligibility is sought. The diversions are to be approximately evenly distributed over the cyclic duration of the test, with the last diversion to be conducted

within 100 cycles of the completion of the test.

(2) *Unbalance and Vibration Endurance.* (i) The simulated ETOPS mission cyclic endurance test required by § 33.200(c)(1) must be performed with the high speed and low speed main engine rotors independently unbalanced to obtain a minimum of 90 percent of the recommended field service maintenance vibration levels. In addition to the specified unbalance for the low and high-speed rotors, for engines with three main engine rotors, the intermediate speed rotor must also be independently unbalanced to obtain a minimum of 90 percent of the recommended production acceptance vibration level. The vibration level must be defined as the peak level seen during a slow acceleration and deceleration of the engine across the operating speed range.

(ii) Each 60 rpm incremental step of the typical high-speed rotor start-stop mission cycle speed range (take-off, climb, cruise, descent, approach, landing and thrust reverse) must be subjected to a minimum of three million vibration cycles during the cyclic endurance test. The test may be conducted using any rotor speed step increment up to 200 rpm provided that the typical service start-stop cycle speed range is covered. For a 200 rpm step the corresponding vibration cycle count is to be ten million cycles.

(iii) Each 60 rpm incremental step of the high-speed rotor approved operational speed range between minimum flight idle and cruise power, and not covered by § 33.200(c)(2)(ii), must be subjected to a minimum of 300,000 vibration cycles during the cyclic endurance test. The test may be conducted using any rotor speed step increment up to 200 rpm provided that the applicable speed range is covered. For a 200 rpm step the corresponding vibration cycle count is to be 1 million cycles.

(iv) Vibration surveys will be conducted at periodic intervals throughout the cyclic endurance test. The equivalent value of the peak vibration level observed during the surveys must meet the minimum vibration requirement of § 33.200(c)(2)(i).

(v) An alternate vibration test that provides an equivalent demonstration of the unbalance and vibration endurance test specified in paragraphs §§ 33.200(c)(2)(i) through 33.200(c)(2)(iv) may be approved by the Administrator.

(d) Prior to the testing required by § 33.200(c), the test engine must be subjected to a calibration run to document power and thrust characteristics.

(e) At the conclusion of the testing required by § 33.200(c), the test engine must:

(1) Be subjected to a calibration test at sea-level conditions; and any change in thrust characteristics must be within certified limits.

(2) Be visually inspected in accordance with the on-wing inspection recommendations and limits contained in the Instructions for Continued Airworthiness submitted in support of § 33.4.

(3) Be completely disassembled and:

(i) The engine hardware must be inspected:

(A) In accordance with the applicable inspection recommendations and limits contained in the Instructions for Continued Airworthiness submitted in support of § 33.4;

(B) With consideration of the causes of loss of thrust control, in-flight shutdown or other power losses identified by § 33.200(b); and

(C) In a manner to identify wear or distress conditions which could result in loss of thrust control, in-flight shutdown, or other power loss, and which are not specifically identified by § 33.200(b) or addressed within the current Instructions for Continued Airworthiness.

(ii) The engine hardware must not show distress to the extent that could result in loss of thrust control, in-flight shutdown, or other power loss within a period of operation before the component, assembly or system would likely have been inspected or functionally tested for integrity while in service. Such hardware distress must have corrective action implemented by way of design changes, maintenance instructions or operational procedures before ETOPS eligibility is granted.

(iii) The type and frequency of hardware distress that occurs during the engine test must be consistent with the type and frequency of hardware distress that would be expected to occur on ETOPS eligible engines, or any non-ETOPS derivative engines of this type. Additional analysis and/or tests may be required to satisfy this requirement.

(f) The 3,000 cycle simulated ETOPS mission cyclic endurance test required by § 33.200(c) may be used to show compliance with §§ 33.90 and 33.90(b). After completing the full number of test cycles required for an initial maintenance inspection test conducted in accordance with § 33.90(a), the 3,000 cycle simulated ETOPS mission cyclic endurance test may be interrupted so that the engine may be inspected by an on-wing or other method and criteria acceptable to the Administrator. Following the § 33.90(b) inspection, the ETOPS test must be resumed to complete the requirements of § 33.200.

13. Add paragraph A33.3(c) to Appendix A to read as follows:

Appendix A to Part 33—Instructions for Continued Airworthiness

* * * * *

A33.3 Content

* * * * *

(c) *Extended Operations (ETOPS) Requirements.* For engines to be installed in ETOPS airplanes, procedures for engine condition monitoring must be included within the Instructions for Continued Airworthiness. The engine condition monitoring procedures must be able to determine prior to flight, whether an engine is capable of providing, within certified engine operating limits, the maximum power or thrust, bleed air and power extraction required for the desired engine inoperative diversion. For engines to be installed on twin-engine ETOPS airplanes, the engine condition monitoring procedures must be validated before ETOPS eligibility is granted.

PART 121—AIR CARRIER OPERATIONS

14. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 46105.

15. Add § 121.7 to read as follows:

§ 121.7 Definitions and designations.

The following definitions apply to those sections of part 121 that apply to ETOPS:

Adequate airport means an airport that:

(1) The Administrator determines satisfies safety requirements of part 139, subpart D, excluding aircraft rescue and fire fighting service, or

(2) Meets the landing performance requirements of § 121.197, or

(3) Is a military airport that is active and operational, and meets the landing performance requirements of § 121.197.

ETOPS alternate means an adequate airport listed in the certificate holder's operations specifications that meets the requirements of § 121.624 and the Rescue and Fire Fighting (RFF) requirements of § 121.106 designated in a dispatch/flight release. This definition applies to flight planning and does not in any way limit the discretion of the pilot in command during flight.

ETOPS area of operation. (1) ETOPS area of operation means for turbine engine powered airplanes with two engines, an area beyond 60 minutes from an adequate airport, or with more than two engines, an area beyond 180 minutes from an adequate airport, and

within the authorized ETOPS maximum diversion time approved for the operation being conducted or an area designated by the Administrator as an area of ETOPS applicability. An ETOPS area of operation is calculated at a one-engine inoperative cruise speed (approved) under standard conditions in still air.

(2) The Administrator designates the following areas as ETOPS areas in which the planning, operational, and equipage requirements for ETOPS apply:

(i) NOPAC: The North Pacific Air Traffic Service routes and adjacent airspace between Anchorage and Tokyo Flight Information Region.

(ii) North Pacific: Pacific Ocean areas north of 40° N latitudes including NOPAC ATS routes, and published PACOTS (Pacific organized track system) tracks between Japan and North America.

(iii) Polar areas—North Pole: The entire area north of 78° N latitude.

(iv) Polar areas—South Pole: The entire area south of 60° S latitude.

ETOPS dual maintenance means maintenance actions performed on the same element of identical, but separate ETOPS maintenance significant systems, during the same routine or non-routine visit. This is to recognize and preclude common cause human failure modes without proper verification process or operation test prior to ETOPS.

(1) For turbine engine powered airplanes with two engines—A maintenance action performed on the same element of identical but separate ETOPS significant systems during the same routine or non-routine visit.

(2) For turbine engine powered airplanes with more than two engines—A maintenance action performed on the same element of identical but separate ETOPS significant systems on 2 engines of a 3 engine aircraft, or more than 1 engine per side of a 4 engine aircraft during the same routine or non-routine visit.

ETOPS entry point means, for turbine engine powered airplanes, the first point on the route of an authorized flight which is more than 60 minutes from an adequate airport for airplanes with two engines, or 180 minutes from an adequate airport for airplanes with more than two engines, or a point designated as an entry point in an area designated by the Administrator as an area of ETOPS applicability. The ETOPS entry point is calculated at a one-engine inoperative cruise speed (approved) under standard conditions in still air.

ETOPS maintenance significant system means:

(1) A system for which the redundancy characteristics are directly linked to the number of engines; or

(2) A system that may affect the proper functioning of the engines to the extent that it could result in an in-flight shutdown or uncommanded loss of thrust; or

(3) A system that contributes significantly to the safety of a diversion.

ETOPS qualified personnel means maintenance personnel that have completed the certificate holder's ETOPS training program.

Maximum diversion time means for the purposes of ETOPS in part 121 the diversion time, under standard conditions in still air at the One Engine Inoperative Cruise Speed (Approved).

One engine inoperative cruise speed means, for the purposes of those sections of part 121 applicable to ETOPS, a speed within the certified operating limits of the airplane, selected by the certificate holder and approved by the FAA, that is used for calculating fuel reserve requirements and the still air distance associated with the maximum approved one engine inoperative diversion distance for the flight.

16. Amend § 121.97 by revising paragraph (b)(1)(ii) to read as follows:

§ 121. 97 Airports: Required data.

* * * * *

(b) * * *

(1) * * *

(ii) Public protection including the availability of facilities at each airport or in the immediate area sufficient to protect the passengers and crew from the elements and to see to their welfare.

* * * * *

17. Amend § 121.99 by adding paragraphs (c) and (d) to read as follows:

§ 121.99 Communications facilities.

* * * * *

(c) For ETOPS where voice communication facilities are available, voice communications must be provided. The certificate holder must consider potential routes and altitudes necessary for diversion to ETOPS alternates in determining whether voice communication facilities are available. Where voice communication facilities are not available or is of poor quality, and voice communication is not possible, communications using alternative systems must be substituted.

(d) For ETOPS beyond 180 minutes the certificate holder must have an additional communication system that is capable of providing immediate satellite based voice communications of landline telephone-fidelity. The system must provide communication capability between the flight crew and air traffic services and the flight crew and the certificate holder. The certificate holder must consider potential routes and altitudes necessary for diversion to ETOPS alternates in determining whether immediate, satellite based voice communications are available. Where immediate, satellite based voice communications are not available, or are of poor quality, communications using alternative systems must be substituted.

18. Add § 121.106 to read as follows:

§ 121.106 ETOPS alternate: Rescue fire fighting service (RFFS).

(a) Except as provided in paragraph (b) of this section, the following rescue fire fighting service must be available at each airport designated as an ETOPS alternate listed in a dispatch or flight release.

(1) For ETOPS up to 180-minute diversion length, the designated ETOPS alternates must have rescue fire fighting capability equivalent to that specified by ICAO Category 4.

(2) For Two-Engine 207-Minute operations the designated ETOPS Alternates must have rescue fire fighting capability equivalent to that specified by ICAO Category 4. In addition, at least one adequate airport within the 207-minute diversion time must have rescue fire fighting capability equivalent to that specified by ICAO Category 7.

(3) For all other ETOPS operations beyond 180 minutes, the designated ETOPS alternates must have rescue fire fighting capability equivalent to that specified by ICAO Category 7.

(b) If the equipment and personnel required in paragraph (a) are not immediately available at the airport, the airport may still be listed on the dispatch or flight release if the required RFFS capability can be augmented from the local fire fighting assets. Such equipment and personnel must be available on arrival of the diverting airplane and must remain as long as the diverting airplane requires the services. A 30-minute response time for augmentation by the local fire department is adequate if the initial notification to respond can be initiated while the diverting airplane is enroute.

19. Add § 121.122 to read as follows:

§ 121.122 Communications facilities.

(a) Each certificate holder conducting supplemental operations must show that a two-way radio communication system or other means of communication approved by the Administrator is available at points that will ensure reliable and rapid communications, under normal operating conditions over the entire

route, (either direct or via approved point-to-point circuits) between each airplane and the certificate holder, and between each airplane and the appropriate air traffic services, except as specified in § 121.351(c).

(b) For ETOPS where voice communication facilities are available, voice communications must be provided. The certificate holder must consider potential routes and altitudes necessary for diversion to ETOPS alternates in determining whether voice communication facilities are available. Where voice communication facilities are not available or is of poor quality, and voice communication is not possible, communications using alternative systems must be substituted.

(c) For ETOPS beyond 180 minutes the certificate holder must have an additional communication system that is capable of providing immediate satellite based voice communications of landline telephone-fidelity. The system must provide communication capability between the flight crew and air traffic services and the flight crew and the certificate holder. The certificate holder must consider potential routes and altitudes necessary for diversion to ETOPS alternates in determining whether immediate, satellite based voice communications are available. Where immediate, satellite based voice communications are not available, or are of poor quality, communications using alternative systems must be substituted.

20. Amend § 121.135(b) by:

a. Redesignating paragraphs (b)(10) through (b)(22) as paragraphs (b)(11) through (b)(23);

b. Redesignating paragraphs (b)(23) and (b)(24) as paragraphs (b)(25) and (b)(26); and

c. Adding paragraphs (b)(10) and (b)(24) as follows:

§ 121.135 Contents.

* * * * *

(b) * * *

(10) For ETOPS, airplane performance data to support all phases of these operations.

* * * * *

(24) For flag and supplemental operations, a passenger recovery plan applicable to each approved en route alternate airport listed in the air carrier's operations specifications.

* * * * *

21. Amend § 121.161 by revising paragraph (a) and adding paragraph (d) to read as follows:

§ 121.161 Airplane limitations: Type of route.

(a) No certificate holder may operate a turbine engine powered airplane over a route that contains a point farther than 60 minutes flying time from an adequate airport for airplanes with two engines, or 180 minutes flying time from an adequate airport for airplanes with more than two engines, (in still air at normal cruising speed with one engine inoperative) or within an area designated by the Administrator as an Area of ETOPS Applicability unless approved by the Administrator in accordance with Appendix O of this part. The polar areas are designated as areas of ETOPS applicability. ETOPS must be authorized in the certificate holder's operations specifications.

* * * * *

(d) Unless authorized by the Administrator, based on the character of the terrain, the kind of operation or the performance of the airplane to be used, no certificate holder may operate a reciprocating engine powered airplane over a route that contains a point farther than 60 minutes flying time (in still air at normal cruising speed with one engine inoperative) from an adequate airport.

22. Add § 121.374 to read as follows:

§ 121.374 ETOPS maintenance elements.

Each certificate holder authorized to conduct ETOPS under Appendix O must have a maintenance program that includes the following:

(a) *Configuration, maintenance, and procedures (CMP) compliance.* A system to ensure compliance with the minimum requirements set forth in the Configuration, Maintenance and Procedures (CMP) for each airframe and engine combination, or the Type Design document for each airframe and engine combination. Any CMP changes necessary for continued safe ETOPS flights will be mandated through the Airworthiness Directive procedures pursuant to part 39 of this chapter.

(b) *Continuous airworthiness maintenance program (CAMP).* Develop and follow a continuous airworthiness maintenance program based on the manufacturers maintenance program or one currently approved for the operator and supplemented for ETOPS for each airframe and engine combination. The program must include the following:

(1) *ETOPS pre-departure service check.* A check that must be accomplished immediately prior to an ETOPS flight and certified complete by an ETOPS qualified maintenance person.

(2) *Dual maintenance.* (i) Procedures to preclude ETOPS dual maintenance.

(ii) Procedures to use if ETOPS dual maintenance cannot be avoided.

(3) *Verification program.* Procedures for corrective action to an ETOPS maintenance significant system.

(4) *Task identification.* Identify ETOPS specific procedures or tasks that must be accomplished or verified by ETOPS qualified personnel.

(5) *Centralized maintenance control procedures.* Establish and document procedures for centralized Maintenance Control related to ETOPS.

(6) *ETOPS program document.* Develop a document for use by personnel involved in ETOPS. All ETOPS requirements, including supportive programs, procedures, duties and responsibilities, must be identified in this document and submitted for approval to the CHDO. This document is not required to be inclusive but must at least reference the maintenance programs and clearly define where they are located in the certificate holder's document system. Changes to the ETOPS document must be submitted to the CHDO and approved before such changes may be adopted.

(7) *ETOPS parts control.* Develop an ETOPS parts control program to ensure the proper identification of parts to maintain the ETOPS configuration.

(8) *Reliability program.* Develop an ETOPS reliability program, or supplement the existing reliability program. The program must be event-oriented and incorporate reporting procedures for significant events detrimental to ETOPS flights.

(i) In addition to the reporting requirements in § 121.703, the following items must be reported within 72 hours to the CHDO:

(A) In-flight shutdowns.

(B) Diversions or turnback.

(C) Uncommanded power changes or surges.

(D) Inability to control the engine or obtain desired power.

(E) Problems with systems critical to ETOPS.

(F) Any other event detrimental to ETOPS.

(ii) The certificate holder must conduct an investigation into the cause of the occurrence of any event listed in § 121.703 and paragraph (b)(8)(i) of this section in conjunction with manufacturers and submit findings and description of corrective action to the CHDO. The report must be submitted in the manner prescribed by § 121.703(e). The corrective action must be acceptable to the CHDO.

(c) *Propulsion system monitoring.* (1) If the IFSD rate computed on a 12-month rolling average exceeds the following values, the certificate holder, in conjunction with the CHDO, must

investigate common cause effects or systemic errors.

(i) Two engine airplanes:

(A) 0.05/1,000 engine hours for ETOPS up to and including 120 minutes;

(B) 0.03/1,000 engine hours for ETOPS beyond 120 minutes up to and including 180 minutes, and 207 minutes in North Pacific; and

(C) 0.02/1,000 engine hours for ETOPS beyond 180 minutes, except for 207 minutes in North Pacific.

(ii) For airplanes with more than two engines:

(A) 0.2/1,000 engine hours for 3-engine ETOPS; and

(B) 0.1/1,000 engine hours for 4-engine ETOPS.

(2) The report of investigation and, if necessary, corrective action taken, must be submitted within 30 days through the CHDO to the Director of the Flight Standards Service for approval.

(d) *Engine condition monitoring.* The certificate holder must establish and conduct an Engine Condition Monitoring program to detect deterioration, at an early stage, and to allow for corrective action before safe operation is affected.

(1) This program must describe the parameters to be monitored, method of data collection, analysis, and corrective action process.

(2) The program must ensure that engine limit margins are maintained so that a prolonged engine inoperative diversion may be conducted without exceeding approved engine limits (for example, rotor speeds, exhaust gas temperatures) at all approved power levels and expected environmental conditions.

(e) *Oil consumption monitoring.* The certificate holder must establish and conduct an engine oil consumption monitoring program to ensure that there is enough oil to complete any ETOPS flight. The operator's consumption limit must not exceed the manufacturer's recommendations. The program must consider the amount of oil added at the departing ETOPS stations with reference to the running average consumption. The monitoring must be continuous up to and including oil added at the ETOPS departure station. The APU must be included if an APU is required for ETOPS.

(f) *APU in-flight start program.* If APU in-flight start capability is required for ETOPS, the certificate holder must have a cold soak in-flight APU start and run reliability program acceptable to the Administrator.

(g) *Maintenance training.* The certificate holder must review the airplane and engine combination maintenance training program with the CHDO to ensure that it adequately supports ETOPS training requirements. The certificate holder must develop additional ETOPS specific training that focuses on the special nature of ETOPS and is required for all personnel involved in ETOPS. This training is in addition to the operator's accepted maintenance training program to qualify individuals for specific airplanes and engines.

(h) *Procedural changes.* Any substantial changes to the maintenance or training procedures established to qualify for ETOPS must be submitted to the CHDO and approved before they may be adopted.

23. Amend § 121.415 by adding paragraph (a)(4) to read as follows:

§ 121.415 Crewmember and dispatcher training requirements.

(a) * * *

(4) Training for crewmembers and dispatchers in their roles and responsibilities in the certificate holder's passenger recovery plan.

* * * * *

24. Amend § 121.565 by revising paragraph (a) to read as follows:

§ 121.565 Engine inoperative: Landing; reporting.

(a) Except as provided in paragraph (b) of this section, whenever an engine of an airplane fails or whenever an engine is shutdown to prevent possible damage, the pilot in command shall land the airplane at the nearest suitable airport in point of time at which a safe landing can be made.

* * * * *

25. Add § 121.624 to read as follows:

§ 121.624 ETOPS alternates.

(a) No person may dispatch an airplane for ETOPS unless the ETOPS Alternates listed in the dispatch or flight release are located such that the airplane remains within the authorized ETOPS maximum diversion time under which the flight is to be dispatched. The certificate holder must consider all adequate airports within the diversion limits of the operation that meet the standards of this part. Each required ETOPS Alternate must be listed in the dispatch or flight release.

(b) No person may list an airport as an ETOPS Alternate in the dispatch or flight release unless the appropriate weather reports or forecasts or any combination thereof indicating that weather conditions are at or above ETOPS Alternate minima specified in the certificate holder's operations specifications and with field condition reports indicating that a safe landing can be accomplished at the time of the intended operation (from the earliest to the latest time of landing at that airport). Once a flight is enroute, the ETOPS Alternates must meet the requirements of § 121.631(c).

(c) No person may list an airport as an ETOPS Alternate in the dispatch or flight release unless that airport meets the requirements of this part.

(d) No person may list an airport as an ETOPS Alternate in the dispatch or flight release unless that airport meets the public protection requirements of § 121.97(b)(1)(ii).

26. Revise § 121.625 to read as follows:

§ 121.625 Alternate airport weather minimums.

Except as required by § 121.624, no person may list an airport as an alternate in the dispatch or flight release unless the appropriate weather reports or forecasts or any combination thereof indicate that the weather conditions will be at or above the alternate weather minimums specified in the certificate holder's operations specifications for that airport when the flight arrives.

27. Amend § 121.631 by redesignating paragraphs (c) and (d) as paragraphs (e) and (f), respectively, and adding new paragraphs (c) and (d) to read as follows:

§ 121.631 Original dispatch or flight release, redispatch or amendment of dispatch or flight release.

* * * * *

(c) For ETOPS, in addition to paragraph (b) of this section, no person may allow a flight to continue beyond the ETOPS Entry Point unless the weather conditions at required ETOPS Alternates specified in the dispatch or flight release are reviewed and forecast to be at or above the operating minimums specified in the operations specifications for that airport during the period in which that airport may be expected to be used (from the earliest to the latest time of landing at that airport). Such a review must include all ETOPS Alternates within the dispatch diversion time of the planned routing and advice to the flight crew of any changes that have occurred since dispatch. However, the dispatch or flight release may be amended en route to add any ETOPS Alternate with weather above operating minima and that is within the maximum ETOPS diversion time that could be authorized for that flight.

(d) The pilot in command for supplemental operators, or a dispatcher for flag operators must, prior to the ETOPS Entry Point, use company communications to update any revised flight plan if required as a result of

re-evaluation of aircraft system capabilities.

28. Add § 121.633 to read as follows:

§ 121.633 ETOPS: Time limited system planning.

(a) For ETOPS up to and including 180 minutes, the time required to fly the distance to the planned ETOPS Alternate or Alternates, at the approved one engine inoperative cruise speed, in still air and standard day temperature, may not exceed the time specified in the Airplane Flight Manual for the airplanes most time limited system time minus 15 minutes.

(b) Except as provided in paragraphs (c) and (d) of this section, for ETOPS beyond 180 minutes, the time required to fly the distance to the planned ETOPS Alternate or Alternates, at the all engines operating cruise speed, correcting for wind and temperature, may not exceed the time specified in the Airplane Flight Manual for the airplane's cargo fire suppression system time minus 15 minutes.

(c) Except as provided in paragraphs (b) and (d) of this section, for ETOPS beyond 180 minutes, the time required to fly the distance to the planned ETOPS Alternate or Alternates, at the approved one engine inoperative cruise speed, correcting for wind and temperature, may not exceed the time specified in the Airplane Flight Manual for the airplanes most time limited system time (except for cargo fire suppression) minus 15 minutes.

(d) Three and four-engine turbine powered airplanes not meeting the requirements of paragraph (b) of this section as of the effective date of this regulation may continue ETOPS operations for a period not to exceed 6 years from the effective date of this regulation.

29. Add § 121.646 to read as follows:

§ 121.646 En route fuel supply: flag and supplemental operations.

(a) No person may dispatch or release for flight or takeoff a turbine engine powered airplane with more than two engines more than 90 minutes (with all engines operating at cruising power) and less than 180 minutes (at the approved one engine inoperative cruise speed) from an adequate airport unless, considering wind and other weather conditions (including icing), it has enough fuel, assuming a rapid decompression at the most critical point followed by descent to a safe altitude in compliance with the oxygen supply requirements of § 121.333, to fly to an adequate airport and conduct a normal approach and landing with enough fuel remaining to hold for 15 minutes at 1500 feet above field elevation.

(b) No person may dispatch or release for flight or takeoff a turbine powered airplane in ETOPS unless, considering wind and other weather conditions expected, it has enough fuel to satisfy the following requirements (b)(1) through (b)(4) of this section:

(1) Greater of:

(i) Fuel sufficient to fly to an ETOPS Alternate assuming a rapid decompression at the most critical point followed by descent to a safe altitude in compliance with the oxygen supply requirements of § 121.333, or

(ii) Fuel sufficient to fly to an ETOPS Alternate at the approved one engine inoperative cruise speed assuming a rapid decompression and a simultaneous engine failure at the most critical point followed by descent to a safe altitude in compliance with the oxygen supply requirements of § 121.333, or

(iii) Fuel sufficient to fly to an ETOPS Alternate at the approved one engine inoperative cruise speed assuming an engine failure at the most critical point followed by descent to the one engine inoperative cruise altitude.

(2) Upon reaching the alternate hold at 1500 feet above field elevation for 15 minutes and then conduct an instrument approach and land.

(3) Add a 5% wind speed factor (*i.e.*, an increment to headwind or a decrement to tailwind) on the actual forecast wind used to calculate fuel in paragraph (b)(1)(i) above to account for any potential errors in wind forecasting. If a certificate holder is not using the actual forecast wind based on wind model acceptable to the FAA, allow 5% of the fuel required for paragraph (b)(1)(i) above, as reserve fuel to allow for errors in wind data.

(4) Compensate in paragraph (b)(1)(i) above for the greater of:

(A) The effect of airframe icing during 10 percent of the time during which icing is forecast (including the fuel used by engine and wing anti-ice during this period), or

(B) Fuel for engine anti-ice, and if appropriate wing anti-ice for the entire time during which icing is forecast.

(C) Unless the certificate holder has a program established to monitor airplane in-service deterioration in cruise fuel burn performance and includes in fuel supply calculations fuel sufficient to compensate for any such deterioration, increase the fuel supply by 5% to account for deterioration in cruise fuel burn performance.

(D) If an APU is a required power source, then its fuel consumption must be accounted for during the appropriate phases of flight.

30. Amend § 121.687 by adding paragraph (a)(6) to read as follows:

§ 121.687 Dispatch release: Flag and domestic operations.

(a) * * *

(6) For each flight dispatched as an ETOPS flight, the ETOPS time basis (if any) under which the flight is dispatched.

* * * * *

31. Amend § 121.689 by adding paragraph (a)(8) to read as follows:

§ 121.689 Flight release form: Supplemental operations.

(a) * * *

(8) For each flight released as an ETOPS flight, the ETOPS time basis (if any) under which the flight is released.

* * * * *

32. Add appendix O to read as follows:

Appendix O to Part 121—Requirements for ETOPS

The Administrator may approve ETOPS for various areas of operation in accordance with the requirements and limitations specified in this appendix.

A. ETOPS Authorizations: Airplanes with Two engines

(a) *75 Minutes ETOPS— (1) Caribbean/Western Atlantic Area.* Approvals may be granted to conduct ETOPS with maximum diversion times up to 75 minutes on Western Atlantic/Caribbean area routes. The airframe and engine combination shall be reviewed by the Administrator to ensure the absence of factors that could prevent safe operations. The airframe and engine combination need not be approved for ETOPS; however, it must have sufficient favorable experience to demonstrate a level of reliability appropriate for 75-minute ETOPS. These operations must comply with the requirements of section 121.633. The certificate holder must employ an FAA approved maintenance program that specifically addresses factors significant to 75-minute ETOPS operations except that a service check before departure of the return flight may not be required.

(2) *Other Areas.* Approvals may be granted to conduct ETOPS operations with maximum diversion times up to 75 minutes on other than Western Atlantic/Caribbean area routes. The airframe and engine combination shall be reviewed by the Administrator to ensure the absence of factors that could prevent safe operations. The airframe and engine combination need not be approved for ETOPS; however it must have sufficient favorable experience to demonstrate a level of reliability appropriate for 75-minute ETOPS. These operations must comply with the requirements of section 121.633. The certificate holder must employ an FAA approved operations and maintenance program that specifically addresses factors significant to 75-minute ETOPS operations.

(b) 90-minutes ETOPS (Micronesia). Approvals may be granted to conduct ETOPS

with maximum diversion times up to 90 minutes on Micronesian area routes. For such operations the airframe and engine combination must be type design approved for a minimum of 120 minute ETOPS. The certificate holder must employ an FAA approved operations and maintenance program that specifically addresses factors significant to 120 minute ETOPS, except that a service check before departure of the return flight may not be required. Minimum equipment list requirements for 120 minute extended range (''ER'') operations apply to such operations.

(c) *120 minutes.* Approvals may be granted to conduct ETOPS with maximum diversion times up to 120 minutes. For such operations the airframe/engine combination must be type design approved for a minimum of 120 minute ETOPS. The certificate holder must employ an FAA approved operations and maintenance program that specifically addresses factors significant to 120 minute ETOPS. Minimum equipment list requirements for 120 minute extended range (''ER'') operations apply to such operations.

(d) *138 Minutes.* 138-minute ETOPS must be operated under one of the following:

(1) *Extension of 120-minute ETOPS authority.* Approvals may be granted to conduct ETOPS with maximum diversion times up to 138 minutes. This authority is deemed to be an extension of already existing 120-minute ETOPS authority, and may only be exercised on a flight-by-flight exception basis. For such operations the airframe-engine combination must be type design approved for a minimum of 120 minute ETOPS. In addition, airplane time-limited system capability may not be less than the authorized 138-minute diversion time in still air conditions at the approved one engine inoperative cruise speed plus a 15-minute allowance for holding, approach and landing. The certificate holder must employ an FAA approved operations and maintenance program that specifically addresses factors significant to 138-minute ETOPS. Operators with 120-minute ETOPS authority but no 180-minute authority may apply to AFS–200 through their certificate holding district office (CHDO) for a modified MEL which satisfies the MMEL policy for system/component relief in ETOPS beyond 120 minutes. The certificate holder shall submit for FAA approval a summary of revisions to training curricula for maintenance, dispatch and flight crew personnel which identifies differences between 138-minute ETOPS diversion authority and its previously approved 120-minute ETOPS diversion authority.

(2) *Use of existing 180-minute ETOPS approval.* Approvals may be granted to conduct ETOPS with maximum diversion times up to 138 minutes to certificate holders with existing 180 minute ETOPS approval. This authority may be exercised on an unlimited basis. For such operations the airframe/engine combination must be type design approved for a minimum of 180-minute ETOPS. The certificate holder must employ an FAA approved operations and maintenance program that specifically addresses factors significant to 138-minute ETOPS. Approved minimum equipment list provisions for ''beyond 120 minutes ETOPS'' apply to these operations. The certificate holder shall submit for FAA approval a summary of revisions to training curricula for maintenance, dispatch and flight crew personnel which identifies differences between 138-minute ETOPS diversion authority and its previously approved 180-minute ETOPS diversion authority.

(e) *180 minutes.* Approvals may be granted to conduct ETOPS with maximum diversion times up to 180 minutes. For such operations the airframe and engine combination must be type design approved for a minimum of 180-minute ETOPS. The certificate holder must employ an FAA approved operations and maintenance program that specifically addresses factors significant to 180-minute ETOPS operations. Minimum equipment list provisions for ''beyond 120 minutes ETOPS'' apply to these operations.

(f) *Greater than 180 minutes.*

Approvals may be granted to certificate holders with previous ETOPS experience to conduct ETOPS with maximum diversion times exceeding 180 minutes as specified in paragraphs (g) through (j) of this appendix. Approvals may be granted only to certificate holders with existing 180 minutes ETOPS approval on the airframe/engine combination listed in their application. In conducting all such operations, operators must make every attempt to minimize diversion time along the preferred track and plan ETOPS at maximum diversion distances of 180 minutes or less. If conditions prevent the use of adequate airports within 180 minutes as ETOPS Alternates, the route may be flown beyond 180 minutes authority subject to the requirements provided for the specific area of operations. In addition to the MEL limitations for 180 minute ETOPS, the following systems must be operational for dispatch:

(1) Fuel Quantity Indicating System (FQIS),

(2) APU (including electrical and pneumatic supply to its designed capability),

(3) auto throttle system,

(4) the communication system required by section 121.99(d) or 121.122(c), as applicable, and

(5) one engine inoperative auto land capability, if flight planning is predicated on its use.

Operators must inform the flight crew any time an aircraft is proposed for dispatch under this authority and make available the dispatch considerations requiring such operations.

(g) *North Pacific.*

On flight by flight exception basis, tracked by the certificate holder, when an ETOPS Alternate is not available within 180 minutes in the North Pacific area of operation, the nearest available ETOPS Alternate must be specified within 207 minutes maximum diversion time. In conducting such operations the operator must give Air Traffic Services preferred track, if available, the first consideration. Application of this exception must be limited to circumstances such as political or military concern, volcanic activity, airport weather below dispatch requirements, temporary airport conditions and other weather related events. For such operations, the airframe and engine combination must be type design approved for a minimum of 180-minute ETOPS. The time required to fly the distance to the planned ETOPS Alternate or alternates, at the approved one engine inoperative cruise speed, in still air and standard day temperature, may not exceed the time specified in the Airplane Flight Manual for the airplane's most time limited system time minus 15 minutes.

(h) *Polar Area (North Pole) and North of NOPAC.*

On a flight by flight exception basis, tracked by the certificate holder, when an ETOPS alternate is not available within 180 minutes in the Polar Area (North Pole) or north of the North Pacific Area of Operations, the nearest available ETOPS Alternate must be specified within 240 minutes maximum diversion time. Application of this exception shall be limited to circumstances related to the weather extremes particular to this area of the world such as volcanic activity, extreme cold weather at en route airports, airport weather below dispatch requirements, temporary airport conditions and other weather related events. The criteria used by the certificate holder to make determinations that extreme weather precludes the use of an airport must be established by the certificate holder and accepted by the FAA and published in the certificate holder's manual for the use of dispatchers and pilots. For such operations, the airframe/engine combination must be type design approved for a minimum of 240-minute ETOPS as specified in the Configuration Maintenance and Procedures (CMP) Standard for such operations. For such operations, the requirements in paragraph C, Polar Area (North & South Pole) and ETOPS beyond 180 minutes North of the NOPAC area, of this appendix apply.

(i) *240 minutes Area of Operations.*

Approvals may be granted to certificate holders with previous ETOPS experience and existing 180-minute ETOPS approval for the airframe engine combination listed in their application to conduct ETOPS with maximum diversion times up to 240 minutes on routes in the Pacific oceanic areas between the U.S. west coast and Australia, New Zealand and Polynesia; south Atlantic oceanic areas; Indian Oceanic areas; oceanic areas between Australia and South America. The operator must designate the nearest available ETOPS Alternate or Alternates along the planned route of flight. For such operations, the airframe and engine combination must be type design approved for a minimum of 240 minute ETOPS. All requirements specified in the Configuration Maintenance and Procedures (CMP) Standard for 240 minute ETOPS are applicable to such operations.

(j) *Beyond 240 minutes Area of Operations.*

Approvals may be granted, to certificate holders who have been operating in accordance with 180 minute or greater ETOPS for 24 consecutive months, of which at least 12 consecutive months shall be at 240 minute ETOPS on the airframe/engine combination for which the authority is requested, to conduct ETOPS with maximum diversion times beyond 240 minutes between city pairs on routes in the Pacific oceanic areas between the U.S. west coast and

Australia, New Zealand and Polynesia; south Atlantic oceanic areas; Indian Oceanic areas; oceanic areas between Australia and South America, and South Pole area. The operator must designate the nearest available ETOPS alternate(s) along the planned route of flight. For such operations, the airframe and engine combination must be type design approved for at least the maximum authorized ETOPS diversion time necessary for that operation. All requirements specified in the Configuration Maintenance and Procedures (CMP) Standard for beyond 240 minute ETOPS are applicable to such operations.

B. ETOPS Authorizations: Airplanes with more than two engines

Approvals may be granted to conduct ETOPS on a routine basis with maximum diversion times up to 240 minutes in any area of operations. For all such operations, the nearest available ETOPS Alternate within 240 minutes diversion time (in still air at one engine inoperative speed) must be specified. If an ETOPS Alternate is not available within 240 minutes, the nearest alternate ETOPS alternate must be specified. In either case the operator must designate the nearest available ETOPS Alternate(s) along the planned route of flight. On all such operations, MEL limitations for ETOPS apply and in addition, the Fuel Quantity Indicating System (FQIS) and the communications requirements of § 121.99(d) or § 121.122(c) must be operational. For company communications on such operations, operators must use the system required by § 121.99(d). For such operations, the airframe and engine combination must be type design approved for the maximum authorized ETOPS diversion time.

C. Polar Area (North & South Pole) and ETOPS Beyond 180 Minutes North of the NOPAC Area

Approvals may be granted to conduct any operations within these areas. To obtain such approvals, in addition to the requirements in paragraphs (A) and (B) of this appendix, the operator must consider airport requirements for ETOPS Alternates, airline recovery plan for passengers at diversion alternates, fuel freeze strategy and monitoring, communication capability, Minimum Equipment List considerations, airline training issues specific to polar operations, long range crew requirements, dispatch and crew considerations during solar flare activity, special equipment requirements, and validation requirements for area approval in a manner acceptable to the Administrator.

PART 135—OPERATING REQUIREMENTS; COMMUTER AND ON DEMAND OPERATION AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

33. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 41706, 44113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

34. Add § 135.98 to read as follows:

§ 135.98 Polar operations.

Except for intrastate operations within the State of Alaska, no person may operate an aircraft in the region north of N 78° 00′, designated as Polar, unless authorized by the Administrator and unless the certificate holder's operation specifications address the following items:

(a) Designation and requirements for airports that may be used for enroute diversions.

(b) Recovery plan for passengers at diversion alternates.

(c) Fuel freeze strategy and monitoring requirements for Polar operations.

(d) Communication capability for Polar operations.

(e) MEL considerations for Polar operations.

(f) Training issues for Polar operations.

(g) Crew considerations during solar flare activity.

(h) Special equipment for Polar operations

35. Amend § 135.345 by removing the word ''and'' from the end of (a)(7), redesignating paragraph (a)(8) as (a)(10), and by adding new paragraphs (a)(8) and (a)(9) to read as follows:

§ 135.345 Pilots: Initial, transition, and upgrade ground training.

* * * * *

(a) * * *

(8) ETOPS, if applicable;

(9) Passenger Recovery for ETOPS, if applicable; and

* * * * *

36. Add § 135.364 to read as follows:

§ 135.364 Multi-engine airplane limitations: Maximum distance from an airport.

Unless approved by the Administrator in accordance with Appendix H of this part (Extended Operations (ETOPS)), no certificate holder may operate an airplane outside the continental U.S. unless the planned route for that airplane remains within 180 minutes flying time (in still air at normal cruise speed with one engine inoperative) from an airport meeting the requirements of §§ 135.385, 135.387, 135.393 or 135.395, as applicable, and §§ 135.219 or 135.221 as applicable.

37. Amend § 135.411 by adding paragraph (d) to read as follows:

§ 135.411 Applicability.

* * * * *

(d) A certificate holder performing Extended Operations must comply with paragraph (a)(2) of this section and the additional requirements of Appendix H of this part.

38. Add appendix H to read as follows:

Appendix H to Part 135—Extended Operations (ETOPS)

The Administrator may approve ETOPS for various areas of operation in accordance with the requirements and limitations specified in this appendix

(A) Definitions

(1) *ETOPS: Extended operations.*

ETOPS is an operation authorized under part 135 for flights beyond 180 minutes flying time (in still air at normal cruise speed with one engine inoperative) from an airport meeting the requirements of §§ 135.385, 135.387, 135.393 or 135.395, as applicable, and §§ 135.219 or 135.221 as applicable. However, ETOPS flights must be planned so as to remain within 240 minutes flying time (in still air with one engine inoperative) from an airport meeting the requirements of §§ 135.385, 135.387, 135.393 or 135.395, as applicable, and §§ 135.219 or 135.221 as applicable.

(2) *ETOPS dual maintenance.*

Maintenance actions performed on the same element of identical, but separate ETOPS maintenance significant systems, during the same routine or non-routine visit. This is to recognize and preclude common cause human failure modes without proper verification process or operation test prior to ETOPS.

(B) Certificate Holder Experience Prior to Conducting ETOPS

(1) Prior to applying for authorization to conduct ETOPS, the certificate holder must have at least 12 months operating experience with a type of transport category turbine-engine powered airplane conducting international operations (excluding Canada and Mexico). For the purpose of this subparagraph, operations to or from the State of Hawaii may be considered as experience in international operations.

(2) Certificate holders granted authority to operate under part 135 or part 121 before [*insert date final rule is effective*] may credit up to 6 months of domestic operating experience (including Canada and Mexico) in a transport category turbojet airplane as part of the required 12 months of international experience.

(3) A certificate holder's previous ETOPS experience with other aircraft types may be considered by the Administrator as meeting the requirements of paragraph (B)(1) in whole or in part.

(C) Airplane Requirements

(1) No person may conduct ETOPS in a multi-engine airplane that was added to the certificate holder's U.S. operations specifications after [*insert date that is eight years after the effective date of this final rule*] unless the airplane is certificated to § 25.1535.

(2) No person may conduct ETOPS in a multi-engine airplane that was added to the certificate holder's U.S. operations specifications on or before [*insert date that is eight years after the effective date of this final rule*] unless the airplane has the following systems capability acceptable to the Administrator:

(a) *Electrical System.* Three or more independent electrical power sources must

be available, each of which must be capable of providing power for all of the equipment required by this part for the duration of any diversion.

(b) *Fuel System.* The fuel supply system must be able to provide sufficient fuel for the duration of any diversion following any single failure of fuel system components.

(D) Certificate Holder Requirements

(1) No certificate holder may operate an airplane in accordance with ETOPS unless the planned route for that airplane remains within 240 minutes flying time (in still air and one engine inoperative) from an airport meeting the requirements of § 135.385, § 135.387, § 135.393 or § 135.395, as applicable, and § 135.219 or § 135.221 as applicable.

(2) In addition to the requirements of § 135.83, § 135.225 and § 135.229 the certificate holder will ensure flight crews have in-flight access to current weather and operational information on all enroute alternate, destination and destination alternate airports proposed for each ETOPS flight.

(E) Operational Requirements

(1) No pilot in command may allow a flight to continue beyond the ETOPS entry point unless the weather and operating conditions at the required enroute alternate airports are reviewed and expected to be at or above the operating minimums specified in the operations specifications during the period in which that airport may be expected to be used based on expected estimated times of arrival at that airport. The planned route of flight may be amended while en route to allow use of additional enroute alternate airports provided weather is forecast to be at or above operating minima and the airport is within the maximum ETOPS diversion time.

(2) Pilots shall plan and conduct ETOPS under instrument flight rules.

(3) Time Limited Systems.

(a) For ETOPS, the time required to fly the distance to the planned ETOPS alternate or alternates, at the all engines operating cruise speed, correcting for wind and temperature, may not exceed the time specified in the Airplane Flight Manual for the airplane's cargo fire suppression system time (if installed), minus 15 minutes.

(b) Except as provided in paragraph (a) above, the time required to fly the distance to the planned ETOPS Alternate or Alternates, at the approved one engine inoperative cruise speed, correcting for wind and temperature, may not exceed the time specified in the Airplane Flight Manual for the airplanes most time limited system time (except for cargo fire suppression) minus 15 minutes.

(c) Certificate holders operating turbine-engine powered airplanes that, on the effective date of this regulation, lack the airplane flight manual information required by paragraphs a and b above, may continue ETOPS operations for a period not to exceed the date that occurs eight years following the effective date of this rule.

(F) Communications Requirements

(1) No person may conduct an ETOPS flight unless the following communications equipment, appropriate to the route to be flown, is installed and operational:

(a) Two independent communication transmitters (at least one must allow voice communication).

(b) Two independent communication receivers (at least one must allow voice communication).

(c) Two headsets, or one headset and one speaker.

(2) In areas where voice communication facilities are not available, or voice communication is not possible or is of poor quality, communications using alternative systems may be substituted.

(G) Fuel Planning Requirements

1. No person may take off a flight for operations in ETOPS unless the fuel carried on board is the greater of:

a. Fuel required under § 135.223, or

b. Considering forecast wind and other weather conditions, the airplane carries sufficient fuel to complete the flight under the following conditions:

(i) Greater of:

(a) Fuel sufficient to fly to a ETOPS enroute alternate airport assuming a rapid decompression at the most critical point followed by descent to a safe altitude in compliance with the oxygen supply requirements of § 135.157; or

(b) Fuel sufficient to fly to a ETOPS enroute alternate airport at the approved one engine inoperative cruise speed assuming a rapid decompression and a simultaneous engine failure at the most critical point followed by descent to a safe altitude in compliance with the oxygen supply requirements of § 135.157; or

(c) Fuel sufficient to fly to a ETOPS enroute alternate airport at the approved one engine inoperative cruise speed assuming an engine failure at the most critical point followed by descent to the one engine inoperative cruise altitude.

(ii) Upon reaching the enroute alternate airport, hold at 1500 ft. above field elevation for 15 minutes and then conduct an instrument approach and land.

(iii) Add a 5% wind speed factor (*i.e.*, an increment to headwind or a decrement to tailwind) on the actual forecast wind used to calculate fuel in paragragh b.(i) of this appendix to account for any potential errors in wind forecasting. If a certificate holder is not using the actual forecast wind based on wind model acceptable to the FAA, allow 5% of the fuel required for a above, as reserve fuel to allow for errors in wind data.

(iv) Compensate in paragraph b.(i) above for the greater of:

(A) The effect of airframe icing during 10 percent of the time during which icing is forecast, or

(B) Fuel for engine anti-ice, and if appropriate wing anti-ice for the time during which icing is forecast,

2. Unless the certificate holder has a program established to monitor airplane in-service deterioration of cruise fuel burn performance and includes in fuel supply calculations fuel sufficient to compensate for any such deterioration, increase the fuel supply by 5 percent to account for deterioration in cruise fuel burn performance.

3. If the APU is a power source required by this appendix, then its fuel consumption must be accounted for.

(H) Maintenance Program Requirements

Each certificate holder authorized to conduct ETOPS under section 135.364 must have a maintenance program that includes the following:

(a) *Configuration, Maintenance, and Procedures (CMP) compliance.*

A system to ensure compliance with the minimum requirements set forth in the Configuration, Maintenance and Procedures (CMP) for each airframe and engine combination, or the Type Design document for each airframe and engine combination.

(b) *Continuous airworthiness maintenance program (CAMP).*

Develop and follow a continuous airworthiness maintenance program based on the manufacturers maintenance program or one currently approved for the operator and supplemented for ETOPS for each airframe and engine combination. The program must include the following:

(1) *ETOPS pre-departure service check.* A check that must be accomplished immediately prior to an ETOPS flight and certified complete by an ETOPS qualified maintenance person

(2) *Dual maintenance.*

(a) Procedures to preclude ETOPS dual maintenance.

(b) Procedures to use if ETOPS dual maintenance cannot be avoided.

(3) *Verification program.* Procedures for corrective action to an ETOPS maintenance significant system.

(4) *Task identification.* Identify ETOPS specific procedures or tasks that must be accomplished or verified by ETOPS qualified personnel.

(5) *Centralized maintenance control procedures.* Establish and document procedures for centralized Maintenance Control related to ETOPS.

(6) *ETOPS program document.* Develop a document for use by personnel involved in ETOPS. All ETOPS requirements, including supportive programs, procedures, duties and responsibilities, must be identified in this document and submitted for approval to the CHDO. This document is not required to be inclusive but must at least reference the maintenance programs and clearly define where they are located in the certificate holder's document system. Changes to the ETOPS document must be submitted to the CHDO and approved before such changes may be adopted.

(7) *ETOPS parts control.* Develop an ETOPS parts control program to ensure the proper identification of parts to maintain the ETOPS configuration.

(8) *Enhanced Continuing Analysis and Surveillance System (CASS) program.* The certificate holder must include the ETOPS program elements in the certificate holder's CASS program. The program must incorporate reporting procedures for significant events detrimental to ETOPS flights.

(a) In addition to the reporting requirements in § 135.415 and § 135.417, the following items must be reported within 72 hours to the CHDO.

(1) In-flight shutdowns.

(2) Uncommanded power changes or surges.

(3) Inability to control the engine or obtain desired power.

(4) Problems with systems critical to ETOPS.

(5) Any other event detrimental to ETOPS.

(b) The certificate holder must conduct an investigation into the cause of the occurrence of any event listed in § 135.415, § 135.417, or paragraph (8)(a) above in conjunction with manufacturers and submit findings and corrective action to the CHDO. The report must be submitted in the manner prescribed by section 135.415(e). If the CHDO determines that additional corrective action is necessary, the certificate holder must implement the corrective action.

(c) *Propulsion system monitoring.*

The certificate holder, in conjunction with the CHDO, must

(1) establish criteria as to what action is to be taken when adverse trends in propulsion system conditions are detected and

(2) investigate common cause effects or systemic errors and submit the findings to the CHDO within 30 days.

(d) *Engine condition monitoring.*

The certificate holder must establish an Engine Condition Monitoring program to detect deterioration at an early stage to allow for corrective action before safe operation is affected.

(1) This program must describe the parameters to be monitored, method of data collection and corrective action process.

(2) The program must ensure that engine limit margins are maintained so that a prolonged engine inoperative diversion may be conducted without exceeding approved engine limits (for example, rotor speeds, exhaust gas temperatures) at all approved power levels and expected environmental conditions.

(e) *Oil consumption monitoring.*

The certificate holder must establish an engine oil consumption monitoring program to ensure that there is enough oil to complete any ETOPS flight. The operator's consumption limit must not exceed the manufacturer's recommendations. The program must consider the amount of oil added at the departing ETOPS stations with reference to the running average consumption. The monitoring must be continuous up to and including oil added at the ETOPS departure station. The APU must be included if an APU is required for ETOPS.

(f) *APU in-flight start program.*

If APU in-flight start capability is required for ETOPS, the certificate holder must have a cold soak in-flight APU start and run reliability program acceptable to the Administrator.

(g) *Maintenance training.*

The certificate holder must review the airplane and engine combination maintenance training program with the CHDO to ensure that it adequately supports ETOPS training requirements. The certificate holder must develop additional ETOPS specific training that focuses on the special nature of ETOPS and is required for all personnel involved in ETOPS. This training is in addition to the operator's accepted maintenance training program to qualify individuals for specific airplanes and engines.

(h) *Procedural changes.*

Any substantial changes to the maintenance or training procedures established to qualify for ETOPS must be submitted to the CHDO and approved before they may be adopted.

(i) *Reporting.*

For each airplane authorized to conduct ETOPS, the certificate holder shall report on a quarterly basis operating hours and cycles for each engine and airframe to the CHDO and to the airplane and engine manufacturer.

Issued in Washington, DC, on November 7, 2003.

James Ballough,

Director, Flight Standards Service.

[FR Doc. 03–28407 Filed 11–10–03; 2:26 pm]

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S. 926/P.L. 108–123

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